

Table of Contents

Abbreviations / Definitions	17
Introduction	19
A. Reason for investigation	19
B. Key objective	24
C. Method and structure	25
Part I: A violation of international law as a necessary element of a “threat to the peace”	28
A. Analysis of Chapter VII Resolutions	28
I. Definition of Chapter VII Resolutions	29
II. Determinations of Article 39 situations in the past	33
1. Preliminary remark	33
2. Breaches of the peace	36
3. Threats to the peace	36
a) Non-compliance with Chapter VI Resolution	37
b) Overthrow of a democratically elected government	38
c) Humanitarian crisis	39
d) Legislating resolutions	40
e) Proliferation of Weapons of Mass Destruction and rogue states	41
f) Other cases	43
III. Conclusion regarding the analysis of Chapter VII Resolutions	43
B. Interpretation of the alternative “threat to the peace”	45
I. Grammatical interpretation	45
1. Wording of Chapter VII	46
2. Comparison of the wording of Chapter VI and Chapter VII	50
a) Different wording	50
b) Different meaning	52

3. Conclusion regarding the grammatical interpretation	53
II. Systematic interpretation	54
1. Differences between the alternatives in Article 39	54
a) Act of aggression	54
b) Breach of the peace	55
c) Threat to the peace	56
d) Conclusion regarding differences between the alternatives in Article 39	58
2. Differences between Chapter VI and VII	59
a) Gradation of measures for conflict resolution	59
b) Chapter VI measures	60
aa) General obligations of states in cases of conflicts	61
bb) Article 33 (2) measures	62
cc) Article 34 measures	62
dd) Article 36 measures	64
ee) Article 37 (2) measures	64
ff) Article 38 measures	66
c) Conclusion regarding differences between Chapter VI and VII	66
3. Conclusion regarding the systematic interpretation	68
III. Teleological interpretation	69
1. The task of the Security Council – prevention or enforcement?	69
a) Articles 1 (1) and 2 (5)	69
b) Right to Chapter VII measures	70
c) Proportionality of preventive Chapter VII measures	72
d) Conclusion regarding the role of the Security Council	73
2. The character of Chapter VII measures – retorsions or countermeasures?	74
a) Article 42 measures	76
b) Article 41 measures	80
aa) Severance of diplomatic relations	81
bb) Economic sanctions	82
cc) Ad hoc tribunals	85
dd) Smart sanctions	89
ee) Administration of states	92

ff) Conclusion regarding the analysis of Article 41 measures	94
c) Recommendations under Article 39	94
d) Article 40 measures	95
e) Conclusion regarding the character of Chapter VII measures	97
3. Conclusion regarding the teleological interpretation	98
IV. Historical interpretation	98
V. Conclusion regarding the interpretation of the alternative “threat to the peace”	100
C. Requirements regarding the unlawful act	102
I. Causal link between unlawful act and peace threatening situation	103
1. Causal link in the field of state responsibility	103
2. Transferal of findings to threats to the peace	106
3. Conclusion regarding the analysis of a causal link between unlawful act and peace threatening situation	107
II. Subject matter of the breached norm	107
III. Necessary severity of the breach	109
IV. Fault	111
V. Burden of proof	112
VI. Conclusion regarding requirements regarding the unlawful act	113
D. Maximization of effectiveness	114
I. European Court of Justice and its extensive interpretation of own competences	116
II. Criteria for compliance with legal obligations	118
1. Theories regarding compliance with international legal obligations	118
a) Deterrence	118
b) Morality and legitimacy	119
2. Application of theories to Chapter VII context	120
a) Deterrence	121
b) Morality and legitimacy	122
aa) Morality	122
bb) Legitimacy	123
cc) Conclusion regarding morality and legitimacy	125

III. Conclusion regarding criteria for compliance with legal obligations	126
IV. Enhancing morality and legitimacy	126
1. General aspects of lawmaking in international law	127
2. Dimensions of legalization in international law	129
a) Characteristics of hard law	130
b) Characteristics of soft law	131
3. Classification of Chapter VII	132
4. Conclusion from enhancing morality and legitimacy	133
V. Conclusion regarding the maximization of effectiveness	136
E. Exceptions to the element of an unlawful conduct	137
I. Anticipatory self-defense and state of necessity	137
1. Anticipatory self-defense	137
a) Preventive actions	138
b) Preemptive actions	142
c) Conclusion regarding anticipatory self-defense	145
2. State of necessity	145
a) Necessity according to the ILC	147
aa) Essential interest	147
bb) Imminent peril	149
cc) Only possible means	150
dd) No exclusion of necessity in the UN Charter	150
ee) No peremptory norms	151
ff) Conclusion regarding necessity according to the ILC	154
b) State of necessity according to customary international law	154
3. Application of preemptive self-defense and necessity in the context of Security Council measures	156
4. Conclusion regarding anticipatory self-defense and state of necessity	157
II. Failed states	158
1. Failed states with high intensity civil war	160
2. Failed states with low intensity civil war or mere internal disturbances	162
a) International Covenant on Economic, Social and Cultural Rights	163

b)	International Covenant on Civil and Political Rights	164
c)	Attribution of conduct to a failed state	167
d)	Conclusion regarding failed states with low intensity civil war or mere internal disturbances	171
3.	Conclusion regarding failed states	172
III.	Weapons of Mass Destruction and withdrawal from arms control treaty	173
1.	Legality of possession of nuclear weapons under customary international law	173
2.	Threat or use of nuclear weapons	176
3.	Withdrawal from the Nuclear Non-Proliferation Treaty	178
4.	Conclusion regarding Weapons of Mass Destruction and withdrawal from arms control treaty	182
F.	The element of a violation of international law with respect to a potential lawmaking competence of the Security Council	185
I.	International organizations in the role of legislators	186
II.	Possibility of global governance by the Security Council	187
III.	Competence of the Security Council to adopt general and abstract resolutions	189
IV.	Element of an unlawful act for the determination of a general abstract situation as a threat to the peace	192
V.	Conclusion regarding the element of a violation of international law with respect to a potential lawmaking competence of the Security Council	195
G.	Summary and final remarks	196
Part II:	Deutsche Zusammenfassung	202
A.	Anlass der Untersuchung	202
B.	Analyse der unter Kapitel VII erlassenen Resolutionen	203
C.	Interpretation des Begriffs „Friedensbedrohung“	205
I.	Grammatikalische Interpretation	205
II.	Systematische Interpretation	206
III.	Teleologische Interpretation	207
IV.	Historische Interpretation	211
V.	Zwischenergebnis	211

Table of Contents

D.	Anforderungen an den Völkerrechtsbruch	212
E.	Maximierung der Effektivität	214
	I. Faktoren, die die Einhaltung rechtlicher Verpflichtungen beeinflussen	215
	II. Steigerung der Moral und Legitimität	217
F.	Ausnahmen vom Tatbestandsmerkmal des Völkerrechtsbruchs	218
	I. Antizipierte Notwehr und Notstand	219
	II. Failed states	221
	III. Kündigung von Rüstungskontrollverträgen und Verbreitung von Massenvernichtungswaffen	223
G.	Das Tatbestandsmerkmal einer Völkerrechtsverletzung im Hinblick auf eine mögliche Gesetzgebungskompetenz des Sicherheitsrats	224
H.	Schlussbemerkung	226
	Annex I: Backgrounds and analyses of Chapter VII Resolutions	227
A.	Conflict in Palestine (1948)	228
	I. Background	228
	II. Analysis	228
B.	Conflict between the Republic of Korea and North Korea (1950)	229
	I. Background	229
	II. Analysis	229
C.	Situation in the Republic of the Congo (Léopoldville) (today DR Congo) (1961)	230
	I. Background	230
	II. Analysis	231
D.	Situation in Southern Rhodesia (today Zimbabwe) (1966)	232
	I. Background	232
	II. Analysis	232
E.	Situation in South Africa (1977)	233
	I. Background	233
	II. Analysis	234

F.	Conflict concerning the Falkland Islands (Islas Malvinas) (1982)	235
	I. Background	235
	II. Analysis	236
G.	Conflict between the Islamic Republic of Iran and Iraq (1987)	236
	I. Background	236
	II. Analysis	237
H.	Conflict between Iraq and Kuwait (Gulf War) (1990)	237
	I. Background	237
	II. Analysis	240
I.	Conflict between the Federal Republic of Yugoslavia (Serbia and Montenegro) and Bosnia and Croatia (1991)	241
	I. Background	241
	II. Analysis	244
J.	Situation in Somalia (1992)	246
	I. Background	246
	II. Analysis	248
K.	Situation in Libyan Arab Jamahiriya (today Libya) (Lockerbie incident) (1992)	249
	I. Background	249
	II. Analysis	250
L.	Situation in Liberia (First Civil War) (1992)	251
	I. Background	251
	II. Analysis	252
M.	Situation in Haiti (overthrow of President Aristide's government) (1993)	253
	I. Background	253
	II. Analysis	254
N.	Situation in Angola (1993)	255
	I. Background	255
	II. Analysis	256
O.	Situation in Rwanda (1994)	257
	I. Background	257
	II. Analysis	258

Table of Contents

P.	Ad hoc tribunals for Yugoslavia (1993) and Rwanda (1994)	259
	I. Background	259
	II. Analysis	259
Q.	Situation in Sudan (failed attempt to assassinate President Mubarak) (1996)	260
	I. Background	260
	II. Analysis	260
R.	Situation in Zaire (today Democratic Republic of Congo) (1996)	261
	I. Background	261
	II. Analysis	262
S.	Situation in Albania (1997)	262
	I. Background	262
	II. Analysis	263
T.	Situation in the Central African Republic (1997)	263
	I. Background	263
	II. Analysis	264
U.	Situation in Sierra Leone (1997)	265
	I. Background	265
	II. Analysis	266
V.	Situation in Kosovo, Federal Republic of Yugoslavia (1998)	267
	I. Background	267
	II. Analysis	268
W.	Situation in Democratic Republic of Congo (1999)	269
	I. Background	269
	II. Analysis	270
X.	Situation in East Timor (today Democratic Republic of Timor-Leste) (1999)	271
	I. Background	271
	II. Analysis	272
Y.	Situation in Afghanistan and Al-Qaida (1999)	273
	I. Background	273
	II. Analysis	274
Z.	Conflict between Ethiopia and Eritrea (1999)	275
	I. Background	275

II. Analysis	276
AA. Situation in Liberia (Second Civil War) (2001)	277
I. Background	277
II. Analysis	278
BB. International Terrorism (2001)	280
I. Background	280
II. Analysis	280
CC. International Criminal Court (2002)	281
I. Background	281
II. Analysis	281
DD. Situation in Côte d'Ivoire (2003)	282
I. Background	282
II. Analysis	283
EE. Situation in Haiti (civil war) (2004)	284
I. Background	284
II. Analysis	285
FF. Non-proliferation of Weapons of Mass Destruction (2004)	286
I. Background	286
II. Analysis	286
GG. Situation in Burundi (2004)	288
I. Background	288
II. Analysis	288
HH. Situation in Sudan (civil wars) (2004)	289
I. Background	289
II. Analysis	291
II. Situation in Lebanon (assassination of Prime Minister Hariri) (2005)	292
I. Background	292
II. Analysis	293
JJ. Situation in Islamic Republic of Iran (2006)	293
I. Background	293
II. Analysis	294
KK. Conflict between Israel and Hezbollah (2006)	295
I. Background	295

Table of Contents

II. Analysis	295
LL. Situation in the Democratic People's Republic Korea (2006)	296
I. Background	296
II. Analysis	296
MM. Situation in Chad and the Central African Republic (2007)	297
I. Background	297
II. Analysis	298
NN. Conflict between Eritrea and Djibouti (2009)	298
I. Background	298
II. Analysis	299
OO. Situation in Libyan Arab Jamahiriya (today Libya) (Arab Spring) (2011)	300
I. Background	300
II. Analysis	301
Annex II: Chronological list of Chapter VII Resolutions	302
Bibliography	307