



BOFAXE

Sea-Level Rise at the Security Council (Part 1)

On Multiplied Threats and Implied Powers

In what has been termed a ‘signature event’ of the Maltese Presidency of the United Nations Security Council (the Council), the latter held an open debate on the implications of sea-level rise for international peace and security in February 2023. While this is not the first time the Council has addressed climate change and the risks related thereto, only one formal outcome recognized the risk posed by sea-level rise. Overall, engagement with sea-level rise and its implications for international law has intensified over the last years, with both the International Law Association and the International Law Commission addressing the issue and scholars debating its implications for the law of the sea, human rights, and statehood (e.g. here, here, and here). The General Assembly has deliberated on climate change various times and the International Court of Justice was recently asked to spell out the legal consequences of climate change in an Advisory Opinion. A question that will not be addressed by the ICJ is: Where does the Council fit into the institutional response to climate change in general and sea-level rise in particular? This post seeks to shed some light on the significance of the Council’s debate and its powers in responding to non-traditional security threats. To this end, the post will start to examine whether sea-level rise falls within the mandate of the Council to then examine the particular tools at the Council’s disposal.

Sea-Level Rise as a Security Threat?

Let us start by examining Art. 24 of the Charter, which identifies the Council’s role as bearing the “primary responsibility for the maintenance of international peace and security”; the powers to discharge this duty are then laid down in chapters VI, VII, VIII and XII, as clarified by Art. 24(2). While Art. 24 of the Charter provides a starting point, it offers little guidance on what is encompassed by “the maintenance of international peace and security”. The question whether a dispute or situation falls within the mandate of the Council is thus one of treaty interpretation. Looking at Art. 39 of the Charter, we learn that the powers under Chapter VII require a determination of a threat to the peace, breach of the peace, or an act of aggression, which – at the very least – encompass armed conflicts (cf. ICTY, Tadić Appeal on Jurisdiction, para. 30). *A contrario*, the general mandate of the Council must be even broader and indeed, it is increasingly accepted that the Council’s mandate is not limited to responding to military conflicts but also encompasses “non-traditional threats” (Peters, para. 34; Pobjie, p. 9, 20), as long as they have a sufficient nexus to the maintenance of international peace and security. Examples of such non-traditional threats in the practice of the Council include climate change, Covid-19, and HIV.

To fall within the mandate of the Council, sea-level rise must thus be considered at least relevant for the maintenance of international peace and security (and to allow it to act under Chapter VII, a threat to the peace) and this relevance can hardly be disputed: As the recent report by the Intergovernmental Panel on Climate Change highlighted once more, the threat posed by sea-level rise can hardly be overstated – sea-levels are expected to rise by up to 1m by the end of the century, resulting in receding coastlines and exacerbated natural catastrophes, with the IPCC predicting that extreme sea-level events will become 100 times more likely (p. 42, 45). While the worst is yet to come, these effects are already apparent in today’s natural disasters, as recently demonstrated by cyclone Freddy’s devastating impacts on the coasts of several states. Especially for small island developing states (SIDS), the consequences are existential, as rising sea levels could result in their territory becoming completely submerged and uninhabitable. This signifies that sea-level rise is a threat that – though connected to climate change – requires separate attention. Sea-level rise raises different questions, most importantly regarding the legal effects of receding coastlines, sinking islands and eventually the submergence of a whole state’s territory. Crucially, sea-level rise also poses different security threats: The first results from legal insecurity. States need legal certainty regarding their status as states, their baselines, and the protection of their population – uncertainty poses a security threat in and of itself, as it will lead to disputes, e.g., over maritime boundaries. Similarly, sea-level rise will lead to a shortage of (natural) resources, which is a further potential driver of future conflicts. Lastly, receding coastlines will leave states and populations more vulnerable and thereby exacerbate (or, in the words of Antonio Guterres, multiply) existing threats.

Altogether, sea-level rise is a particular challenge for international law and its consideration by the Council is a legitimate exercise of its mandate, which is also in line with its established practice. Unclear remains whether the Council can draw from its full set of powers as laid down by the Charter, i.e., whether sea-level rise could even be considered a threat to the peace (thus allowing the Council to act under Chapter VII). Even following a rather narrow interpretation and requiring that a situation must “have the potential of provoking armed conflict between states” (de Wet, p. 138) to qualify as a threat to the peace, such a finding would not be entirely inaccurate concerning sea-level rise. However, this faces not only legal but significant political obstacles (the P5 account for about half of the world’s GHG-Emissions) and will thus remain a theoretical possibility only. The following examination of the Council’s powers thus proceeds on the basis that sea-level rise threatens international peace and security but does not constitute a threat to the peace in the sense of Art. 39 of the Charter.



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Sea-Level Rise at the Security Council (Part 2)

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Options and Limits of the Security Council

When addressing armed conflicts, the role of the Council is rather clear: It can demand that international humanitarian law be complied with, hostilities be ceased, and it can authorize all necessary measures to enforce its resolutions. For climate change and sea-level rise in particular, the security implications and hence the role of the Council are less clear. Crucially, most implications are slow onset; while a security dimension is apparent when e.g. natural disasters hit, dealing with threats that will manifest in the future poses a challenge for the Council, which is ill-equipped to address long-term and structural causes of conflict (cf. [de Wet](#), p. 140). Though it was the express purpose of February's debate to explore how the Council can address the security risks posed by sea-level rise, states either remained vague on the issue or negated the Council's role altogether (Brazil, Russia). To evaluate its potential in responding to sea-level rise, let us thus examine the options at its disposal:

First, the role of the Council as a political organ should not be understated – similar to the General Assembly, it provides a forum for discussion; while generally limited to the 15 members, Art. 31 of the Charter and Art. 37 of the Rules of Procedure of the Council allow for an inclusion of specially affected states, as in this case SIDS (which – given their historic underrepresentation in the Council – is all the more necessary). These discussions take place in different formats, from informal discussions (e.g. Arria-formula meetings) to proper debates, which typically result in the adoption of presidential statements or resolutions. Here, the options of the Council include making recommendations (Arts. 36, 38, 39 Charter), taking enforcement action (Arts. 39-42 Charter) and establishing subsidiary organs (Art. 29 Charter).

While none of these articles appears to be a perfect fit to respond to broad and non-traditional threats such as sea-level rise, it is accepted that the Council also enjoys implied powers (cf. ICJ, Namibia Advisory Opinion, para. 110); notable examples include peacekeeping and peacebuilding, which were not envisioned in the original Charter scheme. Certainly, implied powers must be necessary to discharge the mandate of the Council (cf. ICJ, Reparation for Injuries Advisory Opinion, p. 12), but if the mandate is understood in an increasingly broader way, the same should follow for the implied powers necessary to discharge this mandate. In light of this, more realistic options for the Council are further strengthening the mandate of the peacebuilding commission, which could potentially be tasked to consider climate change and sea-level rise in its work more actively, or even to create a new commission on sea-level rise and/or climate change. Moreover, Albania and Gabon in the debate requested that the Council advocate for the establishment of a mandate for a special representative on climate change and security, which could report to the Council on security implications of climate change and potentially also sea-level rise. Lastly, during the debate, several states (i.a. Japan, UK) stressed the Council's central role in the organization and its power and authority to encourage other organs to address sea-level rise and to create a coordinated response.

This brings us to the Council's limits: The Council is neither in a position to spell out the legal consequences of sea-level rise nor is it the right organ to provide emergency relief. Furthermore, its limited membership makes it less representative than the General Assembly and more dependent upon the placet of a small number of states. Thus, it can certainly discuss the security implications of sea-level rise and could potentially make recommendations, pass binding resolutions, or create a commission on sea-level rise, but the political realities and the power dynamics within the Council will likely pose an insurmountable obstacle to achieve this.

Conclusion: “If You Do Not Change Direction, You May End up Where You Are Heading”

Cynics could denote the Council's new-found interest in issues such as climate change and sea-level rise as symbolism, but it could also be seen as a first step and the recognition of a changing international (legal) climate. The example of peacekeeping/-building missions shows that the UN Charter system is open to change and further the increased engagement with other “non-traditional” security threats, such as climate change and Covid-19, shows that the council is warming to the idea of a more active role in the handling of non-traditional threats (cf. Wood para. 17). The system as it stands without an institution with the clear mandate and power to tackle climate change and sea-level rise has however done more to exacerbate than to prevent them. Thus, a more active Council is at least a first step, whether this step leads in the right direction remains to be seen.