Conclusion

Power, Procedures, and Periphery: The UN Security Council in the Ukraine War

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I. INTRODUCTION

The war launched in February 2022 by Russia against Ukraine has become a stress test for the role of the UN Security Council: 'new geopolitical challenges have led to unprecedented levels of fragmentation within the Council', as the most recent concept note by Albania on Security Council working methods put it.[1] The ongoing war confirms some of the findings of the three authors gathered in this Trialogue.

Congyan Cai, Larissa van den Herik, and Tiyanjana Maluwa have examined the manifestations of law and power in the Council, substance and procedure in its workings, and the relationship between the Council at the centre and its periphery in the form of regional organisations. This concluding chapter revisits these three dichotomies in the light of the Russian invasion, asking: has power eclipsed law (section II)? Are empty ritualistic procedures unable to deliver substantive outcomes (section III)? And has the centre been disabled so that peripheral actors dominate the scene (section IV)?

The chapter concludes (section V) that the Security Council remains important not only as a centre of power but also as a creature of law and as a law-producer – challenging Congyan Cai. The Council's action and inaction is highly dependent on legal procedures (as opposed to mere 'politics'), as Larissa van den Herik has shown. Moreover, the Council – in its response to the Ukrainian war – is firmly embedded in a network of other international bodies and actors, following Tiyanjana Maluwa.

[1] Concept Note for the Security Council open debate on the theme 'Security Council Working Methods', 28 June 2022, annexed to Letter dated 21 June 2022 from the Permanent Representative of Albania to the United Nations addressed to the Secretary-General, UN Doc. S/2022/499, 2.

II. LAW AND POWER

Congyan Cai writes that 'the Security Council was, and continues to be, deeply embedded in power politics' and that its functioning 'largely depends on the relations between the great powers'.[2] Others, especially Ian Hurd, have observed, more specifically, that the Security Council's working seems completely 'dependen[t] on great power unanimity'.[3] If indeed 'great power unanimity' is the key to the body's working, it does not seem true that the Council is 'dominated by Western hegemony', as Cai writes.[4] Rather, the Security Council is entirely reliant on the consent of the non-Western permanent members, too. It can become active only when all five permanent members (the P5) agree, and it lies 'dormant', as Hurd writes, when this is not the case.[5]

That logic has again manifested in the Ukrainian crisis. Obviously, the Security Council could not condemn the Russian aggression in Ukraine, because Russia exercised its veto.[6] As Tiyanjana Maluwa points out, the Council's partial paralysis is by legal design: it is 'unable to deal with threats to international peace and security in which the principal or sole offender is a permanent member of the Council'.[7] Given that Russia is the offender in the Ukraine war, it seems that the member states gave up trying to involve the Council, as Congyan Cai found.[8] Indeed, fewer attempts have been made to reach a Security Council resolution in this case than in that of the Syrian war, which has been waging since 2012.

The Council has been far from inactive, however, as the next sections will show. The example of the Russian aggression in Ukraine illustrates that the

[2] Congyan Cai, 'The UN Security Council: Maintaining Peace during a Global Power Shift', Chapter 1 in this volume, section VII (p. 107).

[3] Ian Hurd, 'The UN Security Council', in Alexandra Gheciu and William Wohlforth (eds), *The Oxford Handbook of International Security* (Oxford: Oxford University Press, 2018), 668–82 (673–4). See also Niels Blokker, *Saving Succeeding Generations from the Scourge of War: The United Nations Security Council at 75* (Leiden: Brill, 2021), 72, who suggests that any reform should strengthen unity among the P5, not make it weaker.

[4] Cai, 'Maintaining Peace during a Global Power Shift', Chapter 1 in this volume, section V.B (p. 81).

[5] Hurd, 'UN Security Council' (n. 3), 668, 673.

[6] In 2014: SC Draft Res. 189 of 15 March 2014 – vetoed by Russia (meeting of 15 March 2014, UN Doc. S/PV.7138, 3). In 2022: SC Draft Res. 155 of 25 February 2022 – vetoed by Russia (meeting of 25 February 2022, UN Doc. S/PV.8979, 6); SC Draft Res. 720 of 30 September 2022 – vetoed by Russia (meeting of 30 September 2022, UN Doc. S/PV.9143, 4).

[7] Tiyanjana Maluwa, 'The UN Security Council: Between Centralism and Regionalism', Chapter 3 in this volume, section IV.B (p. 263).

[8] Cai, 'Maintaining Peace during a Global Power Shift', Chapter 1 in this volume, section III.C.

'dysfunction' of the Council is perhaps not as 'inevitable' as Maluwa has suggested.[9]

This is not to deny that, in the workings of the Security Council, the co-constitutiveness and the mutual interdependence of (political) power on law and of law on (political) power is more apparent than in other institutions. In all settings, the law's content reflects the power constellation in the arena within which this law is made or emerges. However, this content is also shaped by the procedural rules that govern the law's creation, such as by majority voting in a parliament, by the principle of consent and unanimity for the adoption of an international treaty, or by the voting rules in the Security Council. Moreover, the law needs the backing of political or economic power to inspire compliance. Compliance with the law (and thus the law's power to shape reality and influence human behaviour) does not flow mainly from the threat of sanctions; it depends on many factors, one being social acceptance of the prescriptions' substance and of the procedures in which they have been made. Applied to the Security Council, the problem is less about compliance with its decisions but rather about its selective action, resulting from what Larissa van den Herik would perceive as flawed decision-making procedures and what Tiyanjana Maluwa sees as inevitably national (self-)interests.[10]

Our Trialogue authors, like other observers before them, have foregrounded in their studies one or the other dimension of law (law as rules or law as an outgrowth of power politics), in line with their own intellectual predispositions and worldviews. Congyan Cai's chapter tends to align with the work of Ian Hurd, who has insisted that the Security Council framework serves not to displace power politics but to institutionalise it.[11] This is, according to Hurd, an 'imperial model' or a 'legalized hegemony'.[12]

In contrast, Larissa van den Herik foregrounds the legal dimension that is able – within limits – to structure and contain 'raw power'. The Council – from this perspective – appears to be (also) a creature of the law: a legal institution. Van den Herik's paradigm matches the recent argument by Devika Hovell – namely, that the Security Council is the fiduciary of the international community and therefore bound by

[9] Maluwa, 'Between Centralism and Regionalism', Chapter 3 in this volume, section IV.C (p. 268).

[10] *Ibid.*, section IV.B.1 (pp. 204–5).

[11] Ian Hurd, *After Anarchy: Legitimacy and Power in the UN Security Council* (New Jersey: Princeton University Press, 2007), 133.

[12] Hurd, 'UN Security Council' (n. 3), 669, 671.

fiduciary duties such as the duties to inform, to consult, to give reasons, and to account. This reconceptualisation of the legal status of the Council posits that a permanent member violates its fiduciary duties – notably, the 'duty of non-exploitation' – when it exercises the veto out of self-interest and not for the purpose of maintaining peace.[13] But this reconstruction of the UN Charter, persuasive and convincing as it is, confronts the chaotic and inconsistent practice of the Council and its members. Self-interested vetoes have been a constant feature of voting in the Security Council. Against the idea of public trust and concomitant duties, the more conservative reading of the Charter is that it allows the P5 (as it does any other member) to pursue their own interests by all legal means at their disposal. This is perfectly fine: 'It is impossible and not necessarily always desirable to eliminate the politicking that goes on at the Council, nor to eliminate the use of the Council as a foreign policy tool in pursuit of national interests.'[14]

Taking a closer look at power and law in the Security Council, we see that the root cause of problems of effectiveness and legitimacy is not the dependency of the working of the Council on a given power constellation but the fact that the composition of the Council *freezes a historic moment*. This anachronism privileges those states that were powerful in 1945 but which are no longer equally important on the global stage – especially in comparison to the non-European states that are now economic and political giants, such as Brazil or India. In 1945, the voting scheme for the projected Security Council (including the requirement of a 'concurring vote' among the permanent members) was conceived at a conference of the four victorious powers in Yalta in 1945, without participation of the rest. The 'Yalta formula' foreshadowed the text of Article 27 UN Charter.[15] The four sponsoring states made clear that there would be no world organisation without such a prerogative: the voting

[13] Devika Hovell, 'On Trust: The UN Security Council as Fiduciary', *William and Mary Law Review* 62 (2021), 1229–95 (esp. 1290). See also, for the fiduciary relationship, Andreas S. Kolb, *The UN Security Council Members' Responsibility to Protect* (Berlin, Heidelberg: Springer, 2018), 176–8.

[14] Jane Boulden, 'Past Futures for the UN Security Council', *Georgetown Journal of International Affairs* 21 (2020), 80–5 (84).

[15] Protocol of Proceedings at the Yalta Conference, Yalta (Crimea), 11 February 1945, C. ('Voting'): '3. Decisions of the Security Council on all other matters should be made by an affirmative vote of seven members including the *concurring votes of the permanent members*; provided that, in decisions under Chapter VIII, Section A and under the second sentence of paragraph 1 of Chapter VIII. Section C, *a party to a dispute should abstain from voting*' (emphasis added).

scheme was 'essential' to the new organisation.[16] The veto was 'a price to be paid for the creation of the UN'.[17]

At the same time, certain procedures were at work in 1945 – an observation that underscores the message of Van den Herik's chapter. The draft Charter text was not, in formal terms, an *octroi* of the victors; rather, a negotiation process took place in which the rules of diplomatic conferences were applied and formal voting was organised. Thus '[t]he Yalta formula was approved by a vote of 30 to 2, with fifteen delegations abstaining'.[18] A cynical view on procedural rules is that these only embellished the fact that the other states had to swallow the privileges of the great powers if they wanted to get what all sides wanted: a new world organisation through which peace and security could be maintained. However, the veto was accepted not only because of the overwhelming military, political, and even economic power of (some of) the P5 but also because the other states had the normative expectation that this would be a guarantee of peace and security. The four sponsoring powers of the Yalta formula (later joined by France) pledged, at least implicitly, to continue to safeguard world peace, as they had just proven capable of doing in World War II. They proclaimed: 'It is not to be assumed, however, that the permanent members, any more than the non-permanent members, would use their "veto" power wilfully to obstruct the operation of the Council.'[19]

That historic promise has been broken several times in the history of the United Nations – most recently by Russia, in the context of Ukraine.[20] This fact seems to confirm Cai's statement that 'political considerations regularly prevail over law in the workings of the Security Council'.[21] One of the

[16] Statement at San Francisco by the delegations of the four Sponsoring Governments (China, the UK, the USA, and the USSR) on 'The Yalta Formula' on Voting in the Security Council, 8 June 1945, INCIO, XI (1945), 710–14, sec. I.9: '9. In view of the primary responsibilities of the permanent members, they could not be expected, in the present condition of the world, to assume the obligation to act in so serious a matter as the maintenance of international peace and security in consequence of a decision in which they had not concurred.' *Ibid.*, sec. I.10: 'For all these reasons, the four sponsoring Governments agreed on the Yalta formula and have presented it to this Conference *as essential* if an international organization is to be created through which all peace-loving nations can effectively discharge their common responsibilities for the maintenance of international peace and security' (emphasis added).

[17] Blokker, *Saving Succeeding Generations* (n. 3), 73.

[18] Francis Orlando Wilcox, 'The Yalta Voting Formula', *The American Political Science Review* 39 (1945), 943–56, at 950; also quoted in Andreas Zimmermann, 'Article 27', in Bruno Simma, Daniel-Erasmus Khan, Georg Nolte, and Andreas Paulus (eds), *The Charter of the United Nations: A Commentary* (Oxford: Oxford University Press, 4th edn, 2024 forthcoming), MN 20, fn. 21.

[19] Statement on Yalta (n. 16), sec. I.8.

[20] See n. 6.

[21] Cai, 'Maintaining Peace during a Global Power Shift', Chapter 1 in this volume, section II.D (p. 33).

cynicisms of the Russian aggression was that the state's Article 51 letter to the Council paid respect to its formal authority. In this way, Russia attempted to furnish its attack on Ukraine with a veneer of legitimacy by abusing the legal formalities of notifying self-defence (which is obviously absent).[22] Moreover, the Russian letter refers to prior cases before the Security Council. It denounces 'the distortion of all United Nations Security Council decisions on the Libyan question' (of 2011).[23] It also deplores that 'combat operations conducted by the Western coalition' on the territory of Syria (since 2012) 'without ... authorization from the United Nations Security Council are nothing more than aggression and intervention'.[24] Such respect to the Security Council is unsurprising because, as a veto-holding permanent member, Russia basically benefits from the Security Council. The Security Council is a body that, by legal design, amplifies the power of the P5 and is never able to take measures running against their interests[25] – which brings us back to the power constellation of 1945.

What to make, then, of Russia's Article 51 letter? It has been – rightly – pointed out that states which try to justify particular military operations in the Security Council 'at least reinforce the sense that use of force decisions are matters of collective concern and for the Council's deliberation, not within the exclusive purview of individual states'.[26] Such explanations in the language of the law – especially those that rely on self-defence and include an Article 51 letter to the Security Council – have been famously treated as a confirmation of the rule on the prohibition of the use of force established by the International Court of Justice (ICJ) in its *Nicaragua* judgment:

> If a State acts in a way prima facie incompatible with a recognized rule, but defends its conduct by appealing to exceptions or justifications contained within the rule itself, then whether or not the State's conduct is in fact justifiable on that basis, the significance of that attitude is to confirm rather than to weaken the rule.[27]

[22] Letter dated 24 February 2022 from the Permanent Representative of the Russian Federation to the United Nations addressed to the Secretary-General, UN Doc. S/2022/154, annexing the text of the address of Russian President Vladimir Putin to the citizens of Russia, informing them of the measures taken in accordance with Art. 51 of the Charter of the United Nations in exercise of the right of self-defence.

[23] *Ibid.*, 3.

[24] *Ibid.*

[25] Hurd, 'UN Security Council' (n. 3), abstract.

[26] Monika Hakimi, 'The Jus ad Bellum's Regulatory Form', *American Journal of International Law* 112 (2018), 151–90 (185).

[27] ICJ, *Military and Paramilitary Activities in and against Nicaragua* (Nicaragua v. United States), merits, judgment of 27 June 1986, ICJ Reports 1986, 14, para. 186.

However, not all legal cheap talk really manifests a commitment to the law that strengthens the law's normative force. There is a boundary beyond which the language of the law is simply being abused and the 'justification' is a sham. I submit that this line has been crossed with the Russian Article 51 letter to the Security Council. The reason is that no armed attack (ongoing or imminent), neither by Ukraine nor by the North Atlantic Treaty Organization (NATO) nor by any other actor – the minimum requirement for the lawful exercise of self-defence, as all participants in the legal discourse agree – could be shown. While, according to Congyan Cai, 'China considers the Ukrainian crisis, including the SMO [special military operation], largely attributable to NATO's expansion',[28] this is no legal assessment of the situation, because China too does not consider 'expansion' to amount to an armed attack.

With regard to the relationship between law and power, Cai sees a 'fundamental distinction between international and domestic society'.[29] Larissa van den Herik and Tiyanjana Maluwa do not dwell explicitly on this point. From their perspectives, those two different levels of law and governance (domestic and international) rather seem to resemble each other in structural terms. Procedures matter everywhere, and the division of competences and labour between centre and periphery is a standard problem for all polities. The Ukraine war has actually brought to the fore that the specific feature of international society – namely, the absence of a central law-maker and centralised enforcement mechanisms – does not inevitably make a crucial difference to the domestic scenario. In this war – in the face of brute violence – even well-functioning legislation and implementation would have no chance of resolving the problem. No legal or institutional barriers prevent law enforcement against the Russian aggression in form of collective self-defence; rather, it is geostrategic considerations, domestic politics, and the fear of nuclear escalation that prevent Western states from entering the war against Russia. Compare this situation to a police officer facing someone fully armed and holding hostages. The police officer could lawfully try to overpower them but will refrain from doing so for fear that the action might result in casualties. The difference between the domestic and the international level of law and politics here seems thus to be a matter of degree not of kind.

[28] Cai, 'Maintaining Peace during a Global Power Shift', Chapter 1 in this volume, section III (p. 58).B, citing Ministry of Foreign Affairs of the People's Republic of China, 'Wang Yi Expounds China's Five-Point Position on the Current Ukraine Issue', 26 February 2022, available at www.fmprc.gov.cn/eng/zxxx_662805/202202/t20220226_10645855.html.

[29] Cai, 'Maintaining Peace during a Global Power Shift', Chapter 1 in this volume, section II.A (p. 27).

To conclude, while Congyan Cai's main message is that political power often stymies the functioning of the law in the working of the Security Council, Larissa van den Herik offers examples of where and how legal procedures in fact *do* check 'P5 raw power'.[30] Tiyanjana Maluwa's chapter confirms, rather than negates, the shaping power of law by means of an analysis of quite impressive legal developments in the relationship between the UN Security Council and African actors – Article 4(h) being a particularly 'substantial legal innovation'.[31] The Ukraine war, however, ultimately confirms Cai's overall stance – namely, that the Security Council is 'fundamentally disabled' by struggles among the great powers.[32]

III. PROCEDURE AND SUBSTANCE

A. *The Power and Powerlessness of Procedures*

Process also matters in the Security Council. All of the authors in this Trialogue have examined procedures – particularly Larissa van den Herik. Her findings are in line with those of a recent empirical investigation, comprising both a large-N data analysis and case studies, aiming to trace the decision-making processes in the Security Council: 'The powerful hold the veto, but they do not hold sway over the entire process. ... The rules of the institution have an impact.'[33] The Security Council is not a simple 'pass-through for powerful states'.[34]

Why and how do institutional rules matter? Generally speaking, legal procedures for decision-making convey a modicum of legitimacy to the resulting decision. When it is created by means of the proper procedures, an outcome will be acceptable to all affected, independently of its actual substance and content. This 'legitimation through procedures' is highly relevant for the Security Council. The Council's procedures are notoriously underregulated, as illustrated by the fact that the Council still works under only 'provisional' Rules of Procedure that have not been updated since 1982.[35] In

[30] Larissa van den Herik, 'The UN Security Council: A Reflection on Institutional Strength', Chapter 2 in this volume, section I (p. 112).

[31] Maluwa, 'Between Centralism and Regionalism', Chapter 3 in this volume, section III.A (p. 198).

[32] Cai, 'Maintaining Peace during a Global Power Shift', Chapter 1 in this volume, section III.A (p. 44).

[33] Susan Allen and Amy Yuen, *Bargaining in the Security Council: Setting the Global Agenda* (Oxford: Oxford University Press, 2022), 165.

[34] *Ibid.*, 169.

[35] Security Council, Provisional Rules of Procedure, UN Doc. S/96/Rev.7, 21 December 1982.

the face of persistent criticism of the Security Council's secrecy and exclusion, and the resulting lack of accountability, the procedures and working methods have very slowly evolved.[36]

Larissa van den Herik suggests applying several procedural principles, distilled from the practice of various international organisations, more stringently to the working of the Security Council. She asks for more transparency,[37] inclusion,[38] and deliberation.[39] A related procedural mechanism are hearings, accompanied by the decision-maker's obligation to take into account the statements of participants in such hearings.[40] The 'veto initiative procedure', as established by the General Assembly, can be considered an ex post hearing. It assigns the duty of explanation not to the Security Council as a whole but to the permanent member(s) who used the veto to block the Council: that permanent member is now asked to respond to the General Assembly.[41]

Legal limits imposed on power are 'stronger' when the law is more precise. For example, an authorisation by the Security Council to use 'all necessary means' to respond to a threat of the peace leaves such ample leeway to the implementing actors that it can be difficult to draw a line between activities that are faithful to such a mandate and those that overstep it. The controversial intervention in Libya in 2011 brought this problem to the fore. Van den Herik therefore asks for more precision: 'The lesson to be learnt from Libya [is] ... that the limits to an authorised use of force need to be spelled out in much more detail in the authorising resolution.'[42]

[36] See, e.g., Note by the President of the Security Council on working methods, UN Doc. S/2017/507, 30 August 2017; Security Council, *Working Methods Handbook*, January 2021, available at www.un.org/securitycouncil/content/working-methods-handbook. In scholarship, see Joanna Harrington, 'The Working Methods of the United Nations Security Council', *International & Comparative Law Quarterly* 66 (2017), 39–77.

[37] Van den Herik, 'A Reflection on Institutional Strength', Chapter 2 in this volume, section IV.B.2 (p. 134).

[38] *Ibid.* See, along these lines, Note by the President of the Security Council, UN Doc. S/2017/507, 30 August 2017, para. 38: 'It is the understanding of the members of the Security Council that open debates can benefit from the contributions of both Council members and the wider membership.'

[39] Van den Herik, 'A Reflection on Institutional Strength', Chapter 2 in this volume, section VIII (p. 184).

[40] *Ibid.*

[41] GA Res. 76/262 of 26 April 2022 on a standing mandate for a General Assembly debate when a veto is cast in the Security Council, UN Doc. A/RES/76/262.

[42] Van den Herik, 'A Reflection on Institutional Strength', Chapter 2 in this volume, section IV.A (p. 128).

B. *Checks and Balances, and Accountability*

Larissa van den Herik has called also for checks and balances.[43] Importantly, in the multilevel legal system constituted by international and domestic law, such checks can arise at the national level. National commissions of inquiry into the resort to war powers by a government represented in the Council indirectly check the powers exercised by the Council too.[44] Van den Herik cites as an example the British select committee inquiry into the military intervention in Libya that many observers argued had overstretched the Security Council mandate.[45]

Michael Wood and Eran Sthoeger have pointed out that '*the* principal check' on the Security Council's powers are its decision-making procedures – namely, the majority requirement for procedural decisions and the possibility that the elected members can block even the united P5.[46] Congyan Cai finds that this majority rule would be problematic without the counterweight of the veto; he opines that restraining the veto power might give rise to a 'tyranny of the majority' in the Council.[47] My view is that an antidote to such a phenomenon would be the acceptance of constitutional rules that even the majority – or, at least, an unqualified simple majority – cannot overturn. The UN Charter can plausibly be conceptualised as a constitutional document for the world community that embodies global values and which enjoys a higher normative status than 'ordinary' international rules (as expressed in its Art. 103).[48] Such constitutional rules – which are to be respected by the Council itself and by all of its members – are the purposes and principles of Article 1, by which the Council must abide when fulfilling its primary responsibility for maintaining peace and security.[49] After the Cold War ended in 1990, intergovernmental actors and experts sketched out in more detail the parameters that the Security Council should respect. One of the most influential documents is the 2001 report of the International Commission on State Sovereignty and Intervention (ICISS). A major objective of the ICISS was to

[43] *Ibid.*

[44] *Ibid.*

[45] House of Commons Foreign Affairs Committee, *Libya: Examination of Intervention and Collapse and the UK's Future Policy Options*, Third Report of Session 2016–17, September 2016, HC 119.

[46] Michael Wood and Eran Sthoeger, *The UN Security Council and International Law* (Cambridge: Cambridge University Press, 2022), 84–85 (quote at 84), emphasis original.

[47] Cai, 'Maintaining Peace during a Global Power Shift', Chapter 1 in this volume, section VI.A.1 (p. 100).

[48] Bardo Fassbender, *UN Security Council Reform and the Right of Veto: A Constitutional Perspective* (The Hague: Kluwer Law International, 1998), 129–30.

[49] Art. 24(2) UN Charter: 'In discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations.'

formulate principles for military action to be applied by the Council itself (as the most appropriate body to authorise military measures), such as just cause, precautionary principles, and operational principles.[50] The ICISS also suggested a 'code of conduct' to be agreed upon by the P5 to that end.[51] The UN Secretary-General, too, recommended in 2005 'that the Security Council adopt a resolution setting out these principles and expressing its intention to be guided by them when deciding whether to authorize or mandate the use of force'.[52]

Additionally, Wood and Sthoeger point out that member states may simply disregard the binding obligations, and that this prospect incentivises the Council to exercise self-restraint: 'That is the most effective check on the Council's power.'[53] This 'check' is most often no legal mechanism but simply an expression of the fact that unlawful non-compliance by member states is possible. Only under very narrow conditions can a member's disobedience be framed as an admissible countermeasure against a breach of international law by the Security Council itself. However, the legal limits, including the 'constitutional' constraints of the Security Council, are notoriously controversial. Moreover, the more frequent problem is not too much Security Council action but its inaction. The threat of non-compliance does not help against the Council's undesirable passivity.

With regard to reporting requirements, Congyan Cai rightly points out that there must be a recipient of such reports who is 'immune from the control of the great powers'.[54] I agree that reporting cannot generate any accountability (however mild) if the recipient has no freedom to respond critically. The application of the veto initiative in two instances since its introduction in April 2022 has been rather sobering in this regard. After the Russian veto of the draft Security Council resolution that sought to condemn its annexation of four Ukrainian regions, especially, the mandatory General Assembly debate convened under the new procedure did not generate much criticism of the veto but concentrated instead on the violation of the territorial integrity of Ukraine.[55]

This observation is not an argument against the new procedure as such but a reminder that the political constellation inevitably influences how the procedures are used. Cai has consistently called for a close ex ante assessment of the likely practical implementation and outcomes of any suggested

[50] *The Responsibility to Protect*, Report of the International Commission on State Sovereignty and Intervention (ICISS), December 2001, esp. paras 6.13–6.14 and 6.27.

[51] *Ibid.*, para. 6.21.

[52] *In Larger Freedom: Towards Development, Security and Human Rights for All*, Report of the Secretary-General, UN Doc. A/59/2005, 21 March 2005, para. 126.

[53] Wood and Sthoeger, *UN Security Council* (n. 46), 89.

[54] Cai, 'Maintaining Peace during a Global Power Shift', Chapter 1 in this volume, section VI.A.2 (p. 102).

[55] UN Doc. A/ES-11/PV.14, 12 October 2022.

procedural reforms, to gauge whether they are feasible at all – or might even backfire.[56] This strategy of caution and pragmatism needs to be applied to various other procedural proposals at which this concluding chapter looks next.

C. *Procedural Arguments against Manifestly Obstructive Vetoes*

All three authors in this Trialogue have grappled with the (renewed) malfunction of the Security Council in the current era of a 'new Cold War'. Even now, though, the Security Council is adopting more resolutions than ever before, including on difficult topics such as the war in Syria.[57] However, the substance of these resolutions does not strike at the heart of the matter: they do not condemn serious violations of international law if committed by a permanent member or one of its clients nor do they authorise military action against such law-breakers.

This malfunction has materialised acutely in the ongoing Ukrainian crisis. Russia has repeatedly vetoed draft Security Council resolutions that have concerned its activities in the neighbouring state.[58] In this context, the US ambassador to the United Nations has stated that 'any Permanent Member that exercises the veto to defend its own acts of aggression loses moral authority'.[59] Additionally, it is arguable in law that a veto exercised to shield one's own aggression not only lacks moral authority but also is legally problematic, because it risks violating the duty to abstain under Article 27(3) UN Charter (in a plausibly broad reading), constitutes an abuse of rights, infringes the principle of good faith, and deepens the violation of the right to life committed through the aggression.[60]

Two procedural strategies to end abuses of the veto have been espoused, as Larissa van den Herik mentions.[61] First, more than 100 states, including three permanent members of the Security Council, have, in different ways,

[56] Cai, 'Maintaining Peace during a Global Power Shift', Chapter 1 in this volume, section VII (p. 107).

[57] See the figures given in Christian Marxsen, 'The Security Council's Four Defining Fields of Tension', Introduction in this volume, section II (p. 6).

[58] See n. 6.

[59] United States Mission to the United Nations, Remarks by Ambassador Linda Thomas-Greenfield on the Future of the United Nations, 8 September 2022, available at https://usun.usmission.gov/remarks-by-ambassador-linda-thomas-greenfield-on-the-future-of-the-united nations/.

[60] Anne Peters, 'The War in Ukraine and the Illegitimacy of the Russian Vetoes', *Journal on the Use of Force and International Law* 10 (2023) 162–72.

[61] Van den Herik, 'A Reflection on Institutional Strength', Chapter 2 in this volume, section III (pp. 118–19). See also Marxsen, 'The Security Council's Four Defining Fields of Tension', Introduction in this volume.

promised not to exercise the veto in certain situations – notably, in the face of mass atrocities – under the Code of Conduct of the Accountability, Coherence and Transparency (ACT) Group,[62] the French–Mexican initiative,[63] and the recent UN–American pledge.[64] The Ukraine war has also led to the 'veto initiative' under General Assembly Resolution 76/262 of 2022. This Resolution introduced a mandatory General Assembly meeting at which any state that casts its veto must explain itself before the entire UN membership.[65] I have analysed these strategies elsewhere.[66]

The new procedures and procedural arguments do not call into question the P5's legal right to use the veto at their discretion to further their own interests, even if doing so is in tension with their responsibility to contribute to the maintenance of world peace. However, they do call into question the legitimacy of a veto shielding the aggression of the state casting it. The new developments also show how procedures matter. The Security Council is not simply a 'purely' political body but is governed by law, albeit imperfectly. Importantly, however, this law has so far contributed only to avoiding war among the P5 themselves; it has not contained wars led by a permanent member against other states. Ultimately, the most unique procedural feature in the working of the Security Council, the veto, precisely facilitates violations of international law by a permanent member. In this Trialogue, both Van den Herik and Maluwa concur that the procedure needs to be modified if it is to uphold and safeguard the substance of the prohibition on the use of force. In contrast, Cai sees no need for a change of working methods, cautioning against 'unexpected risks'.[67]

[62] Accountability, Coherence and Transparency (ACT) Group, Submission to the United Nations, 'Code of Conduct regarding Security Council Action against Genocide, Crimes against Humanity or War Crimes', 23 October 2015, annexed to Letter dated 14 December 2015 from the Permanent Representative of Liechtenstein to the United Nations addressed to the Secretary-General, UN Doc. A/70/621–S/2015/978.

[63] Global Centre for the Responsibility to Protect, Political Declaration on Suspension of Veto Powers in Cases of Mass Atrocities, 1 August 2015, available at www.globalr2p.org/resources/political-declaration-on-suspension-of-veto-powers-in-cases-of-mass-atrocities/.

[64] See Remarks by Ambassador Linda Thomas-Greenfield (n. 59).

[65] GA Res. 76/262 of 26 April 2022, on a standing mandate for a General Assembly debate when a veto is cast in the Security Council, UN Doc. A/RES/76/262, adopted by consensus.

[66] See, on both procedures, Anne Peters, 'The War in Ukraine and the Curtailment of the Veto in the Security Council', *Revue Européenne du Droit* 5 (2023) 87–93, available at https://geopolitique.eu/en/articles/the-war-in-ukraine-and-the-curtailment-of-the-veto-in-the-security-council/.

[67] Cai, 'Maintaining Peace during a Global Power Shift', Chapter 1 in this volume, section I (p. 24).

IV. CENTRE AND PERIPHERY

The Ukrainian crisis shows – in line with the findings of Tiyanjana Maluwa – the importance of regional actors and alliances that do not ultimately call into question the primacy of the Security Council.

The regional alliance between China and Russia seems to remain intact. In 2021, Russia and China had expressed 'a need to hold a *summit of the permanent members* of the UN Security Council in order to establish a direct dialogue between them on ways to resolve common problems facing humanity, in the interests of maintaining global stability'.[68] In February 2022, Russia and China issued a 'joint statement on the international relations entering a new era and the global sustainable development'.[69] Less than three weeks before the Russian invasion into Ukraine, Russia and China 'reaffirm[ed] their strong mutual support for the protection of ... territorial integrity'.[70] In that statement, the two states also promised to 'respect the rights of peoples to independently determine the development paths of their country', and to 'seek genuine multipolarity, with the United Nations and its *Security Council playing a central and coordinating role*'.[71] Besides the cynical lip service one of these two authors paid to territorial integrity and self-determination just three weeks before it broke these principles, a striking feature of these statements is the oscillation between a focus on the P5 as the actual power-holders and upholding the role of the Security Council as a whole. Both of these foci directly serve the interests of these two permanent members.

Other (regional) actors have not – and this is Tiyanjana Maluwa's main finding – challenged the Security Council's primordial role in matters of peace and security.[72] A 2017 note by the Security Council's president commits the members of the Council to 'continu[ing] to expand consultation and cooperation with regional and sub regional organizations, including by inviting relevant organizations to participate in the Council's public and

[68] Ministry of Foreign Affairs of the Russian Federation, Joint Statement by the Foreign Ministers of China and Russia on Certain Aspects of Global Governance in Modern Conditions, 23 March 2021, available at www.mid.ru/en/foreign_policy/news/-/asset_publisher/cKNonkJE02Bw/content/id/4647776.

[69] President of Russia, Joint Statement of the Russian Federation and the People's Republic of China on the International Relations Entering a New Era and the Global Sustainable Development, 4 February 2022, available at www.en.kremlin.ru/supplement/5770.

[70] *Ibid.*

[71] *Ibid.* (emphasis added).

[72] Maluwa, 'Between Centralism and Regionalism', Chapter 3 in this volume, section V (p. 277).

private meetings, when appropriate'.[73] The involvement of such regional actors is 'now a standard element in the Council's response to conflict situations'.[74] These practices preserve the leading role of the Security Council even in relation to the African Union – a regional organisation that is itself equipped with military powers, yet still follows the Council's lead.[75]

The Western response against Russia's attack on Ukraine again underlines the centrality of the Security Council. Ukrainian territorial integrity against the Russian armed attack could be lawfully defended under the heading of collective self-defence, for example by NATO or any other alliance of Western states. There would be no practical military difference between a pushback under that heading and a response under the authority of the Security Council. From a formal juridical perspective, too, both legal grounds are equally good. Still, it seems as if all actors agree that the blessing of the Security Council would furnish a higher degree of legitimacy to the response – likely because the Council represents the entire UN membership and acts as the official universal authority for the upholding of peace and security.

Zooming in on the African Union, Maluwa describes the relationship between the Security Council and regional organisations as a division of labour and a 'partnership between the centre and the periphery for the maintenance of international peace and security'.[76] This 'partnership' worked on the occasion of the Russo-Ukrainian war. A wide range of regional organisations and bodies immediately condemned the Russian invasion in Ukraine as a flagrant violation of international law. Among them are the European Council (of the European Union),[77] the League of Arab States,[78]

[73] Note by the President of the Security Council, UN Doc. S/2017/507, 30 August 2017, para. 96.

[74] Boulden, 'Past Futures', (n. 14), 83.

[75] Interestingly, the African Union did not, as Maluwa finds upon closer examination, manifest a common AU position on the Russian invasion in Ukraine: see African Union, Statement from Chair of the African Union, H.E. President Macky Sall, and Chairperson of the AU Commission, H.E. Moussa Faki Mahamat, on the situation in Ukraine, 24 February 2022, available at https://au.int/sites/default/files/pressreleases/41529-pr-english.pdf. See also Maluwa, 'Between Centralism and Regionalism', Chapter 3 in this volume, section IV.B (p. 259).

[76] *Ibid.*, section IV.D (p. 274).

[77] European Council, Joint Statement by the Members of the European Council, 24 February 2022, available at www.consilium.europa.eu/en/press/press-releases/2022/02/24/joint-statement-by-the-members-of-the-european-council-24-02-2022/.

[78] Communiqué on developments in the crisis in Ukraine issued by the Council of the League of Arab States at the level of permanent representatives at its Extraordinary Session, annexed to Identical letters dated 1 March 2022 from the Permanent Representative of Kuwait to the

the Association of Southeast Asian Nations (ASEAN),[79] NATO,[80] the Organization for Security and Co-operation in Europe (OSCE),[81] and the Organization of American States (OAS).[82] The various organisations adopted measures and undertook activities in their respective spheres of competence. These range from the European Union's economic and financial sanctions,[83] through the OSCE's reports on violations of international humanitarian law,[84] to the reputational sanction of expulsion from the Council of Europe (CoE).[85] In addition, all parliamentary assemblies of the regional organisations in Europe (i.e., that of the European Union,[86] the CoE,[87] and the OSCE[88]), the Parliamentary Assembly of

United Nations addressed to the Secretary-General and the President of the Security Council, UN Doc. A/76/737–S/2022/169, 3 March 2022.

79 ASEAN, ASEAN Foreign Ministers' Statement on the Situation in Ukraine, 26 February 2022, available at https://asean.org/wp-content/uploads/2022/02/ASEAN-FM-Statement-on-Ukraine-Crisis-26-Feb-Final.pdf.

80 NATO, Statement by NATO Heads of State and Government on Russia's Attack on Ukraine, 25 February 2022, available at www.nato.int/cps/en/natohq/official_texts_192489.htm?selectedLocale=en.

81 OSCE, Joint Statement by OSCE Chairman-in-Office Rau and Secretary General Schmid on Russia's Launch of a Military Operation in Ukraine, 24 February 2022, available at www.osce.org/chairmanship/512890.

82 OAS, Statement from the OAS General Secretariat on the Russian Attack on Ukraine, 24 February 2022, available at www.oas.org/en/media_center/press_release.asp?sCodigo=E-008/22.

83 See the EU sanctions map, available at www.sanctionsmap.eu.

84 OSCE, *Report on Violations of International Humanitarian and Human Rights Law, War Crimes and Crimes against Humanity Committed in Ukraine since 24 February 2022*, 13 April 2022, available at www.osce.org/odihr/515868; OSCE, *Report on Violations of International Humanitarian and Human Rights Law, War Crimes and Crimes against Humanity Committed in Ukraine (1 April–25 June 2022)*, 14 July 2022, available at www.osce.org/odihr/522616; OSCE, *Interim Report on Reported Violations of International Humanitarian Law and International Human Rights Law in Ukraine*, 20 July 2022, available at www.osce.org/odihr/523081; OSCE, *Second Interim Report on Reported Violations of International Humanitarian Law and International Human Rights Law in Ukraine*, 14 December 2022, available at www.osce.org/odihr/534933.

85 CoE Committee of Ministers Res. CM/Res(2022)2 of 16 March 2022 on the cessation of the membership of the Russian Federation to the Council of Europe, adopted at the 1428th meeting of the Ministers' Deputies, available at https://rm.coe.int/0900001680a5da51.

86 EU European Parliament Res. (2023)0015 of 19 January 2023 on the establishment of a tribunal on the crime of aggression against Ukraine, para. 5, available at www.europarl.europa.eu/doceo/document/TA-9-2023-0015_EN.html.

87 PA Rec. 2231(2022) of 28 April 2022 on the Russian Federation's aggression against Ukraine: ensuring accountability for serious violations of international humanitarian law and other international crimes, available at https://pace.coe.int/en/files/30024#trace-4.

88 OSCE PA, Resolution on the Russian Federation's war of aggression against Ukraine and its people and its threat to security across the OSCE region, adopted at the 29th Annual Session,

NATO,[89] and the CoE Committee of Ministers[90] have called for a special tribunal to try President Putin and other officials who might be held accountable for the crime of aggression. In addition, the UN General Assembly is most active under the 'Uniting for Peace' mechanism, under which the Security Council had convened the 11th Emergency Special Session that is ongoing at the time of writing.[91]

The regional and sectorial organisations have mainly adopted statements, and the European Union has also imposed economic sanctions on Russia. Although both NATO and the African Union are well equipped to take military action, and although collective self-defence against the Russian attack is in any case available to all, military support for Ukraine is currently taking the form of weapons supply and training. It does not amount to actual participation in combat. The contribution by all other players outside the United Nations is thus both symbolic and material.

V. CONCLUSIONS: THE EMBEDDED SECURITY COUNCIL

These analyses of the dichotomies of law and power, substance and procedure, centre and periphery, as applied to the war in Ukraine, yield sobering results.

The first dichotomy is law and political power. The dialectics between law and politics in the Security Council was well captured by the dissenters in the ICJ's 1948 Advisory Opinion on the admission to membership of the United Nations.[92] Judges Basdevant, Winiarski, Sir Arnold McNair, and Read conceded that any Security Council decision is 'pre-eminently a political act', but they argued that 'does not mean that no legal restriction is placed upon this liberty. We do not claim that a political organ and those who contribute to the formation of its decisions are emancipated from all duty to respect the law.'[93]

2–6 July 2022, available at www.oscepa.org/en/documents/annual-sessions/2022-birmingham/4409-birmingham-declaration-eng/file, para. 36.

[89] NATO PA, Declaration of 30 May 2022 on standing with Ukraine, available at www.nato-pa.int/document/2022-declaration-standing-ukraine-111-sesp-22, para. 18.

[90] CoE Committee of Ministers, Decision CM/Del/Dec(2022)1442/2.3 of 15 September 2022 on the consequences of the aggression of the Russian Federation against Ukraine: accountability for international crimes.

[91] The 11th Special Emergency Session was convened in response to the Russian invasion by SC Res. 2623(2022) of 27 February 2022 on a decision to call an emergency special session of the General Assembly, UN Doc. S/RES/2623 (2022); GA Res. ES-11/1 of 1 March 2022 on aggression against Ukraine, UN Doc. A/RES/ES-11/1.

[92] ICJ, *Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter)*, advisory opinion of 28 May 1948, ICJ Reports 1948, 82–93, dissenting opinion of Judges Basdevant, Winiarski, Sir Arnold McNair, and Read.

[93] *Ibid.*, para. 9.

The legal principles that are normally accepted to guide the political behaviour of the Security Council as a whole and of its members are not being taken seriously in the Ukrainian crisis. The aggressive politics of a permanent member has not been contained by the Security Council. Legal options that would be available, such as tabling a draft Security Council resolution under Chapter VI and insisting on a Russian abstention under Article 27(3) UN Charter, are not espoused by Council members, for reasons of political expediency. Neither have the political actors picked up the legal argument of the abuse of Russia's veto power. Thus the current crisis rather confirms Congyan Cai's overall assessment that the Security Council is 'deeply embedded in power politics, whether we like it or not'.[94]

The second dichotomy, between substance and procedures, is mainly examined in this Trialogue by Larissa van den Herik, who finds that procedures have been strengthened and modified in response to the Ukrainian crisis. The 'Uniting for Peace' procedure has been set in motion by the Security Council[95] and lingering doubts about its lawfulness have been put to rest.[96] This procedure activates the General Assembly and does not involve the Council. But the inability of the Security Council to condemn Russia's aggression and to take robust action against it is not owed to the current power constellation, which forms the focus of Congyan Cai's chapter; rather, it is rooted in the power constellation of 1945, when the P5 secured for themselves, in the written provisions of the Charter itself, a power to block their own suspension, their own expulsion, and all formal Charter amendments that do not meet with their approval.[97]

The third dichotomy, of centre and periphery, has been analysed by all three of the Trialogue authors – but their assessment of the future relevance of the Security Council differs. Congyan Cai sees a clear risk of the Council being marginalised in the maintenance of international peace, comparable to the situation during the Cold War.[98] Larissa van den Herik is more optimistic and perceives 'a certain expectation that the Security Council will remain the

[94] Cai, 'Maintaining Peace during a Global Power Shift', Chapter 1 in this volume, section VII (p. 107).

[95] See n. 91.

[96] Nico Schrijver, 'A Uniting for Peace Response to Disuniting for War: The Role of the two Political Organs of the UN', *Leiden Law Blog*, 18 March 2022, available at www.leidenlawblog.nl/articles/an-uniting-for-peace-response-to-disuniting-for-war-the-role-of-the-two-political-organs-of-the-un.

[97] Arts 108–9 UN Charter.

[98] Cai, 'Maintaining Peace during a Global Power Shift', Chapter 1 in this volume, section VII (p. 108).

world's primary organ for peace for the near future'. Despite its imperfection, she argues, the Council has not (yet) 'become permanently and fully dysfunctional'.[99] In contrast, Tiyanjana Maluwa devotes much of his chapter to the question of 'whether, in the post-Cold-War era, the Security Council remains the unrivalled centre of global decision-making'.[100] He concludes that 'recent practice has reaffirmed the centrality and primacy of the Security Council'.[101]

The question of relevance leads to the issues of the Security Council's effectiveness and legitimacy. All three authors wish for a legitimate and effective Council, and these two parameters are interlinked.[102] Legitimacy depends, inter alia, on effectiveness ('output legitimacy'), while effectiveness depends, at least in part, on legitimacy, because the more the addressees of Council measures perceive the composition, procedures, and results of Council action to be 'fair', the more readily they will comply with the Council's decision.

The current problems of the effectiveness and legitimacy of the Security Council arise out of a combination of law and power. First are the *legal* rules on Charter revision that prevent the adaptation needed if the Council is to respond to changed circumstances and to changed ideals – ideals about representativeness in a postcolonial world of which Europe is no longer the centre; second is the political power of those who push for reform, which is not (yet) sufficient to overcome the staying power of the P5. Despite these de facto barriers to formal Charter amendment, the Security Council *has* changed its working methods and its overall role repeatedly and in significant ways throughout its decades of existence, 'even during times of animosity among the permanent members'.[103] Here, some promise lies in procedures: new working methods, internal rules, codes of conduct, and the like are – within limits – capable of changing the normative context and of setting new benchmarks for the behaviour of the Security Council as a body and for the conduct of each of its members.

[99] Van den Herik, 'A Reflection on Institutional Strength', Chapter 2 in this volume, section VIII (p. 184); cf. Beth van Schaack, *Imagining Justice for Syria* (Oxford: Oxford University Press, 2020), 53–119.

[100] Maluwa, 'Between Centralism and Regionalism', Chapter 3 in this volume, section V (pp. 274–75).

[101] *Ibid.*, section I (p. 189).

[102] As Pascal famously put it, 'La justice sans force est impuissante, et la force sans justice est tyrannique': Blaise Pascal, *Pensées sur la religion et sur quelques autres sujets* [Lafuma fragment 103/ Brunschvicg fragment 298] (posthumous 1669), quoted – with regard to the Security Council – by Blokker, *Saving Succeeding Generations* (n. 3), 72.

[103] Boulden, 'Past Futures' (n. 14), 83–4.

Problems of effectiveness typically arise when situations run counter to the interests of a permanent member: this leads to Security Council inaction. Conversely, when the P5 agree, this risks resulting in Security Council 'hyper-activism', which generates a problem of legitimacy. All three Trialogue authors note that the Security Council is very active in those areas in which the P5 share interests, such as counter-terrorism activities. The intense and far-reaching regulatory activity of the Council in the sphere of anti-terrorism and non-proliferation has generated 'innovative tools'.[104]

Especially in the field of anti-terrorism, the two key trends of recent decades have been individualisation – that is, the Council's assertion of direct or indirect authority over individuals – and domestication – that is, the interaction (both collaborative and conflictual) between Security Council measures and domestic law.[105] These two trends are likely to continue in the current period of inter-state confrontation and war. Two of the Trialogue authors are of the opinion that constraints are needed on the anti-terror action of the Security Council – an opinion I share. Larissa van den Herik calls the Council's over-activism in this field 'most worrisome'.[106] While Congyan Cai does not criticise the Security Council on this matter, Tiyanjana Maluwa points out that, 'for China, as for Russia, participation in UN-led efforts to fight terrorism in Africa and elsewhere affords a cover of legitimacy for their own campaigns against alleged terrorist groups at home (for China) or in the so-called near-abroad (for Russia)'.[107] Maluwa also deplores the 'lack of transparency and accountability', and rightly identifies 'the failure within the United Nations to find common ground and anchor the Security Council's standard-setting in core principles of law, thereby achieving legal certainty'.[108]

Importantly, the Security Council can – in the present world – no longer act in isolation (if it ever could), but it is '[o]perating in a decentred, polycontextural environment'.[109] It is embedded in a '*legal* pluriverse' whose rules it must

[104] Leonardo Borlini, 'The Security Council and Non-State Domestic Actors: Changes in Non-Forcible Measures between International Lawmaking and Peacebuilding', *Virginia Journal of International Law* 61 (2021), 489–551.

[105] See, for the authority over individuals, Leonardo Borlini, *Il Consiglio di Sicurezza e gli Individui* (Milan: Guiffrè, 2018). See, for the interaction with domestic law, Machiko Kanetake, *The UN Security and Domestic Actors: Distance in International Law* (London: Routledge, 2018).

[106] Van den Herik, 'A Reflection on Institutional Strength', Chapter 2 in this volume, section VIII (p. 184).

[107] Maluwa, 'Between Centralism and Regionalism', Chapter 3 in this volume, section III.C (p. 236).

[108] *Ibid.*, section III.E.2 (pp. 253–54).

[109] Borlini, 'The Security Council and Non-State Domestic Actors' (n. 104), 551 (footnote omitted).

respect.[110] In this pluriverse, there is a need [for finding] 'a new balance, both between the UN Security Council and the UN General Assembly, as well as between the UN Security Council and other international organisations, including those at the regional level'.[111]

To paraphrase the ICISS, the United Nations – including its most powerful organ, the Security Council – 'exists in a world of sovereign states, and its operations must be based in political realism. But the organization is also the repository of international idealism, and that sense is fundamental to its identity.'[112] Thus '[t]he task is not to find alternatives to the Security Council as a source of authority, but to make the Security Council work much better than it has.'[113] The realisation of this task needs both good legal ideas and political will. The Trialogue authors have presented a wide gamut of good legal ideas. It is to be hoped that the political momentum to put them into practice can be built up in the current context of extreme tension, bearing in mind that catastrophes have historically been the sad prompt for evolution in international law.

[110] *Cf.* Pia Hesse, 'UN Security Council Resolutions as a Legal Framework for Multinational Military Operations', in Robin Geiß, Heike Krieger, and Henning Lahmann (eds), *The 'Legal Pluriverse' Surrounding Multinational Military Operations* (Oxford: Oxford University Press, 2020), 267–86.

[111] Van den Herik, 'A Reflection on Institutional Strength', Chapter 2 in this volume, section VIII (p. 185).

[112] ICISS, *The Responsibility to Protect* (n. 50), para. 6.25.

[113] *Ibid.*, para. 6.14.