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Collective Security:

The Security Council Interpretation of Article 39 of the UN Charter

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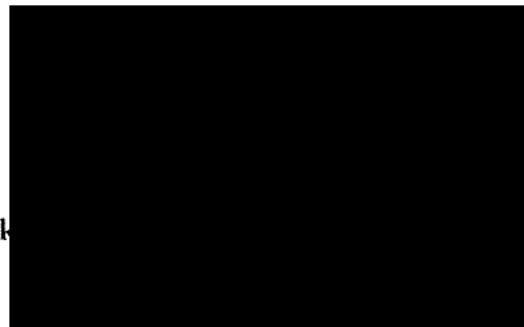
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Introduction:

The year 1914 became an unforgettable experience that captured the memory of mankind. The world witnessed one of the most vicious and aggressive wars of the century. A war that enslaved all the continents of the world in a closed cycle of death and destruction. Out of this chaos, emerged a man who called for an international scheme that would ensure the safety and protection of future generations from the evil of war. This man was Woodrow Wilson and the scheme proposed came to be known as "Collective Security". Unfortunately, this scheme, which was manifested in the League of Nations, was not able to preserve the peace that was hoped for. World War II erupted and revived the unforgettable memories of the preceding war. The enormity of this tragedy was crowned by the two atomic bombs that annihilated the populations of Hiroshima and Nagasaki. There was no doubt that future World Wars can terminate the existence of mankind. Therefore, more serious attempts were initiated for a revived international organization. Collective security appeared for the second time but now with an enforcement mechanism that was hoped to ensure its effectiveness. However, the hopes for a more peaceful world were diminished during the Cold War with the paralysis of the Security Council that rendered collective security ineffective due to the reciprocal vetoes of the two major powers, the United States of America and the Soviet Union.

During the post-Cold War era, the international community witnessed the revival of the Security Council after the collapse of the Soviet Union. The Security Council became more active and involved in most disputes arising in different parts of the world without being subjected to the paralyzing policies of the two super powers. Therefore, the Security Council intervened in many cases sometimes violating many principles of international law such as the principle of nonintervention and the sovereignty of states. It applied economic sanctions and used military force against many countries. The Security Council also established criminal courts in order to prosecute people who committed serious violations of international humanitarian laws. The Security Council intervened and applied such coercive measures only when acting under the provisions of Chapter VII of the UN Charter that embody the theory of Collective Security.

The Security Council cannot invoke Chapter VII of the UN Charter and trigger its collective security powers without applying Article 39 of the UN Charter. Article 39, which is the gateway of collective security, states that:

“The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.”

Accordingly, the Security Council cannot apply collective security without determining that a certain situation constitutes a threat to the peace, breach of the peace, or an act of aggression. Therefore, the concept of these three phrases plays a vital role in determining the attitude of the Security Council towards international disputes. The Security Council cannot impose any sanction without making an Article 39 determination. How did the Security Council determine situations as threats to the peace, breaches of the peace, and acts of aggression? What are the differences between these three concepts? Was the Security Council consistent in applying and interpreting them? How did the Council's interpretation of the three concepts develop during and after the Cold War? This study will be devoted to explaining the three cornerstones of collective security i.e. the three components of Article 39: Threats to the peace, breaches of the peace and acts of aggression and their interpretation by the Security Council.

The importance of this study lies in the fact that Chapter VII of the UN Charter is found under the title “Actions With Respect To Threats To The Peace, Breaches Of The Peace, And Acts Of Aggression”. Although the General Assembly was successful in reaching a definition for aggression, international law has been silent on defining the other two concepts. Accordingly, the determination of the three concepts becomes vital for the literature covering Public International Law, especially that these three determinations pave the way for collective security measures taken by the Security Council against the sovereign entities. The participating member states in the Dumberton Oaks conversations, that preceded the UN Conference of International Organizations in San Francisco, were conscious of not defining the three concepts found in Article 39. This study, on the other hand, will try to put a definition to the “Threats to the Peace” and “Breaches of the Peace” and shed light on the definition of “Acts of Aggression” based upon the Security Council interpretation of these concepts.

It is essential to indicate that the Security Council is a political organ in the United Nations Organization. That is, there are certain political incentives that determine and influence the work of the Council. The Council's resolutions are often issued according to the interests of its permanent members. Therefore, the Security Council sometimes bypasses legal definitions and limits when performing its job. In addition, there are no legal organs in the organization itself that are entitled to oversee the legality of the Council's resolutions. This study will consequently focus on the Council's resolutions and interpretations of the three concepts from the legal point of view and not from the political one.

As for the problems that encountered me when preparing this study, they can be summarized by the lack of references and literature written on this subject. Therefore, I was obliged to refer to the first official meetings that laid the foundations of the United Nations Organization, in addition to the first meetings of the Security Council.

Consequently, Chapter One will be devoted to explaining collective security, the theoretical background of Article 39 of the UN Charter. Collective security, as a theory, can be defined as a system of cooperation among states such that an act of aggression by one of its members is an act of aggression against all of its members" i.e. "the safety of all by all". After presenting the theory of collective security, we will see how this theory is manifested in the UN Charter. In this respect, it is essential to shed light on the difference between the pacific settlement of disputes, collective security, and collective self-defense. Then, I will explain the machinery used in the Charter for the application of collective security.

Chapter Two will be devoted to the first concept in Article 39 of the Charter, "Threats to the Peace". First, I will shed some light on the concept of "Threats to the Peace". Then, I will focus on the Security Council interpretations of threats to the peace during and after the Cold War. The Security Council used to consider military attacks as typical cases for threats to the peace. After the Cold War, the Security Council widened the scope of this interpretation to include human rights violations, the overthrow of democratic regimes, terrorism, infectious diseases, and the proliferation of untraditional weapons as threats to the peace. Through considering these situations as such, the Security Council legitimized its intervention in many countries of the world. Therefore, I will present one or two cases to shed some light on these new interpretations of threats to the peace. Such cases will be taken from the

Iraqi crisis, the Yugoslavian crisis, Haiti, Sierra Leone, and Lockerbie and many others.

Chapter Three will be devoted to "Breaches of the Peace", the second concept in Article 39. This Chapter will be divided into three parts: The first part will be devoted to explaining the concept of "Breaches of the Peace". The second part will examine the various Security Council resolutions that contained a reference of breaches of the peace during the Cold War. In that period, only five resolutions were issued by the Security Council containing such reference. I will examine each of these five resolutions and extract the concept of "Breach of the Peace" out of the Council usage of this concept. The third part will deal with the Council's usage of "Breaches of the Peace" after the Cold War.

Chapter Three will be devoted to the concept of "Acts of Aggression" and it will also be divided into three parts. The first part will shed light on the definition and the different cases of "Acts of Aggression". In this respect, I will present the General Assembly' definition of Aggression found in its resolution 3314 that was issued in 1974. In the second part, various Security Council resolutions will be examined that contain reference to "Acts of Aggression" during the Cold War. The third part will deal with the concept of "Acts of Aggression" and its usage by the Security Council after the Cold War.

The conclusion will develop the argument that there are no limits for the Security Council in applying and interpreting Article 39. Thus, the Security Council can legitimize its intervention in any country it wants. This makes collective security as a tool in the hands of the major powers to pursue their own interests under the principles of equality, justice, and human rights. I will also shed the light on the new version of collective security that has emerged in the 21st century.

Finally yet importantly, I would like to thank both my advisors Dr. Sami Baroudi and Dr. Shafic Masri for their constant encouragement and their conductive critical assessment of this MA thesis. I would also like to thank Dr. Walid Moubarak for generously accepting to be the third reader on my MA Thesis Committee.

I hope that this study will contribute to the development of the literature covering collective security especially that it shed some light on many controversial issues surrounding the functions and the jurisdiction of the most powerful organ of the United Nations organization, the Security Council. I also hope that it may reveal some

of the mysteries surrounding Article 39 and its mode of application. Accordingly, I will begin with the theoretical base behind Chapter VII of the UN Charter?

Chapter One: Collective Security

(I) The Theory of Collective Security:

The theory of collective security raises many problematic questions. Many scholars tried to define collective security. A few fell in some misleading when defining this term, such as confusing between collective security and collective self-defense. Other scholars disagreed on the concept of collective security and its efficiency in solving the problem of war. We will therefore present the various definitions of collective security, its comparison with collective defense, the conditions in which it applies, and whether this theory is applicable in the international system.

A) Definition and Principle:

Collective security is a theory promoted by Woodrow Wilson that aims at "the preservation of peace through shared deterrence of aggression".¹ That is, world peace is preserved by the consolidation of all states against the aggressor. Inis Claude defines collective security as "a scheme for mobilizing the strength of the entire international community to prevent or suppress aggression by any member of the community against any other"². This scheme includes taking collective measures against the aggressor, ranging from diplomatic boycott through economic pressure to the use of armed force with the goal of preserving world peace.³

According to Claude, collective security is a mechanism to forestall aggression, thus it cannot be considered as an enforcement measure for implementing international law.⁴ Morgenthau disagrees with Claude for the former believes that collective

¹ Nolan, Cathal J. "The Greenwood Encyclopedia of International Relations", *Greenwood Publishing: London*, Vol. 1, 2002, p. 314.

² Claude, Inis L. "The United Nations and the Use of Force", *United Nations Studies No. 532*, March 1961, p. 328.

³ Claude, Inis L. "Swords into Plowshares", 4th Edition, *Random House: New York*, 1971, p. 247; In this sense, Claude refers to Articles 39 to 42 of the UN Charter that embody the theory of collective Security.

⁴ Ibid.

security constitutes a solution to the problem of law enforcement.⁵ If a state violates international law, it must expect a "common front of all nations". Although Morgenthau gives collective security a very broad scope of application that is triggered when states violate international law, he focuses on aggression in order to explain collective security. He says that when a state threatens the security of another, all states react as if their own security was threatened. If A attacks B, then C, D, E, F...etc will all consolidate with B against A and apply collective measures against A to preserve world peace.⁶ In Morgenthau's terms collective security can be denoted as "One for all and all for one".⁷

Charles and Clifford Kupchan define collective security as a system where "states agree to abide by certain norms and rules to maintain stability and, when necessary, band together to stop aggression".⁸

David Ziegler, on the other hand, defines collective security as "a system of states that join together, usually by signing a treaty, and make an explicit commitment to do two things: (1) they renounce the use of force to settle disputes with each other, and (2) they promise to use force against any of their number who break rule (1)".⁹ Ziegler believes that collective security works in two ways: it *prohibits* states to use force to settle their disputes and at the same time it *obliges* them to use force to forestall any aggression.¹⁰ In this sense, Moore and Pubantz believe that "collective security refers to agreements and actions among several states uniting them against an aggressor".¹¹

Downs and Iida define collective security as "a group of states attempts to reduce security threats by agreeing to collectively punish any member state that violates the system's norms".¹² Collective security is also defined as "a system of

⁵ Morgenthau, Hans J. "Politics Among Nations", 5th Edition Revised, *Alfred A. Knopf: New York*, 1973, p. 302.

⁶ Ibid.

⁷ Ibid.

⁸ Kupchan, Charles A. & Kupchan, Clifford. "The Promise of Collective Security", *International Security*, Summer 1995, Vol.20, No.1, p. 53.

⁹ Ziegler, David W. "War, Peace, and International Politics", 5th Edition, *Scott, Foresman and Company*, 1990, p. 220.

¹⁰ Ibid.

¹¹ Moore & Pubantz. "The Encyclopedia of the United Nations", *Facts On File Inc.*, 2002, p. 56.

¹² Downs, George W. "Collective Security beyond the Cold War", *The University of Michigan Press*, 1994, p. 18.

cooperation among states such that an act of aggression by one of its members is an act of aggression against all of its members" i.e. "the safety of all by all".¹³

Collective security as a theory lies on an assumption that wars frequently occur, but at the same time they can be prevented.¹⁴ Therefore, collective security refuses the argument that maintains that wars are innate and instinctively found in the human nature. Wars can be abolished by the deterrent effect of the enormous collective power of all states in the international system.¹⁵ Collective security, when operating in its ideal conditions, provides guaranteed security to all states, big and small.¹⁶ The implementation of collective security does not require the knowledge of the dispute or its conditions. It only operates when violations agreed upon take place, especially the violations against the territorial integrity and the political independence of states.¹⁷ It is in this way that states loose some of their sovereignty in favor of their international security. However, states remain free to pursue their own national interests in the international system as long as they do not threaten each other's security.¹⁸

John Mearsheimer believes that collective security deals with the issue of how to cause peace.¹⁹ Thus, collective security recognizes that military power is an important tool in international politics, but the question here is the proper management of this power in order to direct it against potential aggressors.²⁰ Can every international or regional organization that directs its power against potential aggressors be considered as a collective security system?

B) Collective Security and Collective Defense Organizations:

Collective security can be applied in the regional level as well as in the international level. It is more successful in the regional level because neighbor states usually have common interests and common security.²¹ In the regional level, the

¹³ Clark, Mark T. "The Trouble with Collective Security", www.findarticles.com, Spring 1995.

¹⁴ Claude 1971, p. 247.

¹⁵ Ibid, p. 250.

¹⁶ Ziegler 1990, p. 220.

¹⁷ Ibid, p. 221.

¹⁸ Ibid, p. 220.

¹⁹ Mearsheimer, John. "The False Promise of International Institutions", *International Security*, Winter 1994/1995, Vol. 19, No. 3, p. 26.

²⁰ Ibid.

²¹ Ziegler 1990, p. 237.

number of states is limited and the possibility of agreement is high. Accordingly, a regional collective security can preserve and promote peace among its members. The Organization of African Unity (OAU), the Arab league, and the Organization of American States are good examples of regional collective security systems.²² However, it is very important not to fall in confusion between a regional collective security and collective defense systems. The former Secretary-General of SEATO (Southeast Asia Treaty Organization), Mr. Pote Sarasin, fell in this confusion when he explained the conception of collective security. He stated that: "Whenever individuals and nations have felt themselves to be threatened by hostile forces and ideologies they have tended to band together for their common defense. This is the basic meaning of collective security."²³

According to Miller, the key difference between collective security and collective defense lies in the source of the threat. When the threat to the states originates from outside the regional organization, we face a collective defense organization such as the NATO. On the other hand, when the threat originates from the inside, we become facing a regional collective security organization. Miller adds that collective defense organizations have an interest in confusing their aims with those of collective security²⁴ and thus, he believes that many regional collective defense organizations masquerade themselves as collective security organizations.

Another difference between collective security and collective defense lies in the system's response to an attack. The latter wages a war against an enemy, while the former apply adequate measures for the restoration of peace.²⁵ For example, the punishment of an aggressor in a collective security system, such as the UN organization, may range from solving the dispute peacefully to interrupting economic and diplomatic relations and it may escalate to using force against the aggressor. While in a collective defense system, the states can directly use force when threatened by an outside aggressor. Collective defense embodies the concept of some for some

²² Ibid.

²³ Sarasin, Pote. "Collective Security: Shield of Freedom", 2nd Edition, *SEATO Publication: Bangkok*, 1963, Foreword; Mr. Sarasin also believed that NATO constitutes an appropriate example for collective security system.

²⁴ Miller, Lynn H. "The Idea and the Reality of Collective Security", *Global Governance*, Jul-Sep 99, Vol. 5 Issue 3, p. 303.

²⁵ Bennett, Alvin LeRoy. "International Organizations", 6th Edition, *Prentice Hall: New Jersey*, 1995, p. 145.

while the collective security applies the principle of all for all.²⁶ In a collective defense system, not all members are obliged to take part in the coercive measures against a certain state. On the other hand, the collective security system cannot work principally without the full adherence of all its members to the coercive measures taken against the aggressor. Collective defense leaves to each party the liberty to decide what assistance it should give, while collective security obliges all states to implement joint sanctions against an aggressor.²⁷

C) The Conditions of Collective Security:

Many scholars have suggested several conditions for the successful application of collective security. In this section, I will try to present all the conditions that I have found in the collective security literature. Some of these conditions have been a subject of disagreement between the scholars.²⁸ However, I find it important to present all these conditions in order to comprehend better the theory of collective security.

- 1) Collective security requires universal membership²⁹ for the application of economic and military sanctions. Limited membership may weaken the power of the sanctions imposed on the aggressor.³⁰ In case of a regional collective security, all states in that region must participate in this system in order to enable the system to perform its functions.
- 2) The collective action against the aggressor must be characterized as an overwhelming force that would deter the aggressor from initiating future wars.³¹ Thus, any aggressor will be faced by an enormous opposition that will lead eventually to maintenance of peace.³²

²⁶ Claude 1971, p. 266.

²⁷ Ibid.

²⁸ For example, Mearsheimer's realist approach of collective security differs from the Kupchans' idealistic approach of this theory. The Kupchan's article "The Promise of Collective Security" has been a direct response to Mearsheimer's article "The False Promise of Collective Security". See Kupchans 1995 and Mearsheimer 1995.

²⁹ Claude 1971, p. 256.

³⁰ Bennett 1995, p. 145.

³¹ Morgenthau 1973, p. 418.

³² Bennett 1995, p. 144.

- 3) All states must have the same conception of security.³³ States having different approaches to security will make it hard for them to agree. In other words, states must be willing to fight in order to defend the status quo.³⁴ Anyone who defies the status quo is considered as an aggressor. Thus, all states must join together against this aggressor in order to preserve world peace and stability.
- 4) All states must be willing to abandon their national interests for the sake of the collective interest i.e. their security. In other words, all states and its peoples must identify their interests with the interest of mankind, which is the preservation of world peace.³⁵ All nations must be committed to this paramount goal even if it contradicts other goals of national foreign policy.³⁶ Nations must also give sacrifices and engage in wars even in places where they have no national interests.³⁷
- 5) One of the basic conditions for collective security is the "indivisibility of peace".³⁸ This principle implies that a threat to peace in one region may threaten the peace in any other region. Therefore, all states must engage in the eradication of any threat to peace because this threat may eventually threaten their own security.
- 6) States must be convinced that collective security can forestall any aggression threatening them.³⁹ States that have doubts about the collective security system may form alliances in order to guarantee their security. These alliances may challenge collective security and may thus hinder its effectiveness. States must not only trust collective security but also they must trust each other.⁴⁰ Fear among states may have negative effect on collective security.
- 7) States must be willing to sacrifice some of their freedom of action or inaction in favor of collective security.⁴¹ States must loose some of their sovereignty for the sake of their security. They become obliged to take coercive actions and refrain from giving any assistance to an aggressor.

³³ Morgenthau 1973, p. 418.

³⁴ See Claude 1971, p. 254. Also, see Morgenthau 1973, p. 420.

³⁵ See Morgenthau 1973, p. 418. Also, see Claude 1971, p. 250.

³⁶ Bennett 1995, p. 144.

³⁷ Eban, Abba. "The U.N. Idea Revisited", *Foreign Affairs*, Sep-Oct 1995, Vol. 74 No. 5, p. 46.

³⁸ Ziegler 1990, p. 234.

³⁹ Claude 1971, p. 252.

⁴⁰ Mearsheimer 1995, p. 29.

⁴¹ Claude 1971, p. 252.

8) In order to succeed, collective security must work impartially, that is, it must be applied to big states as well as to small states.⁴² States must also be able to punish their allies as well as their enemies.⁴³

9) The international system must be characterized by a diffusion of power.⁴⁴ In other words, power must be dispersed between the states. The existence of a very powerful state may challenge the collective punishment and may thus jeopardize the collective security system.⁴⁵

10) Collective security demands a partial disarmament. If every state in the international system reduces its military power, no country will subsequently be able to initiate a disastrous war.⁴⁶ In addition, only the central organ, which exercises collective security, has the right to possess excessive armaments in order to take coercive measures. On the other hand, the member states must only keep a police force to maintain the law and order among their people.⁴⁷

11) States must renounce the use of force as a means of settling their disputes and they must not resort to aggression in order to alter the status quo. States can only change the status quo via negotiation.⁴⁸ Any state that violates this rule will be considered as an aggressor and will be confronted by the collective force.

12) States must agree in advance on how to react with the aggressors, what punishment must be imposed, and what machinery must be implemented.⁴⁹ Therefore, collective security demands a legal apparatus and a machinery in order to be implemented.⁵⁰

13) Collective security must be set up by a treaty that determines the rights and obligations of states.⁵¹ States must also agree on a definition of aggression in order to determine the aggressor and thus apply collective security and its measures against it.⁵²

⁴² Ibid, p. 255.

⁴³ Eban 1995, p. 46.

⁴⁴ Claude 1971, p. 256.

⁴⁵ Bennett 1995, p. 145.

⁴⁶ Claude 1971, p. 259.

⁴⁷ Dixon, Martin & Mccorquodale, Robert. "Cases and Materials on International Law", 2nd Edition, Blackstone Press Limited: London, 1995, p. 587.

⁴⁸ Mearsheimer 1995, p. 28.

⁴⁹ Bennett 1995, p. 144.

⁵⁰ Claude 1971, p. 259.

⁵¹ Ziegler 1990, p. 221.

⁵² Eban 1995, p. 45.

These are in summery the various conditions that are necessary for the application of collective security. Are these conditions feasible or collective security is just an idealistic approach to solve the problem of war?

D) Applicability of Conditions:

After the First World War, many theories were proposed in order to forestall any future attempt to endanger world peace. According to some scholars, the ideal condition to achieve world peace is the establishment of a world government. Here, Collective security acknowledges this idealistic approach especially in a nation-state era and thus it imposes itself as a bridge between the realistic world governed by the interests of sovereign states and a perfect world ruled by a world government.⁵³

The first attempt to apply collective security in the international system was the League of Nations. Article 16 of the League's Covenant embodied the theory of collective security. It stipulated that: "Should any member of the League resort to war in disregard of its covenants... it shall, ipso facto, be deemed to have committed an act of war against other members of the League." The first major conflict that tested the theory of collective security was the Manchurian crisis. In this crisis, China was a victim of the Japanese assault and the League did nothing to apply collective security, except for condemning this aggression.⁵⁴ The League's experience in Manchuria revealed a primary failure of the Leagues' collective security system. More conflicts, such as the Bolivian and Paraguayan conflict and the Italian invasion on Ethiopia, were all major evidences on the inapplicability of the collective security theory.⁵⁵

With the end of the Second World War, new hopes for a revived international organization, which would preserve world peace, seemed more concrete than ever. Chapter VII and Article 43 of the United Nations Charter, which calls for the establishment of a military committee under the command of the Security Council to enforce the organization's decisions, institutionalized for the first time collective security.⁵⁶ However, the Cold War between the two super powers prevented serious attempts for applying this theory. The Security Council adopted peacekeeping measures to compensate the failure of the UN collective security measures. In the

⁵³ Bennett 1995, p. 144.

⁵⁴ Ziegler 1990, p. 224 & 225.

⁵⁵ Ibid, p. 226.

⁵⁶ Eban 1995, p. 46.

aftermath of the Cold War, Chapter VII was evoked many times. Many scholars advocated the argument that collective security was applied in many post-cold war crises such as the Iraqi crisis and the Yugoslavian crisis. Others believed that collective security was only a masquerade to hide the imperial interests of the great powers. To a lesser degree, we can say that there were attempts to apply collective security but collective security as a theory that preserves world peace failed because it did not fulfill its basic conditions.

Collective security has been criticized for being an ideal theory that is inconsistent with the real picture of world politics. Mearsheimer, a realist scholar, believes that international institutions are created by the most powerful states to preserve their share of world power.⁵⁷ According to Mearsheimer, collective theory violates the basic assumptions of realism that governs the international system.⁵⁸ Consequently, collective security becomes a tool in the most powerful states to maintain and increase their power in the international system. Did collective security fulfill its conditions as suggested by the above-mentioned theory?

One of the basic conditions for collective security is the universality of membership. The fact that a collective security system includes all states is insufficient for its proper application. What collective security needs is the states' full adherence to the decisions and sanctions taken by the collective security organization against the aggressor. What usually happens in a certain crisis is that some states would support the collective sanctions while others support the aggressor.⁵⁹ Another scenario is that some states would hurry for the assistance of other states and pay the cost of that, while others suffice in letting states do that without giving any aid.⁶⁰ This would doom collective security into failure. In addition, many crises may erupt at the same time, which will make it very hard for collective security to operate on many arenas at

⁵⁷ To Mearsheimer, Tony Evans, and Peter Wilson international institutions, including collective security, are "arenas for acting out power relationships and thus the causes of war and peace are mainly a function of balance of power; See Tony Evans and Peter Wilson, "Regime theory and the English School of International Relations: A Comparison", *Millennium: Journal of International Studies*, Vol. 21, No. 3 (Winter 1992), p. 330. Also, see Mearsheimer 1995, p. 13.

⁵⁸ The basic assumptions of realism are the following: First, the international system has no central authority working above the states. Therefore, anarchy prevails in the international system. Second, states possess offensive military capabilities. Third, states can never know the intentions of other states. Fourth, states protect their sovereignty to ensure their survival. Fifth, states are rational actors; Mearsheimer 1995, p. 10.

⁵⁹ Morgenthau 1973, p. 421.

⁶⁰ This is what Downs and Iida calls "the Free-Rider Problem", where states enjoy the security made by other states without sharing in promoting it; Downs 1997, p. 26.

the same time.⁶¹ Mearsheimer also doubts the ability of collective security to handle two or more disputes at the same time. The ability of collective security to handle various disputes relies on many factors such as the number of great powers, the distribution of power, and geography.⁶²

Collective security also lies on the assumption that the aggressor will be faced by an overwhelming force. Abba Eban questions that if former Yugoslavia was able to resist UN and NATO forces, can collective security challenge more powerful states such as Iran, Syria, and Israel?⁶³ Another condition for collective security to exist is the preservation of the status quo. Actually many states, when they become powerful, may seize the opportunity to overthrow the status quo and thus endanger the collective security system.⁶⁴ A state, when it becomes a great power, does not need collective security, because it becomes able to enforce its own security system without the assistance of other states.⁶⁵

According to Morgenthau, no state is fully devoted to international law. Therefore, states react according to their national interest, not in favor of the collective interest.⁶⁶ In addition, collective security is worthless if there is no legal apparatus and machinery that clearly denotes the states' rights and duties towards an aggression. "But if it does so, it puts them in a position of being exploited and mindlessly supporting the status quo".⁶⁷ Another condition for collective security is that states must be willing to punish their allies as well as their enemies. Reality has shown that alliances, affinities, and common interests are all barriers against the application of collective security.⁶⁸ Neither a state nor its citizens are willing to sacrifice themselves economically and militarily for the security of a distant state.⁶⁹

Another major problem that contributed to the failure of collective security is the states' inability to find a unified definition of aggression.⁷⁰ What might be aggression

⁶¹ Morgenthau 1973, p. 418.

⁶² Mearsheimer believes that it is difficult for collective security to handle two wars such as Iraq and North Korea at the same time; Mearsheimer 1995, p. 28.

⁶³ Eban 1995, p. 46.

⁶⁴ Morgenthau 1973, p. 419.

⁶⁵ Downs 1997, p. 22.

⁶⁶ Morgenthau 1973, p. 420.

⁶⁷ Downs 1997, p. 31.

⁶⁸ Eban 1995, p. 46.

⁶⁹ Morgenthau 1973, p. 420.

⁷⁰ Ziegler 1990, p. 231.

to some states is considered a self-defense or a national liberation to others.⁷¹ This leaves the determination of aggression in each situation "to the subjective and perhaps biased collective judgment of the members of the organization".⁷² Furthermore, many states do not rely on collective security for their own security. The states' distrust with collective security is clearly reflected in various security alliances that are established outside the UN umbrella. According to the realist scholars, fear and mistrust among states that characterizes the realistic world of international politics is a major obstacle towards implementing collective security.⁷³ Furthermore, many scholars believe that the world witnessed the death of collective security when the negotiations concerning Article 43 of the UN Charter collapsed and thus the enforcement mechanism of Chapter VII withered with it.⁷⁴ Finally, many realists believe that the theory of collective security carries within it many contradictions. Collective security is based on the assumption that the world is still far from perfection. At the same time it relies on the good faith that prevails in the world to implement collective security. Therefore, collective security depends on conditions which, if they existed, would make the theory unnecessary.⁷⁵

Mearsheimer believes that even scholars who were sympathetic to collective security were dubious about the application of collective security.⁷⁶ To Mearsheimer collective security has two major flaws. It does not explain how states overcome their fears and learn how to trust each other especially in an anarchic world of conflicting national interests.⁷⁷

Accordingly, many scholars agree that collective security in the United Nations failed to perform its intended functions because it carries within an idealistic approach

⁷¹ Eban 1995, p. 46.

⁷² Bennett states that the subjective judgment of the members of the collective-security organizations is substituted by objective standards when defining an aggressor. Such judgments are influenced by the national interpretation of conflicting evidence, by economic and political ties to the parties involved, and by the tendency of a state to participate in a collective action when little interests exist; Bennett 1995, p. 146.

⁷³ Mearsheimer 1995, p. 29.

⁷⁴ Eban 1995, p. 46.

⁷⁵ Schiffer, Walter. "The Legal Community of Mankind", *Columbia University Press: New York*, 1954, p. 199.

⁷⁶ Mearsheimer mentions Inis Claude who devoted much of his literature on collective security. Claude wrote in 1992, "I reached the conclusion some 30 years ago that... the implementation of collective security theory is not a possibility to be taken seriously"; See Claude, *Power and International relations*, p. 203-204. Also, see Mearsheimer 1995, p. 27.

⁷⁷ Mearsheimer 1995, p. 30.

to the problem of war. How is collective security manifested in the Charter of the United Nations?

(II) Collective Security in the UN Organization:

The Charter of the United Nations undoubtedly adopted collective security as an instrument for maintaining international peace and security. In the preamble of the Charter, all member states express their determination to save "succeeding generations from the scourge of war" and to unite their strength "to maintain international peace and security." In addition, Article 1 of the Charter states that:

"The Purposes of the United Nations are: 1- To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, ..."

Furthermore, Article 2.5 stipulates that:

"All members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action."

According to these articles, all states must engage in applying collective sanctions and in abstaining from giving support to any state that jeopardizes international peace and security. A question may arise from the above articles. Is collective security the only machinery for solving international disputes? The UN Charter distinguishes two general methods for solving international disputes: Peaceful settlement of disputes and the use of force in settling disputes i.e. collective security. It is useful to distinguish collective security from the peaceful settlement of disputes and from collective self-defense as reflected in the UN Charter in order to better comprehend the manifestation of collective security in the Charter.

A) Collective Security and Peaceful Settlement of Disputes:

The primary purpose of the United Nations Organization is to maintain international peace and security, develop friendly relations among nations, and achieve international cooperation.⁷⁸ The UN Charter calls upon its member states to fulfill in

⁷⁸ Article 1 of the UN Charter.

good faith these obligations and to settle their disputes by peaceful means in order not to endanger international peace and security.⁷⁹ It is essential to mention that according to Article 24 of the UN Charter, the Security Council has the primary responsibility for the maintenance of international peace and security. In addition to the Security Council, the General Assembly is also competent to deal with situations relating to the maintenance of international peace and security on condition that the Council is not handling the same case.⁸⁰

The Charter of the United Nations differentiates two general methods for solving international disputes. The first is "Pacific Settlement of Disputes"⁸¹ under Chapter VI of the UN Charter. The second is "Actions with respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression" under Chapter VII of the Charter that embodies the theory of collective security. In Chapter VI of the Charter, the Security Council tries to solve international disputes by peaceful methods. If these methods proved ineffective, the Security Council may take coercive measures under Chapter VII to maintain international peace and security. How are disputes solved according to Chapter VI of the Charter?

When a dispute arises between two or more states, the parties must first seek to solve their disputes through the peaceful means mentioned in Article 33 of the Charter.⁸² If the dispute continues, the parties may bring the matter before the Security Council or before the General Assembly.⁸³ The General Assembly or the Security Council, on the other hand, can handle this dispute directly without the request of the parties.⁸⁴ The Security Council, after it handles the case, may ask the parties to solve their dispute by peaceful means or it may recommend appropriate procedures or

⁷⁹ Article 2.2 and 2.3 of the UN Charter.

⁸⁰ In this manner, Article 11.2 of the UN Charter states that: "The General Assembly may discuss any questions relating to the maintenance of international peace and security...and ... may make recommendations with regard to any such questions." Article 12 stipulates that "While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the general Assembly shall not make any recommendations with regard to that dispute or situation unless the Security Council so requests."

⁸¹ This method is also known as peaceful settlement of disputes.

⁸² Article 33 of the UN Charter mentions some nonexclusive methods of solving disputes peacefully such as negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or any other peaceful means agreed upon by the parties.

⁸³ Article 35 of the UN Charter.

⁸⁴ Article 11.2 states that: "The General Assembly may discuss any questions relating to the maintenance of international peace and security before it by any member of the United Nations, or by the Security Council, or by a state which is not a member of the United Nations..." Article 34 of the UN Charter states that: "The Security Council may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute..."

methods of adjustment.⁸⁵ If this dispute escalates and becomes a danger to the maintenance of peace and security, the Security Council may become obliged to take further serious actions against the parties according to Chapter VII of the Charter.⁸⁶

It is worth noting that the Security Council resolutions issued under Chapter VI cannot be applied without the consent of all parties. These Chapter VI resolutions are principally binding to all states because these states have previously agreed to "accept and carry out the decisions of the Security Council".⁸⁷ Accordingly, although the states are principally bound by the Chapter VI resolutions, they are not obliged to implement them. On the other hand, Security Council resolutions issued under Chapter VII of the Charter are self-binding to the states concerned. If the states concerned do not comply with these resolutions, the Security Council may impose sanctions, whether economic or military, to secure their implementation. Another difference between Chapter VI and Chapter VII resolutions is that the former may contain recommendations, observations, and peacekeeping missions, while the latter includes Article 39 determinations, provisional measures, non-military, and military measures against the aggressor.

B) Collective Security and Collective Self-Defense:

In part one, I have shed light on the theoretical differences between collective security and collective self-defense organizations. This part will focus on the differences between these two concepts as reflected in the provisions of the UN Charter.

The provision that gives reference to "self-defense" in the UN Charter is found under Article 51 of the Charter. This article states that:

⁸⁵ Articles 33.3 and 36.1 of the UN Charter.

⁸⁶ The General Assembly can also apply collective security measures pursuant to its resolution 377 issued in 1950 that stipulates that the General Assembly "Resolves that if the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression, the General Assembly shall consider the matter immediately with a view to making appropriate recommendations to Members for collective measures, including in the case of breach of the peace or act of aggression the use of armed force when necessary to maintain or restore international peace and security..."

⁸⁷ Chapter VI resolutions are principally binding because Article 24.1 states that the members of the UN "agree that in carrying out its duties under this responsibility the Security Council acts on their behalf." In addition Article 25 of the UN Charter stipulates that: "The members of the United

"Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security..."

The wisdom behind this article is that the Security Council may take time to organize a force to stop further aggression or to defend a victim state through collective security measures. In the meantime, the victim state has the right to defend itself against the aggression. According to Article 51, the state can exercise two types of self-defense: Individual and collective self-defense. What we are interested in is collective self-defense. Collective self-defense can be divided into two categories: collective self-defense individually exercised and collective self-defense collectively exercised. The first occurs when a single state decides to help a victim state against an aggressor, while the second occurs when two or more states decide to support the victim state.⁸⁸ Certain conditions must prevail for a state to invoke its right of collective self-defense:

- 1- An armed attack must take place: Article 51 explicitly states that individual or collective self-defense can be invoked only in a case of armed attack. Not any type of aggression or attack can justify the right of self-defense. Only an armed aggression can invoke this right.⁸⁹ In addition, the armed attack must be understood as "an actual armed attack conducted by regular forces, or its substantial involvement therein."⁹⁰ Accordingly, threats of aggression and violations of international law do not mount to armed aggression and do not justify collective self-defense.⁹¹
- 2- The victim state must request the help of other states: The exercise of collective self-defense "is subject to the State concerned having been the victim of an armed aggression".⁹² Accordingly, no state can

Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter."

⁸⁸ Dinstein, Yoram. "War, Aggression, and Self-Defense", 2nd Edition, Grotius Publications, Cambridge University Press: Great Britain, 1994, p.249.

⁸⁹ Ibid, p. 183.

⁹⁰ ICJ, Case Concerning Military and Paramilitary Activities in and against Nicaragua, 27 June 1986, Para. 195.

⁹¹ Dinstein 1994, p. 184.

⁹² ICJ, 27 June 1986, para. 195. The Court also finds that "in customary international law... there is no rule permitting the exercise of collective self-defence in the absence of a request by the State which regards itself as the victim of an armed attack." ICJ, 27 June 1986, para. 199.

interfere and help another state against its aggressor without the victim's consent prior or after the attack.

- 3- The victim state must report to the United Nations Organization that it has been under attack in order to invoke its right of self-defense. This condition has been put by the ICJ when it stated that: "The Court concludes that the requirement of a request by the State which is the victim of the alleged attack is additional to the requirement that such a State should have declared itself to have been attacked."⁹³
- 4- All measures taken by the members of the UN Organization against the aggressor pursuant to the right of collective self-defense must be "immediately reported to the Security Council".⁹⁴
- 5- The right of self-defense, whether individual or collective, cannot be justified without the presence of the two main conditions of necessity and proportionality.⁹⁵ The first condition takes place when all ways for solving the dispute peacefully become useless and using force is the only way for the victim state to defend itself. Proportionality means that the victim state may reply using force in a way proportional to the attack occurred against it. For example, a state cannot reply on a single attack against a civilian of its nationality by invading the territory of the attacker.

Collective self-defense can also occur through military alliances concluded with the victim state prior to the attack. These alliances permit other states to come to the rescue of their allies when the latter are subjected to an armed aggression. The establishment of these alliances is lawful under Article 52 of the Charter that stipulates that: "1. Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security..."

After discussing the concept of collective self-defense and its conditions, it is essential to show the differences between this concept and collective security. First,

⁹³ ICJ, 27 June 1986, para. 199.

⁹⁴ Article 51 of the UN Charter. The conditions of necessity and proportionality are also affirmed by the ICJ judgment on Nicaragua on 27 June 1986, para. 200.

⁹⁵ Dinstein 1994, p. 202. The International Court of Justice also stressed these conditions in the Nicaragua case.

collective security is exercised by the United Nations Organization, while collective self-defense may be exercised by either separate states or regional arrangements. Every action by the states acting under collective self-defense must be reported and authorized by the Security Council.⁹⁶ Second, collective security cannot be initiated without the Security Council determination that a threat to the peace, breach of the peace, or an act of aggression has occurred. On the other hand, collective self-defense is not justified when a threat to the peace exist, it is only admissible in a case of armed aggression. Furthermore, in the case of collective security, the Security Council decides if there exist an act of aggression while in the case of collective self-defense, the individual states make this determination, as long as the Council does not interfere.⁹⁷ Third, when the Security Council acts under collective security, all states are obliged to abide by the Council's measures; to assist the victim and to refrain from giving assistance to the aggressor. In case of collective self-defense, the states are not obliged to help the victim unless they are legally obliged to do so under a treaty. Forth, collective self-defense is a phase preceding collective security because the former cease to continue when the Security Council takes certain measures to restore international peace and security including collective security measures.⁹⁸ What is machinery of collective security and how is it applied according to the UN Charter?

C) The Machinery for Implementing Collective Security:

In theory, collective security, as we said, needs a machinery to act in accordance with. This machinery is manifested in Chapter VII of the UN Charter under the competence of the Security Council. In order for collective security to operate, the Security Council must first try to solve any dispute peacefully under Chapter VI of the Charter. If the Council is not able to solve the dispute through the peaceful means, it may become obliged to apply collective security measures under Chapter VII. In this case, the Council must first decide that the situation constitutes a threat to peace, breach of peace or act of aggression according to Article 39 of the UN Charter. After

⁹⁶ Article 53 of the UN Charter. In the words of Hans Kelsen, "The measures of collective security taken under the Chapter VII of the Charter are centralized actions of the Organization, whereas the process of collective self-defense is a completely decentralized reaction against armed attack." Kelsen, Hans. "Collective Security and Collective Self-Defense Under the Charter of the United Nations", *The American Journal of International Law*, Vol. 42, No. 4, October 1948, p. 794.

⁹⁷ Kelsen 1948, 794.

the situation is determined as such, the Security Council can make certain recommendations or it may decide on certain provisional measures and ask the parties of the dispute to comply with these measures.⁹⁹ If the parties also fail to comply with the Council's decisions, the Security Council may decide on non-military measures in order to give effect to its decisions.¹⁰⁰ Furthermore, if these non-military coercive actions proved ineffective and failed to subject the parties to the international legitimacy, the Council may find itself obliged to take more serious actions and measures under Article 42 of the Charter. These measures consist of military actions by air, sea, or land forces. They may also include "demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations."¹⁰¹ All these measures are taken collectively by the UN members and thus they are considered as collective security measures taken the United Nations Organization (UNO).

According to Article 43 of the UN Charter, all members of the UNO must make available to the Council armed forces for the purpose of maintaining peace and security. In addition, all members must also make available national air-force contingents for urgent military actions.¹⁰² All these forces are to be placed under the disposal of the Security Council with the Military Staff Committee, which shall consist of the Chiefs of Staff of the permanent members of the Security Council or their representatives, assisting the Council in the employment and command of these forces.¹⁰³ However, the negotiations between the great powers concerning the Military Staff Committee and its administration failed in 1947 and the Security Council was left without a permanent force at its disposal. Therefore, the Security Council became obliged to use regional arrangements for enforcing its actions under its authority pursuant to Article 53 of the UN Charter. It is important to mention that any Chapter VII resolution that triggers collective security measures needs the approval of the permanent members of the Security Council because these resolutions can be blocked by a veto from these members.

⁹⁸ Ibid, p. 793.

⁹⁹ Article 40 of the UN Charter. Provisional measures may include a cease-fire, respect of a truce, establishment of a court, etc...

¹⁰⁰ According to Article 41 of the Charter, the non-military measures may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

¹⁰¹ Article 42 of the UN Charter.

¹⁰² Article 45 of the UN Charter.

¹⁰³ Article 47 of the UN Charter.

As we have seen, Chapter VII of the UN Charter contains the main provisions of collective security through which the Security Council cannot apply without passing through Article 39. It is in this sense that Article 39 is considered as one of the most important articles in the UN Charter, being the gateway of collective security.

Article 39 of the UN Charter:

Article 39 is a main provision for collective security in the Charter of the United Nations. This article raised many problematic issues. The Security Council, the primary organ that has the competence to apply Article 39,¹⁰⁴ is unstable in its interpretation of this article. Article 39 states that:

“The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with articles 41 and 42, to maintain or restore international peace and security.”

After reading this article, several questions may arise. Does the Security Council have an unlimited authority in determining a situation as a threat to peace, breach of peace, or act of aggression? Is this article applicable to the threats and breaches of external and internal peace of states? What is the difference between threats to the peace, breaches of the peace, and acts of aggression?

According to this article, the Security Council seems to have an unlimited authority in determining that a situation constitutes a threat to the peace, breach of the peace, or an act of aggression. However, Article 24 of the UN Charter under the title of “Function and Powers” of the Security Council contains the only limitation to the Council’s authority. It stipulates that the “ Security Council shall act in accordance with the purposes and principles of the United Nations” when discharging its duties. Consequently, the Security Council, when performing all of its functions, must respect the purposes and principles of the United Nations that are stated in Articles 1 and 2 of the UN Charter. Article 1 states that:

“The Purposes of the United Nations are:

- 1- To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace...”

¹⁰⁴ The General assembly has also the competence of interpreting Article 39 pursuant to its “Uniting for Peace” resolution 337 issued in 1950.

This article distinguishes between situations that are considered as threat to peace, breach of peace, or acts of aggression and situations that might lead to a breach of peace. It thus entitles the Security Council to apply effective collective measures when there is a threat and breach of peace and to adopt peaceful means to solve situations that might lead to a breach of peace.

Article 2 states that:

“The Organization and its members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles:

1. The Organization is based on the principle of the sovereign equality of all its members.

2. All members... shall fulfill in good faith the obligations assumed by them in accordance with the present Charter...”

Accordingly, the Security Council when discharging all of its duties including its Chapter VII authorities, must respect the principle of equality among nations and must fulfill in good faith its obligations. Apparently, the principles and purposes of the United Nations are mentioned in very broad terms in order to give the Security Council the necessary flexibility to deal with any kind of international disputes and thus making its authority, to a certain extent, unlimited.

A question arose during the Security Council early meetings on whether the Security Council can apply Article 39 in situations threatening the internal peace of states as well as international peace. Some representatives in the Security Council argued that the word “any” in article 39 denotes any kind of peace, whether internal or external.¹⁰⁵ This argument was rejected. The Security Council, in its decision on 24 December 1948 concerning the Indonesian question, did not apply Article 39, because it considered that the situation in Indonesia constitutes a threat to the internal peace.¹⁰⁶ In addition, “the threat to the peace” denotes a threat to international peace, which is followed from the same Article 39 when it mentions the measures taken to “restore international peace and security.”¹⁰⁷ Furthermore, according to Article 1 of the UN Charter, the first purpose of the United Nations is to “maintain international peace and security.” Consequently, there is no doubt that Article 39 can only be applied to situations threatening international peace and not the internal peace of states. ★ 7

¹⁰⁵ Repertory of Practice of Article 39 (1945-1954), Vol. 2, para. 36. This question was raised in the Palestinian question during the Security Council deliberations the exceeded its decision of 22 May 1948.

¹⁰⁶ Ibid, para. 31 to 34.

However with the developing jurisprudence of the Security Council, the Council began applying Article 39 and Chapter VII of the Charter to situations threatening internal peace of states. In addition, the principle of sovereignty became for the Security Council an old fashion principle and the Council violated this principle in many of its resolutions such as UNSCR 688 (1991), 713 (1991), 841 (1993), and many others. This new trend will be examined in the following Chapters.

After discussing the theory of collective security and its gateway in the UN Charter, the question still remains vague concerning the difference between the three concepts found in Article 39 of the UN Charter: Threats to the Peace, Breaches of the Peace, and Acts of Aggression. The next three chapters will be devoted for these three concepts respectively.

¹⁰⁷ Kelsen 1951, p. 930.

Chapter Two: Threat to the Peace:

“Threat to the peace” is the first concept mentioned in Article 39 of the UN Charter. This concept has been surrounded by ambiguity due to the Security Council inconsistency in adopting and interpreting it. Moreover, the Security Council does not usually justify why it considers a certain situation as a threat to the peace. During the Cold War, the Council considered military attacks against states as the traditional case of threats to the peace. With the development of its jurisprudence after the Cold War, the Council widened the scope of applying and interpreting “Threats to the Peace” to include new cases without adopting any criterion when making this determination. Accordingly, the first part of this chapter will shed some light on the Council’s interpretation of threats to the peace during the Cold war. The second part will focus on the Council’s interpretation of “Threats to the Peace” after the Cold war. The third part will be devoted to the attempt of defining the concept of “Threats to the Peace” based on the Council’s interpretation of this concept during and after the Cold War.

I) Interpretation of “Threats to the Peace” during the Cold War:

Although the Security Council was paralyzed to a certain extent during the Cold War, it succeeded in issuing a number of resolutions under Chapter VII of the Charter with a reference to “Threats to the Peace”. The Security Council interpretation of “Threats to the Peace” during the Cold War was influenced by many factors including the rivalry between the two superpowers and the increasing number of admitted former colonies to the General Assembly. When analyzing the Council’s resolutions during the Cold War, one can directly deduce that threats to the peace are usually interpreted as military threats to the peace. In addition, the Council considered that apartheid and the violations of the principle of self determination as threats to the peace. The Council’s interpretation of this concept can be grouped into the following categories: Military attacks, acts of aggression, apartheid, and violation of the principle of self-determination.

A) Military Attacks:

The traditional meaning of threats to the peace is the military threat that endangers the peace and security between two or more states. Any international military conflict can develop to engage other states in its sphere. It is the duty of the Security Council to halt the threats to the peace before developing into breaches of the peace. The most recognized types of threats are the military attacks against the sovereignty and territorial integrity of states. However, not all military attacks occurring between states are considered by the Council as threats to the peace. The Security Council has the full competence to determine whether a certain attack is a threat or not without any legal limitation. The following resolutions are a small sample of this attitude.

1) UNSCR 268 (1968) concerning the Complaint against Portugal:

Resolution 268 (1968) was issued on 28 July 1969 as a result of a Portuguese attack on the Eastern Province of Zambia. This resolution stipulates that:

“The Security Council...

Mindful of its responsibility to take effective collective measures for the prevention and removal of threats to international peace and security...

Concerned about the grave situation created by the Portuguese bombing of Lote village in the Katete District of the Eastern Province of Zambia bordering the Territory of Mozambique.

Gravely concerned that incidents of this nature endanger international peace and security,

1. Strongly censures the Portuguese attacks on Lote village...
2. Calls upon Portugal to desist forthwith from violating the territorial integrity of... Zambia;
3. Demands the immediate release and repatriation of all civilians...
4. Further demands from Portugal the return of all property unlawfully taken by Portuguese military forces from Zambian territory;
5. Declares that in the event of failure on the part of Portugal to comply with paragraph 2 of the present resolution, the Security Council will meet to consider further measures...”

Several comments can be made on this resolution. First, this resolution did not mention literally that the situation constitutes a “threat to the peace”. It stated that the incidents “endanger international peace”. This phrase has the same legal meaning and consequences of the phrase “threat to the peace”. Second, resolution 268 (1968) is issued under Chapter VII of the Charter because it made an Article 39 determination under the concept of threat to the peace, stated some provisional measures,¹⁰⁸ asked

¹⁰⁸ The provisional measures imposed on Portugal are to desist from violating the territory of Zambia, to release all prisoners, and to return all property belonging to Zambia.

Portugal to comply with these provisional measures, and threatened to take further measures in case of noncompliance pursuant to Article 40 of the UN Charter. According to the provisions and language of the resolution, it is clearly issued under Chapter VII of the Charter. Third, the Security Council considered that military attacks on Zambia constitute a danger or threat to international peace because these attacks violated the sovereignty and territorial integrity of Zambia.

The Security Council made similar determinations in its resolutions 273 (1969) and 275 (1969). In UNSCR 273 (1969), the Security Council considered that the shelling of a village in Senegal by the Portuguese forces "jeopardize international peace and security" and thus it issued a Chapter VII resolution containing provisional measures pursuant to Article 40 of the Charter.¹⁰⁹ In another incident, Portugal initiated another military attack on two Guinean villages. The Security Council convened and issued resolution 275 (1969), which considered that these incidents "jeopardize international peace and security" and the Council also decided on some provisional measures pursuant to Article 40 of the UN Charter.¹¹⁰ Accordingly, military attacks against the sovereignty and territorial integrity of states constitute the classical cases of threats to the peace.

2) UNSCR 552 (1984) concerning Iran's Attack on Arab Ships:

On 21 May 1984, seven Arab states requested the Security Council to convene and examine the Iranian attacks against commercial ships. The Security Council issued resolution 552 (1984) that states that:

"The Security Council...

Deeply concerned over the recent attacks on commercial ships en route to and from the ports of Kuwait and Saudi Arabia,

Convinced that these attacks constitute a threat to the safety and stability of the area and have serious implications for international peace and security,

¹⁰⁹ UNSCR 273 (1969) issued on 9 December 1969 states that:

"The Security Council...

Conscious of its responsibility for taking effective collective measures to forestall and eliminate threats to international peace and security...

Concerned about the serious situation created by the shelling of the village of Samine...

Deeply concerned at the fact that incidents of this nature jeopardize international peace and security...

1. Strongly condemns the Portuguese authorities for the shelling of the village of Samine...

2. Again calls upon Portugal to desist forthwith from violating the sovereignty and territorial integrity of Senegal;

3. Declares that on the event of failure by Portugal to comply with paragraph 2 of the present resolution, the Security Council will meet to consider other measures..."

¹¹⁰ UNSCR 275 (1969) issued on 22 December 1969.

1. Calls upon all States to respect... the right of free navigation...
3. Calls upon all States to respect the territorial integrity of States
5. Demands that such attacks should cease forthwith...
6. Decides, in the event of non-compliance with the present resolution, to meet again to consider effective measures... to ensure the right of free navigation..."¹¹¹

This resolution, which is taken under Chapter VII of the UN Charter, considered that attacks on commercial ships as having "serious implications for international peace and security" and thus it adopted the first concept of Article 39 "Threat to the Peace". After determining that the situation falls under Article 39, the resolution then stated certain provisional measures that called for the respect of free navigation and the territorial integrity of states. It further stated that the Security Council might take additional measures in the event of non-compliance with the resolution. According to this resolution, military attacks on ships constitute a threat to the peace. However, according to the General Assembly's resolution on the definition of aggression, "an attack by the armed forces of a State on the... marine and air fleets of another States" is considered an act of aggression.¹¹² Consequently, this attack, which is an act of aggression, was considered by the Council as a threat to the peace. In other resolutions, the Security Council considered that acts of aggression constitute threats to the peace. Below are some examples.

B) Acts of Aggression:¹¹³

During the Cold War, the Security Council tended to consider that acts of aggression constitute threats to the peace. This tendency can be deduced from UNSCR 411 (1977) and 424 (1978).

- 1) UNSCR 411 (1977) concerning Southern Rhodesian attacks against Mozambique:

On 22 June 1977, a Security Council meeting was requested by Mozambique backed by other states and the Organization of the African Unity concerning the

¹¹¹ UNSCR 552 (1984) issued on 1 June 1984.

¹¹² United Nations General Assembly Resolution 3314 (XXIX), Definition of Aggression, issued in 1974, Article 2. d.

¹¹³ As mentioned above, the General Assembly took the initiative of defining aggression, the third concept of Article 39. Chapter Four will be devoted to this concept and its interpretation by the Security Council.

attacks caused by the illegal regime of Southern Rhodesia against its neighbouring countries. The Security Council convened and issued resolution 411 (1977) that stipulates the following:

“The Security Council...

Indignant at the systemic acts of aggression committed by the illegal regime in Southern Rhodesia against the People's Republic of Mozambique...

Recalling its resolution 232 (1966) of 16 December 1966, in which it determined that the situation in Southern Rhodesia constituted a threat to international peace and security,

Cognizant of the fact that the recent acts of aggression perpetrated by the illegal regime against the People's Republic of Mozambique together with that regime's constant acts of aggression and threats against the sovereignty and territorial integrity of the Republic of Botswana and the Republic of Zambia aggravate the existing serious threat to the security and stability in the region...¹¹⁴

The Security Council in its previous resolution 232 (1966) considered that the situation prevailing in Southern Rhodesia constitute a threat to the peace. Moreover, Southern Rhodesia began initiating acts of aggression against its neighbouring states in spite of the collective sanctions imposed upon it by previous Security Council resolutions. Rhodesia's actions evidently constituted threats to the peace to its neighbours because it violated the political independence of sovereign states. These actions, in the Council's words, aggravated the existing threat to the peace. Although the Council did not explicitly state that acts of aggression constitute threats to the peace, this conclusion can be implicitly deduced from the this resolution. This tendency of considering acts of aggression as threats to the peace becomes more apparent in UNSCR 424 (1978).

2) UNSCR 424 (1978) concerning Southern Rhodesia's acts of aggression against Zambia:

In 1973, Southern Rhodesia committed acts of aggression against Zambia and closed the borders and thus exerted an economic blockade against Zambia. Many resolutions were issued condemning Rhodesia's aggression and imposing upon it collective coercive measures.¹¹⁵ In 1978, the Security Council convened to discuss the new acts of aggression committed by Southern Rhodesian forces against Zambia. As a result, UNSCR 424 (1978) was issued that states that:

¹¹⁴ UNSCR 411 (1977) issued on 30 June 1977.

"The Security Council...

Reaffirming that the existence of the minority racist regime in Southern Rhodesia and the continuance of its acts of aggression against Zambia and other neighbouring States constitute a threat to international peace and security,

Conscious of the need to take effective steps for the prevention and removal of threats to international peace and security,

1. Strongly condemns the recent armed invasion perpetrated by the illegal minority regime in the British colony of Southern Rhodesia against the Republic of Zambia, which constitutes a flagrant violations of the sovereignty and territorial integrity of Zambia..."

This resolution is a Chapter VII resolution because it considered the situation as a threat to the peace, and it thus invoked Article 39 of the UN Charter. It further determined provisional measures that called upon the Government of Great Britain to take effective measures to bring an end to the illegal regime of Southern Rhodesia. The Security Council considered that the situation prevailing between Southern Rhodesia and Zambia as a threat to the peace for two reasons. First, the existence of the illegal minority regime that had severe repercussions on the development of friendly relations among states and second, the recent acts of aggression committed by Southern Rhodesia that violated the territorial integrity of Zambia. According to this resolution, acts of aggression constitute threats to the peace.

It is essential to mention that many threats to the peace usually arise from acts of aggression. According to the General Assembly resolution 3314 (XXIX), any use of armed force against the territorial integrity or political independence of a state is considered as an act of aggression.¹¹⁶ Accordingly, threats to the peace usually occur by the use of armed force i.e. acts of aggression.

C) Apartheid:

Apartheid is an international term that denotes "the racial policy of the Republic of South Africa based on segregation according to skin color."¹¹⁷ The United Nations first dealt with apartheid when the National party in South Africa came to power and

¹¹⁵ These resolutions are UNSCR 326 (1973) issued on 2 February 1973, UNSCR 327 (1973) issued on 2 February 1973, UNSCR 328 (1973) issued on 10 March 1973, and UNSCR 329 (1973) issued on 10 March 1973

¹¹⁶ United Nations General Assembly Resolution 3314 (XXIX), Definition of Aggression, issued in 1974, Article 1.

¹¹⁷ Osmanczyk, Edmund Jan. "Encyclopedia of the United Nations and International Agreements", Edited by Anthony Mango, 3rd Edition, Vol. 1, Routledge: New York – London, 2003, p. 108.

initiated apartheid as a state policy.¹¹⁸ Between 1949 and 1960, the General Assembly repeatedly asked South Africa to terminate its racial policy, however these requests were disregarded by the racist regime.¹¹⁹ On 25 March 1960, 29 states requested the Security Council to convene in order to consider the situation arising in South Africa after the tragic incidents in Sharpeville.¹²⁰ The Security Council considered in its resolution 134 (1960) that "the situation arising out of the large-scale killings of unarmed and peaceful demonstrators against racial discrimination and segregation in the Union of South Africa" as a "one that has led to international friction and if continued might endanger international peace and security."¹²¹ In this resolution, the Council did not make an Article 39 determination but it determined that if this policy continues, the situation in South Africa may mount to a threat to the peace. This is what happened in resolution 181 (1963) that stipulates that:

"The Security Council,

Having considered the question of race conflict in South Africa resulting from the policies of apartheid of the Government of the Republic of South Africa...

Noting with concern the recent arms build-up by the Government of South Africa, some of which arms are being used in furtherance of that Government's racial policies...

Being convinced that the situation in South Africa is seriously disturbing international peace and security...

2. Calls upon the Government of South Africa to abandon the policies of apartheid...

3. Solemnly calls upon all States to cease forthwith the sale and shipment of arms, ammunition of all types and military vehicles to South Africa..."¹²²

This resolution is a Chapter VII resolution because it made an Article 39 determination when it considered that the situation "is seriously disturbing international peace and security". It further determined provisional measures when it asked the Government of South Africa to cease its policy of apartheid pursuant to Article 40 of the UN Charter. The Security Council also took coercive collective nonmilitary measures to give effect to its resolution when it called all states to stop the sale of arms to South Africa pursuant to Article 41 of the UN Charter. This resolution considered South Africa's policy of apartheid and its military buildups that are used to

¹¹⁸ "The United Nations and Apartheid, 1948-1994", The United Nations Blue Books Series, Volume I, Department of Public Information, United Nations, New York, 1994 p. 149.

¹¹⁹ Osmanczyk 2003, p. 108.

¹²⁰ In this incident, 68 people were killed and about 200 were injured as a result of the shooting by the police against the people who demonstrated peacefully against the racist laws; The United Nations and Apartheid, p. 150.

¹²¹ UNSCR 134 (1960) issued on 1 April 1960.

implement such policy as a threat to the peace.¹²³ In another resolution, the Security Council explicitly reaffirmed that "the policy of apartheid is a crime against the conscience and dignity of mankind and seriously disturbs international peace and security..."¹²⁴ Moreover, in UNSCR 418 (1977), the Council determined that "having regard to the policies and acts of the South African Government [apartheid], that the acquisition by South Africa of arms and related material constitutes a threat to the maintenance of international peace and security..."¹²⁵ The reasons behind the Council's determination that apartheid constitutes a threat to the peace may lie in the fact that these racial policies were a subject of great concern by the member states as shown in UNSCR 182 (1963).¹²⁶ This policy may have severe repercussions on many African states such as encouraging other states to adopt such policies and to rule the majority of the people by a small racist minority. Thus, the policy of apartheid may threaten the existing regimes of other African states. Moreover, apartheid is a policy adopted by the governing minority against the majority and its exercise constitutes a flagrant violation of the principle of Self-Determination that has been considered by the Council in some of its resolutions as a threat to the peace.

D) Violation of the Principle of Self-Determination:

Although the principle of Self-Determination has been recognized in the UN Charter, the United Nations organization started defending independence and the termination of all foreign domination in an unprecedented way in the 1960's through the General Assembly. The reason behind this sudden revival of the principle of self-

¹²² UNSCR 181 (1963) issued on 7 August 1963.

¹²³ Some scholars deny that the Council made a "Threat to the Peace" determination in UNSCR 181 (1963). Robert Cryer, for example, believes that "As far back as Resolution 181 the apartheid conflict was said to seriously disturb international peace and security, but it was only in 1977 with resolution 418 that it was actually determined to constitute a threat." Cryer, Robert. "The Security Council and Article 39: A Threat to Coherence?", *Journal of Armed Conflict Law*, December 1996, 1 (2), p.179. It can be said that the Security Council in its resolution 181 (1963) determined that the situation constitutes a threat to the peace, because without this determination, the Council cannot apply Chapter VII of the UN Charter and impose an arms embargo, which it did in UNSCR 181, on South Africa pursuant to Article 41 of the Charter. Accordingly, even if the Council did not literally use the phrase "Threat to the Peace", it made such determination when it considered the situation as "seriously disturbing international peace and security."

¹²⁴ UNSCR 392 (1976) issued on 19 June 1976.

¹²⁵ UNSCR 418 (1977) issued on 4 November 1977.

determination can be traced to the increasing admission of dozens of former colonies and their domination in the General Assembly. This new majority pressured the General Assembly on 14 December 1960 to issue its resolution 1514 (XV) entitled "Declaration on Granting of Independence to Colonial Countries and Peoples" and to create a special committee to supervise the implementation of the above declaration. This committee has been very aggressive in its decisions; it pressured the Assembly and the Council to impose coercive measures against colonial powers and it worked on moving the world opinion against the countries that violated the Assembly's declarations.¹²⁷ Therefore, the Security Council found itself obliged to determine situations as threats to the peace under the pressure of the world opinion and the General Assembly's resolutions. The following resolutions are examples to such trends.

1) UNSCR 180 (1963) concerning the Territories under Portuguese Administration:

On 15 December 1960, the General Assembly issued resolution 1542 (XV) in which it declared the territories under Portuguese administration to be Non-Self-Governing Territories and it transferred all the administrative powers to the people of those territories pursuant to its former resolution 1514 (XV).¹²⁸ Portugal, on the other hand, did not comply with the Assembly's resolution. Therefore, 32 African Member States requested the Security Council to consider Portugal's noncompliance with the above resolutions.¹²⁹ The Security Council convened and issued resolution 180 (1963) on 31 July 1963 that stipulates that:

"The Security Council...

3. Deprecates the attitude of the Portuguese Government, its repeated violations of the principles of the Charter and its continued refusal to implement the resolutions of the General Assembly and of the Security Council;

4. Determines that the situation in the Territories under Portuguese administration is seriously disturbing peace and security in Africa;

5. Urgently calls upon Portugal to implement the following:

- (i) The immediate recognition of the right of the peoples of the territories under its administration to self-determination and independence;
- (ii) The immediate cessation of all acts of repression and the withdrawal of all military and other forces...

¹²⁶ UNSCR 182 (1963) issued on 4 December 1963 stated that: "The Security Council ... Taking into account the serious concern of the Member States with regard to the policy of apartheid..."

¹²⁷ Bennett 1995, p. 391-393.

¹²⁸ The premises of UNSCR 180 (1963) issued on 31 July 1963.

¹²⁹ Wellens 1993, p. 110.

- (e) The granting of independence immediately thereafter to all the Territories under its administration in accordance with the aspirations of the peoples;
6. Requests that all States should refrain forthwith from offering the Portuguese Government any assistance... and take all measures to prevent the sale and supply of arms and military equipment for this purpose to the Portuguese Government..."

The Security Council implemented Article 39 and Chapter VII of the Charter when it determined that the situation prevailing in the territories under Portuguese administration falls under the concept of "Threat to the Peace". The Council further took coercive non-military measures against the Portuguese government when it imposed upon it an arms embargo pursuant to Article 41 of the Charter.

The Council determined that the situation as "seriously disturbing peace and security in Africa" for the following reasons. The General Assembly considered that the Portuguese administrated territories as "Self-Governing Territories". Therefore, these territories become subjected to the Assembly's resolution 1514 (XV) that declares that "immediate steps shall be taken to transfer all powers to the peoples of those territories [Self-Governing Territories], without any conditions and reservations, in accordance with their freely expressed wishes, without distinction as to race, creed or color, in order to enable them to enjoy complete freedom and independence."¹³⁰ In addition, the General Assembly considered in this resolution that the continuation of colonialism could threaten international peace and security. According to the Assembly's resolution, the people in these territories acquired the right of self-determination and independence. The Portuguese government, on the other hand, violated these rights through its noncompliance with the Assembly's resolutions. Accordingly, Portugal violated the principle of self-determination that is a well founded principle in the UN Charter and several resolutions of the General Assembly and of the Security Council. Consequently, this noncompliance necessitated a Chapter VII resolution to force Portugal to respect the right of self-determination and the various resolutions issued by the Assembly and the Council.

2) UNSCR 217 (1965) concerning the situation in Southern Rhodesia:

Southern Rhodesia was annexed to the United Kingdom in 1923. In 1963, the white settlers in Rhodesia started working for their independence under a minority

¹³⁰ General Assembly resolution 1514 (XV) issued on 14 December 1960.

white rule.¹³¹ This regime started adopting certain racial policies and repressive measures against the black majority and their nationalist leaders.¹³² Several General Assembly resolutions were issued concerning this matter. In these resolutions, the General Assembly condemned any illegal attempt of this regime to declare the independence of Southern Rhodesia¹³³ and considered any declaration of this kind as a threat to international peace and security.¹³⁴ Great Britain accepted to give Southern Rhodesia its independence only under a democracy that would guarantee the rule of the majority. The settlers refused England's conditions and unilaterally declared Southern Rhodesia's independence on November 11, 1965.¹³⁵ This declaration was denounced by the General Assembly¹³⁶ and the representatives of 35 African Member States considered the unilateral declaration of independence as a threat to international peace and security.¹³⁷ On the other hand, the Security Council convened on the next day of the declaration and issued resolution 216 (1965), in which it condemned the unilateral declaration of independence and "called upon all States not to recognize this illegal racist minority regime."¹³⁸ The Council also considered that the situation in Southern Rhodesia constitutes a threat to the peace in its resolution 217 (1965) that stipulates that:

"The Security Council...

1. Determines that the situation resulting from the proclamation of independence by the illegal authorities in Southern Rhodesia is extremely grave, that the Government of the United Kingdom of Great Britain and Northern Ireland should put an end to it and that its continuance in time constitutes a threat to international peace and security...

4. Calls upon the Government of the United Kingdom to quell this rebellion of the racist minority...

6. Calls upon all States not to recognize this illegal authority and not to entertain any diplomatic or other relations with it...

8. Calls upon all States to refrain from any action which assist and encourage the illegal regime and, in particular, to desist from providing it with arms, equipment and military material, and to do their utmost in order to break all economic relations with Southern Rhodesia, including an embargo on oil and petroleum products..."¹³⁹

¹³¹ Schweigman 2001, p.57.

¹³² Wellens 1993, p. 122.

¹³³ General Assembly Resolution 2012 (XX) issued on 12 October 1965.

¹³⁴ General Assembly Resolution 2022 (XX) issued on 5 November 1965.

¹³⁵ Schweigman 2001, p. 57.

¹³⁶ General Assembly Resolution 2024 (XX) issued on 11 November 1965

¹³⁷ Wellens 1993, p.122.

¹³⁸ UNSCR 216 (1965) issued on 12 November 1965.

¹³⁹ UNSCR 217 (1965) issued on 20 November 1965.

The Security Council did not explicitly determine the present situation as a "threat to the peace", it rather stated that the continuity of this situation in time constitutes a threat to the peace. Although determined as such, this resolution falls clearly under Chapter VII of the UN Charter. First, this resolution made an Article 39 determination under the concept of "Threat to the Peace". It also called for provisional measures that requested from the United Kingdom to suppress the racist regime pursuant to Article 40. It also adopted coercive non-military measures that called upon all states to refrain from giving any assistance to the regime and not to establish any diplomatic relations with it. The Council also imposed an economic embargo starting with oil and petroleum products.¹⁴⁰

The resolution, on the other hand, did not mention clearly why the Council considered the situation as a threat to the peace. In my opinion, several reasons may be behind the Council determination of the situation as such. First, the General Assembly and the Security Council were keen to adopt and implement the principle of self-determination, especially after the General Assembly's "Declaration on the Granting of independence to Colonial Countries and peoples". The Security Council found in the unilateral declaration of independence by a minority racist regime as a severe violation to the principle of self-determination especially after the repressive actions taken against African nationalist leaders. This propensity can be found in the resolution 217 (1965) when the Council called upon the government of Great Britain to take immediate measures to eliminate "the authority of the usurpers" in order to "allow the people of Southern Rhodesia to determine their own future consistent with the objectives of the General Assembly resolution 1514 (XV)". Thus, the Council applied Chapter VII of the Charter to enforce its decisions and those of the Assembly.

Another reason behind the Council's determination that the situation in Southern Rhodesia constituted a threat to the peace may lie in the fact that the Council did not want the tragedies resulting from the policies of race discrimination and apartheid that

¹⁴⁰ David Schweigman believes that in resolution 232 (1966) "the Council... for the first time in its history imposed mandatory sanctions under Article 41 of the Charter"; Schweigman 2003, p. 60. In this respect, the Security Council first imposed mandatory sanctions in the Rhodesian Crisis pursuant to Article 41 in its resolution 217 (1965) and not resolution 232 (1966) as Schweigman claims. In resolution 217, the Council explicitly imposed an arms embargo in Southern Rhodesia pursuant to Article 41, which states that "The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions... These may include complete or partial interruption of economic relations..." Evidently, the decision of imposing an arms embargo in UNSCR 217 (1965) preceded UNSCR 232 (1966) in imposing mandatory sanctions pursuant to Article 41 of the UN Charter.

occurred in South Africa, to take a new form with another similar regime in Southern Rhodesia. These regimes, if flourished, may threaten other African governments and thus may pose a serious threat to the peace and security of the African states. This may be the reason behind the fear of the 35 African States that requested the Security Council to consider the situation in Southern Rhodesia as a threat to international peace and security. Moreover, the General Assembly made it clear to the white settlers that any unilateral declaration of independence will be considered as a threat to the peace.¹⁴¹ With the regime's indifference to the Council's and Assembly's resolutions, the Council found itself obliged to make an Article 39 determination in order to enforce its decisions through Chapter VII of the Charter.

E) Destruction of Holy Places in Palestine:

As a result of the Israeli military activities in the holy land, fire broke out in the Holy Al Aqsa mosque. In addition, the southern part of the ceiling was completely destroyed and severe damage occurred to the walls.¹⁴² Upon the request of 25 states, the Security Council convened to discuss the matter and issued resolution 271 (1969) on 15 September 1969, which stipulates the following:

"The Security Council,

Grieved at the extensive damage caused by arson to the Holy Al Aqsa Mosque in Jerusalem on 21 August 1969 under the military occupation of Israel...

2. Recognizes that any act of destruction or profanation of the Holy Place, religious buildings and sites in Jerusalem or any encouragement of, or connivance at, any such act may seriously endanger international peace and security..."

This resolution, although taken under Chapter VI of the Charter, is considered as a precedent in the practice of the Security Council. The Council considered for the first time that actions jeopardizing the human culture or religious sites may mount to serious threats to international peace. In the present case, no hostilities were initiated between two sovereign states and the Palestinian issue has been always determined as an interior conflict. In UNSCR 271 (1969), the concept of threats to the peace widened with the inclusion of threats to the cultural heritage of states. The reason behind this new interpretation may lie in the Council's belief that the destruction of Holy Places in

¹⁴¹ General Assembly resolutions 2012 (XX) and 2022 (XX).

¹⁴² Wellens, Karel C. "Resolutions and Statements of the United Nations Security Council (1946-1992): A Thematic Guide" 2nd Edition, Martinus Nijhoff Publishers: London, 1993, p. 664.

Jerusalem may have severe repercussions on the international level. Many Moslem States will not tolerate any destruction or sacrilege of their holy places especially that 25 states have requested the Council to convene and take serious measures to halt the Israeli actions against their holy places.

II) Interpretation of "Threats to the Peace" after the Cold War:

After the Cold War impeded the Security Council from performing its functions, the post Cold War era witnessed the birth of a revived Security Council. This fact is evident through comparing the number of resolutions issued by the Security Council before and after the end of the Cold War. From 1946 till 1989, the number of the resolutions passed by the Security Council averaged 15 resolutions annually, while from 1989 till 2002 the number increased to reach more than sixty resolutions annually.¹⁴³ This revived role pushed the Security Council to be more involved in dealing with international as well as internal disputes. Accordingly, we will try to sort the most important resolutions issued by the Security Council after the Cold War, which determined situations as threats to the peace, into 6 categories: Violation of humanitarian international law, anti-democratic systems, terrorism, infectious diseases, proliferation of untraditional weapons, and interpreting international law.

A) Humanitarian Intervention:

Humanitarian intervention occurs when the Security Council intervenes in the domestic affairs of states under the justification of protecting human rights. Prior to 1990, the United Nations never intervened in the internal affairs of states for humanitarian reasons. However, many resolutions were passed after the cold war, which legitimized such intervention. These resolutions considered that vigorous violations of human rights are considered as a threat to peace. Below are some examples of this new trend.

¹⁴³ Wallenstein, Peter & Johansson, Patrik. "Security Council Decisions in Perspective", in "The UN Security Council From the Cold War to the 21st Century" edited by David M. Malone, *Lynne Rienner Publishers: Boulder-London*, 2004, p. 18.

1) UNSCR 688 (1991) concerning the Iraqi Crisis:

When Iraq invaded Kuwait, the Security Council authorized the United States and the coalition forces to drive the Iraqis out of Kuwait. In order to put more pressure on the Iraqi regime, the coalition forces encouraged the Kurds and Shiites in Iraq to rebel against the government, who were long oppressed by the Saddam Regime. After the Iraqi retreat from Kuwait, the Iraqi authorities initiated a new assault against its civilians and suppressed those who opposed the Iraqi regime. At first the Security Council did not intervene because it considered the situation as an internal matter.¹⁴⁴ At a later stage and under the request of France, the Security Council issued resolution 688 on 5 April 1991, which states that:

“The Security Council...

Gravely concerned by the repression of the Iraqi civilian population in many parts of Iraq, including most recently in Kurdish populated areas, which led to a massive flow of refugees towards and across international frontiers and to cross-border incursions, which threaten peace and security in the region,

Deeply disturbed by the magnitude of the human suffering involved...

1. Condemns the repression of the Iraqi civilian population in many parts of Iraq, including most recently in Kurdish populated areas, the consequences of which threaten international peace and security in the region;

2. Demands that Iraq, as a contribution to remove the threat to international peace and security in the region, immediately end this repression ...”

This resolution is considered one of the first resolutions issued after the Cold War that contained an interpretation of “threat to the peace”. In this resolution, we can clearly find a transition in the Security Council’s interpretation of threats to the peace. The Security Council gives two reasons for considering this situation as a threat to the peace. The first reason is humanitarian, which is based on the suppression of the Iraqi population and the second is the international consequences behind this suppression. We notice that the Security Council gave a priority for humanitarian reasons when considering the Iraqi situation as a threat to the peace. This conclusion can be supported by the Council’s demand that Iraq stops the suppression of its people.

In principle, the Iraqi crisis was an internal dispute between the regime and its opponents. Thus, according to Article 2.7 of the UN Charter, the United Nations cannot intervene in the policies of the Iraqi regime and its actions towards its nationals. On the other hand, the Security Council legitimized its intervention through considering that the consequences of the suppression constitute a threat to the international peace. Consequently, the Security Council tried to legitimize its

intervention by referring to the refugees, but the actual reason for intervening, which was obvious in the resolution itself, was for humanitarian reasons. Therefore, there is no doubt that the Security Council has set a new precedent in interfering in the domestic affairs of states to protect human rights. This precedent was consolidated in many later resolutions such as UNSCR 713 (1991).

2) UNSCR 713 (1991) concerning the Yugoslavian Crisis:

Prior to 1991, Yugoslavia was a federal republic in Europe that was established in 1945. The federation, formerly a kingdom, was composed of six republics and two autonomous regions: Serbia, Croatia, Bosnia-Herzegovina, Macedonia, Slovenia, and Montenegro, in addition to Kosovo and Vojvodina as the two autonomous regions.¹⁴⁵

After the collapse of communism, hostilities began in June 1991 when Croatia and Slovenia declared their independence from Yugoslavia. The Federal government, which was controlled by the Serbs, opposed the move and supported the Serbian militias against the Croatian and Slovenian authorities. Furthermore, the armed conflict intensified when Bosnia-Herzegovina, supported by Bosnian Croats and Bosnian Moslems, declared its independence in 1992.¹⁴⁶

The first resolution issued by the Security Council that dealt with the Yugoslavian crisis carried within it the seeds of altering the interpretation of Article 39. The Security Council resolution 713, issued on 25 September 1991, stated that:

“The Security Council...

Deeply concerned by the fighting in Yugoslavia which is causing a heavy loss of human life and material damage, and by the consequences for the countries of the region, in particular in the border areas of neighboring countries,

Concerned that the continuation of this situation constitutes a threat to international peace and security...

6. Decides, under Chapter VII...”

In this resolution and at the beginning of the conflict, the six republics constituting Yugoslavia were considered as a one state. Therefore, according to international law, the conflict in Yugoslavia was an internal conflict, a civil war. According to the Charter of the United Nations, the Security Council cannot interfere in the internal affairs of a state except in the case of threat, breach of international

¹⁴⁴ Gray, Christine. “International Law and the Use of Force”, *Oxford University Press*, 2000, p. 191.

¹⁴⁵ Morse, Joseph Laffan. “The Universal Standard Encyclopedia”, *Unicorn Publishers: New York*, 1954, p. 9403.

peace, or acts of aggression.¹⁴⁷ The Security Council, in this resolution, gave a priority to the humanitarian crisis in determining that the situation constitutes a threat to the peace. It also seemed that the Security Council, in order to give this resolution a more legal justification for applying Article 39, mentioned the international consequences caused by this internal conflict which were "the consequences for the countries of the region, in particular in the border areas of neighboring countries". Consequently, we see in this resolution an attempt of transition, by the Security Council, in the application of Article 39 from direct military aggressions to pure humanitarian reasons. Such transition is the same as the one we saw in the Iraqi crisis. The Security Council in its resolutions 760 (1992), 770 (1992), and 827 (1993) seemed more insistent in considering the violations of human rights as threats to international peace. Thus, the Council has set new precedents for the application of Article 39 and its interpretation of "Threats to the Peace". UNSCR 760 (1992) issued on 18 June 1992 states that:

"The Security Council,
Recalling its resolutions..., in which it emphasized the urgent need for humanitarian assistance and fully supported the current efforts to deliver humanitarian aid to all the victims of the conflict,
Acting under Chapter VII of the Charter of the United Nations..."

In addition, the Security Council resolution 770, issued on 13 August 1992, states that:

"The Security Council...
Recognizing that the situation in Bosnia and Herzegovina constitutes a threat to international peace and security and that the provision of humanitarian assistance in Bosnia and Herzegovina is an important element in the Council's effort to restore international peace and security in the area...
Deeply concerned by reports of abuses against civilians imprisoned in camps, prisons and detention centers,
Determined to establish as soon as possible the necessary conditions for the delivery of humanitarian assistance wherever needed in Bosnia and Herzegovina,...
Acting under Chapter VII of the Charter of the United Nations, ..."

As for the resolution 827 (1993) that established the International Criminal Tribunal for Former Yugoslavia, it states that:

"The Security Council...
Expressing once again its grave alarm at continuing reports of widespread and flagrant violations of international humanitarian law occurring within the territory of the former Yugoslavia, and especially in the Republic of Bosnia and Herzegovina, including reports of mass killings, massive, organized and systematic detention and rape

¹⁴⁷ Articles 2.7 and 39 of the UN Charter.

of women, and the continuance of the practice of (ethnic cleansing), including for the acquisition and the holding of territory,

Determining that this situation continues to constitute a threat to international peace and security...¹⁴⁸

In all these resolutions, the Security Council considered that serious violations of international humanitarian law are considered as threats to the peace. According to this precedent, the Security Council can intervene in the internal affairs of states and apply collective measures when states commit serious violations of International Humanitarian law. Other examples of this trend include UNSCR 1299 in Kosovo, UNSCR 1101 in Albania, UNSCR 929 in Rwanda, and UNSCR 1264 in East Timor.

The Security Council has therefore developed through these resolutions a notion of Human Security. This notion is considered, according to many Security Council resolutions, as a threat to international security that might trigger Chapter VII provisions. This notion has been also emphasized in the UN 2004 report as a new challenge for collective security. In addition, this report stated that the concept international responsibility towards protecting human rights has to "overcome the tension between the competing claims of sovereign inviolability and the right to intervene".¹⁴⁹ Thus the UN 2004 report adopted the Council's new trend in legitimizing the usage of humanitarian intervention under Chapter VII of the Charter.

B) Democratization:

Pro-democratic intervention is based on the assumption that democratic states are less prone to aggression. Restoring democracy, according to the UN logic, will evidently lead to peace.

In 1989, the former president of Panama refused to accept the results of the presidential elections that led to the victory of his opponent. Here, the US intervened militarily under the alibi of protecting its nationals abroad but not under the justification of restoring democracy.¹⁵⁰ In the Security Council debate concerning the US intervention in Panama, no state has put forward a doctrine of pro-democratic

¹⁴⁸ UNSCR 827 issued on 25 May 1993.

¹⁴⁹ UN Report of the Secretary-General's High-level Panel on Threats, Challenges, and Change, "A More Secure World: Our Shared Responsibility", United Nations, 2004, p. 18.

¹⁵⁰ Gray 2000, p. 43.

intervention.¹⁵¹ Thus, at that time no such doctrine was accepted and used to trigger collective security under Article 39. However, in later cases the Security Council intervened in many states to restore or impose democracy under different legal justifications.

1) UNSCR 841 (1993) concerning the situation in Haiti:

In 1990, a presidential election occurred in Haiti under the supervision of the United Nations and the Organization of American States (OAS), which led to the election of Jean-Bertrand Aristide.¹⁵² The crisis in Haiti started when the military coup overthrew the government of the elected president. The OAS immediately condemned the military coup and the UN Secretary-General expressed his concern about "the grave threats to democracy ... established with the assistance of the United Nations". The OAS and the United Nations tried to solve the crisis in Haiti peacefully, especially after reports of human rights abuses.¹⁵³ On 16 June 1993, the Security Council issued resolution 841, which states that:

"The Security Council...

Also recalling the statement of 26 February 1993 (S/25344), in which the Council noted with concern the incident of humanitarian crisis, including mass displacement of population, becoming or aggravating threats to international peace and security,

Deploping the fact that, ... the legitimate Government of President Jean-Bertrand Aristide has not been reinstated,

Concerned that the persistence of this situation contributes to a climate of fear of persecution and economic dislocation which would increase the number of Haitians seeking refuge in neighboring Member States...

Determining that, in these unique and exceptional circumstances, the continuation of this situation threatens international peace and security in the region,

Acting, therefore, under Chapter VII of the Charter of the United Nations, ...

16. Expresses its readiness to review all the measures in the present resolution with a view to lifting them, if ... the de facto authorities in Haiti have signed and have begun implementing in good faith an agreement to reinstate the legitimate Government of President Jean-Bertrand Aristide; "

The Security Council, in order to consider that the situation in Haiti constitutes a threat to peace and security, used the following logic: The overthrow of the legitimate government led to a massive flow of refugees. This massive flow of refugees threatened the peace and security in the neighboring countries. Consequently, the

¹⁵¹ Ibid.

¹⁵² Einsiedel, Sebastian von & Malone, David. "Haiti", in "The UN Security Council From the Cold War to the 21st Century" edited by David M. Malone, *Lynne Rienner Publishers: Boulder-London*, 2004, p. 468-470.

¹⁵³ Ibid.

Security Council called on the military regime to restore the elected president or else coercive measures would be taken against it.

Accordingly, if the legitimate reason behind recognizing that the situation constitutes a threat to peace is the overflow of refugees into the neighboring states, why didn't the Security Council demand the regime to stop its aggressive acts against the civilians in order to end this flow of refugees? In addition, in all the 3-paged resolution, the only demand requested by the Security Council was the restoration of the legitimate government of Aristide with not a single humanitarian request to the de-facto government. This obviously leads to the conclusion that the Security Council used Chapter VII and intervened in the domestic affairs of Haiti just to restore the elected government of Aristide. According to Einsiedel and Malone, this case is considered the first in which the Security Council used force to restore democracy within a member state.¹⁵⁴ As for Malanczuk, he considered that "the case of Haiti has been described as the most important precedent supporting the legitimacy of an international principle of democratic rule as well as of collective humanitarian intervention."¹⁵⁵ It is worth noting that China abstained from voting on this resolution because it considered it as a dangerous precedent.¹⁵⁶

2) UNSCR 1132 (1997) concerning the situation in Sierra Leone:

In the 1990's, violence broke out between the Revolutionary United Front (RUF) and the three successive governments in Sierra Leone.¹⁵⁷ The revolutionaries robbed the country's resources and inflicted enormous damage on the population. The rebels' actions were stopped in 1995 by the South African mercenary organization and a peace agreement was signed between the government of Ahmad Tejan Kabbah and the RUF in Abidjan. Following the agreement and the departure of the foreign troops in 1997, a military coup occurred by junior army officers that invited the RUF in and threw President Kabbah out of the country.¹⁵⁸ The Security Council reacted to this crisis by issuing its resolution 1132 on October 8, 1997, which states that:

"The Security Council,

¹⁵⁴ Einsiedel & Malone 2004, p. 467.

¹⁵⁵ Malanczuk 1997, p. 408.

¹⁵⁶ Ibid.

¹⁵⁷ Hirsch, John. "Sierra Leone", in "The UN Security Council From the Cold War to the 21st Century" edited by David M. Malone, *Lynne Rienner Publishers: Boulder-London*, 2004, p. 521-522.

¹⁵⁸ Ibid.

Recalling the statements of its President...condemning the military coup in Sierra Leone...

Reaffirming its view that the Abidjan Agreement (S/1996/1034) continues to serve as a viable framework for peace, stability and reconciliation in Sierra Leone,

Deploping the fact that the military junta has not taken steps to allow the restoration of the democratically-elected Government and a return to constitutional order,

Gravely concerned at the continued violence and loss of life in Sierra Leone following the military coup of 25 May 1997, the deteriorating humanitarian conditions in that country, and the consequences for neighboring countries,

Determining that the situation in Sierra Leone constitutes a threat to international peace and security in the region,

Acting under Chapter VII of the Charter of the United Nations,

1. Demands that the military junta take immediate steps to relinquish power in Sierra Leone and make way for the restoration of the democratically-elected Government..."

In this resolution, the Security Council considered that the crisis in Sierra Leone constitutes a threat to international peace and security without precisely stating why. It vaguely stated that the consequences of the deteriorating humanitarian conditions on neighboring countries and the loss of lives in Sierra Leone constitute a threat to the peace. How can the humanitarian conditions in a certain country affect the peace and security of a neighboring state? Furthermore, the main reason behind this resolution is the restoration of the democratic government. This is clearly shown in the resolution because the first demand of the Security Council is the "restoration of the democratically elected government". This is the second time in which the Security Council intervened in the domestic affairs of a state and acted under Chapter VII to restore a democratic government. In addition, the Security Council consolidated this precedent in many of its resolutions such as UNSCR 1072 (1996) concerning the situation in Burundi.

However, we must be careful in considering that the Council, in all its resolutions that legitimized its intervention to restore democracy, did not consider that anti-democratic regimes constitute a threat to peace. The Council only intervened when anti-democratic regimes become a cause of serious violations of human rights. The Council never intervened in an anti-democratic regime when this regime preserved the internal stability of a country. Therefore, it is not precise to say that anti-democratic regimes are considered as a threat to the peace under Article 39. It is more precise to say that anti-democratic regimes when accompanied with serious violations of human rights are considered as a threat to the peace. Consequently, I disagree with scholars that states that the Security Council has set a new precedent, which is the international principle of democratic rule. This assumed precedent is only a

continuation of a former precedent, which is the principle of humanitarian intervention that started in the beginning of the 1990s. However, there are growing trends in the UN Organization that call for the Security Council intervention for “developing frameworks for minority rights and the protection of democratically elected Governments from unconstitutional over-throw”.¹⁵⁹ Until now, this trend has not materialized itself sufficiently and independently in the Security Council resolutions. In addition, the UNO has neither intervened nor applied sanctions in order to restore democratic governments in many other similar cases such as Burma (1990), Algeria (1991), Nigeria (1993), Niger (1996), and Pakistan (1999).¹⁶⁰

C) Terrorism:

Although terrorism as a threat to the peace and security dates back to the early 1990's, it has developed quickly and became a serious threat that captured the interest of the international community especially after September 11 attacks on the United States. Although the Security Council issued many resolutions condemning and imposing sanctions upon states supporting terrorism, the Council remains until now unable or unwilling to define terrorism. Below are some resolutions that considered terrorism as a threat to international peace and security.

1) UNSCR 731 (1992) concerning the Lockerbie Crisis:

The Lockerbie case started in 1988 with the explosion of Pan Am Flight 103, over the region of Lockerbie in Scotland.¹⁶¹ This explosion, which was caused by a bomb, killed all the passengers as well as some citizens of Lockerbie. The American and British investigations revealed that two Libyan citizens were responsible for that tragedy. Consequently, the US and England requested Libya to hand in these two men. Libya refused by stating that its constitution forbids it from extraditing its nationals.¹⁶² As a result, the Security Council passed resolution 731 (1992) that states that:

“The Security Council,

Deeply disturbed by the world-wide persistence of acts of international terrorism in all its forms, ... have a deleterious effect on international relations and jeopardize the security of States,

¹⁵⁹ UN Report 2004, p. 36.

¹⁶⁰ Gray 2000, p. 44.

¹⁶¹ Dixon, Martin & Mccorquodale, Robert. “Cases and Materials on International Law”, 2nd Edition, Blackstone Press Limited: London, 1995, p. 631.

¹⁶² Ibid

Deeply concerned by all activities directed against civil aviation and affirming the right of all States, ... to protect their nationals from acts of international terrorism that constitute threats to international peace and security,

Deeply concerned over the results of investigations which implicate officials of the Libyan Government ... against Pan Am flight 103 and UTA flight 772..."¹⁶³

Although this resolution is not taken under Chapter VII, it is considered a very important precedent when it determined terrorism as a threat to international peace and security. It explicitly states that acts of international terrorism jeopardize the security of states and international peace. I believe that this resolution is a logical interpretation of what constitutes a threat to peace. This resolution paved the way for resolution 748 (1992) taken by the Security Council under Chapter VII of the UN Charter. The latter resolution states that:

"The Security Council...

Convinced that the suppression of acts of international terrorism, including those in which States are directly or indirectly involved, is essential for the maintenance of international peace and security,

Reaffirming that, ... every State has the duty to refrain from organizing, instigating, assisting or participating in terrorist acts in another State...

Determining in this context that the failure by the Libyan Government to demonstrate, by concrete actions its renunciation of terrorism and in particular its continued failure to respond fully and effectively to the requests in resolution 731 (1992), constitute a threat to international peace and security...,

Acting under Chapter VII of the Charter of the United Nations,

1. Decides that the Libyan Government must now comply ...with paragraph 3 of resolution 731...

2. Decides also that the Libyan Government must commit itself definitively to cease all forms of terrorists action and all assistance to terrorist groups..."¹⁶⁴

In this resolution, the Security Council reaffirmed that terrorism constitutes a threat to peace and security. In addition, states that organize, participate, and assist in terrorist acts are considered as states supporting terrorism and thus they may pose a threat to international peace and security. This determination may open the door for applying coercive measures against these states. What is also worth noting in these resolutions is the concept of "threat to international security". Any threat to world security is treated in the same context of threat to the peace. Therefore, Article 39 can be applied in situations threatening international security as well as international peace.

¹⁶³ UNSCR 731 issued on 21 January 1992.

¹⁶⁴ UNSCR 748 issued on 31 March 1992.

2) UNSCR 1373 (2001) concerning the condemnation of Terrorism:

The significance of this resolution lies in the fact that it is the first resolution applied under Chapter VII condemning terrorism after September 11 attacks on the United States. This resolution, which was issued on 28 September 2001, states that:

“The Security Council...

Reaffirming also its unequivocal condemnation of the terrorist attacks which took place in New York, Washington, D.C. and Pennsylvania...

Reaffirming further that such acts, like any act of international terrorism, constitute a threat to international peace and security,

Reaffirming the inherent right of individual or collective self-defense as recognized by the Charter of the United Nations...

Reaffirming the need to combat by all means, in accordance with the Charter of the United Nations, threats to international peace and security caused by terrorist acts...

Calling on states to work together urgently to prevent and suppress terrorists acts...

Acting under Chapter VII of the United Nations,...”

This resolution reaffirmed the declarations and resolutions that were issued by the UN Organization concerning terrorism. Thus, it considered that any act of terrorism constitutes a threat to international peace and security and called for the implementation of collective security to suppress all acts of terrorism. On the other hand, this resolution legitimized all future US attacks against any state supporting terrorism. This given legitimacy is very dangerous especially that no specific definition for terrorism has been adopted by the UNO. This resolution will therefore legitimize any attack by the US against any other state under the alibi of “inherent right of self-defense”. In addition, many other resolutions were issued by the Council condemning terrorism and encouraging cooperation between states in the fight against terrorism.¹⁶⁵

In its resolution 1566 (2004), the Security Council, acting under Chapter VII of the Charter called upon “States to cooperate fully in the fight against terrorism, especially with those States where or against whose citizens terrorist acts are committed, in accordance with their obligations under international law, in order to find, deny safe haven and bring to justice... any person who supports, facilitates, participates or attempts to participate in the financing, planning, preparation or commission of terrorist acts or provides safe havens...”¹⁶⁶ This resolution is a very serious and important one because it obliges states to cooperate with the UNO in

¹⁶⁵ Some of these resolutions include UNSCR 1450 (2002) issued on 13 December 2002, UNSCR 1455 (2003) issued on 17 January 2003, and UNSCR 1526 (2004) issued on 30 January 2004.

¹⁶⁶ UNSCR 1566 (2004) issued on 8 October 2004.

identifying and prosecuting any person that is connected with an act of terrorism. In case of noncompliance, the Security Council can take coercive measures against the uncooperative state pursuant to Article 40, 41 and 42 of the UN Charter.

According to the 2004 UN report, September 11 attacks revealed that the states and the UN Organization failed in preventing terrorism. The technological revolution helped in minimizing geographical boundaries and thus aided the terrorist groups in inflicting enormous damages without any help from states.¹⁶⁷ Furthermore, the UN report stressed that the attacks against many countries in four different continents in the last few years proved that Al-Qaida, in addition to other terrorist organizations, pose a universal threat to the members of the United Nations and the United Nations Organization itself.¹⁶⁸ Terrorism is not just a threat to the security, it is a danger that jeopardizes most of the United Nations values such as: Respect for human rights, the rule of law, rules of war, tolerance among peoples and nations, and the peaceful resolution of conflicts.¹⁶⁹ This is why there is an urgent need for a collective action to eradicate this international threat.

D) Infectious Diseases:

Infectious diseases pose a serious threat to the international security. In the last few decades, the world witnessed the emergence of new fatal diseases and a reawakening of older ones.¹⁷⁰ According to the 2004 UN Report, the international response in combating these diseases remains extremely slow. When the Security Council passed the resolution 1308 (2000), the number of deaths per year from HIV/AIDS in Africa exceeded the number of deaths that resulted from all civil wars that erupted in Africa in the 1990s. By 2003, more than 11 million children were infected by this disease in Africa.¹⁷¹ Accordingly, enormous efforts must be dedicated to suppress these infectious diseases that threaten all mankind irrespective of where they live. In this respect, the Security Council issued Resolution 1308 (2000), which stipulates that:

¹⁶⁷ UN Report 2004, p. 14.

¹⁶⁸ Ibid, p. 47.

¹⁶⁹ Ibid.

¹⁷⁰ Ibid, p. 24.

¹⁷¹ Ibid, p. 25.

“The Security Council,

Deeply concerned by the extent of the HIV/AIDS pandemic worldwide, and the severity of the crisis in Africa in particular...

Stressing the need for coordinated efforts of all relevant United Nations organizations to address the HIV/AIDS pandemic in line ... and to assist, wherever possible, in global efforts against the pandemic...

Recognizing that the spread of HIV/AIDS can have a uniquely devastating impact on all sectors and levels of society,

Reaffirming the importance of a coordinated international response to the HIV/AIDS pandemic...

Further recognizing that the HIV/AIDS pandemic is also exacerbated by conditions of violence and instability...

Stressing that the HIV/AIDS pandemic, if unchecked, may pose a risk to stability and security...”¹⁷²

In this resolution, the Council uses the term “threat to security”. There is an increasing trend in the United Nations to include infectious diseases as situations constituting a “threat to the peace and security”. Therefore, we can say that the Security Council adopted a new precedent in considering HIV/AIDS as a disease threatening international peace and security. This resolution also states that the spread of HIV/AIDS has a direct effect in promoting violence, which might also endanger international peace.

According to the UN Organization, infectious diseases pose a serious threat to international security, especially that international flights can easily carry these diseases from one country to another. A recent example on this fact is that the Severe Acute Respiratory Syndrome (SARS) was capable of spreading to more than 8000 people in 30 countries in three months, killing almost 700.”¹⁷³

Other infectious diseases remain an eminent threat to international security. The UN Secretary General states in his report that although there were significant efforts to fight tuberculosis, more than 805 million new cases of this disease reappear and more than 2 million people die from it every year. On the other hand, the recent successful experience in combating SARS has shown the unique ability of the UNO and the states concerned to combat such infectious diseases when they desire to.”¹⁷⁴

¹⁷² UNSCR 1308 (2000) issued on 17 July 2000.

¹⁷³ UN Report 2004, p. 24.

¹⁷⁴ Ibid, p. 25.

E) Proliferation of Unconventional Weapons:

It is indisputable that any use of nuclear weapons will directly lead to enormous human casualties and economic disasters. According to the United Nations report, stopping the proliferation of such weapons is an urgent need for the international security.¹⁷⁵ The Security Council resolution 1540 (2004) has set a new precedent in interpreting Article 39 and in applying Chapter VII of the Charter by stating that:

“The Security Council,

Affirming that proliferation of nuclear and biological weapons, as well as their means of delivery, constitutes a threat to international peace and security...

Affirming its resolve to take appropriate and effective actions against any threat to international peace and security caused by the proliferation of nuclear, chemical and biological weapons and their means of delivery, ...

Gravely concerned by the threat of illicit trafficking in nuclear, chemical, or biological weapons and their means of delivery, and related materials, which... also poses a threat to international peace and security,

Acting under Chapter VII of the Charter of the United Nations,

1. Decides that all States shall refrain from providing any form of support to non-State actors that attempt to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery;

2. Decides also that all states... enforce appropriate effective laws which prohibit any non-State actor to manufacture... use nuclear, chemical or biological weapons...”¹⁷⁶

According to this resolution, any attempt to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical, or biological weapons poses a threat to international peace and security. In addition, developing means of delivery of such weapons is also considered as a threat to the peace such as missiles, rockets, or other instruments that are capable of holding nuclear weapons. Consequently, the Security Council applied Chapter VII and requested all states to refrain from giving any aid to non-state actors in the above mentioned activities and to enforce laws in order to prohibit such actions.

Nuclear weapons are recognized by the international community as a threat to the peace long before this resolution. However, what is new about this resolution is the Security Council’s application of collective security under the title of “Nuclear, Biological and Chemical weapons”, which constitutes a precedent in the Council’s interpretations of Article 39 and the concept of “Threat to the Peace”.

¹⁷⁵ Ibid, p. 39.

¹⁷⁶ UNSCR 1540 (2004) issued on 28 April 2004.

According to the UN Report, the threat posed by the proliferation of nuclear weapons may arise in many ways: The first is the danger which may exist if these weapons fall in terrorist hands. The second is when states, under the cover of the treaty on the non-proliferation of nuclear weapons, illegally develop these kinds of weapons. The third is the possible collapse of the whole Treaty regime¹⁷⁷ as a result of the noncompliance of many member states to the provisions of the treaty. Consequently, there is no doubt that nuclear, radiological, chemical, and biological weapons pose a direct and serious threat to international security and stability and require more serious attempts to eradicate it.

F) Impeding the Work of the ICC:

One of the dangerous precedents adopted by the Security Council is its power to put limitations on the work of international governmental organizations. This precedent can be found in the UNSCR 1422 (2002) issued on 12 July 2002, that requested the ICC to cease from initiating investigations and proceedings against non-member states of the ICC statute that participate in peacekeeping operations. According to Carsten Stahn, the Security Council argued that this resolution was necessary to counter any future US vetoes against the peacekeeping operations authorized by the Security Council.¹⁷⁸ This resolution states that:

“The Security Council,

Taking note of the entry into force on 1 July 2002, of the statute of the International Criminal Court (ICC), done at Rome 17 July 1998 (the Rome Statute)...

Noting that States Parties to the Rome Statute have chosen to accept its jurisdiction in accordance with the Statute...

Determining that operations established or authorized by the United Nations Security Council are deployed to maintain or restore international peace and security

Determining further that it is in the interests of international peace and security to facilitate Member States' ability to contribute to operations established or authorized by the United Nations Security Council,

Acting under Chapter VII of the Charter of the United Nations,

1. Requests, consistent with the provisions of Article 16 of the Rome Statute, that the ICC, if a case arises involving current or former officials or personnel from a contributing State not a party to the Rome Statute over acts or omissions relating to a United Nations established or authorized operation, shall ... not commence or proceed with investigation or prosecution of any such case, unless the security Council decides otherwise;...

¹⁷⁷ UN Report 2004, p. 39.

¹⁷⁸ Stahn, Carsten. “The Ambiguities of Security Council resolution 1422”, *European Journal of International Law*, 2003, Vol.1, 85).

3. Decides that Member States shall take no action inconsistent with paragraph 1 and with their international obligations...”

The first thing to note about this resolution is its issuance under Chapter VII of the Charter. According to the UN Charter, the Security Council cannot apply Chapter VII before considering a situation as a threat to international peace and security, breach of the peace, or an act of aggression. In this resolution there is no such reference. The only justification that the Council used is that “it is in the interest of international peace and security to facilitate Member States’ ability to contribute to operations authorized by the United Nations Security Council”. Therefore, the Security Council introduced a new concept to Article 39, which is “the interest of peace”. What is dangerous about this resolution is the fact that anything can be related to the interest of peace. This will legitimize any interference by the Security Council in any matter, not just disputes in the domestic matters of states.

The second comment is that this resolution constitutes an assault on the powers of the International Court of Justice (ICJ). In this resolution the Security Council has not just interpreted a treaty, but it also gave itself the power to exclude any state from this treaty. It therefore, violated Articles 24 and 92 that differentiate between the powers and functions of the Security Council and those of the ICJ. Article 24 gives the Security Council the “primary responsibility for the maintenance of international peace and security”, while Article 92 considers the ICJ as the “principal judicial organ of the United Nations”, and thus the latter is entitled to interpret international treaties and laws. In addition, the Security Council also violated the principles and purposes of the United Nations, especially Article 2 that stipulates that the UNO must respect the “principle of the sovereign equality of all its members”. This violation occurred when it excluded some states from the application of this treaty.

Many jurists and scholars denounced UNSCR 1422 and considered it as an illegal resolution because it violates the basic principles of the Charter. Professor Flavia Lattanzi, a member of the Humanitarian Fact-Finding Commission-Geneva Conventions, stated that UNSCR 1422 is not founded in law and an unprecedented resolution in the history of the Security Council.¹⁷⁹ Carsten Stahn believes that this

¹⁷⁹ Flavia expresses that “Resolution 1422 is ultra vires [not founded in law] also under the inherent norms of the United Nations Charter system. In fact, the Council adopted the resolution pretending to act “under Chapter VII of the Charter of the United Nations”, but it did so in the absence of the preventive finding that a threat to peace... exists under Article 39... The absence of such a finding is unprecedented in the 57 years of practice of the Security Council itself!... how could the Council

resolution developed international law in a negative way and it constituted a dangerous and irreversible precedent in international law.¹⁸⁰

Accordingly, there is no doubt that resolution 1422 has set a new precedent in interpreting Article 39. This precedent may pave the way for more dangerous interpretations of Article 39, which will not only legitimize the Security Council's interference in any issue or case that may occur in any country but also may jeopardize the work and the competence of many governmental international organizations.

(III) The Concept of "Threats to the Peace":

After portraying various Security Council resolutions during and after the Cold War, several conclusions can be deduced from the Council's interpretations of the first concept of Article 39. First, the concept of "Threat to the Peace" not only includes an actual threat to the peace, but also a potential threat. This conclusion can be clearly deduced from the Chapter VII resolution UNSCR 282 (1970), which states that "the situation resulting from the continued application of the policies of apartheid and the constant build-up of the South African military and police forces...constitutes a potential threat to international peace and security..."¹⁸¹ Moreover, in resolution 688 (1991), the Council considered that the massive flow of refugees threatens international peace and security. In this case, no actual threat to peace occurred, but

sustained the untenable position that the possibility of a fair trial for a peacekeeper would have represented a threat to peace? Lattanzi, Flavia. "La Corte penale internazionale: una sfida per le giurisdizioni degli Stati, in *Diritto Pubblico Comparato ed Europeo*, 2002-III in "Collection of Legal Scholars Opinions on the Legal and Political Implications of Res. 1422", compiled by David Cattin, Doc. No.4 -Parliamentarians for Global Action (PGA): Strategy Meeting on the ICC, 22 April 2003, p. 1372).

¹⁸⁰ Carsten Stahn wrote that: "SC Resolution 1422 (2002) is one of the most controversial resolutions of the Security Council. The Council stretched its Chapter VII powers to its utmost limits when treating the issue of the immunity of peacekeepers as a matter of international peace and security under Article 39 of the Charter. Moreover, the resolution may mark a deplorable setback for the development of international law if it is used as an instrument to permanently bar the exercise of jurisdiction of the ICC over peacekeepers of non-state parties... However, it is still uncertain whether international legal practice will finally develop in this direction... Therefore SC Resolution 1422 (2002) certainly sets a dangerous, but not an irreversible, precedent in international law; Stahn, Carsten. "The Ambiguities of Security Council resolution 1422", *European Journal of International Law*, 2003, Vol.1, p. 103).

¹⁸¹ UNSCR 282 (1970) issued on 23 July 1970.

the overflow of refugees might endanger the relations between Iraq and its neighbors, which constitutes a potential threat to the peace. Accordingly, the concept of threat to the peace includes both actual and potential threats to the peace.

Second, the Security Council, when applying Article 39 of the Charter, did not stick to the literal reference of "Threat to the peace". In many of its resolution, the Council used different terms under this concept that ranged from "seriously disturbing international peace",¹⁸² "endanger international peace",¹⁸³ jeopardize international peace",¹⁸⁴ "danger to international peace",¹⁸⁵ "endangering international peace",¹⁸⁶ and "serious implications for international peace and security".¹⁸⁷ Most of these references were made under Chapter VII of the Charter and they denote for a "threat to the peace". Accordingly, all these terms have the same legal implications of the classical term "Threat to the Peace" and the Council took provisional, nonmilitary and military measures based upon them.

Third, as we have explained in Chapter One, Article 39 applies only to international threats and breaches of the peace.¹⁸⁸ However, the Security Council practice proved that "threats to the peace" can also be applied to threats of internal peace. UNSCR 713 (1991) considered the situation in Yugoslavia as a threat to the peace before the UN recognized the independence of the former states of Yugoslavia. In UNSCR 733 (1992), the Security Council invoked Article 39 and determined that the situation in Somalia as a threat to the peace although the situation prevailing there was a civil war.¹⁸⁹ These two examples are a small sample that proves that the Security Council started applying Article 39 and the concept of threat to the peace to internal as well as external threats to the peace.

As we have seen, the Security Council is the only organ that is competent to interpret the concept of "Threat to the Peace". During the Cold War, the Council used to apply the traditional interpretation of "threats to the Peace". Nevertheless, the changing structure of the international community had a direct effect on the role and work of the Security Council. With the domination of the former colonies in the

¹⁸² UNSCR 181 (1963) and UNSCR 191 (1964).

¹⁸³ UNSCR 268 (1969) and UNSCR 271 (1969).

¹⁸⁴ UNSCR 273 (1969) and UNSCR 275 (1969).

¹⁸⁵ UNSCR 478 (1981).

¹⁸⁶ UNSCR 522 (1982).

¹⁸⁷ UNSCR 552 (1984).

¹⁸⁸ See Chapter One, Part (II), Section C, Article 39 of the UN Charter.

General Assembly, we find the Security Council stressing on the principle of self-determination and the termination of foreign domination. In this respect, several Chapter VII resolution were issued that considered that the violation of the principle of self-determination and the continuance of racial and foreign regimes as a serious threat to international peace and security. After the Cold War and with the termination of the rivalry relations between the East and West hemispheres, the Council seemed free from any restriction in interpreting and applying "Threats to the Peace". On certain occasions, the Council considered that grave violations of humanitarian law are a threat to the peace. On other occasions, the overthrow of democratic regimes became a menace that threatened international peace and security. Furthermore, the Security Council has developed new terms to be applied under the concept of threats to the peace and security, which is the notion of "Human Security". Under this notion, terrorism, infectious diseases, and the proliferation of unconventional weapons became direct threats to international security. Then the Council widened the scope of this concept to its biggest extent, when it gave itself the competence of interfering and regulating the work of other international organizations.

Accordingly, is it possible to determine a precise definition of threat to the peace, thus limiting the authority of the Council in interpreting this concept? The answer is negative because it is impossible to determine a systematic pattern in the Council's practice when interpreting this concept. The Council seems to frequently introduce new situations within the concept of threat to the peace in an inconsistent manner. Accordingly, as Akehurst argued the "threat to peace is whatever the Security Council says is a threat to the peace."¹⁹⁰ In addition, the International Court of Justice, in many of its decisions, avoided intervening and reviewing the Council's interpretation of Article 39.¹⁹¹ Therefore, the Security Council has almost no limits in applying this article. However, Malanczuk believes that the interpretation of Article 39 is a political decision and not a legal decision especially that there is no legal evaluation to the Council's resolutions.¹⁹² What Malanczuk says seems true because in many of its decisions, the Security Council applied double standards. The United Nations never applied sanctions against Israel to thwart the Israeli's assaults and mass

¹⁸⁹ UNSCR 733 (1992) issued on 23 January 1992.

¹⁹⁰ Malanczuk 1997, p. 426.

¹⁹¹ Gray 2000, p. 11.

¹⁹² Ibid.

violations of human rights in the occupied territories. It also it did not oblige Israel to respect and join the various agreements on nuclear and unconventional weapons. In addition, the Security Council never established criminal courts to punish the Israeli officials who were behind the war crimes and genocides in Lebanon and Palestine. In addition, the Security Council never interfered against the United States because of the latter's gross violations of international humanitarian law and human rights in the prisons of Iraq and Guantanamo.

According to the UN report, the biggest threats to international peace and security today, go far beyond states waging wars against each other.¹⁹³ The United Nations defines six major threats to international security:

- “. Economic and social threats, including poverty, infectious disease and environmental degradation
- . Inter-State conflict
- . Internal conflict, including civil war, genocide and other large-scale atrocities
- . Nuclear, radiological, chemical, and biological weapons
- . Terrorism
- . Transnational organized crime”¹⁹⁴

In addition, the UN Organization considers development as an indispensable foundation for collective security. It serves in fighting poverty, infectious diseases, and environmental degradation that kill millions of people everywhere. According to the UN Report, Chapter VII empowers the Security Council to deal with every threat that may encounter any State including those mentioned above.¹⁹⁵ The logic behind considering all these threats as threats to international peace and security is the following: Poverty, infectious diseases, environmental degradation, and wars are all interconnected in a vicious closed cycle. Statistics proved that poverty is always associated with civil wars. Infectious diseases increase poverty. Poverty and diseases cause environmental degradation that increases the spread of these diseases. Environmental degeneration, caused by enormous populations and the scarcity of national resources, may lead to civil violence. This is without mentioning the transnational organized crimes that aid in arming various terrorist groups that endanger world peace and security.¹⁹⁶ Accordingly, the notion of threat to the peace became an extremely wide concept that includes various economic, social, political,

¹⁹³ UN Report 2004, p. 1.

¹⁹⁴ Ibid, p. 2.

¹⁹⁵ Ibid, p. 3.

cultural issues. This new notion of threat to the peace, which was adopted by the Security Council, is now being advocated by the Secretary General of the United Nations in his 2004 UN Report.

¹⁹⁶ Ibid, p. 15.

Chapter Three: Breaches of the Peace:

According to Article 39 of the UN Charter, the Security Council cannot invoke Chapter VII of the UN Charter without determining that the situation constitutes a threat to the peace, breach of the peace, and an act of aggression. Therefore, the concept of these three phrases plays a vital role in determining the attitude of the Security Council in solving international disputes. This Chapter will be devoted to second concept of Article 39, which is "Breach of the Peace".

Chapter VII of the UN Charter is found under the title "Actions With Respect To Threats To The Peace, Breaches Of The Peace, And Acts of Aggression". International law has been silent on what constitutes a breach of the peace. Accordingly, the determination of the concept of "Breach of the Peace" becomes vital for the literature covering Public International Law. In addition, the participants in Dumberton Oaks conversations agreed not to put any definitions to the three concepts found in Article 39. Consequently, an attempt to define "Breach of the Peace" will be made based upon the Security Council interpretation of this concept.

This Chapter will be divided into three parts: The first part will be devoted to explaining the concept of "Breach of the Peace". The second and third part will examine the various resolutions of the Security Council that contained a reference of breaches of the peace during and after the Cold War. Accordingly, what do we mean by a "Breach of the Peace"?

I) The Concept of "Breaches of the Peace":

The Covenant of the League of Nations did not give any reference to "Breach of the Peace". The UN Charter, on the other hand, mentioned "Breach of the Peace" in many of its articles. Article 1 stated that:

"The purposes of the United Nations are:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means...settlement of international disputes or situations which might lead to a breach of the peace."

Several conclusions can be drawn from this article. First, this article states that threats to the peace must be removed and prevented, while acts of aggression and other breaches of the peace must be suppressed. It is clear that acts of aggression and breaches of the peace constitute more serious situations than threats to the peace.

This conclusion can be also supported by Article 39 of the UN Charter. Article 39 notes that there are three cases in which the Security Council can apply coercive measures against a state. The three cases are written in the following order both in Article 39 and in the title of Chapter VII: "Threat to the Peace, Breaches of the Peace, and Acts of Aggression". Accordingly, it is logical to conclude that the UN founders have put these three phrases according to their degree of gravity. Acts of aggression and breaches of the peace, are therefore more serious than threats to the peace.

Based upon the analysis of the Security Council resolutions, three conditions must be fulfilled for a breach of the peace to take place:

- 1- An international dispute must be present between two or more states. This condition excludes civil wars from constituting a breach of the peace, pursuant to the spirit and meaning of Article 39 of the UN Charter.¹⁹⁷
- 2- A direct well founded attack must occur for a breach of the peace to take place. A breach of the peace must include an actual assault, not a potential assault or attack. Threats of attacking or invading do not constitute breaches of the peace. Therefore, this condition differentiates the concept of "Breach of the Peace" from the concept of "Threat to the Peace". If a state threatens another state of invasion or of initiating hostilities, this may lead to international friction and consequently, a threat to the peace may take place. However, this threat to the peace does not mount to a breach of the peace if direct hostilities are not involved.
- 3- In order for a breach of the Peace to occur, the assault or attack must be severe, grave, and of a continuous nature. That is, a small single attack by a state against a territory of another state is not enough for constituting a breach of the peace. In addition, a small attack by a state

¹⁹⁷ Article 39 of the UN Charter states that: "The Security Council... shall... decide what measures shall be taken... to maintain international peace and security." Accordingly, the threat and breaches of peace are of an international nature.

against another state's ship also does not constitute a breach of the peace. A breach of the peace must include a severe and grave attack that may mount to an invasion or a full-scale war. Here, a differentiation can be made between the concept of "Breach of the peace" and "Acts of Aggression". Acts of aggression are defined by the General Assembly Resolution 3314 (XXIX) issued in 1974 by the following: "Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations, as set out in this Definition." The General Assembly then lists several cases that constitute acts of aggression. We can say that a breach of the peace always and necessarily includes acts of aggression. However, not every act of aggression constitutes a breach of the peace. An example of the latter case is Article 3 (b) of the Assembly's resolution 3314. This paragraph states that: Acts of aggression includes "...the use of any weapons by a State against the territory of another State." Not every use of weapons against the territory of another state constitutes a breach of the peace, even if it is considered as an act of aggression such as a small attack on the border.

Consequently, based upon the Security Council jurisprudence and its interpretation of "Breaches of the Peace", we can define this term as a well-founded act of aggression that is characterized by its gravity and continuity occurring between two or more sovereign states. Examples of breaches of the peace include wars,¹⁹⁸ full-scale attacks,¹⁹⁹ and invasions.²⁰⁰ It is essential to mention that the Security Council is not obliged to consider each situation containing the above conditions as a breach of the peace.²⁰¹ The reason behind this fact is that there are political considerations behind most of the Council decisions and the Council is not bound by its previous Article 39 determinations.

¹⁹⁸ The Palestinian Question in 1948, see Part II, Section (A), 1) in this Chapter.

¹⁹⁹ The Iraq-Iran War in 1980, see Part II, Section (A), 4) in this Chapter.

²⁰⁰ The Argentinean invasion of the Falkland Islands, see Part II, Section (A), 3) in this Chapter.

²⁰¹ For example, in UNSCR 447 (1979) of 28 March 1979, the Council considered South Africa's invasion of the Angola as a threat to the peace instead of a "Breach of the Peace".

After giving an idea about the concept of "Breach of the Peace", the next Part of this chapter will deal with how the Security Council interpreted "Breach of the Peace" during the Cold War.

II) "Breaches of the Peace" during the Cold War:

The Security Council adopted few Chapter VII resolutions during the Cold War. The majority of these resolutions were interpreted as a "threat to the peace". Very few resolutions were issued that determined situations as breaches of the peace. In this part, we will examine various Security Council resolutions that gave reference to "Breaches of the Peace".

The Security Council issued only five resolutions in which it referred to Article 39 as a breach to the peace. These resolutions are UNSCR 54 (1948) in the Palestinian Question, UNSCR 82 (1950) in the Korean Crisis, UNSCR 502 (1982) concerning the situation in the Falkland Islands, UNSCR 598 (1987) concerning the situation between Iran & Iraq, and UNSCR 660 (1990) concerning the situation between Iraq & Kuwait.

1) UNSCR 54 (1948) in the Palestinian Question:

This resolution is considered as the first resolution that gave reference to a breach of the peace. This resolution was issued after the Jewish Agency proclaimed the creation of the state of Israel in Palestine on 14 May 1948.²⁰² Directly after this proclamation, severe hostilities broke out between the Palestinians and the Jewish communities. Regular troops from the neighboring Arab countries came to assist the Palestinians against the well-equipped Jewish settlers. The Security Council was successful in imposing a four-week truce between the Arabs and the Jewish communities.²⁰³ However, the UN mediator, Count Folke Bernadotte, failed to prolong

²⁰² The United Nations & the Question of Palestine, United Nations Department of Public Information, New York, 1990, p.7.

²⁰³ This truce went into effect on June 11 and ended on July 9. The truce was supervised by the United Nations mediator, Count Bernadotte, with the help of some international military observers known as the United Nations Truce Supervision Organization UNTSO; The United Nations & The Question of Palestine, p.7.

this truce among the fighting parties.²⁰⁴ As a result, the Security Council convened in its 338th meeting and issued resolution 54, which stipulates that:

“The Security Council,

Taking into consideration that the provisional Government of Israel has indicated its acceptance in principle of a prolongation of the truce in Palestine; that the State members of the Arab League have rejected successive appeals of the United Nations Mediator, and of the Security Council in its resolution 53 (1948), for the prolongation of the truce in Palestine; and that there has consequently developed a renewal of hostilities in Palestine,

1. Determines that the situation in Palestine constitutes a threat to the peace within the meaning of Article 39 of the Charter of the United Nations;
2. Orders the Governments and authorities concerned, pursuant to Article 40 of the Charter, to desist from further military action and to this end to issue cease-fire orders to their military and paramilitary forces, to take effect at a time to be determined by the Mediator, but in any event not later than three days from the date of the adoption of this resolution;
3. Declares that failure by any of the Governments or authorities concerned to comply with the preceding paragraph of this resolution would demonstrate the existence of a breach of peace within the meaning of Article 39 of the Charter requiring immediate consideration by the Security Council with a view to such further action under Chapter VII of the Charter as may be decided upon the Council; ...”²⁰⁵

This resolution is one of the very few resolutions that were adopted under Chapter VII concerning the Palestinian question. The importance of this resolution lies in the fact that it is the first resolution that considered the situation in Palestine as a threat and (perhaps) a breach of the peace. Going Back to the Security Council official records its 338th meeting, no discussions were made on the term of “breach of the peace” and the fourth paragraph of the resolution was adopted directly after it has been put on the vote by 8 votes to 1, with 2 abstentions.²⁰⁶

Why did the Council consider that any future violation of the truce would constitute a breach to the peace? Returning to the facts, we find that different states were directly involved in the fighting in Palestine. The Arab states were fighting for the Palestinians against the recently proclaimed state of Israel. In this case, we had an international conflict between the Arab states and Israel. The Security Council was very insistent on imposing a cease-fire among the fighting parties. It considered that any breach of the truce would be considered as a breach of the peace. Here, the Council believed that the cessation of fighting might become an introduction to a

²⁰⁴ The United Nations & the Question of Palestine, United Nations Department of Public Information, New York, 1990, p.7.

²⁰⁵ UNSCR 54 (1948) issued on 15 July 1948.

²⁰⁶ Security Council Official Records, Third Year, 338th Meeting, New York 1948, p. 49.

peaceful settlement of this dispute. Therefore, any violation of the cease-fire will not only threaten the peace but also may aggravate the whole situation and may escalate to a full range war between the various countries. This is the reason behind the serious language of resolution 54 and its determination that a breach of the peace may exist if any party violates this cease-fire. In addition, the threat that was caused by the disputing parties was not a potential threat, it was an actual threat that was well founded based on the reports of the UN Mediator and the UNTSO.²⁰⁷ On the other hand, the Council was not obliged to take any of the Chapter VII coercive measures because the truce came into force between Israel and the Arab states at that period.²⁰⁸

2) UNSCR 82 (1950) in the Korean Crisis:

In this resolution, the Security Council considered that the situation prevailing in Korea constitutes a breach of the peace. The Council was not only satisfied in determining the situation as such, but also took coercive measures under Article 41 and Article 42 of the UN Charter. What happened in Korea?

The General Assembly in its resolution 112 (II) issued in 1948 established a commission to monitor free elections in Korea. The Commission was successful in observing the elections in South Korea but was unable to enter the North Korean territories. Therefore, the Government of the Republic of Korea that was established in the South was considered as the only legitimate government in all of Korea.²⁰⁹

In June 1950, the North Korean forces invaded South Korea. As a result, Security Council resolution 82 was issued on 25 June 1950 that states that:

“The Security Council,

Recalling the finding of the General Assembly in its resolution 293 (IV) of 21 October 1949²¹⁰ that the Government of the Republic of Korea is a lawfully established government having effective control and jurisdiction over that part of Korea...

Mindful of the... concern expressed that the situation described by the United Nations Commission on Korea in its report menaces the safety and well being of the

²⁰⁷ See footnote (7).

²⁰⁸ By the time the truce came into force, Israel had controlled much of the territory that was allocated to the Arabs according to the General Assembly's Partition Resolution i.e. General Assembly Resolution 181 (II) that was issued on 29 November 1947; *The United Nations & the Question of Palestine*, p.8.

²⁰⁹ Wellens, Karel C. “Resolutions and Statements of the United Nations Security Council (1946-1992), 2nd Edition, Martinus Nijhoff Publishers, London 1993, p.323.

²¹⁰ The General Assembly in its resolution 293 (IV) of 21 October 1949 recalled its previous declaration that there had been established a lawful government. The General assembly also directed the United Nations Commission to “to observe and report any developments which might lead to, or otherwise involve, military conflict in Korea. The Assembly also called all the Koreans to assist the Commission in performing its duties.

Republic of Korea and the people of Korea and might lead to open military conflict there,

Noting with grave concern the armed attack on the Republic of Korea by forces from North Korea,

Determines that these actions constitute a breach of the peace; and

I

Calls for the immediate cessation of hostilities;

Calls upon the authorities in North Korea to withdraw forthwith their armed forces to the 38th parallel...

III

Calls upon all member States to render every assistance to the United Nations in the execution of this resolution and to refrain from giving assistance to the North Korean authorities."

The Security Council issued this resolution directly under Chapter VII of the Charter,²¹¹ when it determined that the actions of North Korea constitute a breach of the peace. Therefore, the Council made an Article 39 determination and decided on provisional measures that called for the end of hostilities and the withdrawal of the North Korean forces pursuant to Article 40.²¹² The Council also decided on certain measures to give effect to its decisions: It called upon all member states to assist the UN Organization in implementing this resolution and it also asked them not to give the North Korean authorities any assistance, pursuant to Article 41 of the UN Charter.²¹³

The Security Council reaffirmed that the situation prevailing in Korea constituted a breach to the peace in its resolutions 83 (1950) of 27 June 1950 and 84 (1950) of 7 July 1950. In UNSCR 83 (1950), the Security Council noted that the authorities in North Korea did not abide by the Council's provisional measures i.e. to stop the hostilities and withdraw to the 38th parallel. Consequently, the Council applied Article 42 of the UN Charter.²¹⁴ It stated that "urgent military measures are required to restore international peace and security" and it recommended that "the members of the United Nations furnish such assistance to the Republic of Korea as may be necessary

²¹¹ The Security Council usually issues resolutions under Chapter VI before escalating them to Chapter VII. In the Korean Crisis, the Council did not issue any resolution under Chapter VI but it directly issued a resolution under Chapter VII and requested certain measures pursuant to Article 40 and Article 41.

²¹² Article 40 of the UN Charter states that: "In order to prevent an aggravation of the situation, the Security Council may, before making the recommendations or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable..."

²¹³ Article 41 of the UN Charter states that: "The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures..."

to repel the armed attack and to restore international peace and security in the area.” In UNSCR 84 (1950), the Council reaffirmed the above resolution and recommended “all Members providing military forces and other assistance pursuant to the aforesaid Security Council resolutions make such forces and other assistance available to a unified command under the United States of America”.²¹⁵ Accordingly, the Security Council adopted most of the provisions of Chapter VII of the Charter in this crisis and applied collective security military measures ²¹⁶ for the first time against the North Korean forces.

Why did the Security Council consider that the situation prevailing in Korea as a breach of the peace? Before answering this question, it is worth noting that the Council adopted the fourth paragraph of the resolution - the one that determined the situation as a breach of the peace- by 9 votes in favor, with one abstention and one member of the Council being absent.²¹⁷ In the Security Council meeting, the Korean Crisis was addressed as a “Complaint of aggression upon the Republic of Korea”. In that meeting, the Council examined the report of the United Nations Commission on Korea. This report stated that: “Government of Republic of Korea states that about 04:00 hrs 25 June attacks were launched in strength by North Korean forces all along the 38th parallel”, “Commission wishes to draw attention of Secretary-General to serious situation developing which is assuming character of full-scale war and may

²¹⁴ Article 42 of the UN Charter states that: “Should the Security Council consider that measures provided for in Article 41 would be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security...”

²¹⁵ UNSCR 84 (1950) issued on 7 July 1950.

²¹⁶ Some Scholars believe that the Korean Crisis represented a case of collective self-defense rather than a case of collective security. Eugene Rostow believes that the Council recommended that the members refrain from giving assistance to the North Korean forces and “the forces which finally prevailed in Korea were national forces carrying out a mission of collective self-defense under American direction, not a Security Council enforcement action.” Rostow, Eugene. “Until What? Enforcement Action or Collective Self-defense?” *The American Journal of International Law*, Vol.85, No.3 (Jul, 1991), p.508. We believe that the Korean Crisis, although it did not embody collective security as an ideal theory, it embodied collective security within the UN Charter concept. i.e. the Security Council applied Articles 39, 40, 41, and 42 that embody the UN concept of collective security and it did not apply Article 51 that carries the concept of collective self-defense.

²¹⁷ Security Council Official Records, Lake Success, New York, Fifth Year, No.15, 473rd Meeting, 25 June 1950, p. 16. The absent member of the Council was the USSR and the abstaining member was Yugoslavia. Yugoslavia abstained because its draft resolution, which called for the invitation of the Government of North Korea to state its case before the Council, was not adopted. Yugoslavia felt that the Council must grant an opportunity for the representative of North Korea, which was accused of aggression, to receive a hearing; Security Council Official Records, 473rd Meeting, p. 15.

endanger the maintenance of international peace and security..."²¹⁸ All the members of the Council consented on defining the Korean actions as aggressive acts. The representative of the United States declared that: "Under these circumstances, this wholly illegal and unprovoked attack by North Korean forces, in the view of my Government, constitutes a breach of the peace and an act of aggression."²¹⁹ Although the US representative determined the situation as such, the draft resolution that was submitted by him referred only to a breach of the peace. The representative of the Republic of Korea stated that the invasion of his country "is an act of aggression and a threat to international peace and security."²²⁰ Moreover, the representative of China asked the President of the Security Council "to put the resources of the Security Council to work as soon as possible against this act of aggression."²²¹ The French delegate considered the Korean actions as a threat to the peace,²²² while the representative of Ecuador stated that: "the information received from the United Nations Commission on Korea contain serious indications that we are faced by a grave case of aggression."²²³

Accordingly, the Council members consented on considering the North Koreans attacks as very serious attacks and determined them as acts of aggression. Going back to the facts, the North Korean attack was characterized by the UN Commission as a "full-scale war". It was "an invasion" from the North, which clearly exceeded the concept of a threat to the peace to reach the concept of breach of the peace and an act of aggression.

Accordingly, the Council considered that a breach of the peace exists because of several reasons. First, the dispute was of an international nature. This dispute not only included North Korea and South of Korea, it included in one way or the other the Soviet Union and thus it endangered the peace and stability in the whole region. Second, there was an actual and a direct assault by the North Korean forces against South Korea. This assault was well founded and confirmed by the UN Commission on Korea. Third, in the Commission's words, these assaults mounted to a full-scale war.

²¹⁸ Cablegram dated 25 June 1950 from the United Nations Commission on Korea addressed to the Secretary-General concerning aggression upon the Republic of Korea (S/1496). This document is also found in the Security Council Official Records, fifth Year, 473rd Meeting, p.2.

²¹⁹ Security Council Official Records, fifth Year, 473rd Meeting, p.4.

²²⁰ Ibid, p.8.

²²¹ Ibid, p.11.

²²² Ibid, p.11.

²²³ Security Council Official Records, fifth Year, 473rd Meeting, p.12

Accordingly, the attacks were severe, grave, and continuous in nature. According to all these reasons, the Council found that there was a breach of the peace that endangered the stability in that region and that exceeded the traditional concept of a threat to the peace.

3) UNSCR 502 (1982) concerning the Situation in the Falkland Islands:²²⁴

This dispute arose between Argentina and the United Kingdom, when an Argentinean cargo vessel anchored in the Falkland Islands, on March 19, 1982. This vessel was then backed up by other Argentinean forces. On April 1, 1982, the United Kingdom informed the Council that Argentina was about to invade the Falklands. Argentina, on the other hand, informed the Council of great tension arising between their country and Britain. As a result, a Presidential Statement was issued on April 1, 1982 that expressed its concern about the tension in the region and called for the most restraint.²²⁵ On April 2, United Kingdom informed the Security Council that Argentinean forces invaded the Falklands Islands.²²⁶ As a result, the Security Council convened and issued resolution 502 (1982) of April 3, 1982 that stipulates the following:

“The Security Council,

Recalling the statement made by the President of the Security Council at the 2345th meeting of the Council on 1 April 1982 calling on the Governments of Argentina and the United Kingdom of Great Britain and Northern Ireland to refrain from the use of threat of force in the region of the Falkland Islands (Islas Malvinas),

Deeply disturbed at reports of an invasion on 2 April 1982 by armed forces of Argentina,

Determining that there exists a breach of the peace in the region of the Falkland Islands (Islas Malvinas),

1. Demands an immediate cessation of hostilities;
2. Demands an immediate withdrawal of all Argentinean forces from the Falkland Islands (Islas Malvinas);

²²⁴ The Falkland Islands consist mainly of two large islands in the South Atlantic Ocean. They lie some 300 miles east of the island of Tierra del Fuego at the southern tip of the South American continent. Calvert, Peter; “The Falklands Crisis: The Rights and the Wrongs”, Frances Pinter Publishers: London, 1982, p.4. The Falklands Islands were unilaterally possessed by Argentina and Britain in various periods. Nevertheless, on 20 December 1832, the British took possession of the islands. From that date, the British rule was gradually consolidated under the frequent protest of Argentina; Gibran, Daniel K. “The Falklands War: Britain Versus the Past in the South Atlantic”, McFarland & Company: North Carolina 1998, p. 29 & 30.

²²⁵ The presidential statement that was issued on April 1, 1982 stated that: “... The Council accordingly calls on the Governments of Argentina and the United Kingdom to exercise the utmost restraint at this time and, in particular, to refrain from the use or threat of force in the region and to continue the search for a diplomatic solution...”

²²⁶ Wellens, Karel C. “Resolutions and Statements of the United Nations Security Council (1946-1992), 2nd Edition, Martinus Nijhoff Publishers, London 1993, p.593.

3. Calls on the Governments of Argentina and the United Kingdom of Great Britain and Northern Ireland to seek a diplomatic solution to their differences and to respect fully the purposes and principles of the Charter of the United Nations.”

This resolution is a Security Council Resolution taken under Chapter VII of the UN Charter. The Security Council considered that the situation in the Falkland Islands constituted a breach of the peace pursuant to Article 39 of the UN Charter and it also determined some provisional measures²²⁷ pursuant to Article 40 of the UN Charter. It is also worth noting that this resolution came directly after a Presidential Statement issued on 1 April 1982, and thus it did not follow a Chapter VI resolution. In the present resolution, the Council determined the Argentinean attack as an invasion. These attacks were not single or separate strikes; they constituted a full-scale invasion, especially after the ruling Argentine military Junta decision to use military force to “repossess” lost territory.²²⁸ Evidently, there was more than a threat to the peace, there was a direct and actual breach of the peace between Argentina and Britain.

Accordingly, the Security Council considered the present situation as a breach of peace for many reasons: First, the dispute was of an international nature i.e. between Argentina and Great Britain. Second, direct assaults were taking place on the island and not just a threat of attacking. These assaults were well founded and established through reports submitted to the Security Council. Third, these assaults did not consist of single strikes, they were characterized by their seriousness, severity, and continuity and were determined as “an invasion” in the Council’s language. This why the Security Council considered the situation in the Falklands Islands as a breach of the peace, rather than a threat to the peace.

4) UNSCR 598 (1987) concerning the Situation between Iran & Iraq:

This Chapter VII resolution saw light after seven years of continuous fighting between Iraq and Iran in a war, which came to be known as the First Gulf War. The bases of this war lies in a dispute over the sovereignty of Shatt-al-Arab and the violation of the 1975 Agreements relating to the Iran-Iraq boundaries.²²⁹ Many

²²⁷ The Security Council requested the two fighting parties to cease hostilities and it asked for the withdrawal of the Argentinean forces.

²²⁸ Gibran, Daniel K. “The Falklands War: Britain versus the Past in the South Atlantic”, McFarland & Company: North Carolina 1998, p. 58.

²²⁹ Wellens 1993, p. 443.

Presidential Statements were issued in addition to Security Council resolutions calling for the peaceful settlement of this dispute. UNSCR 479, which was issued on 28 September 1980, was the first resolution issued by the Security Council that called on "Iraq and Iran to refrain immediately from any further use of force and to settle their dispute by peaceful means and in conformity with principles of justice and international law..."²³⁰

On July 12, 1982 and after the intensification of the conflict, the Security Council issued resolution 522 in which it considered that the dispute between Iraq and Iran as "endangering peace and security". It further called on an immediate cease-fire and the withdrawal of the forces to internationally recognized boundaries.²³¹ In 1983, the war between the two Gulf States began to target civilians and residential areas. As a result, the Secretary-General dispatched a mission to Iran and Iraq for the inspection of the targeted civilian areas.²³² Moreover, UNSCR 540 was issued in which it condemned "all violations of international humanitarian law, in particular, the provisions of the Geneva Conventions of 1949 in all their aspects," and it called "for the immediate cessation of all military operations against civilian targets, including city and residential areas..."²³³ Following resolutions 582 (1986) and 588 (1986)²³⁴ in which the Council considered that the Iraq-Iran dispute endangers international peace and security, the Security Council finally adopted an explicit Chapter VII resolution in which it considered that the dispute constitutes a breach of the peace. Accordingly, UNSCR 598 (1987) states that:

"The Security Council,
Reaffirming its resolution 582 (1986),
Deeply concerned that, despite its calls for a cease-fire, the conflict between the Islamic republic of Iran and Iraq continues unabated, with further heavy loss of human life and material destruction...

²³⁰ UNSCR 479 also urged the parties to accept any offer of mediation or conciliation to settle their dispute peacefully, and it supported the Secretary-General in his good offices in solving the dispute; UNSCR 479 (1980).

²³¹ UNSCR 522 also requested from all states to abstain from actions that may lead to the continuation of the conflict and to facilitate the implementation of the resolution; UNSCR 522 (1982) issued on 4 October 1982.

²³² Wellens 1993, p.443.

²³³ UNSCR 540 also called affirmed the right of free navigation and commerce in international waters and called on the two states to cease hostilities against the sea-lanes, navigable waterways, offshore installations and ports; UNSCR 540 (1983) issued on 31 October 1983.

²³⁴ UNSCR 582 urged "that a comprehensive exchange of prisoners-of-war be completed within a short period after the cessation of hostilities in co-operation with the International Committee of the Red Cross"; UNSCR 582 issued on 24 February 1986, while UNSCR 588 called upon the parties to implement fully resolution 582; UNSCR 588 (1986) issued on 8 October 1986.

Deploing also the bombing of purely civilian population centers, attacks on neutral shipping or civilian aircraft, the violation of international humanitarian law and other laws of armed conflict, and, in particular, the use of chemical weapons contrary to obligations under the 1925 Geneva Protocol'

Deeply concerned that further escalation and widening of the conflict may take place,

Determined to bring to an end all military actions between Iran and Iraq...

Determining that there exists a breach of the peace as regards to the conflict between Iran and Iraq,

Acting under Articles 39 and 40 of the Charter,

Demands that, as a first step towards a negotiated settlement, the Islamic Republic of Iran and Iraq observe an immediate cease-fire, discontinue all military actions on land, at sea and in the air, and withdraw all forces to the internationally recognized boundaries without delay;

Requests the Secretary-General to dispatch a team of United Nations observers to verify, confirm and supervise the ceasefire and withdrawal....

Urges the prisoners-of-war be released...

Calls upon Iran and Iraq to cooperate with the Secretary-General in implementing this resolution...²³⁵

This resolution, as we have mentioned before, recognized that the situation between Iran and Iraq constitutes a breach of peace after seven years of continuous fighting. Although, this dispute did not witness a full invasion of a state's territory, it included severe and continuous fighting, a great loss of civilians, and destruction. Many dangerous and mass destructive weapons were used, in addition to chemical weapons. Accordingly, the situation not only threatened the peace and security of the two Gulf States, but also threatened the security of the entire region. It was quite clear that if the Council did not take this Chapter VII resolution, the conflict would have escalated to include other states in and outside the region. It is worth noting that Iraq accepted this resolution on July 23, 1987. Iran, on the other hand, accepted it on July 17, 1988.²³⁶

The situation between Iraq and Iran clearly constituted a breach of the peace for several reasons: First, it was a dispute between two sovereign states and thus the dispute was of an international character that threatened the international peace in the region. Second, the attacks between the two states were actual and not potential. The atrocities between the parties were well founded and reported by the UN missions in that region. Third, the atrocities between the belligerents were very serious and led to severe material and human casualties. Furthermore, the hostilities between Iran and Iraq were continues for a period of seven years with the usage of the most destructive

²³⁵ UNSCR 598 (1987) issued on 20 July 1987.

²³⁶ Wellens 1993, p. 445.

and chemical weapons. Accordingly, the situation clearly constituted a breach of the peace. However, the Security Council was late in considering the situation as a breach of the peace and it only did so after many Chapter VI resolutions.

5) UNSCR 660 (1990) concerning the Crisis between Iraq & Kuwait:

When Kuwait became independent on June 19, 1961,²³⁷ Iraq protested and claimed all of Kuwait on the bases that Kuwait was an integral part of the province of Basra under the Ottoman Empire.²³⁸ After Kuwait declared its independence, Iraq began moving its troops in the Basra region.²³⁹ Therefore, Kuwait requested military assistance and this request was fulfilled with the deployment of British and Saudi Arabian troops in Kuwait. In October 1961, British forces were replaced by forces of the Arab league for preserving the sovereignty of Kuwait. When Kuwait was admitted in the UN Organization on 14 May 1963, Iraq recognized Kuwait as a sovereign state. An agreement was also signed between the two governments regarding the restoration of friendly relations among them.²⁴⁰ However, on 2 August 1990, the Kuwaiti representative requested an urgent meeting of the Security Council to consider the Iraqi invasion of Kuwait.²⁴¹ The Security Council directly convened on August 2 and issued resolution 660, which stipulates the following:

“The Security Council,
Alarmed by the invasion of Kuwait on 2 August 1990 by the military forces of Iraq,
Determining that there exists a breach of international peace and security as regards the Iraqi invasion of Kuwait,
Acting under Articles 39 and 40 of the Charter of the United Nations,
Condemns the Iraqi invasion of Kuwait;
Demands that Iraq withdraw immediately and unconditionally all its forces to the positions in which they were located on 1 August 1990;

²³⁷ After World War I, Great Britain administered Kuwait as a self-governing protectorate. On June 19, 1961, England decided to end its control and military presence in Kuwait; *The United Nations and the Iraq-Kuwait Conflict (1990-1996)*, The United Nations Blue Books Series, Volume IX, Department of Public Information, United Nations, New York, 1996, p. 9.

²³⁸ Wellens 1993, p. 507.

²³⁹ When Iraq started its attacks against Kuwait in 1961, Kuwait directly asked the Security Council to convene and issue a resolution condemning Iraqi's actions. However, this resolution was not issued, although two draft resolutions were submitted. The first draft failed due to a negative vote of a permanent member of the Security Council and the second draft also failed due to the insufficient number of affirmative votes; Wellens 1993, p.507. Also see *The United Nations and the Iraq-Kuwait Conflict (1990-1996)*, p.10.

²⁴⁰ Wellens 1993, p.508. The peaceful agreement between Iraq and Kuwait was devised by the Arab League; *The United Nations and the Iraq-Kuwait Conflict (1990-1996)*, p. 8.

²⁴¹ This request states that: “Upon instructions from my Government, I have the honour to request an immediate meeting of the Security Council to consider the Iraqi invasion of Kuwait in the early morning of 2 August 1990.” S/RES/660 (1990), 2 August 1990.

Calls upon Iraq and Kuwait to begin immediately intensive negotiations for the resolution of their differences and supports all efforts in this regard, and especially those of the League of Arab States;

Decides to meet again as necessary to consider further steps to ensure compliance with the present resolution."²⁴²

In this resolution, the Security Council considered the invasion of Kuwait as a breach of the peace. The Security Council directly intervened in the crisis to deter further aggression and issued this resolution under Chapter VII of the UN Charter.²⁴³ The Council started by making an Article 39 determination when it considered that the situation in Iraq constitutes a breach of the peace. Then, it demanded from Iraq certain provisional measures pursuant to Article 40 of the UN Charter. These measures included: immediate and unconditional withdrawal of all Iraqi troops and immediate initiation of intensive negotiations. The Council also warned Iraq that if these measures were not met, it might meet again to consider other measures.²⁴⁴ Consequently, this resolution is a very dangerous one, because it would pave the way for coercive measures to be taken by the Council against Iraq, if the latter did not comply with the Council's resolution.

On 6 August 1990, Kuwait reported to the UN that Iraq did not comply with UNSCR 660 (1990) and the Iraqi forces has neither withdrew their forces nor did they stop their suppression of the civilian population.²⁴⁵ Consequently, the Security Council convened on August 6 and issued resolution 661 in which it reaffirmed its previous resolution 660 (1990) and expressed its concern that the resolution has not been implemented. It further imposed economic sanctions that boycotted all Iraqi and Kuwaiti commodities.²⁴⁶ After resolution 660, a dozen resolutions were issued by the Security Council under Chapter VII that were based upon resolution 660 that reaffirmed that the Iraqi invasion constituted a breach of the peace.

²⁴² UNSCR 660 issued on 2 August 1990. This resolution was adopted by 14 to none. One of the members (Yemen) did not participate in the vote.

²⁴³ The Security Council did not issue any resolution before UNSCR 660. Thus, there were no Chapter VI resolutions before the Council's resolution 660 (1990).

²⁴⁴ According to the 41 of the UN Charter, if the parties of a dispute did not comply with the provisional measures decided by the Council, the Council may take measures "not involving the use of force" to give effect to its resolution. Such measures may include "complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations."

²⁴⁵ Wellens 1993, p. 509.

²⁴⁶ UNSCR 661 (1990) issued on August 6, 1990.

What interests us in these resolutions is why the Security Council addressed the Iraqi-Kuwaiti Crisis as a breach of the peace. The answer to this question can be summarized in the following: First, the dispute between Iraq and Kuwait was an international conflict. This dispute was threatening to many states in the region. Second, There was an actual and not a potential threat on Kuwait. The Iraqi forces clearly breached Kuwait's territorial sovereignty and independence. Therefore, Iraq not only threatened Kuwait's sovereignty and independence, but also it exterminated any signs of its independence especially that on August 7, Iraq declared its annexation of Kuwait²⁴⁷. Third, It was evident that the Iraqi troops did not attack some targets, it invaded and launched a full-scale war into Kuwait. Therefore, Iraqi attacks exceeded in its context the concept of a threat to the peace. It breached the peace of Kuwait and threatened the peace of other Arab states. These attacks were founded and well established before the Security Council, especially that a "breach of the peace" determination may have serious legal and political repercussions. Therefore, the Security Council found itself obliged under the international pressure to convene and issue a Chapter VII resolution in an attempt to stop the Iraqi invasion into Kuwait.

III) "Breach of the Peace" after the Cold War:

After the Cold War, the Security Council did not consider any situation as a breach of the peace.²⁴⁸ In all of its Chapter VII resolutions, the Council considered all situations as threats to the peace. This tendency of the Security Council in considering all serious situations as threats to the peace became obvious after the Cold War. The notion of the threat to the peace, according to the Security Council, included acts of aggression and breaches of the peace. Accordingly, the Security Council considered all situations that traditionally fell under breaches of the peace as threats to the peace.

²⁴⁷ On August 7, 1990, Iraq declared its "comprehensive, eternal and inseparable merge" with Kuwait; The United Nations and the Iraq-Kuwait Conflict (1990-1996), p. 16.

²⁴⁸ The period of study of the Security Council resolutions after the Cold war ranged from 1990 till 1999.

In this sense, Inger Osterdahl believes that the traditional conception of what constitutes a breach of the peace is a state attacking another state²⁴⁹. Accordingly, she advocates that the situation in Bosnia-Herzegovina, which the Security Council considered as a threat to the peace, constituted a breach of the peace since Serbia and Montenegro attacked Bosnia-Herzegovina that became independent in 1992.²⁵⁰ We have to agree with Osterdahl's determination that the situation in Bosnia-Herzegovina constituted a breach of the Peace. In this respect, we recall UNSCR 757 (1992) that stipulates that:

"The Security Council,
...recalling that no territorial gains or changes brought about by violence are acceptable and that the borders of Bosnia-Herzegovina are inviolable, ...

Deploing the fact that the demands in resolution 752 (1992) have not been complied with, including its demands: that all parties and others concerned in Bosnia and Herzegovina stop the fighting immediately, that all forms of interference from outside Bosnia and Herzegovina cease immediately, that Bosnia and Herzegovina's neighbors take swift action to end all interference and respect the territorial integrity of Bosnia and Herzegovina...

Determining that the situation in Bosnia and Herzegovina and in other parts of the former Socialist Federal Republic of Yugoslavia constitutes a threat to international peace and security,

Acting under Chapter VII of the Charter of the United Nation, ..."²⁵¹

In this resolution, the Council could have considered that the situation constitutes a breach of the peace rather than a threat to the peace, for several reasons: First, the war that erupted in the former state of Yugoslavia became a war between several sovereign states: Croatia, Slovenia, Bosnia-Herzegovina, and Serbia-Montenegro. Consequently, the war although began as a civil war changed and transformed into a war between sovereign states. Second, there was no potential breach of the peace. Actual hostilities were taking place and were reported by the UN personnel in that region. Accordingly, the situation mounted to an actual breach of international peace and not just a threat to the peace. Third, the breach of the peace consisted of a full-scale war between the states of former Yugoslavia. The conflict was a severe and continuous one that included grave violations of international

²⁴⁹ Osterdahl believes that a state threatening or attacking another state is the traditional conception of threat to the peace and breach of the peace respectively. Osterdahl, Inger. "Threat to the Peace: The interpretation by the Security Council of Article 39 of the UN Charter", Forlag Uppsala, 1998, p.80.

²⁵⁰ Osterdahl believes that the conflict between Serbia and Montenegro on one hand and Bosnia-Herzegovina, on the other is an international conflict although it started as a civil war, Osterdahl 1993, 80.

²⁵¹ UNSCR 752 (1992) issued on 15 May 1992.

humanitarian law. Evidently and according to these facts, the Security Council was before an obvious "Breach of the Peace" situation.

We will suffice by this example to prove that certain situations must have been considered as a breach of the peace rather than a threat to the peace in accordance with the previous jurisprudence of the Security Council. The reasons behind the Council's not making a "Breach of the Peace" determination may be based on its unwillingness to limit itself to these determinations. If the Council became consistent in interpreting "Breaches of the Peace", it may become principally obliged to abide by its determinations. In the United Nations Conference on International Organizations that took place in San Francisco on 25 April 1945, the participants expressed their desire not to define any terms in Article 39,²⁵² so that they do not limit the authority of the Security Council under Chapter VII. Accordingly, the Security Council prefers not to make any consistent determinations under Article 39 so that it can widen the scope of its application and interpretation of Article 39. This may be the reason why we did not witness any "Breach of the Peace" resolutions issued by the Security Council in the post Cold War era.

²⁵² Yearbook of the United Nations (1946-47), Department of Public Information, United Nations, Lake Success, New York, 1947, p. 26.

Chapter Four: Acts of Aggression:

Acts of Aggression is the third and last concept mentioned in Article 39 of the UN Charter. This concept has raised much controversy since the first debates that governed the establishment of the United Nations Organization. In the Dumbarton Oaks agreements,²⁵³ the participants agreed that the Security Council "should determine the existence of threat to the peace, breach of the peace and acts of aggression". Several delegations that participated in the United Nations Conference on International Organization that followed the Dumbarton Oaks Agreements had suggested that "Acts of Aggression" should be defined and determined. However, the majority of the participants had maintained that "a preliminary definition of aggression went beyond the scope of the Charter and that the modern techniques of warfare rendered any definition of aggression impossible."²⁵⁴ As a result, no definition of this concept was laid.

With the initiation of the Security Council's responsibility of maintenance of peace and security, many states advocated a precise definition for aggression. Several attempts took place until the General Assembly finally issued its resolution 3313 in 1974 that contained a definition of aggression. Pursuant to this definition, many Security Council resolutions were issued that contained reference to acts of aggression. This Chapter will shed light on the concept of aggression and whether the Security Council interpreted this concept within the legal definition laid down by the General Assembly Resolution. Consequently, Part I of this Chapter will deal with the various definitions of aggression. Parts II and III will be devoted to the Security Council interpretations of Acts of Aggression during and after the Cold War.

²⁵³ The Dumbarton Oaks conversations were initiated by the major allied governments in 1944. The purpose of these conversations was to establish an international organization that could impede the eruption of future wars. These conversations were supplemented by another expanded conference in 1945 that included various Allied and neutral states, which is known as the United Nations Conference on International Organization. Bennett 1995, p. 48-50.

²⁵⁴ Yearbook of the United Nations 1946 – 1947, Department of Public Information, United Nations, Lake Success: New York, 1947, p. 26.

I) The Definition of Aggression:

A precise definition of aggression by the UN Organization could easily determine the cases in which the Security Council can intervene and impose coercive measures pursuant to the provisions of the UN collective security system. Some scholars considered the word "aggression" as the "most controversial word in modern history".²⁵⁵ Osmanczyk defines aggression as "a term in international law denoting an attack by one or more states against another."²⁵⁶ Nolan, on the other hand, defines it as "any unprovoked attack aiming at expansion or conquest."²⁵⁷ Ziegler defines aggression as a "violation of a border – unauthorized entry by the forces of another state."²⁵⁸ Some of these definitions may not be very precise, because aggression may include attacks on a state's aircraft or vessel, not just attacks on borders. In addition, not all aggressions aim at expansion and conquest for states may use aggression to acquire economic or political gains.

In order to unveil any misconception surrounding this definition, the Convention for the Definition of Aggression in 1933 defined the aggressor in an international conflict as "the state which will be the first to commit any of the following acts:

- 1- Declaration of war against another state.
- 2- Invasion by armed forces, even without a declaration of war, of the territory of another state.
- 3- An attack by armed land, naval, or air forces, even without a declaration of war, upon the territory, naval vessels or aircraft of another state;
- 4- Naval blockade of the coasts or ports of another state.
- 5- Aid to armed bands formed on the territory of a state and invading the territory of another state..."

According to this definition, aggression denotes the violation of a state's sovereignty over its territory (land, sea, and airspace) and its acquisitions. The UN Charter, on the other hand, did not adopt any definition for aggression. As a result of the ambiguities surrounding this definition and the serious consequences behind it, the General Assembly in its resolution 3314 (XXIX) issued in 1974 gave a precise definition of aggression. Two reasons drove the General Assembly to issue such a definition:

²⁵⁵ Schweigman 2001, p. 35.

²⁵⁶ Osmanczyk 2003, p. 42.

²⁵⁷ Nolan 2002, p. 22.

The first reason was to permit the UN Organization in distinguishing the aggressor from the victim state when confronting an international conflict. This conclusion can be deduced from the provisions of the resolution itself. The resolution stated that:

“The General Assembly, ...

Deeply, convinced that the adoption of the Definition of aggression would contribute to the strengthening of international peace and security...

Convinced that the adoption of a definition of aggression ought to have the effect of deterring a potential aggressor, would simplify the determination of acts of aggression and the implementation of measures to suppress them and would also facilitate the protection of the rights and lawful interests of, and rendering of assistance to, the victim.”

According to the premises of this resolution, the definition of aggression may easily help in the identification of both the aggressor and the victim, especially that under the UN Charter the aggressor has certain duties such as to seize further acts of aggression, to settle the dispute peacefully, and to respect Security Council resolutions.²⁵⁹ The victim, on the other hand, has also rights that are manifested in the inherent right of individual and collective self-defense under Article 51 of the UN Charter.²⁶⁰

The second reason behind the General Assembly's definition of aggression was to offer guidelines for the Security Council when the latter is considering a situation under the concept of “acts of aggression” pursuant to Article 39 of the Charter. In this respect, the resolution states that:

“The General Assembly...

4. Calls the attention of the Security Council to the Definition of Aggression, as set out below, and recommends that it should, as appropriate, take account of that Definition as guidance in determination, in accordance with the Charter, the existence of an act of aggression.”

A question arises from the above paragraph. Does the General Assembly have the authority to offer guidelines for the Security Council concerning the interpretation of Article 39 of the UN Charter?

²⁵⁸ Ziegler 1990, p. 125.

²⁵⁹ Article 2.3 and 2.4 of the UN Charter state that “All members shall settle their international disputes by peaceful means...” and “All members shall refrain... from the threat or use of force against the territorial integrity or political independence of any state...” Article 25 of the Charter also states that “The members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.”

According to Article 10 of the UN Charter:

"The General Assembly may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter, and... may make recommendations to the Members of the United Nations or to the Security Council or to both on any questions or matters."

In addition, Article 11 of the Charter stated that:

"2. The General Assembly may discuss any questions relating to the maintenance of international peace and security... and... may make recommendations with regard to any such questions to the state or states concerned or to the Security Council or to both."

According to these two articles, the General Assembly have the authority to discuss any matter relating to the functions and powers of the organs of the United Nations, in addition to any question relating to international peace and security. What is evident is that the "Definition of Aggression" directly relates to the powers of the Security Council and its authority under Chapter VII of the Charter when maintaining international peace and security. Accordingly, the General Assembly made in its resolution 3314 (1974) certain recommendations to the Security Council pursuant to Articles 10 and 11 of the UN Charter.

The Provisions of the General Assembly Resolution 3314 (1974):

The General Assembly first uses general terms in defining Aggression. It states that:

"Aggression is the use of armed force by a State against the sovereignty, territorial integrity, or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations, as set out in this Definition."

After the General Assembly has laid down its general definition, Article 3 of this resolution mentions the different cases that can be classified as acts of aggression. Accordingly, Article 3 states that aggression includes the use of force against the territory of a state, the blockade of the ports or coasts of a state by armed forces, and an attack against the armed forces of a state including sea or air forces or against the marine and air fleets of another state. Aggression also includes the presence of a state in another state, even with the consent of the receiving state, when this presence is extended beyond the agreement or when it violates the agreement of both states. An

²⁶⁰ Article 51 stipulates that: "Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a member of the United Nations..."

aggressor also includes the state that places its territory at the disposal of another state for the conduct of hostilities against a third State. In addition, the state that sends armed groups or mercenaries to the territory of another state to execute the acts mentioned above is also considered as an aggressor.²⁶¹

However, if the above-mentioned acts are committed when the state or the people are exercising their legitimate right of self-determination, freedom, and independence, these acts will no longer be considered as acts of aggression on condition that they are performed in conformity with international law.²⁶²

Another important provision in the General Assembly's resolution 3314 is Article 5 paragraph 2, which stipulates that: "A war of aggression is a crime against international peace. Aggression gives rise to international responsibility." According to this article, the resolution distinguishes between aggression and the war of aggression. Not every act of aggression may lead to a war and therefore, not every act of aggression constitutes a crime against peace.²⁶³ In conformity with the developing character of international law, the International Law Commission in the United Nations issued in 1991 a Draft Code of Crimes against Peace and Security of Mankind, in which it considered all acts of aggression including the threat of aggression as crimes against peace.²⁶⁴ Accordingly, no such distinction exists between wars of aggression and acts of aggression and they are both considered as crimes against peace pursuant to international law.

The International Court of Justice and the Definition of Aggression:

In 1986, the International Court of Justice (ICJ) issued a judgment in which it considered Article 3 paragraph (g) of the General Assembly's definition of aggression²⁶⁵ as a part of customary international law. It stated that: "This description, contained in Article 3 paragraph (g) of the Definition of Aggression annexed to

²⁶¹ Article 3 of the General Assembly Resolution 3314 (XXIX) issued in 1974.

²⁶² Article 7 of the General Assembly Resolution 3314. These rights of self-determination, independence, and freedom are mentioned in the Charter of the United Nations and in the Declaration on principles of International Law concerning Friendly Relations and Cooperation among States.

²⁶³ Dinstein, Yoram. "War, Aggression, and Self-Defence", *Cambridge University Press: Great Britain*, 1994, p. 125.

²⁶⁴ Ibid.

²⁶⁵ Article 3 paragraph (g) stipulates that: "The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such

General Assembly Resolution 3314 (XXIX), may be taken to reflect customary international law.”²⁶⁶ Why did the ICJ consider the above paragraph as customary international law?

The General Assembly usually issues non-binding recommendations to the Security Council according to Articles 10 and 11 of the UN Charter. Moreover, the issuance of the Assembly’s resolutions under a great majority or even unanimity of the member states does not make these resolutions as part of customary international law.²⁶⁷ What makes these resolutions as customary international law is the states’ acceptance and implementation of these resolutions as laws in a consistent and continuous manner.²⁶⁸ The Assembly’s definition of aggression was a result of the states’ practice of what they considered as acts of aggression. In addition, the Assembly resolution 3314 (1974) came to consolidate former attempts to define this concept such as the Convention for the Definition of Aggression in 1933. Accordingly, we can consider all the definition laid down by the Assembly as customary international law.

The Security Council and the Definition of Aggression:

Although the General Assembly adopted the definition of aggression to be a guideline for the Security Council, this definition had “no visible impact on the deliberations of the Security Council.”²⁶⁹ As we mentioned before, the General Assembly resolution is non-binding recommendation to the Security Council pursuant to Articles 10 and 11 of the Charter. Furthermore, in the resolution itself, the General Assembly states in Article 4 that:

“The Acts enumerated above are not exhaustive and the Security Council may determine that other acts constitute aggression under the provisions of the Charter.”

According to this article, the General Assembly explicitly states that the Security Council is not bound by this definition for it can determine other acts, not mentioned in this resolution, as acts of aggression. After all the efforts exerted by

gravity as to amount to the acts listed above [the various acts that are determined as aggressions], or its substantial involvement therein.”

²⁶⁶ ICJ judgement issued on 27 June 1986, Case concerning Military and Paramilitary Activities against Nicaragua, provision 195.

²⁶⁷ Wolfke, Karol. “Custom in Present International Law”, 2nd Edition, *Martinus Nijhoff Publishers: Dordrecht*, 1993, p. 84.

²⁶⁸ Ibid.

²⁶⁹ Dinstein 1994, p. 130.

states to put a precise definition of aggression, the General Assembly introduced a final article that nullifies the legal effect of its definition on the Security Council's authority. Consequently, the Security Council remains the primary organ in determining situations as acts of aggression without any legal limits. The next two parts of this Chapter will examine whether the Security Council abided by the General Assembly's definition of aggression in its resolutions during and after the Cold War.

II) Interpretation of "Acts of Aggression" during the Cold War:

Various Security Council resolutions were issued with reference to acts of aggression. Some of these resolutions were issued under Chapter VI while others under Chapter VII. We will sort these resolutions pursuant to the General Assembly's definition of aggression. Accordingly, these resolutions will be examined under the following titles: Invasion, attacks against the territorial integrity of states, economic blockade, and the attacks by mercenaries and rebel forces against a state.

A) Invasions against Sovereign States:

We previously mentioned that breaches of the peace usually occur through acts of aggression. However, not all acts of aggression lead to breaches of the peace.²⁷⁰ Although the Security Council considered several cases of invasion as a breaches of the peace, the Council was inconsistent in this determination. In some cases, the Security Council considered invasion as a threat to the peace such as in UNSCR 447 (1979).²⁷¹ In other cases, the Security Council adhered to the General Assembly's definition of aggression when it considered that invasions constitute acts of aggression. The reason behind this inconsistency can be attributed to the lack of a legal definition that binds the Security Council when applying Chapter VII of the Charter. Below are some resolutions in which the Council considered invasions as acts of aggression.

²⁷⁰ See Chapter Three, Part (I) of this study.

²⁷¹ In UNSCR 447 (1979) of 28 March 1979, the Council considered South Africa's invasion of Angola as a threat to the peace. Another example of the Council's determination of invasions as threats to the peace is the Turkish invasion of Cyprus in UNSCR 353 (1974).

1) UNSCR 387 (1976) concerning South Africa's invasion of Angola:

On 10 March 1976, Kenya, upon the request of the African Group of States requested the Security Council to convene and examine the invasion of Angola by the South African forces. The Security Council convened and issued resolution 387 (1976) that stipulates that:

“The Security Council,

Gravely concerned at the acts of aggression committed by South Africa against the People's Republic of Angola and the violation of its sovereignty and territorial integrity...

Gravely concerned also at the damage and destruction done by the South African invading forces in Angola...

1. Condemns South Africa's aggression against the People's Republic of Angola...

3. Demands also that South Africa desist from the utilization of the international territory of Namibia to mount provocative or aggressive acts...

4. Calls upon the Government of South Africa to meet the just claims of the People's Republic of Angola for a full compensation for the damage...”²⁷²

Resolution 387 (1976) is a Chapter VII resolution because the Security Council made an Article 39 determination when describing South Africa's actions as acts of aggression. It also decided on provisional measures in conformity with Article 40 of the Charter when it demanded South Africa to stop initiating its aggressive acts through the territories of Namibia and to compensate for the damage inflicted upon Angola. In the present resolution, the Security Council described South Africa's invasion of Angola as act of aggression and it therefore adhered to Article 3 paragraph (a) of the Assembly's resolution 3314 (XXIX) that stipulates that: “Any of the following acts...qualify as an act of aggression: (a) The invasion or attack by the armed forces of a State of the territory of another State...” The South African attack was an invasion that breached the sovereignty and territorial integrity of Angola and thus was legally determined as an act of aggression by the Security Council in conformity with the Assembly's resolution 3314 (1974). Below is another resolution issued by the Council in which it considered invasion as an act of aggression.

2) UNSCR 424 (1978) concerning the Southern Rhodesian invasion of Zambia:

Since 1973, Zambia has been complaining about serious acts of aggression committed by the illegal regime of Southern Rhodesia. In March 1978, Zambia requested the Security Council to examine the armed invasion of its territories

perpetrated by the forces of Southern Rhodesia on 6 March 1978. Consequently, the Council convened and issued resolution 424 (1978) that stipulates that:

“The Security Council...

Gravely concerned at the numerous hostile and unprovoked acts of aggression by the illegal minority regime in Southern Rhodesia violating the sovereignty, air space and territorial integrity of the Republic of Zambia, resulting in the death and injury of innocent people, as well as the destruction of property, and culminating on 6 March 1978 in the armed invasion of Zambia...

Further recalling its resolutions... in which it condemned the illegal regime in Southern Rhodesia for its acts of aggression...

Reaffirming that the existence of the minority racist regime in Southern Rhodesia and the continuance of its acts of aggression against Zambia and other neighbouring States constitute a threat to international peace and security...

5. Decides that, in the event of further acts of violation of the sovereignty and territorial integrity of Zambia... the Council will meet again to consider the adoption of more effective measures...”²⁷³

This resolution is clearly a Chapter VII resolution because it made an Article 39 determination when it considered the armed invasion of Zambia as an act of aggression and because it recalled previous Chapter VII resolutions, in which the Council condemned previous acts of aggression perpetrated by Southern Rhodesia against Zambia. This resolution determined that “the existence of the minority regime in Southern Rhodesia as well as the continuance of its acts of aggression against Zambia [which manifested itself through the armed invasion] constitute a threat to the peace. In other words, the armed invasion, which is described as an act of aggression, threatened international peace and security and therefore justified collective coercive measures taken by the Council pursuant to Chapter VII of the Charter. The invasion violated the sovereignty and territorial integrity of Zambia and thus constituted an obvious case of aggression. In this case also, the Council adhered to the Assembly’s definition of aggression.

It is essential to mention that in the case of Southern Rhodesia, the Council imposed for the first time in its history mandatory sanctions against a state.²⁷⁴ In previous resolutions and particularly resolution 232 (1966), the Council imposed an economic embargo pursuant to Article 41 of the UN Charter.²⁷⁵ In UNSCR 253

²⁷² UNSCR 387 (1976) issued on 31 March 1976.

²⁷³ UNSCR 424 (1978) issued on 17 March 1978.

²⁷⁴ Schweigman 2001, p. 60.

²⁷⁵ UNSCR 232 (1966) issued on 16 December 1966 stipulates that:

“The Security Council...

Deeply concerned that the Council’s efforts so far and the measures taken by the administering Power have failed to bring the rebellion in Southern Rhodesia to an end...

(1968), the Council tightened the economic sanctions imposed upon Southern Rhodesia in the previous resolution.²⁷⁶

B) Attacks against the Territorial Integrity of States:

According to Article 1 of the Assembly's definition of aggression: "Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State..." Article 3 of the resolution then considers that "the invasion or attack by the armed forces of a State of the territory of another State" constitute also acts of aggression. According to these definitions, an armed attack by a state against the sovereignty and territorial integrity of another state is an obvious case of aggression. Needless to say that the Security Council did not consider such attacks as acts of aggression in a consistent manner. For it sometimes described them as threats to the peace such as the Portuguese attacks against Senegal.²⁷⁷ The following resolutions represent the Security Council's tendency in considering attacks against the sovereignty of states as acts of aggression pursuant to the General Assembly's definition of aggression.

1) UNSCR 568 (1985) concerning South Africa's Attacks against Botswana:

As a result of the South Africa's military attack on the capital of Botswana on 14 June 1985, the Security Council convened and issued resolution 568 (1985) that stipulates that:

"The Security Council,

Acting in accordance with Articles 39 and 41 of the UN Charter,

1. Determines that the present situation in Southern Rhodesia constitutes a threat to international peace and security;
2. Decides that all States Members of the United Nations shall prevent:
(a) The import into their territories of..."

²⁷⁶ UNSCR 253 (1968) issued on 29 May 1968.

²⁷⁷ After the Portuguese shelling of Senegalese villages, the Security Council considered these attacks as jeopardizing and threatening international peace and security in its resolutions 273 (1969) and 294 (1971). UNSCR 273 stated that:

"The Security Council,

Concerned about the serious situation created by the shelling of the village of Samine...

Deeply concerned at the fact that incidents of this nature jeopardize international peace and security...

2. Again calls upon Portugal to desist forthwith from violating the sovereignty and territorial integrity of Senegal
3. Declares that in the event of failure by Portugal to comply with paragraph 2 of the present resolution, the Security Council will meet to consider other measures..."

Expressing its profound concern that the racist regime resorted to the use of military force against the defenceless and peace-loving nation of Botswana, Gravely concerned that such acts of aggression can only serve to aggravate the already volatile and dangerous situation in southern Africa...

1. Strongly condemns South Africa's recent unprovoked and unwarranted military attack on the capital of Botswana as an act of aggression against that country and a gross violation of its territorial integrity and national sovereignty;
2. Further condemns all acts of aggression, provocation and harassment, including murder, blackmail, kidnapping and destruction of property committed by the racist regime of South Africa against Botswana;
3. Demands the immediate, total and unconditional cessation of all acts of aggression by South Africa against Botswana..."
5. Demands full and adequate compensation by South Africa to Botswana for the damage..."²⁷⁸

UNSCR 568 (1985) is a resolution issued under Chapter VII of the UN Charter because it considered that the attacks of South Africa against the capital of Botswana constitute an act of aggression thus applying Article 39 of the UN Charter. It further decided on provisional measures pursuant to Article 40 when it demanded the cessation of all acts of aggression and compensation in favour of Botswana. In this resolution, the Council applied the general definition of aggression laid down by the General Assembly, which is the usage "of armed force against the sovereignty, territorial integrity or political independence of another State."²⁷⁹ It also applied Article 3 of the Assembly's resolution 3314 that states that aggression includes an "attack by the armed forces of a State of the territory of another State..." when it considered that the use of armed force against Botswana's sovereignty and territorial integrity as an evident act of aggression. Another example of the Council's determinations that military attacks constitute acts of aggression can be found in UNSCR 573 (1985).

2) UNSCR 573 (1985) and 611 (1988) concerning the Israeli attacks on Tunisia:

On the first of October 1985, the Israeli forces launched an air attack on civilian areas in the suburbs of Tunis causing heavy loss of human life and extensive material damage. On the same day, Tunisia requested an urgent meeting of the Security Council to consider these attacks. The Security Council convened and issued resolution 573 (1985) that stipulates that:

²⁷⁸ UNSCR 568 (1985) issued on 21 June 1985.

²⁷⁹ Article 1 of the General Assembly resolution 3314 (XXIX), issued in 1974.

“The Security Council,

Having considered the letter dated 1 October 1985, in which Tunisia made a complaint against Israel following the act of aggression which the latter committed against the sovereignty and territorial integrity of Tunisia...

Gravely concerned at the threat to peace and security in the Mediterranean region posed by air raid perpetrated on 1 October by Israel in the area of Hammam Plage, situated in the southern suburb of Tunis,

Drawing attention to the serious effect of the aggression carried out by Israel...

1. Condemns vigorously the act of armed aggression perpetrated by Israel against Tunisian territory in flagrant violation of the Charter of the United Nations, international law and norms of conduct;

2. Demands that Israel refrain from perpetrating such acts of aggression or from threatening to do so...”²⁸⁰

This resolution is a Chapter VII resolution because the Security Council described the Israeli attack as an aggression that threatened peace and security in the Mediterranean region and thus it applied Article 39 of the UN Charter. It further decided on provisional measures that called Israel to stop its aggression or the threat of aggression pursuant to Article 40 of the Charter. As for the reasons behind the Council’s determination that an act of aggression exists is that Israel breached the sovereignty of Tunisia through violating the latter’s airspace and land by air raids aimed at the southern suburbs of Tunisia. It was clear to the Security Council that these Israeli actions constituted acts of aggression and it thus adopted the Assembly’s concept of aggression.

Another similar incident occurred in April 1988 when a terrorist commando unit assassinated a member of the executive Committee of the Palestine Liberation Organization in the presence of his wife and daughter in Tunisia.²⁸¹ Tunisia requested a Security Council meeting to discuss this new act of aggression against its sovereignty and territorial integrity. As a result, the Security Council issued resolution 611 (1988) that states the following:

“The Security Council...

Having noted with concern that the aggression perpetrated on 16 April 1988 in the locality of Sidi Bou Said has caused loss of human life, particularly the assassination of Mr. Khalil El Wazir...

Gravely concerned by the act of aggression which constitutes a serious and renewed threat to peace, security and stability in the Mediterranean region,

1. Condemns vigorously the aggression...

2. Urges Member States to take measures to prevent such acts against the sovereignty and territorial integrity of all States;

²⁸⁰ UNSCR 573 (1985) issued on 4 October 1985.

²⁸¹ Wellens 1993, p. 283.

3. Expresses its determination to take appropriate steps to ensure the implementation of the present resolution..."²⁸²

In this Chapter VII resolution, Israel's Boeing 707 aircraft violated the Tunisian airspace and the terrorist commando violated the territorial integrity of Tunisia through killing a PLO member on Tunisian soil. In this action, Israel violated the sovereignty and political integrity of Tunisia, which led to an act of aggression determination by the Security Council. In these resolutions, the Security Council considered the attacks against the political and territorial integrity of states as acts of aggression. However, as we said earlier, the Council was inconsistent in making such determinations because such attacks were sometimes considered by the Council as threats to the peace.

It is also essential to mention that if military attacks were initiated through a third state, these attacks will keep their initial description as acts of aggression. Many examples can be cited in this respect such as the South African aggression against Angola through the territories of Namibia in UNSCR 567 (1985), 571 (1985), 574 (1985),²⁸³ 577 (1985), and 602 (1987).

C) Economic Blockade:

According to the Assembly's definition of aggression, economic blockade is considered as an act of Aggression. A blockade against a certain state impedes the State's freedom in exercising various economic activities, thus limiting its sovereignty and freedom of activity. An economic blockade usually occurs through military forces and thus forbids the victim state from exercising its sovereignty over its land, sea, or airspace. The dangerous consequences resulting from an economic blockade may not only affect the armed forces of the victim state but it may also extend to reach the economic life of the citizens living in that state. Because of these severe repercussions, the General Assembly stated in Article 3 of its resolution 3314 (1974) that: "Any of the following acts, regardless of a declaration of war, shall... qualify as an act of aggression: (c) The Blockade of the ports or coasts of a State by the armed forces of

²⁸² UNSCR 611 (1988) issued on 25 April 1988.

²⁸³ In UNSCR 574 (1985), the Security Council "strongly condemns[d] also South Africa for its utilization of the illegally occupied Territory of Namibia as a springboard for perpetrating acts of

another State..." No Security Council resolutions were adopted following the General Assembly's definition of aggression that determined economic blockade as acts of aggression. However, the Council issued a resolution previous to the Assembly's resolution that contained such determination. The Security Council considered in its resolution 326 (1973) that an economic blockade against Zambia constitutes an act of aggression, thus adopting a similar determination to that of the Assembly.

UNSCR 326 (1973) concerning Southern Rhodesia's Actions against Zambia:

In January 1973, South Africa closed its borders and imposed an economic blockade against Zambia. These actions were supplemented by troop employments along the borders. As a result, Zambia, supported by member states, requested the Security Council to convene and consider the situation.²⁸⁴ The Security Council convened and issued resolution 326 (1973) that stipulates that:

"The Security Council...

Gravely concerned at the situation created by the provocative and aggressive acts committed by the illegal regime in Southern Rhodesia against the security and economy of Zambia...

Recalling its resolution 232 (1966) of 16 December 1966, in which it determined the situation in Southern Rhodesia constituted a threat to international peace and security,

1. Condemns all the acts of provocation and harassment, including economic blockade, blackmail and military threats, against Zambia...

6. Demands the immediate and total withdrawal of South African military and armed forces in Southern Rhodesia and from the border of that Territory with Zambia..."²⁸⁵

This resolution is a Chapter VII resolution because it made an Article 39 determination when it considered the Southern Rhodesian actions as acts of aggression and because it recalled a previous Chapter VII resolution 232 (1966) that considered the situation in Southern Rhodesia as threatening international peace and security. It also decided on some provisional measures that called for the immediate withdrawal of forces from the borders with Zambia pursuant to Article 40 of the Charter. This resolution was issued as a result of the dangerous actions of South Rhodesia that were manifested in an economic blockade against Zambia and in the deployment of troops along the borders especially that these actions limited Zambia's sovereignty.

aggression against the People's Republic of Angola, as well as sustaining its occupation of part of the territory of that country"; UNSCR 574 (1985) issued on 7 October 1985.

²⁸⁴ Wellens 1993, p. 164.

²⁸⁵ UNSCR 326 (1973) issued on 2 February 1973.

Accordingly, in this resolution the Council adopted the Assembly's notion of aggression when it considered the economic blockade as an act of aggression.

D) Mercenaries' Attacks against States:

Acts of aggression are not only carried out by states. These acts can be also instigated by mercenaries and armed groups on condition that they are backed or sent by states pursuant to Article 3 paragraph (g) of the General Assembly Resolution 3314. This paragraph stated that aggression includes: "The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein." The acts which this article mentions that constitute acts of aggression when perpetrated by mercenaries are attacks, invasions, bombardments against the territory of a state, its land, sea, or air forces, its marine and air fleets, and the blockade of its ports and coasts. In addition, the International Court of Justice considered that this provision reflected customary international law.²⁸⁶ The following resolutions reflect the Council's tendency to consider the above actions when initiated by armed groups as acts of aggression.

1) UNSCR 405 (1977) & 419 (1977) concerning the Aggression on Benin:

In January 1977, Benin has been a target of aggression when a group of mercenaries attacked its airport and the city of Cotonou. As a result, Benin requested the Security Council to convene and consider the situation.²⁸⁷ The Council issued resolution 404 (1977) that affirmed the territorial integrity and political independence of Benin and decided to dispatch a Special Mission to investigate the situation.²⁸⁸ After it made its investigations, the mission reported that Benin has been subjected to an attack by mercenaries with the purpose of overthrowing the government. The Security Council studied the report and issued its resolution 405 (1977) that stipulates the following:

²⁸⁶ ICJ judgement issued on 27 June 1986, Case concerning Military and Paramilitary Activities against Nicaragua, provision 195.

²⁸⁷ Wellens 1993, p. 96.

²⁸⁸ UNSCR 404 (1977) issued on 8 February 1977.

"The Security Council...

Deeply grieved at the loss of life and substantial damage to property caused by the invading force during its attack on Cotonou on 16 January 1977...

2. Strongly condemns the act of armed aggression perpetrated against the People's Republic of Benin on 16 January 1977;

3. Reaffirms its resolution 239 (1967) of 10 July 1967...

4. Calls upon all States to exercise the utmost vigilance against the danger posed by international mercenaries and to ensure that their territory and other territories under their control, as well as their nationals, are not used for the planning of subversion and recruitment, training and transit of mercenaries designed to overthrow the Government of any Member State;

5. Further calls upon all States to consider taking necessary measures to prohibit, under their respective domestic laws, the recruitment, training and transit of mercenaries on their territory and other territories under their control;

6. Condemns all forms of external interference in the internal affairs of Member States, including the use of international mercenaries to destabilize States and/or to violate their territorial integrity, sovereignty and independence...²⁸⁹

UNSCR 404 (1977) is considered as a Chapter VII resolution for several reasons. First, this resolution recalled and reaffirmed a previous Chapter VI resolution, UNSCR 239 (1967) in which the Council condemned "any State which persists in permitting or tolerating the recruitment of mercenaries, and the provision of facilities to them, with the objective of overthrowing the Governments of States Members of the United Nations". The Council in resolution 239 (1967) also called upon "Governments to ensure that their territory and other territories under their control, as well as their nationals, are not used for the planning of subversion, and the recruitment, training and transit of mercenaries designed to overthrow the Government..."²⁹⁰ Second, the Council explicitly considered the attack perpetrated by the mercenaries as an invasion and described it as an act of aggression, thus applying Article 39 of the UN Charter. Third, the Council decided on some provisional measures pursuant to Article 40 of the Charter that called all states to ensure that their territories and nationals are not used for planning, training, and transit of mercenaries and to take effective measures to prohibit such actions.²⁹¹

The Council's determination that the attack perpetrated by the mercenaries against the government of Benin represents an act of aggression corresponds to the last paragraph of Article 3 of the Assembly's resolution 3314. This Article stated that the sending by or on behalf of a State of mercenaries to carry out acts of armed attacks against another State is considered as an act of aggression. In the present resolution the

²⁸⁹ UNSCR 405 (1977) issued on 14 April 1977.

²⁹⁰ UNSCR 239 (1967) issued on 10 July 1967.

²⁹¹ Paragraphs 3, 4, 5, 8, and 10 of UNSCR 409.

mercenaries who attacked Benin were backed by a foreign state with the aim of overthrowing the government. Although no state was plainly accused behind the mercenary attack in this resolution, the Council was convinced of the presence of an external element when it condemned in a later resolution 419 (1977) "the act of armed aggression perpetrated against the People's Republic of Benin on 16 January 1977 and all forms of external interference in the internal affairs of Member States, including the use of mercenaries to destabilize States and/or to violate their territorial integrity, sovereignty, and independence..."²⁹² Accordingly, the Council adhered in its resolutions 405 (1977) and 419 (1977) to the General Assembly's definition of aggression.

2) UNSCR 507 (1982) concerning the Attack against Seychelles:

On 25 November 1981, a group of mercenaries landed in the Seychelles International Airport, where they fought with the local police and hijacked a plane headed to South Africa.²⁹³ UNSCR 496 (1981) was issued that condemned the attack and considered it as an act of aggression. The resolution also dispatched a commission of inquiry to investigate all aspects surrounding the attack.²⁹⁴ On 15 March 1982, the UN Commission submitted its report after investigating the incident. The Commission stated in its report that it was unable to determine the precise origin of the aggression but it was sure that the objective behind the attack was to overthrow the government. The commission added that it was difficult to believe that the South African authorities did not know of the preparations that preceded the attack.²⁹⁵ Based upon this report, the Security Council convened and issued resolution 507 (1982) that stipulates that:

"The Security Council...

Deeply grieved at the loss of life and substantial damage to property caused by the mercenary invading force during its attack on the Republic of Seychelles on 25 November 1981,

²⁹² UNSCR 419 (1977) issued on 24 November 1977.

²⁹³ Wellens 1993, p. 485.

²⁹⁴ UNSCR 496 (1981) states that:

"The Security Council...

2. Condemns the recent mercenary aggression against the Republic of Seychelles and the subsequent hijacking;

3. Decides to send a commission of inquiry composed of three members of the Security Council in order to investigate the origin, background and financing of the mercenary aggression of 25 November 1981 against the Republic of Seychelles, as well as assess and evaluate economic damages, and to report to the Council with recommendations no later than 31 January 1982..."

²⁹⁵ Wellens 1993, p. 485.

Gravely concerned at the mercenary aggression against the Republic of Seychelles, prepared in and executed from South Africa,

Deeply concerned at the danger which mercenaries represent for all States, particularly the small and weak ones, and for the stability and independence of African States...

2. Strongly condemns the mercenary aggression against the Republic of Seychelles

4. Reaffirms its resolution 239 (1967)...

5. Condemns all forms of external interference in the internal affairs of member States, including the use of mercenaries to destabilize States and/or violate the territorial integrity, sovereignty and independence of States;

7. Calls upon all States to provide the Security Council with any information they might have in connection with the mercenary aggression of 25 November 1981..."

This resolution is issued under Chapter VII of the Charter because it made an Article 39 determination when it considered the attack as an act of aggression and it also decided on provisional measures that called on all states to provide the Council with any information concerning the attack. This resolution also recalled UNSCR 239 (1967) that condemned any state that persists in tolerating the recruitment of mercenaries or aiding them.

At first, the Council had suspicions on whether the mercenary attack originated from South Africa. When the UN Commission acknowledged South African interference in this incident with the objective of overthrowing the government of the Seychelles, the Council issued this resolution that condemned the aggression "prepared in and executed from South Africa". Accordingly, the Council's determination was consistent with the Assembly's definition of aggression that considered the attack by mercenaries when backed by a foreign state as an act of aggression.

In order to evaluate the Council interpretations of acts of aggression during the Cold war, one can mention that prior to 1974, before the issuance of the Assembly's resolution 3314, only one resolution was adopted by the Security Council that contained an interpretation of acts of aggression. This resolution was UNSCR 326 (1973) concerning Southern Rhodesia's aggression against Zambia. In this resolution, as mentioned earlier, the Council determined that the economic blockade against Zambia constituted an act of aggression and thus this determination came consistent with the Assembly's definition of aggression.

After the issuance of the General Assembly resolution 3314 (1974), the Council did not fully adhere in all of its resolutions to the provisions contained in the Assembly's resolution. In some cases, the Council considered invasion as a "threat to the peace" instead of an "act of aggression" such as UNSCR 290 (1970) concerning

the Portuguese invasion of Guinea²⁹⁶ and UNSCR 447 (1979) concerning South Africa's invasion of Angola.²⁹⁷ In other cases, the Council determined invasion as a "breach of the peace" such as UNSCR 502 (1982) concerning the Argentinean invasion of the Falkland Islands.²⁹⁸ While in UNSCR 387 (1976) concerning South Africa's invasion of Angola and UNSCR 424 (1978) concerning the Southern Rhodesian invasion of Zambia, the Council adhered to the Assembly's resolution 3314 when it considered these invasions as acts of aggression.

With respect to the Council interpretations of armed attacks, the same conclusion can be deduced. In UNSCR 273 (1969), the Security Council considered the armed attacks perpetrated by Portugal against Senegal as acts threatening international peace and security.²⁹⁹ The same applies in UNSCR 268 (1969), when the Council considered that the armed attack by Portugal against Zambia as a threat to international peace and security.³⁰⁰ In other cases, the Security Council considered such attacks as acts of aggression pursuant to the Assembly's definition of aggression. The examples that can be cited in this respect are UNSCR 568 (1985) concerning South Africa's attacks against Botswana and UNSCR 573 (1985) and 611 (1988) concerning the Israeli attack on Tunisia.

In UNSCR 552 (1984), the Security Council totally ignored the Assembly's definition of aggression when it considered that the attack on commercial ships

²⁹⁶ UNSCR 290 (1970) issued on 8 December 1970 states that:

"The Security Council...

Gravely concerned that the invasion of the territory of the Republic of Guinea...

Gravely concerned that such armed attacks directed against independent African States pose a serious threat to the peace and security of independent African States...

2. Strongly condemns the Government of Portugal for its invasion of the Republic of Guinea..."

²⁹⁷ UNSCR 447 (1979) issued on 28 March 1979 stipulates that:

"The Security Council...

1. Condemns strongly the racist regime of South Africa for its premeditated, persistent and sustained armed invasions of the People's Republic of Angola, which constitute a flagrant violation of the sovereignty and territorial integrity of that country as well as a serious threat to international peace and security..."

²⁹⁸ See Chapter Three, Part II, Section A), 3.

²⁹⁹ UNSCR 273 (1969) issued on 9 December 1969 states that:

"The Security Council...

Concerned about the serious situation created by the shelling of the village of Samine in the southern region of Senegal from the Begene Base,

Deeply concerned at the fact that incidents of this nature jeopardize international peace and security..."

³⁰⁰ UNSCR 268 (1969) issued on 28 July 1969 stipulates that:

"The Security Council...

Concerned about the grave situation created by the Portuguese bombing of Lote village in the Katete District of the Eastern Province of Zambia bordering the Territory of Mozambique,

Gravely concerned that incidents of this nature endanger international peace and security..."

constitutes a threat to the peace rather than an act of aggression. According to Article 3 paragraph (d) of the General Assembly Resolution 3314 (1974), acts of aggression include "An attack by the armed forces of a State on the... marine and air fleets of another State." In 1984 and as a result of Iranian assaults on commercial ships of several countries, the Security Council convened and issued a Chapter VII resolution in which it considered that the attacks on commercial ships "constitute a threat to the safety and stability of the area and have serious implications for international peace and security."³⁰¹ Accordingly, the Security Council has the full authority and freedom in deciding whether to abide or reject the Assembly's definition of aggression in every particular case.

After discussing various Security Council resolutions that contained interpretations of acts of aggression during the Cold war, another analysis must be made to such resolutions after the Cold War.

III) Interpretation of "Acts of Aggression" after the Cold War:

Although the General Assembly has laid down a definition of aggression, the Security Council remains as the major organ that has the competence of determining whether an action falls under the concept of acts of aggression. Moreover, the Assembly in its resolution 3314 (1974), confirmed the Council's authority and left for it the entire freedom of decision on whether to abide or not by the definition of aggression laid down by the Assembly. Accordingly, the Security Council is not obliged to abide by the Assembly's definition. During the Post Cold War Era, only one resolution was issued that contained an interpretation of acts of aggression.³⁰² In UNSCR 667 (1990), the Council's interpretation did not fall within the actions described by the Assembly as acts of aggression.

- UNSCR 667 (1990) concerning Iraq's Abduction of Foreign Diplomats in Kuwait:

³⁰¹ The Council in this resolution decided on provisional measures when it called on all states to respect the territorial integrity of states and demanded that such attacks must cease. The Council also stated that in case of noncompliance, it would convene again "to consider effective measures... in order to ensure the freedom of navigation in the area." UNSCR 552 (1984) issued on 1 June 1984.

³⁰² The period of study ranges from 1990 till 2000.

After the Iraqi invasion into Kuwait in 1990, many Security Council resolutions were issued that condemned such invasion and imposed economic sanctions upon Iraq. In September 1990, France requested an urgent Security Council meeting to discuss the latest Iraqi violations of international law. Iraqi forces violated the immunity of many foreign embassies, including the French embassy, and abducted diplomats and foreign national³⁰³ thus vigorously violating international law and the Vienna Conventions on Diplomatic and Consular relations.³⁰³ The Security Council convened and issued resolution 667 (1990) that stipulates that:

“The Security Council...

Recalling its resolution 660 (1990) of 2 August 1990, 661 (1990)...

Recalling the Vienna Convention on Diplomatic Relations of 18 April 1961 and the Vienna Convention on Consular Relations of 24 April 1963, to both of which Iraq is a party,

Considering that the decision of Iraq to order the closure of diplomatic and consular missions in Kuwait and to withdraw the immunity and privileges of these missions and their personnel is contrary to the decisions of the Security Council, the international Conventions mentioned above and international law...

Outraged at recent violations by Iraq of diplomatic premises in Kuwait and at the abduction of personnel enjoying diplomatic immunity and foreign nationals who were present in these premises,

Considering also that the above actions by Iraq constitute aggressive acts and a flagrant violation of its international obligations...

Acting under Chapter VII of the United Nations

1. Strongly condemns aggressive acts perpetrated by Iraq against diplomatic premises and personnel in Kuwait...

2. Demands the immediate release of those foreign nationals...

4. Further demands that Iraq immediately protect the safety and well-being of diplomatic and consular personnel...”

The above resolution clearly falls under Chapter VII of the UN Charter. The Security Council explicitly invoked Chapter VII, made frequent references to acts of aggressions, and thus applied Article 39 of the Charter. The Council further decided on provisional measures when it demanded Iraq to immediately release the foreign nationals and to respect the immunity and privileges of diplomatic and consular personnel. The Council also threatened to take further actions under Chapter VII of the Charter in case of noncompliance.

The Council’s determination that an act of aggression took place can be traced to the following reasons: First, the resolution recalled previous resolutions containing

³⁰³ Wellens 1993, p. 512. Other countries made the same request such as Italy, Denmark, Belgium, Finland, the Federal Republic of Germany, Hungary, Spain, Luxembourg, Greece, Sweden, Norway, Portugal, Australia, and the Netherlands.

certain determinations such as “armed attack”³⁰⁴ and “invasion”³⁰⁵ that can be legally described as acts of aggression. Second, the resolution mentioned the “acts of violence” committed against diplomatic missions and most importantly, the resolution expressed the Council’s “outrage” at Iraq’s violation of diplomatic premises and the abduction of diplomatic and consular personnel, which “constitute aggressive acts.” Accordingly, the resolution explicitly stated that the “abduction of personnel enjoying diplomatic immunity and foreign nationals” is considered as an act of aggression. We could have considered that the abduction of diplomats falls under Article 3 paragraph (a) of the General Assembly resolution 3314 that stipulates that aggression includes “The invasion or attack by the armed forces of a State of the territory of another State...” but the resolution stressed on the act of abduction as constituting itself an act of aggression. Therefore, we can say that the Security Council enlarged the concept of acts of aggression to include the abduction of people and personnel. In this resolution, the Council did not fully adhere to the Assembly’s definition of aggression for it could have at least explained why these acts fall under the concept of acts of aggression. No other resolutions were issued that contained interpretations of acts of such determination aggression after the Cold War.

The Security Council generally considered in the post Cold War era situations as “threats to the peace” rather than acts of aggression when applying Chapter VII of the UN Charter. The reason behind this can be attributed to the Council’s willingness to escape from the legal definition of aggression provided by the General Assembly in order to avoid any criticism when using this term. The notion of “threat^③ to peace” is more general and more flexible than acts of aggression and it permits the Council to apply it in various situations.

Furthermore, during the deliberations of Dumbarton Oaks proposals that preceded the emergence of the UN Charter, it has been decided after a serious debate not to define the components of Article 39 of the Charter i.e. “threat to the peace”, “breach^② of the peace”, and “acts of aggression”.³⁰⁶ The great powers that participated in these deliberations agreed not to limit the authority of the Security Council by defining these terms. They thus, gave the Security Council the full authority and

³⁰⁴ UNSCR 661 (1990) issued on 6 August 1990.

³⁰⁵ UNSCR 664 (1990) issued on 18 August 1990.

³⁰⁶ Schweigman 2001, p. 34.

responsibility for interpreting and applying Article 39 of the Charter with all its components.

If the Security Council is not bound by the resolutions of the General Assembly, can we consider that the Council becomes obliged to abide by the Assembly's definition of aggression since the International Court of Justice considered it as part of customary international law? Principally, the Security Council must not violate principles of international law whether customary or codified. Therefore, the Council does not have the right to violate the Assembly's Definition of Aggression since it is part of customary international law. However, if the Security Council violates the above definition, no authority exists that can determine the Council's resolution as null and void since it violated international law. Moreover, all states are bound to accept and implement the Security Council resolutions even if these resolutions carry within them contradictions and violations of international law. This conclusion can be deduced from Article 103 of the UN Charter that stipulates that:

"In the event of a conflict between the obligations of the members of the United Nations under the present Charter and their obligations under any international agreement, their obligations under the present Charter shall prevail."

Most of the principles of international law have been a product of international treaties. Any contradictions between the obligations arising from treaties that carry within them principles of international law and that of the Charter, states must prefer and abide by their obligations arising from the Charter. According to Article 25 of the UN Charter, "the members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter." Consequently, all members of the United Nations must implement and abide by any resolution issued by the Security Council even if these resolutions carried within them contradictions and violations of international law. In addition, the Assembly's resolution 3314 (1974) gave the Security Council the authority and freedom of not adopting the provisions of its definition of aggression.

Finally, we can say that the General Assembly's definition of aggression was an unsuccessful attempt to limit the authorities of the Security Council and to oblige the latter to respect and adopt principles of international law.

Conclusion:

Article 39 of the UN Charter, the gateway of collective security and coercive measures, is one of the most ambiguous articles of the UN Charter. This ambiguity arises from the fact that the three concepts encompassing Article 39 are still undefined and subject to many different interpretations. The least controversial concept of the three pillars constituting collective security is "Acts of Aggression". Although the Security Council remains free in interpreting this concept, the General Assembly was able to define aggression and determine what actions fall under this concept. As for the second concept of Article 39 "Breach of the Peace", a definition can be derived from the few Security Council resolutions that contained interpretations of this concept. The concept of breach of the peace was applied by the Security Council in cases involving vigorous attacks that mounted to full-scale wars and invasions. These two concepts of Article 39 were used in a decreasing rate by the Security Council until the Council almost ceased of using them during the post Cold War era. On the other hand, the first concept of Article 39, "threat to the peace", has been revived in an unprecedented way after the 1990's. This concept became one of the most flexible concepts among the three that the Council used to justify its intervention in any county of the World.

The object of this study was to put a clear-cut definition to the three concepts encompassing Article 39 of the UN Charter. After studying and analyzing various resolutions, several comments on these three concepts can be made: The UN founders has put the three concepts in the following order: "Threats to the Peace", "Breaches of the Peace", and "Acts of Aggression". Any observer can deduce that the sequence of these three concepts denotes their degree of gravity. However, the Security Council did not abide by this sequence and considered that breaches of the peace as the gravest form of the three concepts. Furthermore, the deliberations between the member states of the Security Council showed an obvious confusion between the two concepts: ~~breaches~~ breaches of the peace and acts of aggression. Although I was able to deduce a definition of "Breaches of the Peace" and differentiate it from the other two concepts, this definition remains as one that is produced from the Security Council, the political organ of the UN Organization. Can this definition be adopted as a reference to all UN agencies and a fixed interpretation to what constitutes a breach of

the peace in the literature covering international law? The answer to this question raises more controversial issues that are connected with the Council's ability to legislate and develop new principles of international law. What is sure is that this definition does not bind the Council in its future resolutions.

As for the third term covering Article 39, acts of aggression, it can be said that the Security Council was eager to use the Assembly's definition of aggression during the Cold War. However, after the end of this war, the Security Council almost ceased from issuing Chapter VII resolutions containing an act of aggression determination. To compensate, the Council tended to issue most of its Chapter VII resolutions under the concept of "threats to the peace." Many reasons can be behind this unprecedented behavior of the Security Council. The Cold War witnessed the confrontation of two gigantic powers that influenced the work of the Council. The possibility of agreement in the Security Council was low and thus this led the Council to issue more resolutions based upon international law rather than political agreements. After the Cold war, the Council became free from the political confrontation that existed during that era and thus its resolution were passed easier than before under the political agreements of the major powers headed by the United States. The Council sometimes sacrificed many legal principles of international law in favor for the political interests of its members. In addition, the Council became more reluctant to refer to acts of aggression in order to escape the legal definition of the General Assembly and to give itself more freedom of action under the first concept of Article 39, threats to the peace. Threats to the peace became the most flexible concept which was used by the Council to trigger collective security. This flexibility has been also acknowledged by the Secretary General.

In the 2004 report of the Secretary General's High-level Panel on Threats, Challenges, and Change, the Secretary General has set a new version of collective Security to confront the various threats to international peace and security that prevails in the 21st century. According to the report, the collective security system, which was established by the UN founders, was chartered to counter the traditional military threats against states. It was a "system in which States join together and pledge that aggression against one is aggression against all, and commit themselves in that event to react collectively."³⁰⁷ In addition, the UN founders also acknowledged

³⁰⁷ UN Report 2004, p. 1.

the importance of human development, human rights, and freedom. The role of the new collective security system is to embrace all these principles and work on defending them.

The new threats to the peace that the world must encounter are economic and social threats, including poverty, infectious diseases and environmental degradation, Inter-State conflicts, Internal conflicts, including civil wars, genocides and other large-scale atrocities, nuclear, radiological, chemical, and biological weapons, terrorism, and transnational organized crimes. The new version of collective security recognizes that the front-line actors in dealing with the threat of international peace and security remains the individual nation state, whose sovereignty is respected under the UN Charter. Nevertheless, "in the twenty-first century, more than ever before, no State can stand wholly alone" thus, collective strategies, actions, and responsibilities become indispensable in our contemporary world.³⁰⁸

According to the report, this new collective security is build upon three basic pillars. First, it assumes that today's threats do not recognize national boundaries. Second, no state, even if it is the most powerful, is invulnerable to these threats. Third, it is always possible that states will not be able to defend their people or to restrain themselves from harming their neighbors.³⁰⁹

According to the preamble of the UN Charter, the main objective behind the establishment of the UN is to find a scheme that would prevent future wars. This objective can be deduced from the first paragraph of the preamble that states that: "We the peoples of the United Nations determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights..." Therefore, collective security was recreated to forestall any possibility for future wars and not to be used in cases of humanitarian, social, economic, and environmental degradation. According to the UN Charter, these issues must be dealt with through mutual cooperation between states and not through coercion. This conclusion can be also implied from Article 1 paragraph 3 that stipulates that the purposes of the United Nations are "3. To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights..."

³⁰⁸ Ibid.

The report also advocated that new threats to international peace and security require new methods for preventing them. States must be, more than ever, united and determined to encounter these new threats. The report implicitly implies that states must be willing to give up to a certain degree their sovereignty. This sovereignty, which is guaranteed in the UN Charter, must not be an obstacle towards confronting these new threats to the peace that don't recognize any boundaries between states. The traditional collective security was applicable to attacks that threatened the states' sovereignty and independence. The new version of collective security, on the other hand, extends to reach new threats such as poverty, infectious diseases and environmental degradation. This development in the concept of collective security is very dangerous because it will enable the Security Council or the "Great Powers" to intervene in any state they want under any alibi. Accordingly, collective security that was initially made to protect the sovereignty of states became itself a threat to this sovereignty.

The United Nations was established in 1945 as a response to World War II. This organization was empowered with collective security that would forestall any attacks on the states' sovereignty and independence. Intervention, which was a sacred principle in the United Nations Charter, seems to become an old fashion principle in front of the constantly developing authority of the Security Council. Since the end of the Cold War, the Security Council has developed its jurisprudence so that it could catch up with the continuous developments in international relations. In addition, international law has been in a constant change and evolvement. Consequently, it is not astonishing if we see major contradictions between the 1945 principles and the recent jurisprudence and principles of international law. What is needed, as the UN report stated, is a new commitment by states to abide by the evolved principles of international law. Who is against an international organization that protects human rights across the globe? Who is against an international organization that intervenes in the internal affairs of states to restore peace in case of civil wars? We are not against the United Nations' interference in the domestic affairs of states to protect human rights, restore democracy, and to prevent genocide and civil wars, on condition that the decisions of interference are taken in an impartial and unprejudiced way.

³⁰⁹ Ibid.

There is a fear among many international law scholars that the new interventionism promoted by the Security Council may be transformed into a tool used by the great powers to intervene in any situation for self-interest profits. Especially that in many cases, the Security Council adopted double standards in deciding when and where to intervene. In order to forbid the Security Council from adopting double standards, a judicial impartial institution must be created to oversee the decisions of the Security Council and to check if these resolutions are taken in conformity with international law. In every system in the world, we find a separation of powers between legislative, executive, and judiciary powers. Why cannot this logic be applied in the United Nations system? Why cannot the General Assembly be transformed into a legislative power, the Security Council into an executive power, and the International Court of Justice into a judiciary power? The separation of these powers and a proper mechanism for controlling their functions would ensure the proper performance of the United Nations Organization. One question remains. Can the Security Council accept such legal supervision on its decisions that limits its authorities and powers? This question can only be answered by the five veto powers!

Bibliography

I) Books & Articles

- **Bennett**, Alvin LeRoy. "International Organizations", 6th Edition, *Prentice Hall: New Jersey*, 1995.
- **Calvert**, Peter; "The Falklands Crisis: The Rights and the Wrongs", *Frances Pinter Publishers: London*, 1982.
- **Cryer**, Robert. "The Security Council and Article 39: A Threat to Coherence?", *Journal of Armed Conflict Law*, December 1996, 1 (2), p. 161-195.
- **Clark**, Mark T. "The Trouble with Collective Security", www.findarticles.com, Spring 1995.
- **Claude**, Inis L. "The United Nations and the Use of Force", *United Nations Studies No. 532*, March 1961.
- **Claude**, Inis L. "Swords into Plowshares", 4th Edition, *Random House: New York*, 1971.
- **Dinstein**, Yoram. "War, Aggression, and Self-Defence", *Cambridge University Press: Great Britain*, 1994.
- **Dixon**, Martin & **Mccorquodale**, Robert. "Cases and Materials on International Law", 2nd Edition, *Blackstone Press Limited: London*, 1995.
- **Downs**, George W. "Collective Security beyond the Cold War", *The University of Michigan Press*, 1994.
- **Eban**, Abba. "The U.N. Idea Revisited", *Foreign Affairs*, Sep-Oct 1995, Vol.74 No.5, p39.
- **Evans**, Tony & **Wilson**, Peter. "Regime theory and the English School of International Relations: A Comparison", *Millennium: Journal of International Studies*, Vol. 21, No. 3 (Winter 1992), p. 330.
- **Einsiedel**, Sebastian von & **Malone**, David. "Haiti", in "The UN Security Council From the Cold War to the 21st Century" edited by David M. Malone, *Lynne Rienner Publishers: Boulder-London*, 2004.
- **Gibran**, Daniel K. "The Falklands War: Britain Versus the Past in the South Atlantic", *McFarland & Company: North Carolina* 1998.

- **Gray**, Christine. "International Law and the Use of Force", *Oxford University Press*, 2000.
- **Hirsch**, John. "Sierra Leone", in "The UN Security Council From the Cold War to the 21st Century" edited by David M. Malone, *Lynne Rienner Publishers: Boulder-London*, 2004.
- **Kelsen**, Hans. "Collective Security and Collective Self-Defense Under the Charter of the United Nations", *The American Journal of International Law*, Vol. 42, No. 4, October 1948, p. 794.
- **Kelsen**, Hans. "The Law of the United Nations: A Critical Analysis of its Fundamental Problems", *Frederick Praeger Inc: New York*, 1951.
- **Kupchan**, Charles A. & **Kupchan**, Clifford. "The Promise of Collective Security", *International Security*, Summer 1995, Vol.20, No.1, p52-61.
- **Lattanzi**, Flavia. "La Corte penale internazionale: una sfida per le giurisdizioni degli Stati, in *Diritto Pubblico Comparato ed Europeo*, 2002-III in "Collection of Legal Scholars Opinions on the Legal and Political Implications of Res. 1422", compiled by David Cattin, Doc. No.4 –Parliamentarians for Global Action (PGA): Strategy Meeting on the ICC, 22 April 2003.
- **Malanczuk**, Peter. "Akehurst's Modern Introduction To International Law", 7th Revised Edition, *Routledge*, 1997.
- **Mearsheimer**, John. "The False Promise of International Institutions", *International Security*, Winter 1994/1995, Vol.19, No.3, p4-49.
- **Miller**, Lynn H. "The Idea and the Reality of Collective Security", *Global Governance*, Jul-Sep99, Vol.5 Issue 3, p303.
- **Moore & Pubantz**. "The Encyclopedia of the United Nations", *Facts On File Inc.*, 2002.
- **Morgenthau**, Hans J. "Politics Among Nations", 5th Edition Revised, *Alfred A. Knopf: New York*, 1973.
- **Morse**, Joseph Laffan. "The Universal Standard Encyclopedia", *Unicorn Publishers: New York*, 1954.
- **Nolan**, Cathal J. "The Greenwood Encyclopedia of International Relations", *Greenwood Publishing: London*, Vol. 1, 2002.

- **Osmanczyk**, Edmund Jan. "Encyclopedia of the United Nations and International Agreements", 3rd Edition, *Routledge: New York – London*, Vol.1, 2003.
- **Osterdahl**, Inger. "Threat to the Peace: The interpretation by the Security Council of Article 39 of the UN Charter", *Forlag Uppsala*, 1998.
- **Rostow**, Eugene. "Until What? Enforcement Action or Collective Self-defense?" *The American Journal of International Law*, Vol.85, No.3 (Jul, 1991), p.506-516.
- **Sarasin**, Pote. "Collective Security: Shield of Freedom", 2nd Edition, *SEATO Publication: Bangkok*, 1963.
- **Sarooshi**, Danesh. "The United Nations and the Development of Collective Security: The Delegation by the UN Security Council of its Chapter VII Powers", *Clarendon Press: Oxford*, 1999.
- **Schiffer**, Walter. "The Legal Community of Mankind", *Columbia University Press: New York*, 1954.
- **Schweigman**, David. "The Authority of the Security Council under Chapter VII of the UN Charter", *Kluwer Law International, The Netherlands*, 2001.
- **Stahn**, Carsten. "The Ambiguities of Security Council resolution 1422", *European Journal of International Law*, 2003, Vol.1.
- **Wallensteen**, Peter & **Johansson**, Patrik. "Security Council Decisions in Perspective", in "The UN Security Council From the Cold War to the 21st Century" edited by David M. Malone, *Lynne Rienner Publishers: Boulder-London*, 2004.
- **Wolfke**, Karol. "Custom in Present International Law", 2nd Edition, *Martinus Nijhoff Publishers: Dordrecht*, 1993.
- **Ziegler**, David W. "War, Peace, and International Politics", 5th Edition, *Scott, Foresman and Company*, 1990.

IV) United Nations Publications, Reports, and Documents:

- UN Report of the Secretary-General's High-level Panel on Threats, Challenges, and Change, "A More Secure World: Our Shared Responsibility", United Nations, 2004.
- Yearbook of the United Nations 1946 – 1947, Department of Public Information, United Nations, Lake Success : New York, 1947.
- "The United Nations and Apartheid, 1948-1994", The United Nations Blue Books Series, Volume I, Department of Public Information, United Nations, New York, 1994.
- The United Nations & the Question of Palestine, United Nations Department of Public Information, New York, 1990.
- The United Nations and the Iraq-Kuwait Conflict (1990-1996), The United Nations Blue Books Series, Volume IX, Department of Public Information, United Nations, New York, 1996.
- Charter of the United Nations, issued on 26 June 1945.
- International Court of Justice decision issued on 27 June 1986 "Case Concerning Military and Paramilitary Activities in and against Nicaragua", (Nicaragua VS. USA).
- Repertory of Practice of the United Nations Organs, Repertory of Practice of Article 39 (1945-1954), Vol. 2.
- Repertory of Practice of Article 39, Supplement No. 6 (1979-1984), Vol. 3.
- Security Council Official Records, Lake Success, New York, Third Year, 338th Meeting, New York 1948.
- Security Council Official Records, Lake Success, New York, Fifth Year, No.15, 473rd Meeting, 25 June 1950.
- Security Council Official Records, Lake Success, New York, 11th year, 751st Meeting, 31 October 1956.
- General Assembly Resolutions:
 - o General Assembly Resolution 293 (IV) issued on 21 October 1949
 - o General Assembly Resolution 3314 (XXIX) issued in 1974, "Definition of Aggression"
 - o General Assembly Resolution 337 issued in 1950, "Uniting for Peace"

- General Assembly Resolution 1514 (XV) issued on 14 December 1960
- General Assembly Resolution 2012 (XX) issued on 12 October 1965
- General Assembly Resolution 2022 (XX) issued on 5 November 1965
- General Assembly Resolution 2024 (XX) issued on 11 November 1965

- Security Council Resolutions: