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International Law and the Securitisation of Peacemaking: On Chapter VII, the Security Council and the Mediation Mandate in Yemen

Catherine Turner*

Abstract

Peace mediation as a form of peaceful settlement of disputes has evolved significantly in the past 20 years, moving away from an informal process between parties towards a more structured undertaking rooted in norms and values of international law. Sitting between Chapter VI and Chapter VII of the UN Charter, mediation is an underexplored aspect of the collective security regime in international law. Surprisingly little attention has been paid to the role of the UN Security Council (UNSC) and the exercise of legal authority under Chapter VII in shaping mediation mandates. This article addresses this gap by developing a theoretical framework for understanding the role of UNSC in the construction of security in the context of peacemaking. Using the mandate of the Office of the Special Envoy for Yemen as a case study, the article traces the progression of the mediation mandate a set out in the UNSC resolutions, interrogating the shift in discourse from UN support for an inclusive political transition into a narrower focus on hard security and the international response to the threat of terrorism. Through this analysis the article demonstrates how the place of UNSC within the Charter system allows for a gradual securitisation of the peace mediation process at the expense of inclusive approaches. At a time when consensus on collective security appears to be weakening the role of the UNSC in constructing and responding to global threats is of significant interest to the future of Charter-based international peace and security.

1. Introduction

Mediation is a form of dispute resolution. It is defined by the United Nations (UN) as 'a process whereby a third party assists two or more parties, with their consent,

* Durham Law School, Durham University, Palatine Centre, Durham DH1 3LE, UK. E-mail: Catherine.turner@durham.ac.uk. Research for this article was enabled by the award of a Christopherson Knott Fellowship from the Institute of Advanced Studies at Durham University in 2019. Sincere thanks are due to Dr May Darwich and Dr Sarah Clowry for their expert input into the themes of the paper. Thanks also to Prof Aoife O'Donoghue and to members of the Conflict+ research cluster at Durham Global Security Institute for their comments on an earlier draft.

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to prevent, manage or resolve conflict by helping them to develop mutually acceptable agreements'.[1] It is one of the forms of peaceful settlement of disputes included in the scope of Chapter VI of the UN Charter and as such is an integral part of the collective security architecture of the international legal order.[2] For the first nearly 50 years of the UN's existence mediation existed as an informal process whereby a third party would facilitate dialogue between parties to a conflict. Any international legal obligation that existed in respect of mediation was an obligation of means rather than ends.[3] Where parties were in dispute they were expected to use mediation to settle that dispute, but there was little guidance on how that should be structured, or indeed what the outcome would be.

Following the UN's landmark *Agenda for Peace* report in 1992,[4] UN peacemaking became infused with a more substantive role in the pursuit of global goals of justice and human rights. This led to substantial interest in the ways in which mediation could be used to embed liberal ideals of the rule of law, as well as how international law could be used to inform and constrain the power politics of conflict resolution.[5] There is by now a significant and established body of literature examining the relationship between international law and peacemaking. [6]

Over time—mirroring the changing nature of conflict from primarily inter-state to primarily intra-state mediation moved away from being a process between state parties towards a much more structured and professionalised undertaking which incorporates a range of different international legal priorities.[7] This can be seen in the detailed mandates provided to UN mediators in some of the world's most complex conflicts. In particular there has been a drive towards embedding the principles of international law. This shift towards norms and values in peace mediation is reflected in the UN's 2012 Guidance on Effective Mediation, which explicitly names the importance of international law and normative frameworks in a way which was absent from earlier definitions of mediation.[8] Mediation has more recently been embedded into UN

[1] United Nations, Guidance on Effective Mediation (2012) 4 (hereinafter UN Guidance).

[2] United Nations, Handbook on Peaceful Settlement of Disputes, UN Doc OLA/COD/2934 (1992).

[3] See eg J Merrills and E de Brabandere, *International Dispute Settlement* (7th edn, CUP 2022).

[4] United Nations, 'An Agenda for Peace, Preventive Diplomacy, Peace-Keeping and Peace-Making: Report of the Secretary General Pursuant to the Statement Adopted at the Summit Meeting of the Security Council on 31 January 1992'. UN Doc A/47/277-S/24111 17 June 1992.

[5] See eg C. Bell, *On the Law of Peace: Peace Agreements and the Lex Pacificatoria* (CUP 2008); C Stahn, JS Easterday and J Iverson (eds), *Jus Post Bellum: Mapping the Normative Foundations* (OUP 2014).

[6] P Kastner, *Legal Normativity in the Resolution of Armed Conflict* (CUP 2015).

[7] O Richmond, 'A Genealogy of Mediation in International Relations: From Analogue to Digital forms of 'Global Justice' or 'Managed War' (2018) 53 *Co-operation and Conflict* 301; See also C Turner and M Wählisch (eds), *Rethinking Peace Mediation: Challenges of Contemporary Peacemaking Practice* (Bristol University Press 2021).

[8] United Nations (n 2).

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policy through its inclusion in the Sustaining Peace Agenda,[9] and a series of resolutions and commitments from the Secretary General as part of his surge in diplomacy for peace.[10] Taken together, this normative turn in peace mediation has oriented international efforts away from elite bargaining and towards the much broader concept of 'inclusive' security underpinned by compliance with international law.

However, during this time another shift in the UN's approach to peace mediation has gone underexplored by international lawyers. Since 2011 the United Nations Security Council (UNSC) has operated increasingly within the framework of counter-terrorism. This has had an impact on peace mediation and the way in which it is authorised and conducted under the auspices of the UN. In particular, sanctions are a powerful new legal tool in the UNSC toolbox, and ones which are re-shaping mediation practice.[11] This move towards a counter-terrorism paradigm has created a tension in UN peacemaking between the normative goal of inclusive peace which underpins the Sustaining Peace Agenda, on one hand, and the security goals of the counter-terrorism regime on the other. While the legal literature has for the most part focused on the application of legal regimes to the practice and outcomes of peacemaking, very little attention has been paid to the broader ways in which international law can shape the narrative of peacemaking earlier in the process. In particular, less has been done to understand the role of the UNSC and the exercise of Chapter VII powers in the context of peace processes. As White suggests, the *concept* of peacemaking has not been developed significantly within the broader parameters of the Charter and collective security.[12]

This article addresses this gap by developing a theoretical framework for understanding the role of the UNSC in the construction of (collective) security in the context of peacemaking. It does this by demonstrating through empirical analysis of UNSC resolutions how the exercise of Chapter VII powers comes to privilege 'hard' security over the competing approach of 'inclusive' security in the context of a UN-backed peace process. Using the mandate of the Office of the Special Envoy of the Secretary General for Yemen (OSESGY) as a case study, the article traces the progression of the mediation mandate a set out in

[9] General Assembly, Review of the United Nations Peacebuilding Architecture UN Doc A/RES/70/262 (27 April 2016); United Nations Security Council Resolution 2282 UN Doc S/RES/2282 (27 April 2016); United Nations Secretary General, 'Report on Peacebuilding and Sustaining Peace' A/72/707-S/2018/43 (18 January 2018).

[10] M Wählisch, 'Sustainable Peace: UN Frameworks and Practice' in C Stahn and J Iverson (eds), *Just Peace After Conflict: Jus Post Bellum and the Justice of Peace* (OUP 2020) 65.

[11] S Haspeslagh, *Proscribing Peace: How Listing Armed Groups As Terrorists Hurts Negotiations* (Manchester University Press 2021); TJ Biersteker, R Brubaker and D Lanz, 'Exploring the Relationship Between UN Sanctions and Mediation' (2022) 28 *Global Governance* 180.

[12] ND White, 'The Security Council, Peace-Making and Peace Settlement: Between Executive and Pragmatic' in M Weller and others (eds), *International law and Peace Settlements* (CUP 2021) 237, 243.

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the UNSC resolutions, interrogating the shift in discourse from UN support for an inclusive political transition in the context of the 2011 revolution/s, into a gradually narrower focus on hard security and the international response to the threat of terrorism. This empirical analysis is strengthened by the development of an interdisciplinary theoretical framework for reading the resolutions which brings the international law of peace and security into dialogue with the international relations (IRs) theory of securitisation. Through this analysis the article demonstrates how the place of UNSC within the Charter system allows for a gradual securitisation of the peace mediation process, arguing that UNSC resolutions do not simply reflect shifting understandings of international peace and security, they also help to construct them in line with the political priorities of UNSC Member States. As such the analysis and theoretical framework can be applied not only to the case of Yemen but also to understanding the tensions inherent in UN-backed peace mediation.

The article is structured in four parts. Section 1 examines the place of peacemaking within the UN Charter system, highlighting the inter-relationship between international law and peace mediation. The Section 2 introduces the role of international law in setting the mediation mandate. It demonstrates the ways in peace mediation activities move between being categorised as a Chapter VI form of 'peaceful settlement of dispute' on one hand and authorised as a more robust use by the UNSC of its Chapter VII peace enforcement powers on the other. Section 3 sets out the framework of securitisation, which is then applied to the UNSC resolutions that form the mandate for the Special Envoy, demonstrating the ways in which the 'frame' of the intervention shifts from that of support for political transition into counter-terrorism and ceasefire negotiations, demonstrating the impact this change in mandate has on the progress of talks. Finally, Section 4 analyses the significance of the use by UNSC of its Chapter VII powers in this context. It suggests that by mandating peace mediation under Chapter VII international law provides a cloak of legal authority for the securitisation of the process, prioritising one form of security over others, shifting the emphasis away from broader social transformation and towards the narrowly defined parameters of hard security.

2. International law and peace mediation: locating peacemaking in the UN Charter

Until relatively recently within the UN's history, mediation was regarded as an informal and political process.[13] It is intended to be consent based and non-coercive, distinct from judicial forms of dispute resolution.[14] Under Chapter VI,

[13] United Nations (n 2).

[14] J Bercovitch and others, 'Some Conceptual Issues and Empirical Trends in the Study of Successful Mediation in International Relations' (1991) 28 *Journal of Peace Research* 7, 8.

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the responsibility for settling disputes peacefully rests with states who are parties to the dispute in the first instance. Yet, peace mediation has an innate relationship to international law because of its role in the maintenance of the multilateral order established by the UN Charter.

The influence of law is seen on three levels. The first is the overall commitment to work within the mechanisms of the Charter to resolve disputes. According to the UN Secretary General, UN mediators work within the framework of the Charter of the UN, relevant Security Council and General Assembly Resolutions and the Organisations rules and regulations.[15] This is the macro-level commitment to the organisation of the UN and the values of multilateralism. International law in this sense is reflected in a commitment to the institution, to the values of the Charter as a treaty-based system of obligation, and to the provisions of Chapter VI as the foundation of the international legal order.

Within this framework peace mediation is a form of peaceful settlement of dispute. It has its legal basis in Article 33 which provides that

> The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

Obligations at this level are procedural rather than substantive—that mediation should be used, rather than how it should be designed.

In more recent years Chapter VI of the Charter has been the site of the normative development of mediation.[16] The UN's 2012 Guidance on Effective mediation situated mediation alongside good offices and dialogue as a form of dispute resolution. The expansion of the professional field of mediation support and the incorporation of tools such as dialogue into the UN's Sustaining Peace Agenda has been promoted through the General Assembly and the Office of the Secretary General.[17]

The second is at the level of legal principle. The framing of a mandate for mediation under Chapter VI is often done with reference to underlying broad principles of international law and the need to uphold them.[18] At this level, the values of the system are supplemented with reference to more specific, but

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[15] United Nations Secretary General, 'Strengthening the Role of Mediation in the Peaceful Settlement of Disputes, Conflict Prevention and Resolution' UN Doc A/66/811 (June 2012) para 29 (hereinafter UNSG 2012).

[16] White (n 12) 244.

[17] UN General Assembly A/RES/72/276 (30 April 2018) (Sustaining Peace); United Nations, 'Report of the Secretary General: United Nations Activities in Support of Mediation' A/72/115 (27 June 2017).

[18] UNSG (n 15), stating that 'Mediators conduct their work within the framework constituted by the rules of international law that govern the situation' para 40.

commonly accepted, regimes of international law relating to the management of conflict. The re-affirmation of the need to uphold the principles of international law in this context underlines the desirability of maintaining support for law *per se*. UN mediators are constrained by the 'framework constitute by the rules of international law', which include international humanitarian law, international human rights law, international criminal law and international refugee law. It is by now largely accepted that UN-led mediation processes cannot be designed without reference to both international law and broader normative frameworks.[19] This requirement is included in the UN's own Guidance on Effective Mediation, and derives from the influence of peremptory norms in shaping the parameters of a mediator's discretion when dealing with conflict parties.[20] For example, UN mediators cannot endorse outcome agreements that provide amnesties for, for example, genocide, crimes against humanity or gender-based violence.[21]

In addition to the explicitly legal frameworks, increasing emphasis is placed on the so-called 'normative expectations' related to, for example, the inclusion of women and civil society more broadly in the process, and the need to include provisions for justice and reconciliation.[22] While these expectations are less clearly defined and do not carry the same binding legal authority they are nevertheless persuasive in terms of shaping the relationship between norms and politics when it comes to peace processes.[23] This is a theme that has been developed in significant depth in the IR literature, but perhaps owing to lack of clear binding legal obligations has been less studied by international lawyers.[24]

The third level is the more granular legal normativity, where mediation starts to be connected to a more directive form of law which regulates not only the process but the substance of the mediation. At this level, it is considered that consistency with international law and norms contributes to reinforcing the legitimacy of a process and the durability of a peace agreement.[25] While process-oriented obligations have gained traction in IR and in policy facing research, legal scholarship has emphasised the importance of the outcomes of peace mediation. This scholarship analyses two distinct aspects of the agreements that result from peace mediation.[26] The first assesses the legal status of

[19] UN Guidance (n 1); 'Guidelines for UN Representatives on Certain Aspects of Negotiations for Conflict Resolution' UN Department of Political Affairs, 1999 (updated 2006).
[20] See S Helmüller, JP Federer and M Zeller, *The Role of Norms in International Peace Mediation* (Swisspeace 2015).
[21] UN Guidance (n 1) 17.
[22] Kastner (n 6).
[23] S Helmüller, J Pring and O Richmond, 'How Norms Matter in Mediation: An Introduction' (2020) 26 *Swiss Political Science Review* 345; Kastner (n 6).
[24] See eg C Chinkin, *Women Peace and Security and International Law* (CUP 2022).
[25] UNSG (n 15) para 41.
[26] M Retter, A Varga and M Weller, 'Framing the Relationship between International Law and Peace Settlements' in M Weller (ed), *International Law and Peace Settlements* (CUP 2021).

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peace agreements, focusing on the questions of the extent to which such agreements can be said to produce documents with international legal effect from a mediation process.[27] This includes assessing the relative status of the different types of agreements that are reached at different stages of a peace process, the difficulties inherent in classifying negotiated settlement agreements themselves as international legal documents, and the challenges of holding parties to account for the implementation of obligations arising from a negotiated peace agreement.[28] This body of literature intersects with the question of the legal status of parties to a conflict and their capacity to participate in negotiations to end the conflict,[29] as well as broader questions of international legal personality of minority groups to participate as signatories to a settlement agreement.[30]

The second strand considers the incorporation of international law into the terms of the peace settlement more broadly defined—the 'Legal Tools for Peacemaking'.[31] In this literature, international lawyers analyse the extent to which peace settlements reflect the current state of international law on a range of thematic areas, mostly deriving from international human rights law frameworks.[32] Peace settlements are now routinely assumed to include factors such as constitutional reform, human rights and rule of law reforms, as well as some form of transitional justice or reconciliation policy.[33] In a similar vein, scholars of both international law and of mediation have considered the legal relationship between a peace agreement and a post-conflict constitution, usually either drafted or mandated as part of the peace negotiation process.[34] This literature looks beyond the agreement itself as having constitutional status to consider the inherent connections between a negotiated peace settlement and the process of renegotiating constitutional order as a means of embedding peace in the aftermath of

27 C Bell, 'Peace Agreements: Their Nature and Legal Status' (2006) 100 *American Journal of International Law* 373.
28 LB Restrepo, 'The Legal Status of the Colombian Peace Agreement' (2016) 110 *AJIL Unbound* 188; J Sapiano, 'Courting Peace: Judicial Review and Peace Jurisprudence' (2017) 6 *Global Constitutionalism* 131.
29 A Ozcelik, 'Entrenching Peace in Law: Do Peace Agreements Posses International Legal Status?' (2020) 21 *Melbourne Journal of International Law* 190.
30 Bell (n 27).
31 Retter, Varga and Weller (n 26).
32 P Hayner, *The Peacemakers Paradox* (Routledge, 2018); C Bell, *Peace Agreements and Human Rights* (OUP 2000); Kastner (n 6); M Weller (ed), *International Law and Peace Settlements* (CUP 2021).
33 See generally R MacGinty and A Wanis-St. John (eds), *Contemporary Peacemaking: Peace Processes, Peacebuilding and Conflict* (3rd edn, Palgrave Macmillan, 2022).
34 L Nathan, 'The Real Deal? The Post Conflict Constitution as Peace Agreement' (2020) 41 *Third World Quarterly* 1556; M Mubashir, J Klauke and L Vimalarajah, 'The Nexus of Peace Mediation and Constitution Making: The Case for Stronger Interaction and Collaboration' in C Turner and M Wählisch (eds), *Rethinking Peace Mediation: Challenges of Contemporary Peacemaking Practice* (Bristol University Press 2021) 333; C Turner and R Houghton, 'Constitution Making and Post Conflict Reconstruction' in M Saul and J Sweeney (eds), *International Law and Post Conflict Reconstruction Policy* (Routledge 2015) 119–40.

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armed conflict. This particular aspect of the relationship between international law and peacemaking is closely connected to the dominance of liberal international theory and the practice of state reconstruction through democratic reform.[35] When seen through this lens international law provides a counterweight to security focused approaches to mediation that analyse the possibilities of negotiated settlements through a rationalist lens.[36] However, while the place of law has undoubtedly grown in recent years, questions remain about the influence that international law actually exerts on politics and security, and how shifts in global power relations might alter the normative weight of law.[37]

While the peaceful settlement of disputes is ideal of the international system, at times, conflicts may escalate to a point where peaceful settlement seems out of reach without outside intervention. Acknowledging this possibility, Article 34 of the Charter explicitly provides that a dispute may rise to the level where it is of sufficient for the UNSC to investigate the situation to decide if it is likely to endanger international peace and security. It is here that the intersection between Chapter VI and the more robust Chapter VII powers of UNSC begins to become visible. Under Chapter VII of the UN Charter, UNSC is charged, on behalf of all Member States, with the maintenance of international peace and security. Under Article 25 of the Charter, UNSC enjoys binding legal authority to discharge this function, allowing it to project executive power in the realm of security. International law scholarship has tended to focus on specific aspects of this power, notably the rules on the use of force under the Charter, and more recently in the authorisation of peacekeeping mandates. Less attention has been paid to the exercise of legal authority by UNSC under the auspices of Chapter VII in situations falling short of military intervention or sanctions. Yet as White notes, peacemaking 'operates in the shadow of the Security Council's enforcement powers under Chapter VII'.[38]

As a conflict escalates it may evolve from being 'likely to endanger' international peace and security in a way that would trigger recommendations from UNSC, towards being classified explicitly as a 'threat to international peace and security' which triggers UNSC authority to take binding legal action. As the case study of the OSESGY presented below demonstrates, UNSC can work between Chapters VI and VII to respond to conflict developments and strategic negotiating positions as a mediation process develops. As such, the choice of basis from which UNSC takes action determines the extent to which international law, in the form of the authority granted to UNSC under Chapter VII, is engaged in setting the normative direction of peacemaking. This is an area of collective security that has been largely overlooked in the international legal scholarship but is one which

[35] Richmond (n 7)

[36] See L Nathan, 'The Peacemaking Dilemma: Ousting or Including the Villains?' (2020) 26 *Swiss Political Science Review* 468 on the incompatibility of the norms of international peace and security with those of promoting justice.

[37] White (n 12); M Koskenniemi, 'The Place of Law in Collective Security' (1996) 17 *Michigan Journal of International Law* 455.

[38] White (n 12) 237.

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can help us to understand the place of law in constructing international peace and security more broadly. Examining the decision making in relation to UNSC engagement with the conflict in Yemen specifically through the OSESGY reveals the symbiotic relationship between law and security.

3. Mediation mandates: constructing legal authority

A. The mediation mandate

To consider the role of international law in peace mediation, it is necessary to start with the mandate that is given by the UN (or other authorising body) to the mediator. The mandate is an important, yet relatively under-researched,[39] aspect of peace mediation process design. Its significance arises from the fact that the mandate will shape the priorities of the process. The mandate not only shapes the 'goals strategies and processes of mediation',[40] but by doing so it both empowers and constrains mediators, as well as either facilitating or impeding the progress of the peace mediation process.[41] Absent a mandate, either from the sending organisation or from the parties to the conflict, the mediator has no authority to become involved as a third-party intermediary in a conflict.[42] In the context of UN-backed peace mediation the mandate plays a particular role. In his typology of mediation mandates, Nathan outlines the effect of the 'constitutive mandate' which he defines as providing a 'general authorisation for mediation to be undertaken by an international organisation, one of its decision-making bodies and/or one of its officials'.[43]

In addition to providing the authority for a mediator to intervene as a third party in a conflict, the mandate will also set the terms on which the mediator can engage.[44] As noted above, there is by now an established body of normative guidance that shapes UN-mandated mediation. These rules constrain the power of the mediator to engage with the parties and limit the issues that can be negotiated. The mandate 'synthesizes the normative considerations and practical requirements of the mediating organisation',[45] meaning that the mediator is constrained by the specific functions authorised in the mandate, as well as the

39 L Nathan, 'The Mandate Effect: A Typology and Conceptualisation of Mediation Mandates' (2018) 43 *Peace and Change* 318.

40 ibid 319.

41 ibid.

42 Mandates can take a number of different forms. These include mandates from donors, from conflict parties or from affected constituencies. These mandates will apply most often to specific conflicts or priorities. See Nathan (n 39) 322.

43 Nathan (n 39) 323.

44 This is classified by Nathan as the 'normative mandate'. ibid 325.

45 J Pring, 'Including or Excluding Civil Society? The Role of the Mediation Mandate for South Sudan (2013-2015) and Zimbabwe (2008-2009)' (2017) 10 *African Security* 223, 223.

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general values of the organisation which he or she represents. In the case of UN mediation, the mandate comes directly from UNSC. Therefore, while the mandate is often considered to be a form of political authority,[46] when authorisation comes from the UNSC acting under its Chapter VII powers, it also becomes a source of legal authority. In short, the mandate forms the *legal basis* for an intervention by a mediator on behalf of an international organisation. It is another form of peace enforcement being exercised by the UNSC pursuant to its responsibility for collective security. From an international law perspective the exercise of Chapter VII powers to mandate peacemaking is interesting. It raises the question of the relationship between international law and security in the negotiation and adoption of the resolutions at UNSC. It also refocuses the gaze of international legal inquiry away from the role of international law in shaping the outcome of peacemaking, towards considering the ways in which law is complicit in constructing security threats from the outset and shaping the response accordingly. It is therefore necessary to consider the way in which UNSC, through its resolutions, frames the nature of the conflict. This can be done by drawing on the concept of 'framing'.[47]

Framing relates to the way in which information is presented. To 'frame' information is to emphasise certain aspects of a situation at the expense of others. For example, a government responding to armed uprising will usually 'frame' events as illegal violence. This framing places an emphasis on the (illegitimate) use of violence while minimising or excluding information on the reasons for it. The way in which the situation is described reflects the interpretation of the person 'framing' the facts. This in turn will alter how those hearing the information respond to it. Frames function as the 'lens' through which people make sense of the situation they are faced with. The frame influences what choices people believe are open to them, and as discussed in the following section, these choices determine the perceived range of acceptable response to events. Frames can therefore be understood as 'conceptual structures or sets of beliefs that organise political thought, policies and discourse'.[48] Framing theory deals with the questions of how collective meaning is created through discursive interaction and how frames are generated to achieve a specific strategic purpose.[49] Thus, it is a particularly useful way of understanding the way in which UNSC resolutions shape the meaning of security when it comes to armed conflict.

46 L Nathan, 'Marching Orders: Exploring the Mediation Mandate' (2017) 10 *African Security* 155; Pring (n 45).

47 While 'framing' is a broad linguistic construct, in this article it is explored through the more limited literature of international relations.

48 T Van Dijk, 'Critical Discourse Analysis' in Deborah Schiffrin, Deborah Tannen and Heidi Hamilton (eds), *The Handbook of Discourse Analysis* (Blackwell 2001) 352, 360.

49 D Rychnovská, 'Securitization and the Power of Threat Framing' (2014) 22 *Perspectives* 9, 15.

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B. Threat framing in the Security Council

The theory of 'securitisation' was developed in IR to explain the way in which some issues are treated as security threats and some are not. As issue is 'securitised' where it is successfully articulated or designated as a security threat, and as a result moved into a different domain of action. Fundamentally, securitisation rests on the ability of particular messages to be projected, and received by the necessary audiences.[50] For McDonald, securitisation can be defined as 'the positioning through speech acts ... of a particular issues as a threat to survival, which in turn (with the consent of the relevant constituency) enables emergency measures and the suspension of "normal politics" in dealing with that issue'.[51] In the context of collective security this occurs through the determination that a particular situation is either 'likely to endanger' international peace and security under Chapter VI of the Charter, or where the UNSC determines that a threat to international peace already exists.[52] This determination in turn brings the situation within the remit of UNSC, triggering Chapter VII powers under the provisions of the Charter.

While the Copenhagen School, from which securitisation theory originates, focused specifically on a performative act whereby a threat was designated as a security issue (a resolution in the case of UNSC), more recent scholarship has sought to broaden understanding of the way in which securitisation operates. The construction of threat, it is argued, is a discursive practice. To properly understand how some situations become securitised it is necessary to look beyond what is said and towards the broader context in which it is said. Factors such as the role of the audience in consenting to or acquiescing in the designation of threat,[53] as well as the social, political or social context within which it is made, have all been highlighted as central to understanding how the articulation of threat becomes possible.[54]

What emerges is a three-step process. First is the articulation or designation of the perceived threat. This is the 'exceptional' event to which the organisation must respond. Secondly, is the willingness of the audience to whom this message is addressed to acquiesce in the threat designation. If the speaker lacks authority or credibility when it comes to threat designation, or the nature of the threat is contested, then the audience is less likely to acquiesce, and the threat is less likely to be securitised. Thirdly, the willingness of the audience to acquiesce in the designation of the threat depends on the context in which it is made. It does

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[50] B Buzan, J de Wilde and O Waever, *Security: A New Framework for Analysis* (Lynne Reiner 1998); The theory is credited with seeking to understand the conditions that might enable securitisation of a political issue through 'speech acts' of powerful actors. See M McDonald, 'Securitization and the Construction of Security' (2008) 14 *European Journal of International Relations* 563, 567.

[51] McDonald (n 50) 567.

[52] UN Charter, art 39.

[53] T Balzacq, 'The Three Faces of Securitization: Political Agency, Audience and Context' (2005) 11 *European Journal of International Relations* 171.

[54] McDonald (n 50) 573.

not arise in abstract terms but will be shaped by other factors such as, for example, the nature and extent of violence that makes the threat more apparent. Securitisation therefore shapes both the perception of the threat and the proposed response to it. If the 'security' measures respond to the perceived threat, then it follows that the articulation of the threat, coupled with the acquiescence of the audience in accepting that designation arising from the context in which it is made, leads to a process through which the meaning of security itself is constructed.[55] In the context of international law, the UN Charter provides authority for the UNSC to project such messages on security to a global audience that is generally predisposed to accept them because of a shared adherence to the values of collective security enshrined in the Charter. The 'threat to international peace and security' becomes the 'frame' through which situations are understood and responded to.

More recently, international legal scholarship has started to examine the 'invisible frames' that structure knowledge production in international law.[56] As van Aaken and Elm note, international legal scholars are 'bound to benefit from studying framing effects as it refines our understanding of the mechanics underlying much of public international law'.[57] In particular, framing can help to understand how the perceived solutions to problems are shaped. Filtering information by framing can make some aspects of a problem seem more salient than others, changing the nature of deliberation on how to respond.[58] This is a core aspect of the discourse of international law. Discourse elaborated by key actors and grounded in global power structures shape what we mean by international law and what types of arguments can be made.[59] When a global deliberative body such as the UNSC issues resolutions it effectively produces knowledge that frames the issues at hand in a decisive way that will shape subsequent decisions and practice,[60] not just in the UNSC but beyond. Applying the concept of 'framing' to securitisation theory in the context of UNSC can help to understand how security is constructed discursively and as a result, how situations become 'securitized'.[61] Benford and Snow identify three distinct types of frame—*diagnostic*, *prognostic* and *motivational*.[62] Put simply,

[55] ibid 569.
[56] A Bianchi and M Hirsch (eds) *International Law's Invisible Frames* (OUP 2021).
[57] A van Aaken and J-P Elm, 'Framing in and through Public International Law' in A Bianchi and M Hirsch (eds) *International Law's Invisible Frames* (OUP 2021) 35.
[58] ibid 39.
[59] A Bianchi, 'Knowledge Production and International Law: Processes and Forces' in A Bianchi and M Hirsch (eds) *International Law's Invisible Frames* (OUP 2021) 155:158.
[60] Van Aaken and Elm (n 57) 54.
[61] In bringing these two approaches together Rychnovská seeks to demonstrate how securitisation theory, most often applied in the context of the domestic state, can be applied to discursive politics in the Security Council, thus overcoming one of the limitations of securitisation theory for understanding global politics.
[62] R Benford and D Snow, 'Framing Processes and Social Movements: An Overview and Assessment' (2000) 26 *Annual Review of Sociology* 611.

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this is the struggle over the interpretation of what constitutes the threat, who is responsible for it, and what should be done to counter it.[63] In this context, the concept of securitisation helps to 'explain why some frames are more effective than others by looking at how a frame appeals to the existing beliefs and values of the audience'.[64]

Central to this analysis is the place of the Security Council as global deliberative body.[65] While securitisation theory has traditionally focused on the nation state, the privileged place of the Security Council within the Charter system enables it to 'speak' with authority to states and other regional and international organisations on specific issues within its mandate.[66] While UNSC is not considered in international law to be a 'legislative' actor,[67] it does nevertheless have the power to shape the interpretation of threats in a way that defines global discourse and policy. The text of UNSC resolutions are the outcome of a process of contestation and negotiation between the relevant actors. This, by definition, makes the UNSC a securitising actor. The way in which situations are defined as a threat to bring them within the scope of the powers of the UNSC potentially shapes broader understanding of these issues. For example scholars have demonstrated how UNSC, through its resolutions, has already securitised other areas of global policy, including terrorism,[68] and women's rights.[69] White similarly notes the effect of this requirement on deliberation and decision making at the UNSC, suggesting that 'the idea that the Security Council, as a body, had to classify a situation as [a threat to international peace and security] ... before resolutions could be adopted, meant that debates focused on these triggers, rather than on the needs of peace and security themselves.'[70] This is the process by which the UNSC 'negotiate[s] the understanding of the threat with the audience'.[71]

[63] Rychnovská (n 49) 16.

[64] ibid; See also S Nouwen, 'The Importance of Frames: The Diverging Conflict Analyses of the United Nations and the African Union' (2013) *ASIL Proceedings* 330; Koskenniemi (n 37) 468 describes this phenomenon as a 'shared normative code of meaning' which makes both description and action possible.

[65] 'Deliberative' in this sense refers to the process by which the text of resolutions is agreed, and does not suggest a democratic function. See eg LJ Shepherd, 'Power and Authority in the Production of United Nations Security Council Resolution 1325' (2008) 52 *International Studies Quarterly* 383.

[66] M Wood, 'The Interpretation of Security Council Resolutions' (1998) 2 *Max Planck Yearbook of United Nations Law* 73.

[67] The Chapter VII powers of the Security Council operate on a case-by-case basis and are not considered to create rules of general application beyond the situation with which the Council is seized. See S Talmon, 'The Security Council as World Legislature' (2005) 99 *American Journal of International Law* 175; Wood (n 66).

[68] Rychnovská (n 49); See also F de Londras, *The Practice and Problems of Transnational Counter Terrorism* (CUP 2022); G Sullivan, *The Law of the List: Couterterrorism Sanctions and the Politics of Global Security Law* (CUP 2020).

[69] N Hudson, 'Securitizing Women's Rights and Gender Equality' (2009) 8 *Journal of Human Rights* 53.

[70] White (n 12) 242.

[71] Rychnovská (n 49) 13.

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This negotiation will be most successful where the resolution can be embedded in a prior discourse that makes it recognisable to its audience.[72] This prior discourse can take one, or both, of two forms. First, it can be a 'master frame',[73] such as the concept of 'international peace and security' that underpins peace enforcement and collective security within the Charter system. Such a master frame, in the case of the UNSC, would span resolutions under both Chapters VI and VII. The second form is the frame of a 'prior threat image'.[74] In this case resolutions would refer to threats to international peace and security that had already been securitised, such as, for example, terrorism. This type of framing commonly supplements reference to the master frame in Chapter VII resolutions. The designation of a situation as a threat to international peace and security is perlocutionary. It enables certain action to be taken. The determination that the threshold of Article 39 has been reached triggers legal effects that both create powers and enable particular substantive actions to be taken.[75] As Nouwen notes, 'frames are not merely analytical tools. They are constitutive: they create reality in accordance with which some conflicts are resolved and others are continued, intensified, or even ignited.'[76] This dynamic is reflected in the way in which UNSC deliberates,[77] and the securitising effect it has on mediation initiatives. Understanding this process of framing also reveals 'how underlying power relations play out in the process of negotiating the meaning of frames.'[78]

C. The situation in Yemen: from good offices to special envoy

The OSESGY provides a good example of the ways in which UNSC uses its powers under both Chapters VI and VII to construct the threat and thereby frame the peacemaking intervention. It also demonstrates the shifting form of the mandate and the way in which it simultaneously constructs and responds to changing interpretations of violence. Tracking the 'mandate' for the UN Special Envoy through UNSC resolutions reveals the shifting focus of UNSC and the ways in which legal authority shapes the priorities of the mediation process.

The UN presence in Yemen its current phase began in 2011. Initially, the presence was limited to a special representative of the Secretary General

72 For discussion of the meaning of discourse in the context of public international law see Bianchi (n 59).
73 Rychnovská (n 49) 17.
74 ibid.
75 MD Öberg, 'The Legal Effects of Resolutions of the UN Security Council and General Assembly in the Jurisprudence of the ICJ' (2006) 16 *European Journal of International Law* 879, 881; Koskenniemi (n 37) 467.
76 Nouwen (n 64) 331.
77 See Koskenniemi (n 37).
78 Rychnovská (n 49) 16; See also Bianchi (n 59).

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offering 'good offices' in support of a political transition in Yemen.[79] Good offices are a form of delegated authority that comes directly from the UN Secretary General.[80] In recent years, recognising their place in peace diplomacy, good offices have been placed at the centre of the UN Secretary General's mediation strategy.[81] They are not included in Chapter VI as a tool in support of the peaceful settlement of disputes. However, by 2012, the use of good offices was included in the UN Guidance on Effective Mediation, recognising their contribution to establishing the conditions for mediation. The scope and remit of good offices remain vague, but are understood to include a range of activities to help prevent, manage or resolve a conflict.[82] In 2011, the UN representative Jamal Benomar was exercising good offices on behalf of the UN Secretary General in Yemen but without a formal mandate from either the General Assembly or the UNSC.[83]

In 2011 Yemen, along with other countries in the Arab region, saw mass uprisings calling for the departure of its political leader. As with other protests in the region, the reasons were broad based and complex, but were driven by frustration over factors such as lack of economic opportunity, corruption, poor health and education services, as well as food insecurity.[84] These protests were met with force as President Saleh resisted calls for him to depart. In response to the escalation of violence in Yemen the Gulf Co-operation Council (GCC) launched a diplomatic initiative to mediate between the sides. An agreement brokered by the GCC was signed in November 2011 and outlined a two-phase transition. The first phase would focus on the transfer of power and the creation of a government of national unity in Yemen.[85] The second would include reform of the constitutional and security structures of the state. The first phase of the transition was backed by the USA, European Union and the GCC, while the UN took the lead in the negotiation of the second phase.[86]

[79] For an overview of UN involvement see H Lackner, 'The Role of the United Nations in the Yemen Crisis' in S Day and N Brehony (eds), *Global, Regional and Local Dynamics in the Yemen Crisis* (Springer 2020) 15.

[80] They are personal appointments authorised under art 101 of the UN Charter. See also UN Doc A/51/226 s11 para 5; For a history of the concept of good offices see A O'Donoghue, 'Good Offices: Grasping the Place of Law in Conflict' (2014) 34 *Legal Studies* 469.

[81] A Day, 'Politics in the Driving Seat: Good Offices: UN Peace Operations, and Modern Conflicts' in C de Coning and M Peter (eds), *United Nations Peace Operations in a Changing Global Order* (Palgrave Macmillan 2019) 67.

[82] ibid 70.

[83] It should be noted however that during this phase Benomar regularly visited and briefed the Security Council. See G Hill, *Yemen Endures: Civil War, Saudi Adventurism and the Future of Arabia* (Hurst 2017) 240–41.

[84] See E Gaston, *Process Lessons Learned in Yemen's National Dialogue* (USIP 2014) 2.

[85] This agreement also provided immunity for President Salah, meaning that it could not be formally endorsed by the UN. Resolution 2014 does give implicit endorsement in the form of a call on parties to implement it. Z Hudákóva, 'Success in the Shadow of Failure: UN Mediation in Yemen (2011-2015)' (2021) 27 *International Negotiation* 1, 14.

[86] Hudáková ibid 13.

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In this early period, Benomar convened talks between the government and the opposition, the outcome document from which became known as the GCC Initiative Implementation mechanism, setting out a 'road map' to complete the second phase of the transition, including the negotiation and sequencing of a series of domestic reforms.[87] This Implementation Agreement became the basis of subsequent UN mediation efforts in Yemen. The initiative received the backing of UNSC in resolution 2014 (2011) which welcomed the continued efforts of the good offices of the Secretary General,[88] and set out the UNSC's concerns with the situation, providing significant authority that could be used to put pressure on Saleh.[89] In this context, it is worth highlighting the way in which the UN presence in Yemen was framed. Resolution 2014 is a detailed text that sets out the specific concerns of the UNSC and mandates the Secretary General, through his representative, to continue to use his good offices to encourage Yemeni stakeholders, states and regional organisations to implement the provisions of the resolution.[90]

This resolution became the reference point for the mediation initiative in the early years (2011–2014). It demonstrates both the way in which the UNSC defines the threats it sees as being 'likely to endanger' peace and security, as well as the recommended response to those threats. In so doing it also recalls its own position as bearing primary responsibility under the Charter for the maintenance of international peace and security. The preamble of the resolution expresses 'serious concern' at the worsening security situation, including armed conflict. The lack of progress on a political settlement is identified as giving rise to potential further escalation of violence.[91] Indeed the resolution stresses that the 'best solution to the current crisis in Yemen is through an inclusive and Yemeni led political process of transition that meets the legitimate demands and aspirations of the Yemeni people for change.'[92] The preamble also reaffirms the importance of the Women Peace and Security (WPS) agenda and the need to ensure the full, equal and effective participation of women in the process, thus connecting the goal of an inclusive transition with the mechanisms through which it is promoted by the UNSC.[93]

The operational paragraphs of the resolution provide insight into the way in which the situation is to be addressed. Of particular note is the condemnation of 'continued human rights violations', including the excessive use of force against protestors and other acts of violence and human rights abuses and the call for accountability for these violations.[94] The resolution 'demands' that the Yemeni authorities 'allow the people of Yemen to exercise their human rights and

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[87] For an overview of the timing of negotiations see Hudáková (n 85).
[88] UN Doc S/RES/2014 (2011) (21 October 2011) preamble.
[89] Hill (n 83).
[90] UN Doc S/RES/2014 (2011) OP 11.
[91] UN Doc S/RES/2014 (2011) preamble.
[92] Preamble.
[93] See Chinkin (n 24).
[94] OP 2.

fundamental freedoms, including the rights of peaceful assembly...' and 'end attacks against civilian targets'.[95] While the resolution expresses concern about the threat of terrorism and the need for all parties to comply with obligations under international humanitarian law, the emphasis of the operational paragraphs of the resolution rests squarely on the implementation of the GCC initiative and a political transition.[96] The resolution is clearly internal facing, with an emphasis on the responsibility of the Yemeni government to address the demands and protect its people.

This 'frame' becomes important because it is reflected in the priorities articulated in the mandate given to Benomar through UNSC resolutions, as well as the relative weight afforded to the different activities. To return to the analytical framework of framing, from this resolution it is possible to identify the way in which the situation in Yemen is framed. *Diagnostically*, the security threat is defined as arising from the failure to make progress towards a political transition. This failure is illustrated by the use of force against protestors and other human rights abuses alleged to be being committed by government forces.[97] *Prognostically*, the way in which to best respond to the threat is through co-operation with the GCC initiative, and movement towards an inclusive political transition. *Motivationally*, the reason that resolution 2014 is possible, and the reason that it resonates with the global audience (both within and beyond the UNSC) is that it connects events in Yemen with the broader phenomenon of the 2011 revolutions. Events are discursively linked with other uprisings and the belief at the time that Arab states were in the process of a democratising movement that should be supported by UNSC.[98] This creates support for the involvement of the UN in Yemen. The ability to frame security concerns against this background helps to justify the mandate given to the Secretary General to offer his good offices in support of the transition.

Resolution 2014 therefore marks the beginning of the 'mandate' for UN mediation efforts in Yemen. The endorsement by the UNSC of the use of good offices in the country is repeated in the subsequent resolution 2051 which 'welcom[es] the continuing engagement of the Secretary General's good offices, including the visits to Yemen by his Special Adviser...'[99] Resolution 2051, while expressing concern at the security situation and condemning terrorist and other attacks against civilians in Yemen,[100] continues to emphasise the centrality of an inclusive political transition as set forth in the GCC Initiative and Implementation Mechanism as the solution.[101] Notably, the operational paragraphs of resolution

[95] OP 5.

[96] OP 4.

[97] It should be noted that at this stage terrorism, and in particular the presence of Al Qaeda, on the Arabian Peninsula, are noted as matters of concern, but are less prominent in the framing of the security threat than uprising related violence.

[98] See CSR Murthy, 'United Nations and the Arab Spring: Role in Libya, Syria and Yemen' (2018) 5 *Contemporary Review of the Middle East* 116.

[99] S/RES/2051 (2012) preamble.

[100] ibid.

[101] ibid.

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2051 set out the need for a 'fully inclusive, participatory, transparent and meaningful National Dialogue Conference (NDC) with the youth and women's groups…'.[102] The NDC and its outcome document would become significant in subsequent mediation efforts. However, in 2012, the emphasis of the UNSC was on supporting the political transition that had been agreed through the GCC initiative.

The presence of the special advisor was formalised in 2012. In a letter dated 18 June 2012, the Secretary General briefed the Security Council on developments in Yemen,[103] including the successes enjoyed by his special advisor in supporting peace efforts.[104] In this letter, he also advised the Security Council of his intention to 'establish a small Office of the Special Advisor to the Secretary General on Yemen'.[105] This office was to be established for an initial period of 12 months to facilitate Yemen's transition and assist the implementation of the GCC agreement. At this point it should be noted that the mediation effort in Yemen was generally considered to be a success. It was the only externally mediated transition arising from the 2011 revolutions that featured an inclusive domestic led process that enjoyed international support.[106]

4. The mediation mandate for Yemen and the construction of threats

Following the establishment of the Office of the Special Advisor the mandate continued to emphasise support to transition. However, in 2014 UNSC passed the first mandate resolution acting under its Chapter VII powers. By this time, the National Dialogue Conference foreseen in resolution 2051 had taken place and had produced a lengthy outcome document that specified a range of commitments to good governance, rule of law, human rights and national reconciliation. Resolution 2140 welcomed this outcome document as a 'road map for a continued Yemeni led democratic transition'.[107] Recalling both resolution 2014 and resolution 2051, the operational paragraphs of the resolution set out the expected next steps in the transition for which support is offered. These include the drafting of a new constitution, electoral reform and timely elections.[108] The resolution also encourages all constituencies in the country, including youth and women, to continue active and constructive engagement in the political transition, and the implementation of the recommendations of the NDC.[109] Where resolution 2140 differs is in the increased emphasis on the deterioration of the security situation, and attacks against civilians, infrastructure and the 'legitimate

[102] S/RES/2051 (2012) OP 5.
[103] S/2012/469.
[104] For an overview of the successes in this period see Hudákóva (n 85).
[105] S/2012/469.
[106] Hudáková (n 85) 2.
[107] S/RES/2140 (2014) preamble.
[108] S/RES/2140 (2014) OP 2.
[109] ibid OP 3.

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authorities' in Yemen.[110] In this resolution, for the first time, UNSC determined that the situation in Yemen constituted a threat to international peace and security in the region, and called on all parties to comply with their obligations under international law, including international humanitarian law and human rights law.[111] This designation of the situation as a threat to international peace and security allowed for the introduction of a sanctions regime targeting those responsible for violence.[112] Resolution 2140 is a lengthy document, with detailed provision on the establishment of the sanctions regime and its application to Yemen. At this stage, the regime was introduced alongside the primary emphasis on the political transition and the implementation of the NDC recommendations.

To return to the framing, *diagnostically* the security threat continues to arise from the failure to implement the terms of the GCC initiative and of the NDC. *Prognostically*, however, the emphasis on the inclusive transition now sits alongside a robust sanctions regime established by the operational paragraphs of the resolution. Both the master frame of 'threat to international peace and security' and the 'prior threat' frame of terrorism have been invoked to shape the resolution and to bring the legal authority of the UNSC to bear on the situation.[113] *Motivationally* the timing is also of interest. By 2014 when the resolution was passed it had become clear that the so called 'Arab Spring' was not going to result in a wave of democratisation. Events in Syria and in Yemen had both progressed from the use of force against pro-democracy protestors and towards civil war, with armed opposition to sitting leaders. At the time the dominant frame in international law was also moving towards the right of Western powers to use 'humanitarian intervention' in support of pro-democracy rebels.[114] This is mirrored in the Yemen resolutions, whereby the discourse of the UNSC implicitly backs one side—that of the transitional government—against another—the deposed leader—in a situation that was descending into civil war.[115] While the debate on Syria centred on military intervention, and the failure of the collective security mechanisms, in Yemen the primary UN involvement was through OSESGY, mandated by the UNSC acting under its Chapter VII powers. Notwithstanding the gradual shift in emphasis towards a 'prior threat' frame of terrorism, the mandate at this time remained to continue offering good offices and to work in co-ordination with other international partners, including the GCC, to contribute to the successful

[110] S/RES/2140 (2014) preamble.

[111] S/RES/2140 (2014) OP 9.

[112] For more detail on the sanctions regime see Sullivan (n 68).

[113] The resolution specifically references the Al Qaida sanctions regime administered pursuant to UNSC resolutions 1267 (1999) and 1989 (2011) S/RES/2140 (2014) OP 29.

[114] See eg M Schmitt, 'Legitimacy versus Reality Redux: Arming the Syrian Rebels' (2014) 7 *Journal of National Security Law and Policy* 138; UK Government, 'Syria Action: UK Government Legal Position' (2018) <www.gov.uk/government/publications/syria-action-uk-government-legal-position/syria-action-uk-government-legal-position> accessed 1 February 2022.

[115] See generally Lackner (n 79). See also Biersteker, Brukaer and Lanz (n 11) on the effect of this for the mediation process.

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transition.[116] However, as implementation of the transition progressed there was increasing opposition and violence sparked by some of its provisions.[117] It was becoming clear that key parties were no longer engaged with the process. This led to a hardening of the discourse in UNSC. In a statement made in August 2014 UNSC accused Houthis and others of continuing to 'stoke the conflict in an attempt to obstruct the political transition'.[118]

Resolution 2201, passed in February 2015, reflected the increasing precarity of the process. In this resolution UNSC 'deplores' the unilateral actions of the Houthis in escalating political conflict and emphasises that the political transition process has been undermined.[119] While the resolution reaffirmed the determination that the situation in Yemen constituted a threat to international peace and security, it did not invoke Chapter VII powers. The resolution was used to strengthen the mandate of the Special Envoy, urging all parties, but the Houthis in particular, to accelerate inclusive UN-brokered negotiations,[120] and 'demanding' that the Houthis 'immediately and unconditionally' engage in good faith with these negotiations.[121] To strengthen the mandate of the Special Envoy the resolution requested the Secretary General to 'propose options for strengthening the office of the Special Advisor to enable him to fulfil his mandate'.[122] The mandate, in early 2015, remained to offer support for finalising and adopting the draft constitution, undertaking electoral reform, holding general elections and creating mechanisms for disarmament, demobilisation and reintegration as well as security sector reform.[123]

However, 2015 marked a turning point, where the increase in violence eclipsed any progress on political transition. Yemen moved from being in a state of transition to being in a state of internationalised armed conflict.[124] From this point there was a significant change in the approach of the UNSC. Resolution 2204, adopted under Chapter VII, noted the 'critical importance of effective implementation of the sanctions regime'[125] and set out the legal basis for renewing the measures imposed under resolution 2140. More significantly, in April 2015 resolution 2216 responded to a letter from the President of Yemen, in which he had requested regional support 'by all means and measures, including military intervention, to protect Yemen and its people from the continuing aggression of the Houthis'.[126] The UNSC declined to invoke collective security

[116] S/RES/2140 (2014) OP 32.
[117] Relating primarily to the division of the country into administrative districts following the NDC report. See Hudáková (n 85) 21.
[118] S/PRST/2014/18.
[119] S/RES/2201 (2015) preamble.
[120] S/RES/2201 (2015) OP 5.
[121] ibid OP 7.
[122] ibid OP 12.
[123] ibid.
[124] For background to these events see Lackner (n 79); Hudáková (n 85).
[125] S/RES/2204 (2015) preamble.
[126] This request for support was made to the Cooperation Council for the Arab states of the Gulf and the League of Arab States.

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to authorise military intervention. Instead it passed resolution 2216 which defined the range of possible subsequent UNSC intervention.[127] There was a clear shift in the discourse in this resolution away from the language of inclusion and towards that of military security.[128] The resolution demanded, inter alia, that the Houthis immediately and unconditionally end the use of violence, withdraw their forces from all areas they had seized, relinquish arms and refrain from provocation or threats to neighbouring states through acquiring and stockpiling weapons.[129] In addition to the demands made on the conflict parties, and the Houthis in particular, the resolution also creates obligations, in the form of an arms embargo, on other UN Member States.

By 2015 the resolutions had become self-referential. Failure to comply with demands included in earlier resolutions itself became the basis for censure. The resolution further extended the scope of the sanctions regime that had been established under resolution 2140. Resolution 2216 was another foundational resolution, setting out very detailed expectations from UNSC as to how the situation should be de-escalated. The difficulty it created, however, was that it was viewed as a one-sided resolution that created division within the UNSC. By backing the 'transitional' Hadi government the UNSC had taken sides, undermining its impartiality as an external party to the conflict. While the preamble 'emphasises' the need to return to the implementation of the GCC Initiative Implementation Mechanism, the relative priority afforded to this demand was significantly diminished vis-á-vis the attention paid to military escalation. Similarly, within the operational paragraphs, the parties are called upon to resume and accelerate inclusive UN-brokered negotiations on governance,[130] but the majority of the operational paragraphs of the resolution are concerned with military security. The language of inclusion that had punctuated the earlier resolutions had been dropped from both the preamble and the operational paragraphs in favour of a focus on responding to the military situation. The relative decline in emphasis on the political transition is also mirrored in the agenda of talks convened by the Special Envoy in this period. From 2015 to 2016 three sets of talks were convened, which dealt with the withdrawal of armed groups, handover of weapons and security arrangements, and the resumption of inclusive political dialogue.[131] In this context, the mandate of the Special Envoy is to 'intensify his good offices role in order to *enable a resumption of* a peaceful, inclusive, orderly and Yemeni led political transition process'.[132]

Subsequent resolutions were much more restricted in their focus. While they continued to express their support for the Office of the Special Envoy, the focus

[127] Lackner (n 79) 22.
[128] Lackner notes how this resolution is described within a beyond UN circles as a 'war' rather than a 'peace' resolution because of its one sidedness. Lackner (n 79) 23.
[129] S/RES/2216 (2015) OP 1.
[130] ibid OP 5.
[131] Lackner (n 79) 24.
[132] S/RES/2216 (2015) OP 13 (emphasis added).

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of resolution 2266 in 2016, resolution 2343 in 2017 and resolution 2402 in 2018 was narrowed down to the operation of the sanctions regime and reaffirming the need for compliance with the terms of resolutions 2140 (2014) and 2216 (2015). The resolutions continued to be passed under Chapter VII powers but were significantly diminished in the mandate they provide for the Special Envoy. This shift is attributed to division in the UNSC, and the influence of states who were involved in the conflict.[133] Once consensus broke down in UNSC over the approach to Yemen there was a shift in emphasis away from the inclusive transition and towards a limited emphasis on combatting terrorism and enabling humanitarian relief. Returning once more to the framing of events, it was the *diagnostic* frame that shifted in 2015. The threat was no longer defined primarily as a failure to implement the political transition. Rather it was the existence of an armed conflict which was creating a significant humanitarian crisis. *Prognostically* the UNSC was limited in how it could respond to this new frame, largely because of political differences within the Council itself. This resulted in a much less ambitious mandate for the Special Envoy. *Motivationally* the audience had also shifted. During the early years of the 'transition' and the UN's tenure in Yemen there had been relative consensus in UNSC on the aims of the UN mediation. However, as the conflict escalated and states became involved in the conflict UNSC was speaking to a more critical audience, primarily of Arab states opposed to the approach taken in UNSCR 2216. As a result, UNSC statements become more restricted, focused on the security problems arising from the armed conflict than the need for an inclusive political transition that was no longer accepted by key audiences.

The revised framing of the security threat led in turn to a restricted mandate for the Special Envoy. By 2018, the role of the Envoy was largely subordinate to that of a powerful group of states known as the Quad that became 'the main site for further attempts to reach agreement'.[134] The only further development in the mandate was to create a role for the Special Envoy in support of diplomatic initiatives to prevent and contain a military offensive on the port of al-Hodeida.[135] However division in UNSC meant that the Special Envoy was left without a strong mandate to mediate between the parties, or indeed to promote a broader, more inclusive political process. In 2018, UNSC passed resolution 2451 which determined that the situation in Yemen continued to constitute a threat to international peace and security but stopped short of invoking Chapter VII. This resolution called on parties to engage constructively and in good faith with the Special Envoy to work towards stabilising the Yemeni economy, on Sana'a airport, and participating in the next round of talks.[136]

[133] UNSC, 'Parties in Yemen Must Prioritize National Interest in Efforts to End Fighting, Special Envoy Tells Security Council amid Calls for Unity of Purpose' SC/13227 (27 February 2018).

[134] Lackner (n 79) 25. The Quad consisted of the USA, UK, Saudi Arabia and UAE and its aim was to address the political and security tracks simultaneously.

[135] S/PRST/2017/7.

[136] S/RES/2451 (2018) OP 3.

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These talks referred to an agreement reached in Stockholm on the monitoring of ceasefires, troop redeployments and the management of key ports.[137] The subsequent resolution 2452 (2018) established a UN special political mission which would offer support by monitoring the agreement reached on al-Hodeida. Although these resolutions created a role for the Special Envoy in the co-ordination between international partners, and reporting to the UNSC, in this regard there is little of substance. Subsequent resolutions in 2020 continued to mandate the Special Envoy to play this role,[138] but the overall scope of UN mediation had been significantly diminished. From a robust mandate from UNSC to support an inclusive political transition in Yemen, the Office of the Special Envoy had been reduced effectively to coordinating information between parties on ceasefire monitoring. This arose as a result of the framing of the threat, as well as the audience to which the Security Council addressed its resolutions. Why this is important for international law is that it demonstrates the symbiotic relationship between law and security in the Security Council. The peace mediation mandate illustrates the paradoxical nature of international law in both constructing security and by extension constraining power.

5. International law, security and sustaining peace

The progression of the mandate of the Special Envoy for Yemen demonstrates the way in which the framing of events in Yemen influenced the approach taken by UNSC. From the initial offer of good offices in support of the political transition to a more limited role in the monitoring of agreements, the mandate provided to OSESGY reflected the changing dynamics both of the conflict in Yemen and the relative power of the UNSC to respond to it. What emerged over the course of the mandate was a tension between the idea of inclusive security that underpins the Sustaining Peace Agenda, and the hard security approach that dominates the resolutions from 2015 onwards. This gives rise to what Nathan terms a 'situational incompatibility' between the distinct forms of 'security' envisaged within the work of the UNSC when it comes to peacemaking.[139] On one hand are the norms of inclusive security—promoting justice, accountability and democratisation—that are dominant in the early resolutions on Yemen, as well as in the outcomes of the NDC. On the other are the institutional norms of the maintenance of international peace and security. As has been demonstrated, the relative priority afforded to these norms shifts over the course of the conflict cycle. However, the UNSC and its resolutions did not simply reflect shifting understandings of international peace and security, they also helped to construct it. Once the mandate resolutions moved from Chapter VI to Chapter VII there was a gradual securitisation of the response to the

[137] ibid OP 6.
[138] S/RES/2505 (2020); S/RES/2511 (2020); S/RES/2534 (2020).
[139] Nathan (n 36).

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conflict in Yemen. Once the 'master frame' of the threat to international peace and security was invoked other forms of political engagement were gradually marginalised. This shaped the range of the Special Envoy's powers. By 2018 the OSESGY, whose mandate had originated in the need to support a fully inclusive political transition of power, no longer had a clear mandate from UNSC to engage on much more than the monitoring of deals brokered between the parties by other agencies.[140] This closes the space for more inclusive approaches. In narrowing the scope of the mediation mandate UNSC was responding only to the violent symptoms of conflict, not to the causes. This creates a difficulty for the pursuit of more inclusive models of peace mediation and security as it ties the hands of the mediator when it comes to addressing locally driven understandings of justice and security or indeed of the underlying causes of conflict.

As noted, there has been significant normative development in relation to peacemaking conducted under the auspices of both Chapter VI of the Charter and the Office of the Secretary General since 2010. This development has sought to place peace mediation at the heart of a broader strategy of sustaining peace that responds to the growth of intra state conflict. However, mediation processes risk becoming securitised through the actions of states in the UNSC. While mediation increasingly happens at different levels and through different actors, the primary focus of peace processes remains the elite level Track One peace talks. Efforts at increasing inclusion focus on this track,[141] and the agreements reached in these processes are those that will shape the post-conflict landscape. UNSC resolutions, when passed under Chapter VII, bring legal authority of the UNSC to bear in defining the meaning of security. The mediation mandate provided by UNSC is therefore important. While international organisations, including UNSC itself through its Women Peace and Security resolutions,[142] advocate inclusive peace processes, there is legally no mandate to bring wider issues onto the official agenda. Without the backing of UNSC for pushing for a more inclusive approach it is easy for conflict parties and their political backers to continue to negotiate for elite deals.

Whereas literature on the role of international law in peacemaking has tended to conceptualise law as a constraint on power politics, when seen through the lens of the mandate, the use of Chapter VII provides a cloak of legal authority to the designation of threat, and the proposed response to it that implicates international law not only in upholding certain constructions of security but also in precluding others. It should be noted that this dynamic can work both ways. One critique of the early years of the OSESGY was that it

140 S/RES/2505 (2020); S/RES/2511 (2020); S/RES/2534 (2020).

141 C Bell and C Turner, 'Models for Women's Inclusion in Track One Mediation, Peace and Transition Processes' Cairo, UN Women, 2020.

142 S/RES/1325 (2000); S/RES/1880 (2009); S/RES/2122 (2013); S/RES/2242 (2015); S/RES/2493 (2019).

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focused unduly on the justice and reconciliation aspects of transition at the expense of some of the security problems that were to escalate.[143] The dominant diagnostic framing of the threat in the early years of the mandate as being a failure to implement an inclusive political transition led to an almost exclusive focus on inclusion and transition at the expense of other security problems, including dissatisfaction at the direction of the process itself, that were not addressed. After 2015 this dynamic was reversed. The dominant diagnostic framing became that of the armed conflict, with the idea of inclusive security and a negotiated transition being marginalised from the UNSC discourse.

Beyond being a tension between two different understandings of security, the tension that emerged in UNSC over the Yemen conflict demonstrates the interplay between law and security within the Charter itself. Fundamentally the deliberative processes of UNSC enable a particular security narrative to emerge that suits the foreign policy objectives of the relevant powers. Once this diagnostic framing of the threat has been accepted, the prognostic response, in terms of action under Chapter VII, becomes possible. Further while UNSC resolutions do not themselves create precedent in the sense of generalised binding legal authority,[144] the progression of the resolutions demonstrates the ways in which they are referential to the 'master' frame, of international peace and security, as well as to the 'prior threat' frame established both in the broader 'terrorism' resolutions that created the sanctions regime that is imposed.[145] Once these threats are invoked in the resolutions and accepted by the relevant audience, the mandate resolutions themselves become self-referential, with failure to comply with security provisions becoming the basis of further resolutions. When seen in these terms law and security increasingly form a mutually sustaining partnership when it comes to peacemaking. Law, far from being a constraining force, is applied at the service of power within UNSC.

6. Conclusion

To return to Nathan's 'situational incompatibility', in the context of peace mediation normative orientations of both justice and security exist naturally within the structure of the Charter, and Chapter VII in particular. As Nathan notes, 'not only are these two sets of norms generally compatible, more fundamentally they are all constitutive of the UN.'[146] The difficulty for the UNSC, however, is that peacemaking when it occurs under Chapter VII of the Charter 'pits one set of constitutive norms against another'.[147] It is here that the lens of securitisation and threat framing helps to understand the role of actors such as UNSC and the

[143] Lackner (n 79).
[144] Talmon (n 67); Wood (n 66).
[145] S/RES/1267 (1999).
[146] Nathan (n 36).
[147] ibid; See also Koskenniemi (n 37) 460 on the latent possibility of the UNSC using its collective security powers to address economic or humanitarian crises.

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role that it plays in setting the agenda for peace mediation through the mandate they authorise for the Special Envoy.

The tension between competing visions of security within the UNSC reflects the nature of the UN as a multilateral institution. On the one hand, the Charter underpins a multi-lateral system in which politics is subjected to rules of collective security and peaceful settlement of disputes. On the other hand, the trace of great power politics remains in the membership of the Security Council and the rules which determine the exercise of its power.[148] In its 75-year history the UN has tended at various times towards different sides of this polarity. Modern peacemaking, and peace mediation in particular, have been shaped by the liberal international paradigm, and the belief in the rule of law. However, as global power dynamics shift and proxy conflicts rise it is likely that peacemaking will be securitised further.[149] Law is not neutral in this context. Chapter VII and the authority it provides enables state actors to cloak their own foreign policy and security interests in legal authority and present them as the dominant diagnostic frame driving peacemaking. These discursive battles are fought in the UNSC, and the outcomes they produce, in the form of resolutions, have significant impact on the practice of peacemaking. In the words of Koskenniemi, '[L]aw's contribution to security is not in the substantive responses it gives but in the process of justification that it imports into institutional policy and in its assumption of responsibility for the policies chosen.'[150] In this way it helps to orient security towards the pursuit of peace in the eyes of the onlooker. Refocusing the gaze of international legal inquiry highlights this dynamic and contributes to better understanding the limits of the current policy and practice of inclusive peace processes.

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[148] H Köchler, 'The United Nations Organisation and Global Power Politics: The Antagonism Between Power and Law and the Future of World Order' (2006) 5 *Chinese Journal of International Law* 323.
[149] F Ward, 'Mediating Multilateral Proxy Conflicts' in C Turner and M Wählisch (eds), *Rethinking Peace Mediation: Challenges of Contemporary Peacemaking Practice* (Bristol University Press 2021).
[150] Koskenniemi (n 37) 478.