

THE SECURITY COUNCIL AS ENFORCER OF HUMAN RIGHTS

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Course abstract

The course will review the enforcement of human rights law by the Security Council from a systemic perspective, in other words, such enforcement action will be approached as sanctions in response to violations of fundamental human rights law (taken broadly to cover also international humanitarian and criminal law) deemed to be threats to international peace and security. Such qualifications under Article 39 of the Charter open the door to the application of a wide range of enforcement measures under Chapter VII. The Council may thus be seen to play a role as promoter and protector of human rights law. But it has also assumed a quasi-legislative role in this area, including as an indirect contributor to the development of areas of this law. The appropriateness and legitimacy of the role it has assumed and the effects on individual rights will be questioned. The Course will cover the following issues.

1. Introduction

This will review the Security Council's changing functions within the framework of the international legal system in light of the development of an international public policy and the links between regimes of responsibility and collective security. Security Council practice in the field of sanctions will be briefly outlined in the light of UN reform proposals, including the responsibility to protect.

2. *The Qualification of State and Individual Violations of Fundamental Norms of International Human Rights and Humanitarian Law*

Beginning with the first sanctions experiment in the case of Southern Rhodesia in 1965 in which human rights violations lay at the root of the crisis, the Security Council has qualified under Chapter VII not only conduct which breaches the *jus ad bellum*, but also conduct by both State and non-state actors which violate norms protecting the individual, such as genocide or ethnic cleansing and other gross violations of human rights, including the right to self-determination, as well as grave breaches of humanitarian law, including those encompassed within a State's own borders, as threats to the international security fabric. It has also reacted to imminent or actual forced movements of populations. The broadened notion of threat to the peace, the nature of the Council's determinations under

Article 39, the quasi-judicial nature of the Council's pronouncements, as well as problems of attribution not only to State but also to non-State entities will be addressed.

3. The Enforcement of State and Individual Obligations under Fundamental Norms of International Human Rights, Humanitarian Law and Criminal Law

One of the consequences of determinations under Article 39 of the Charter is the application of enforcement measures under Chapter VII. This has encompassed a whole range of binding non-military collective responses either expressly stated or implied in Article 41, as well as authorizations to member States or regional organizations for the use of force. The application of such measures in select cases involving human rights and humanitarian law violations will be examined, such as collective non-recognition, severance of diplomatic relations, economic embargoes, financial restrictions, penal measures, and limited use of force. Security Council resolutions countering terrorism have also contained measures such as the freezing of funds and prohibition of travel directed against individuals for the commission of ill-defined crimes considered to constitute a threat to international peace and security.

4. The Contribution of the Security Council to the Development of International Human Rights, Humanitarian Law and Criminal Law

The impact of Council "legislative" resolutions on the interpretation and development of customary international law and treaty law in these fields, such as resolutions on the recruitment of child soldiers or sexual violence against women will be reviewed, as also the promotion of the rule of law and human rights law in UN administered territories as well as occupied Iraq. In addition, the involvement of the Security Council in international criminal law and its impact on the development of both its substantive and procedural aspects and on the process of the institutionalisation of criminal responsibility which has taken many hybrid forms, will be addressed.

5. The Effects of Security Council Enforcement of Human Rights on Treaties and Domestic Law

The potential power of Security Council resolutions to override existing human rights treaty obligations of member states under Article 103 of the Charter will be revisited in the light of developments in the international legal system. The important constitutional problems which have arisen from the implementation of Security Council resolutions in domestic law and the question of the compatibility of such resolutions with domestic and regional fundamental rights and freedoms, including surrender of individuals to UN related international tribunals, will be addressed, although the question of judicial review will only be briefly alluded to.

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