

IS THE SECURITY COUNCIL *LEGIBUS SOLUTUS*? AN ANALYSIS OF THE LEGAL RESTRAINTS OF THE UNSC

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According to Greek mythology, Prometheus incurred the wrath of Zeus by stealing heavenly fire for men. As a result, Prometheus was chained to Caucasus with shackles forged by Hephaestus.² Every day at noon, Prometheus saw his liver, which is a symbol of life in many cultures, devoured by an eagle sent by Zeus. At night, Prometheus's liver would regenerate, and on the following day his suffering would start anew. His plight only came to an end when Hercules set him free.

In its first few decades of existence, the United Nations Security Council (UNSC), like Prometheus, found itself imprisoned not by the shackles of Hephaestus but by the excessive use of veto. Because of this "imprisonment," the UNSC was unable to provide mankind with something that could have been as valuable as Prometheus's fire. With more freedom, the UNSC could have helped maintain international peace and security in a century plagued by conflicts. Instead, the Council remained inert, and wars claimed countless human lives.

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2. See BRANDÃO JUNITO DE SOUZA, *MITOLOGIA GREGA* 166 (Vozes 18th ed. 2004).

The end of the Cold War set the Council free from the binding power of the veto. In the first five decades of the Council's existence, the veto was used 244 times.³ In the following 10 years, the veto was only used on 13 occasions.⁴ This new freedom brought forth not only a greater quantity of resolutions and actions but also a number of new practices from the UNSC. These practices include the extradition of terrorist suspects,⁵ the establishment of international tribunals,⁶ the creation of a committee to demarcate international boundaries,⁷ the institution of a safe area free from any armed attack or any other hostile act,⁸ the establishment of a military flight ban zone,⁹ and the freezing of funds and other financial assets of individuals accused of terrorism.¹⁰

If action was expected of the UNSC in the past, then the profusion of activities from the Security Council today leads us to the following question: is the UNSC subject to any type of legal restraint? As with so many other legal issues, this question, although simple, draws complex and contradictory answers. Several highly regarded commentators, such as Hans Kelsen,¹¹ argue that there are no legal restrictions to the Security Council's powers. In this article, we will hold that the Security Council is subject to certain legal limitations. We will seek to expose the myths upon which the contrary argument is founded.

I. THE MYTH OF THE POLITICAL ORGAN *LEGIBUS SOLUTUS*

Some scholars argue that because the Security Council is a political organ with a distinct *modus operandi* from juridical organs, such as the International Court of Justice, it can ignore international law.¹²

Kelsen expresses this argument in different terms by holding that the Security Council's resolutions, which are based on Chapter VII of the Charter, do not have to conform with the law because "the purpose of the enforcement action under Article 39 is not to maintain or restore the law,

3. For a detailed breakdown of the United Nations Security Council's use of veto, see *Changing Patterns in the Use of the Veto in the Security Council*, GLOBAL POLICY FORUM, <http://www.globalpolicy.org/security/data/vetotab.htm> (last visited Feb. 20, 2011).

4. *Id.*

5. S.C. Res. 748, ¶ 6, U.N. Doc. S/RES/748 (Mar. 31, 1992).

6. S.C. Res. 955, ¶ 1, U.N. Doc. S/RES/955 (Nov. 8, 1994); S.C. Res. 827, ¶ 2, U.N. Doc. S/RES/827 (May 25, 1993).

7. S.C. Res. 687, ¶ 3, U.N. Doc. S/RES/687 (Apr. 3, 1991).

8. S.C. Res. 819, ¶ 1, U.N. Doc. S/RES/819 (Apr. 16, 1993).

9. S.C. Res. 781, ¶ 1, U.N. Doc. S/RES/781 (Oct. 9, 1992).

10. S.C. Res. 1333, ¶ 8, U.N. Doc. S/RES/1333 (Dec. 19, 2000).

11. See generally Hans Kelsen, *THE LAW OF THE UNITED NATIONS: A CRITICAL ANALYSIS OF ITS FUNDAMENTAL PROBLEMS* (Frederick A. Praeger 5th ed. 1966) (1950).

12. Rosalyn Higgins, *The Place of International Law in the Settlement of Disputes by the Security Council*, 64 AM. J. INT'L L. 1 (1970).

but to maintain or restore peace, which is not necessarily identical with the law.”¹³

The classification of the Council as a political institution rests upon a false dichotomy between “political” and “juridical.” In fact, both national and international public organs have components that can be regarded as either “juridical” or “political.” A system that classifies institutions as one or the other is likely to be artificial and arbitrary.

More importantly, one must not lose sight of the fact that such organs are legally constituted and ruled. In other words, their functions, composition, procedures, powers, and limitations are defined by and derived from a legal instrument.

The Security Council was created by the U.N. Charter. Thus, the Council’s powers and discretion, although considerable, are based on and restricted by this instrument. Accordingly, Mohamed Bedjaoui, the former judge of the International Court of Justice, writes, “It is self-evident that an organ created by a treaty is subjected to that instrument in its very existence, its mission and its power.”¹⁴

We return to the aforementioned proposition by noting that the treaty is included within a larger set of norms (i.e., the normative order). Thus, in the final analysis, all organs created by a treaty (or by other legal instruments), including the Security Council, are subject to law. Judge Jennings expounds upon this point in the *Lockerbie* case:

All discretionary powers of lawful decision-making are necessarily derived from the law, and are therefore governed and qualified by the law. This must be so if only because the sole authority of such decisions flows itself from the law. It is not logically possible to claim to represent the power and authority of the law and, at the same time, claim to be above the law.¹⁵

In other words, the Council is not exempt from the law simply because the Council is based on Chapter VII of the Charter of the U.N. Even if the Council is struggling for “the maintenance of restoration of peace,” as Kelsen puts it, its mission was still given to it by law.

13. KELSEN, *supra* note 11, at 294.

14. MOHAMMED BEDJAOU, *THE NEW WORLD ORDER AND THE SECURITY COUNCIL: TESTING THE LEGALITY OF ITS ACTS* 14 (1994).

15. Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libya v. U.K.), Preliminary Objections, 1999 I.C.J. 105 (June 29).

II. THE MYTH OF THE PROLIX ARTICLE

An analysis of the Charter reveals and delimits, with relative clarity, the main powers of the Security Council. Nevertheless, when confronted with such limits, those who favor the thesis of the Council *legibus solutus* provide an incoherent reading of the spirit and text of the Charter.

As the source of obligatoriness for the Council's decisions, Article 25 of the Charter declares that "[t]he Members of the United Nations agree to accept and carry out the decisions of the Security Council *in accordance with the present Charter*." Thus, there is no obligation for members of the United Nations to accept and carry out decisions that are not *in accordance with the Charter*.¹⁶

However, the authors who believe that the UNSC is *legibus solutus* argue that the text is ambiguous. These writers claim that one cannot know if the phrase "in accordance with the present Charter" refers to the members' obligations or to the decisions of the Council.¹⁷

Although the wording of Article 25 is imprecise, a fundamental rule of interpretation is that no phrases or words are presumed to be useless in legal texts.¹⁸ This rule is known as the *principle of effectiveness* and is summarized by the maxim *ut res magis valeat quam pereat* ("That the matter may have effect rather than fail"). The principle of effectiveness has appeared in decisions produced by the International Court of Justice and its predecessor, the Permanent Court of International Justice,¹⁹ commentaries

16. See Derek Bowett, *The Impact of Security Council Decisions on Dispute Settlement Procedures*, 5 EUR. J. INT'L L. 89, 92 (1994) (stating that "[t]he Council decisions are binding only in so far as they are in accordance with the Charter"). See also Eric Suy & Nicolas Angelet, *Article 25, in LA CHARTE DES NATIONS UNIES: COMMENTAIRE ARTICLE PAR ARTICLE* 909, 912 (Jean-Pierre Cot, Alain Pellet & Mathias Forteau eds., 3d ed. 2005).

17. See Bernd Martenczuk, *The Security Council, the International Court and Judicial Review: What Lessons from Lockerbie?* 10 EUR. J. INT'L L. 517, 535 (1999); Gabriel Oosthuizen, *Playing the Devil's Advocate: The United Nations Security Council is Unbound by Law*, 12 LEIDEN J. INT'L L. 549, 555 (1999) (Neth.).

18. JOÃO CASTRO MENDES, *INTRODUÇÃO AO ESTUDO DO DIREITO* 230 (Pedro Ferreira 1994).

19. In the *Corfu Channel* case (referring to the interpretation of a Special Agreement), the Court stated, "It would indeed be incompatible with the generally accepted rules of interpretation to admit that a provision of this sort occurring in a special agreement should be devoid of purport or effect." *Corfu Channel* (U.K. v. Alb.), Judgment, 1949 I.C.J. 4, 24 (Apr. 9), available at <http://www.icj-cij.org/docket/files/1/1645.pdf>. The Court also cites a previous decision from the Permanent Court of International Justice, where the court stated, "In case of doubt, the clauses of a special agreement by which a dispute is referred to the Court must, if it does not involve doing violence to their terms, be construed in a manner enabling the clauses themselves to have appropriate effects." *Free Zones of Upper Savoy and District of Gex* (Fr. v. Switz.), Order, 1929 P.C.I.J. (ser. A) No. 22, at 13 (Aug. 19), available at http://www.icj-cij.org/pcij/serie_A/A_22/68_Zones_franches_Haute_Savoie_et_Pays_de_Gex_Ordonnance_19290819.pdf. In the *Corfu Channel* case (referring to the interpretation a Special Agreement), the Court stated, "It would indeed be incompatible with the generally accepted rules of interpretation to admit that a provision of this sort occurring

of the International Law Commission (ILC) to the “draft articles on the law of treaties,”²⁰ as well as in decisions of international trade law panels.²¹

Furthermore, if the Council makes decisions that are not in accordance with the Charter, then the Council will violate the Charter and, consequently, the principle of specialty. On this point, the International Court of Justice (ICJ) states, “International organizations are governed by the ‘principle of speciality,’ that is to say, they are invested by the States which create them with powers, the limits of which are a function of the common interests whose promotion those States entrust to them.”²² In other words, any decisions made by the Council that are not in accordance with the Charter are *ultra vires*.

Some commentators argue that if this view was the prevailing interpretation, then the member states would be bound only by those Security Council (SC) decisions that the member states believed conformed with the Charter.²³ However, an ICJ advisory opinion shows that a resolution adopted by an organ of the United Nations (U.N.) in accordance with the organ’s procedural rules is valid.²⁴ That is, although the member states must presume that the UNSC’s decisions are valid, the decisions may not be deemed invalid *a posteriori* by, for instance, the ICJ.

III. A MATTER OF PRINCIPLES

Article 24 also outlines the important limitations imposed on the Security Council by the U.N. Charter. The first part of the Article asserts that

in a Special Agreement should be devoid of purport or effect.” *Corfu Channel (U.K. and N. Ir. v. Alb.)*, 1949 I.C.J. Reports 24 (Dec. 19). The Court also cites a previous decision from the Permanent Court of International Justice, where the court stated, “In case of doubt, the clauses of a special agreement by which a dispute is referred to the Court must, if it does not involve doing violence to their terms, be construed in a manner enabling the clauses themselves to have appropriate effects.” *Free Zones of Upper Savoy and District of Gex (Fr. v. Switz.)*, 1929 P.C.I.J. (ser. A) No. 22 (Aug. 19).

20. *Reports of the International Law Commission to the General Assembly, Draft Article on the Law of Treaties with Commentaries*, U.N. Doc. A/6309/Rev.1 (1966), reprinted in [1966] 2 Y.B. Int’l L. Comm’n 219, U.N. Doc. A/CN.4/SER.A/1966/Add.1. [hereinafter *International Law Commission*]. It is stated in the commentaries that “[w]hen a treaty is open to two interpretations one of which does and the other does not enable the treaty to have appropriate effects, good faith and the objects and purposes of the treaty demand that the former interpretation should be adopted.” *Id.*

21. For more information about the application of the principle of effectiveness in 1947 GATT/WTO panels, see James Cameron & Kevin Gray, *Principles of International Law in the WTO Dispute Settlement Body*, 50 INT’L & COMP. L.Q. 248 (2001).

22. *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, 1994 I.C.J. 66, 78 ¶25 (Jul. 8).

23. Oosthuizen, *supra* note 17, at 556.

24. *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South-West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion*, 1971 I.C.J. 22, at para. 20 (June 21).

“member States confer to the Security Council the main responsibility for the maintenance of international peace and security. . . .”²⁵

Some authors claim that Article 24 (I) in general and the verb “confer” in particular reveal that the Security Council’s authority stems from the U.N. members. As the grantors, members have the power to “determine that the grantee has exceeded its authority and ultimately to withdraw the authority which has been granted.”²⁶ Gill suggests that the word “confer” and its consequent “grantor/grantee” relation imply a “superior or hierarchical relationship.”²⁷

However, we find that the delimitation of powers referred to in Article 24 (2) of the Charter, which establishes that “the Security Council shall act according to the purposes and principles of the United Nations,” is more relevant.²⁸ In the next section, we examine these principles and purposes in greater detail.

IV. THE PRINCIPLES AND PURPOSES OF THE U.N. CHARTER THAT LIMIT THE UNSC’S POWERS

In addition to maintaining international peace and security, the U.N. also aims to accomplish the following: develop friendly relations based on respect for equal rights and the self-determination of peoples; facilitate international cooperation in solving economical, social, cultural, and humanitarian problems around the world; and promote human rights and the fundamental freedoms for all people without discriminating against race, sex, language, or religion.²⁹

The principles of the U.N. Charter encompass equality, good faith, the peaceful resolution of disputes, the ban of threats, or the use of force and non-intervention in internal affairs. Moreover, in Article 2, we find that the members are obligated to assist the U.N. and to compel the states that are not U.N. members to act in accordance with the principles of the Charter for the sake of maintaining international peace and security.

For some authors, the scope of the Charter’s purposes and principles hinders any “tangible constraint.”³⁰ Martenczuk asserts that “the purposes and principles of the United Nations as laid down in Articles 1 and 2 of the Charter are extremely vague and general in nature” and that “the standard of

25. U.N. Charter art. 24.

26. Terry D. Gill, *Legal and Some Political Limitations on the Power of the UN Security Council to Exercise Its Enforcement Powers Under Chapter VII of the Charter*, 26 NETH. Y.B. INT’L L. 33, 68 (1995).

27. *Id.*

28. U.N. Charter art. 24.

29. U.N. Charter art. 1.

30. Matthew Craven, *Humanitarianism and the Quest for Smarter Sanctions*, 13 EUR. J. INT’L L. 43, 51 (2002).

review of the Security Council resolutions cannot be sought in the purposes and principles of the United Nations.”³¹

Such criticism appears to stem from a misunderstanding of the principles’ content and functions.³² Because principles are naturally more general than rules, principles are less defined and dense by nature.³³ This latitude allows principles to organize and integrate the other norms in a system such that the norms are no longer partial, fragmentary or conjectural in nature.³⁴

V. PROMOTION OF INTERNATIONAL PEACE AND SECURITY

In the preamble and Article 1(1) of the Charter, the U.N. explicitly rejects war and dedicates itself to the preservation of peace. Although the preamble affirms that “[w]e the peoples of the United Nations, determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind,” Article 1(1) describes the U.N.’s purpose as the following:

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

In the Charter, the expression “international security” is always accompanied by the word “peace,”³⁵ whereas the word “peace” occasionally appears by itself.³⁶ Given the context of the preamble and Articles 1(1), 2

31. See Martenczuk, *supra* note 17, at 537 for the complete text.

32. Luis Roberto Barroso stresses the role of principles, especially in a postpositivist paradigm: “The acknowledgement of the normativity to the principles and their quality distinction in relation to the rules is a symbol of post-positivism. Unlike rules, principles are not commands immediately descriptive of specific conduct, but they are like norms that cherish determined values or indicate public goals to be attained by different means.” Luis Roberto Barroso, *Neoconstitucionalismo e constitucionalização do direito*, 1 REVISTA DA ESCOLA NACIONAL DA MAGISTRATURA, 26, 36 (2006) (Braz.).

33. JORGE MIRANDA, DIREITO INTERNACIONAL PÚBLICO 142 (1995).

34. *Id.*

35. See U.N. Charter preamble; art. 1, para. 1; art. 2, para. 3, 6; art. 11, para. 1, 3; art. 12, para. 2; art. 15, para. 1; art. 18, para. 2; art. 23, para. 1; art. 24, para. 1; art. 26; art. 33, para. 1; art. 34; art. 37, para. 2; art. 39; art. 42; art. 43, para. 1; art. 47, para. 1; art. 48, para. 1; art. 51; art. 52, para. 1; art. 54; art. 73; art. 76; art. 84; art. 99; art. 106.

36. See e.g., U.N. Charter pmb. (“live in peace”); art. 1, para. 1 (“avoid threats to peace”; “disturbance of peace”); art. 1, para. 2 (“strengthening of universal peace”); art. 1, para. 4 (“lovers of peace”); art. 1, para. 39 (“threat to peace, breach of peace”).

and 3, one may infer that peace is not limited to the absence of war.³⁷ According to this perspective, peace has a connotation that is close to “the construction of peace,” which consists of activities undertaken to assemble “the foundations of peace and provide the tools for building upon those foundations something that is more than just the absence of war.”³⁸ In other words, the search for peace necessitates the construction of a more just and united international society in which more opportunities for economic and cultural advancement exist.

This interpretation enables us to understand that the Charter struggles not only “to promote social progress and better standards of life in larger freedom,”³⁹ but also to promote respect for human rights by employing the “international machinery for the promotion of the economic and social advancement of all peoples.”⁴⁰ Additionally, the Charter aims to resolve “international problems of an economic, social, cultural, or humanitarian character”⁴¹ and support international “justice.”⁴²

VI. THE PRINCIPLE OF SELF-DETERMINATION

As articulated in Article 1(2) of the U.N. Charter, the principle of self-determination is not only difficult to define but also to apply to real-world situations. Baldi avers that “generally, we regard self-determination or self-decision as the capacity that populations sufficiently defined ethnically and culturally possess to coordinate themselves and the right that a people of a State has to choose the system of government.”⁴³ Baldi also distinguishes between two conflicting notions in the following:

An international aspect, that consists of the right of a people of not to be subject to the sovereignty of another State against their will and to secede from a State which they don't want to be subject to (the right to be politically independent) and an aspect of internal order, which consists of the right of each people to choose their preferred system of government.⁴⁴

37. Rudiger Wolfrum, *Article 1, in 1 THE CHARTER OF THE UNITED NATIONS: A COMMENTARY* 39, 40-41 (Bruno Simma ed., Oxford University Press 2d ed. 2002).

38. See U.N. GAOR, 55th Sess., agenda item 87 at 2, U.N. Doc. A/55/305 (Aug. 21, 2000), available at http://www.un.org/peace/reports/peace_operations/docs/a_55_305.pdf. The concept used here was the same as that of the Brahimi report with only a slight change. We replaced *reassemble* with *assemble*. We did so because the concept used in the report only referred to post-conflict societies, and we believe that such change makes this concept applicable to other societies. See *id.*

39. U.N. Charter pmbl.

40. *Id.*

41. U.N. Charter art. 1, para. 3.

42. See U.N. Charter pmbl.; art. 1, para. 1.

43. Carlo Baldi, *Antodeterminação, in DICIONÁRIO DE POLÍTICA* 70 (Norberto Bobbio, Nicola Matteucci & Gianfranco Pasquino eds., UnB 11th ed. 1998) (1983).

44. *Id.*

As a corollary of the principle of self-determination, neither the Security Council nor any other U.N. organ can impose a system of government on a population of a State or any other entity.⁴⁵

The greatest difficulty with interpreting the principle of self-determination is determining the extent to which we should recognize a group's right to "secede from a State to which it does not want to be subject to."⁴⁶ Cassese states, "indiscriminately granting the right to [external] self-determination to all ethnic groups would pose a serious threat to peace and bring about the fragmentation of States into a myriad of entities unable to survive."⁴⁷ Imprudent support for (external) self-determination may multiply the number of conflicts, as shown by the case of the former Yugoslavia. Regarding this point, a Yugoslav once put it, "Why should I be a minority in *your* state when *you* can be a minority in mine?"⁴⁸ In an advisory opinion of great relevance to the study of self-determination and secession, the Supreme Court of Canada stated:

[T]he right to self-determination of a people is normally fulfilled through internal self-determination -- a people's pursuit of its political, economic, social and cultural development within the framework of an existing state. A right to external self-determination (which in this case potentially takes the form of the assertion of a right to unilateral secession) arises in only the most extreme of cases and, even then, under carefully defined circumstances.⁴⁹

To validate a State's existence and, more importantly, to promote international peace and security, the desideratum of the International Community cannot be to create a State for each ethnic group but to guarantee the rights and the coexistence of all ethnic groups within the same State. This task is easier said than done.

Another relevant issue is the verification of the legitimacy of those who evoke the principle of self-determination. In the case of Rhodesia, the Security Council did not breach the right to self-determination. Rather, Ian

45. Gill, *supra* note 26, at 75.

46. Baldi, *supra* note 43, at 70.

47. ANTONIO CASSESE, INTERNATIONAL LAW 108 (2001).

48. RICHARD HOLBROKE, TO END A WAR 31 (Modern Library 1999) (1998).

49. Reference re Secession of Quebec, [1998] 2 S.C.R. 217, ¶ 126 (Can.). In the same decision, the Canadian Supreme Court lists the "cases" that may lead to a "right of secession": "where 'a people' is governed as part of a colonial empire; where 'a people' is subject to alien subjugation, domination or exploitation; and possibly where 'a people' is denied any meaningful exercise of its right to self-determination within the state of which it forms a part." The Canadian Court further adds: "In other circumstances, peoples are expected to achieve self-determination within the framework of their existing state." *Id.* at pmb1.

Smith's minority group did so when it seized power against the will of the majority.⁵⁰

VII. THE PRINCIPLE OF GOOD FAITH

Article 2(2) of the U.N. Charter states, "All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter."⁵¹

At first reading, the demand for good faith appears to refer only to U.N. members. However, when we examine the article's chapeau,⁵² we notice that this demand applies to members not only while they are acting in their individual capacities but also while they are acting as members of U.N. organs.⁵³

In the advisory opinion entitled "Conditions of Admission of a State to membership in the United Nations," the ICJ recognizes that the principle of good faith represents a limitation to the members' discretion.⁵⁴ In their dissenting votes, Judges Basdevant, Winiarski, McNair, and Read emphatically state that all U.N. members, under any circumstances (including the occasions when they are taking part in the works of U.N. organs, such as the Security Council or the General Assembly), have "the obligation to act in good faith . . . with the goal of accomplishing the purposes and principles of the Charter."⁵⁵

The principle of good faith was also included in the Vienna Convention on the Law of Treaties.⁵⁶ The International Law Commission stressed that the concept of good faith is applicable to international relations as a whole.⁵⁷ The ILC specifically noted that

50. DAVID SCHWEIGMAN, *THE AUTHORITY OF THE SECURITY COUNCIL UNDER CHAPTER VII OF THE UN CHARTER* 1, 169-70 (2001).

51. U.N. Charter art. 2, para. 2.

52. U.N. Charter art. 2. The chapeau reads: "*The Organization and Its Members*, in pursuit of the purposes stated in Article 1, shall act in accordance with the following Principles." (emphasis added).

53. ERIKA DE WET, *THE CHAPTER VII POWERS OF THE UNITED NATIONS SECURITY COUNCIL* 195 (2004).

54. *Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter)*, Advisory Opinion, 1948 I.C.J. 57, 63 (May 28).

55. *Id.* at 91-92 (joint dissenting opinion).

56. *See* Vienna Convention on the Law of Treaties art. 26, May 23, 1969, 1155 U.N.T.S. 331 (All treaties in force bind the parties and must be fulfilled by them in good faith); *id.* art. 31, para. 1 (A treaty must be interpreted in good faith according the common sense attributable to the terms of the treaty in its context and in light of its objective and goal); *id.* arts. 46, 69.

57. *International Law Commission*, *supra* note 20, at 211. The report states, "The motif of good faith, it is true, applies throughout international relations; but it has a particular

The rule that treaties are binding on the parties and must be performed in good faith — is the fundamental principle of the law of treaties. Its importance is underlined by the fact that it is enshrined in the Preamble to the Charter of the United Nations. As to the Charter itself, paragraph 2 of Article 2 expressly provides that Members are to “fulfill in good faith the obligations assumed by them in accordance with the present Charter.”⁵⁸

Additionally, the ILC asserted that, although some members favored stating that a State should “abstain from acts calculated to frustrate the object and purpose of the treaty,” the Commission felt that this notion was “clearly implicit in the obligation to perform the treaty in good faith.”⁵⁹

Thus, we may infer that the principle of good faith is not only applicable to the UNSC but also dictates the Council’s obligation to act in accordance with the purposes and principles of the Charter. Additionally, the good faith principle demands that the Council avoid adopting any act that may frustrate the Charter’s principles and purposes because doing so will breach the principle of good faith, indicate an abuse of power (*excès de pouvoir*), and render the act null and void. In the advisory opinion entitled “Certain Expenses of the UN,” Judge Gaetano Morelli expounded upon this notion in the following:

It is only in especially serious cases that an act of the Organization could be regarded as invalid, and hence an absolute nullity. Examples might be a resolution which had not obtained the required majority, or a resolution vitiated by a manifest *excès de pouvoir* (such as, in particular, a resolution the subject of which had nothing to do with the purposes of the Organization).⁶⁰

Therefore, the principle of good faith strengthens the demand for observance of the Charter’s principles and purposes, whereas the abuse of power induces sanctions against manifest transgressions.

importance in the law of treaties and is indeed reiterated in Article 27 in the context of the interpretation of treaties.” *Id.*

58. *Id.*

59. *Id.*

60. Certain Expenses of the United Nations (Article 17, Paragraph 2, of the Charter), Advisory Opinion, 1962 I.C.J 151, 223 (July 20) (separate opinion of Judge Morelli). The original text in French reads as follows:

C’est seulement dans les cas d’une gravité particulière qu’un acte de l’Organisation pourrait être considéré comme un acte invalide et, par conséquent, absolument nul. On pourrait faire l’exemple d’une résolution qui n’aurait pas obtenu la majorité requise ou d’une résolution entachée d’excès de pouvoir évident (telle, notamment, une résolution ayant un objet tout à fait étranger aux buts de l’Organisation).

Id.

Additionally, the principle of good faith and its implications are demonstrated in the nuclear tests case (*Australia v. France*). In this case, the Court recognized that “one of the basic principles governing the creation and performance of legal obligations, whatever their source, is the principle of good faith”⁶¹ and that “trust and confidence are inherent in international cooperation, in particular in an age when this co-operation in many fields is becoming increasingly essential.”⁶² Consequently, in the Court’s view, States are obligated to respect the expectations that they create.⁶³

VIII. RESPECT FOR HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Article 1(3) of the Charter states that one of the purposes of the U.N. is “to promote and to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.” Other articles in the Charter, especially Articles 55 and 56, and the principle of good faith emphasize these concerns about human rights.⁶⁴

With regard to the issue of human rights, Gill writes, “[B]y acting, the Security Council must take into consideration the impact of the sanctions on the population of target countries and assure that civilians and military observe the rules of human rights in conducting their operations.”⁶⁵ Nevertheless, some authors reject the notion that Article 1(3) limits the UNSC’s actions. For example, Craven claims that a statement such as “the Council is obliged to promote the respect for human rights” depends not only on one’s perceptions of the relations among the Charter’s objectives but also on one’s conception of the content of human rights.⁶⁶ In the same vein, Hans Kelsen argues in the following that the lack of a definition for human rights impeded their protection: “[T]he Charter does, in no way, specify the rights and freedoms to which it refers. Legal obligations of the Members in this respect can be established only by an amendment to the Charter or by a convention . . . ratified by the Members.”⁶⁷

We believe that these objections are groundless. The first issue raised by Craven (i.e., one’s perception of the relations among the Charter’s objectives) is probably more pertinent to a legal reasoning debate than to current discussion. However, Craven’s argument requires additional

61. Nuclear Tests (*Austl. v. Fr.*), 1974 I.C.J., 253, 268 (Dec. 20).

62. *Id.*

63. *Id.* See also WET, *supra* note 53, at 197.

64. In 1948, Philip Jessup stated: “It is already the law, at least for Members of the United Nations, that respect for human dignity and fundamental human right is obligatory. The duty is imposed by the Charter, a treaty to which they are parties.” PHILIP C. JESSUP, *A MODERN LAW OF NATIONS* 91 (1948).

65. Gill, *supra* note 26, at 78.

66. Craven, *supra* note 30, at 51.

67. KELSEN, *supra* note 11, at 342.

considerations. First, *in casu*, no antinomy⁶⁸ or incompatibility exists among the rules. There is no determination of an objective in one sense (say, forbidding something) as opposed to another (say, allowing something). Instead, the rules can and must be harmonized in the factual case. This task is not a prerogative of the U.N. Charter. Moreover, both domestic and international normative texts have rules that need to be harmonized with one another in certain factual situations.

With regard to the second objection (i.e., the “absence of specification” in the “concept of the content of human rights”), an elementary examination of the norms produced under the auspices of the U.N. shows that, in reality, the content of human rights is being continually and effectively specified by international treaties, such as the International Covenant on Civil and Political Rights (1966), the Convention on the Elimination of All Forms of Discrimination against Women (1979), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), and the Convention on the Rights of the Child (1989).

Two statements from the ICJ help clarify this point and reinforce the arguments employed in this article. In the following, we reproduce the first statement, which appears in a *decisum* of a dispute involving the United States and Iran: “Wrongfully to deprive human beings of their freedom and to subject them to physical constraint in conditions of hardship is in itself *manifestly incompatible with the principles of the Charter of the United Nations*, as well as with the fundamental principles enunciated in the Universal Declaration of Human Rights.”⁶⁹

The other statement appears in the advisory opinion “Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)” and reads as follows: “To establish instead, and to enforce, distinctions, exclusions, restrictions and limitations exclusively based on grounds of race, color, descent or national or ethnic origin which constitute a denial of fundamental human rights is a flagrant violation of the purposes and principles of the Charter.”⁷⁰

An analysis of these statements demonstrates the Court’s understanding that the members of the U.N. have a duty to respect human rights because of

68. Bobbio explains that an antinomy is a “situation in which two rules exist and one of them enforces a conduct whereas the other one forbids it, or one obliges a conduct and the other one permits it, or one prohibits a conduct and the other permits it.” BARDO FASSBENDER, TARGETED SANCTIONS AND DUE PROCESS 23 (2006) (report prepared for the Council of Europe). Bobbio adds that the rules must belong to the same normative order and possess the same validity ambit (i.e., temporal, spatial, personal and material). *Id.*

69. United States Diplomatic and Consular Staff in Tehran (U.S. v. Iran), Judgment, 1980 I.C.J. 42, at § 91 (May 24).

70. Legal Consequences for States of the Continued Presence of South Africa in Namibia (South-West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, 1971 I.C.J. 57, ¶ 131 (June 21).

the Charter.⁷¹ Furthermore, the Court affirms that a connection exists between the duty to respect human rights and the “infra-constitutional” instrument (i.e., The Universal Declaration of Human Rights).

The observance of the instruments produced by the Organization, besides being an issue of coherence, is a legal duty deriving from the principle of good faith. As the U.N. steps up the production and adoption, by its Members, of normative texts protective of human rights, it creates an expectation as to the respect for such rules by the Organization itself.⁷² Moreover, the principle of good faith binds the Member States when they take part in organs of the U.N., to comply with the expectations created in the ambit of the U.N. which are legally relevant in the field of Human Rights.⁷³

Additionally, the U.N. cannot lecture its members to respect human rights and simultaneously fail to observe their behaviors. Doing so would signify a transgression of the principle expressed in the maxim *venire contra factum proprium* (“Nobody should act contrarily to and inconsistently with his/her own behavior”).⁷⁴

IX. JUS COGENS

We find limitations to the UNSC’s power not only in the U.N. Charter but also in the imperative norms (i.e., *jus cogens*). According to the definition of the Vienna Convention on the Law of Treaties, these norms are accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.⁷⁵

The basic idea behind the concept of *jus cogens* is rather simple. *Jus cogens* is based on the notion that the freedom that States and organizations possess for entering into pacts is limited under international law. Thus, they

71. See Egon Schwelb, *The International Court of Justice and the Human Rights Clauses of the Charter*, 66 AM. J. INT’L L. 337 (1972).

72. WET, *supra* note 53, at 200.

73. *Id.*

74. BARDO FASSBENDER, TARGET SANCTIONS AND DUE PROCESS 23 (2006) (report prepared for the Council of Europe).

75. Vienna Convention on the Law of Treaties art. 53, May 23, 1969, 1155 U.N.T.S. 331. With regard to *jus cogens* and constitutionalism, Michael Byers stated the following:

Some of the most obvious examples of constitutional rules in international law are rules of *jus cogens*. Nowhere else in the international legal system is the ability of some rules to limit the ability of States to develop, maintain or change other rules, or to prevent them from violating fundamental rules of international public policy, so clear.

Michael Byers, *Conceptualizing the Relationship Between Jus Cogens and Erga Omnes Rules*, 66 NORDIC J. INT’L L. 211, 220 (1997).

cannot conduct transactions involving certain rules (i.e., *jus cogens*) because these rules are not revocable by an *inter partes* agreement.⁷⁶ The international community's collective interest prevails over the individual will of a State.

The notion of *jus cogens* is largely recognized today by modern legal doctrine⁷⁷ and jurisprudence⁷⁸ but remains surrounded by doubts and controversies.⁷⁹ Although the Vienna Convention's definition is the most quoted by international doctrine,⁸⁰ this definition is still criticized in many

76. Alfred Verdross, *Jus Dispositivum and Jus Cogens in International Law*, 60 AM. J. INT'L L. 55 (1966).

77. For a skeptical analysis of *jus cogens*, see Anthony D'amato, *It's a Bird, It's a Plane, It's Jus Cogens!*, 6 CONN. J. INT'L L. 1 (1990). The most remarkable rejection of the concept of *jus cogens* is provided by Rosalyn Higgins. ROSALYN HIGGINS, *PROBLEMS & PROCESS: INTERNATIONAL LAW AND HOW WE USE IT* 21 (1994).

78. References to *jus cogens* can be found in both the judgments of the ICJ and domestic courts. *See, e.g.*, North Sea Continental Shelf Cases (F.R.G. v. Neth.), 1969 I.C.J. 3, ¶ 70 (Feb. 20). In the case of Military and Paramilitary Activities in and against Nicaragua, the Court cited with approval the IDC's statement that a ban against the use of force would constitute an "example of *jus cogens*." *See* Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), 1986 I.C.J. 14 (June 27). We must note that various individual judges of the ICJ mention *jus cogens* in numerous cases, including *ad hoc* Judge Fernandes in the case concerning the Right of Passage over Indian Territory (Port. v. India), 1960 I.C.J. 6, 135, ¶ 29 (Apr. 12); South West Africa (Liber. v. S. Afr.), Judgment, 1966 I.C.J. 6, 298 (July 18) (Judge Tanaka) and *ad hoc* Judge Lauterpacht in Application of Convention on Prevention and Punishment of Crime of Genocide (Bosn. & Herz. v. Serb. & Montenegro), Provisional Measures, 1993 I.C.J. 325, 440 (Sept. 13) (separate opinion of Judge Lauterpacht) [hereinafter Lauterpacht opinion]. All of the decisions and votes are available at <http://www.icj-cij.org/docket/index.php?p1=3&p2=3> (last visited May 15, 2011). For International Criminal Court decisions regarding the former Yugoslavia that mention *jus cogens*, *see e.g.*, Prosecutor v. Kupreskic, Case No. IT-95-16-T, International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991, ¶ 520 (Jan. 14, 2000). Prosecutor v. Anto Furundzija, Case No. IT-95-17/1-T, ¶¶ 144, 153–156 (Int'l Crim. Trib. for the Former Yugoslavia Dec. 10, 1998). References to *jus cogens* can be found in both the judgments of the ICJ and domestic courts. *See, e.g.*, North Sea Continental Shelf Cases (F.R.G. v. Neth.), 1969 I.C.J. 3, ¶ 70 (Feb. 20); Az Alkotmánybírósg Határosatai, *Hungarian Constitutional Court, 1994*, in CASSESE, *supra* note 47, at 428.

79. RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES, § 102 (1987) ("Although the concept of *jus cogens* is now accepted, its content is not agreed.")

80. For commentators who use the definition of *jus cogens* given by the Vienna Convention on Treaty Law, *see for example*, MICHAEL AKEHURST, *MODERN INTRODUCTION TO INTERNATIONAL LAW* 57 (Peter Malanczuk ed., 7th ed. 1997) (1970); IAN BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 489 (6th ed. 2003); MANUEL BECERRA RAMÍREZ, *MANUAL DE DERECHO INTERNACIONAL PÚBLICO* 43 (1991); THOMAS BUERGENTHAL & HAROLD G. MAIER, *PUBLIC INTERNATIONAL LAW* 108 (1990); CASSESE, *supra* note 47, at 140; JOAQUIM DA SILVA CUNHA & MARIA DA ASSUNÇÃO DO VALE PEREIRA, *MANUAL DE DIREITO INTERNACIONAL PÚBLICO* 347 (Almedina, 2d ed. 2004); EDUARDO JIMÉNEZ DE ARÉCHAGA, *EL DERECHO INTERNACIONAL CONTEMPORÁNEO* 80 (1980); ANDRÉ GONÇALVES PEREIRA & FAUSTO QUADROS, *MANUAL DE DIREITO INTERNACIONAL PÚBLICO* 280 (3d ed. 1997);

corners. Jiménez de Aréchaga ponders that the concept of *jus cogens* is faulty because it is based on legal effects and not on the intrinsic nature of the imperative rule.⁸¹ He concludes that “it is not that certain rules are *jus cogens* because they do not permit agreement against them, but that contrary agreements are not permitted to certain rules because they possess a *jus cogens* character.”⁸²

Aréchaga points out the greatest difficulty with the *jus cogens* rule. That is, when can a rule be considered *jus cogens*? To date, no universally accepted criterion exists for defining a rule as imperative.⁸³ Consequently,

L.A. PODESTÁ COSTA & JOSÉ MARIA RUDA, DERECHO INTERNACIONAL PUBLICO 138 (6th ed. 1985); NGUYEN QUOC DINH, PATRICK DAILLIER & ALAIN PELLET, DIREITO INTERNACIONAL PÚBLICO 185 (2d ed. 1999); ANTONIO REMIRO BROTONS ET AL., DERECHO INTERNACIONAL PÚBLICO 279 (1997); JOSÉ FRANCISCO REZEK, DIREITO INTERNACIONAL PÚBLICO: CURSO ELEMENTAR 116 (10th ed. 2005); ROBERTO LUIZ SILVA, DIREITO INTERNACIONAL PÚBLICO 49 (Del Rey 2d ed. 2002); JEAN TOUSCOZ, DIREITO INTERNACIONAL 211 (1993); GRIGORII IVANOVICH TUNKIN, THEORY OF INTERNATIONAL LAW 154–55 (William E. Butler trans., 1974).

81. JIMÉNEZ DE ARÉCHAGA, *supra* note 80, at 81.

82. *Id.*

83. See Antônio Gómez Robledo, who states that the following:

The determination of the content of *ius cogens*, or it used to be said, the identification of its rules, is, without a doubt, as Sinclair put it, the most controversial aspect of its investigation, its genesis, its nature and function. With the exception of a minimum content normative core and by all recognized (the hypothesis of school, as Rousseau would say), the radiating zone of this core is full of uncertainties and in the list of imperative rules made by the authors, some with great profusion, the mark of subjectivism is frequently seen, and, at any rate, these lists are, as Sztucki said, both impressive and confusing. Each author elects this or that rule as imperative rule or absolutely inderogable, for it seems to them that the very structure of the international society or the supreme human interest hinge on the observance of such rules.

ANTONIO GOMEZ ROBLEDO, EL JUS COGENS INTERNACIONAL 153 (UNAM 2003). The text in Spanish reads as follows:

La determinación del contenido del *ius cogens*, o como acostumbra también decirse, la identificación de sus normas, es sin duda, como dice Sinclair, el aspecto más controvertido (*most controversial*) de la investigación en torno a él, su génesis, su naturaleza, su función. Con excepción de un núcleo normativo de contenido mínimo y de todos reconocido (las hipótesis de escuela, como diría Rousseau), la zona irradiante de este núcleo está llena de incertidumbre, y en las listas de normas imperativas que suelen hacer los autores, algunos con gran profusión, puede verse a menudo la impronta del subjetivismo, y en todo caso estas listas son, como dice Sztucki, tan impresionantes como desorientadoras (*both impressive and confusing*). Cada cual erige esta o aquella norma en norma imperativa o absolutamente inderogable, por parecerle que de su observancia depende la estructura misma de la sociedad internacional o los supremos intereses del hombre.

controversy accompanies even concrete examples of situations forbidden by the imperative rule.

Because a more profound analysis of *jus cogens* is beyond the scope of this work, we will simply recognize the examples accepted by the majority of the members of the International Law Commission (ILC) as peremptory rules: the unlawful use of force, genocide, slavery, and piracy.⁸⁴

Martenczuk argues that the definition of *jus cogens* is based on Article 53 of the Vienna Convention on the Law of Treaties and that this definition cannot be easily grafted into the U.N. Law.⁸⁵

Nonetheless, we must remember that the International Law Commission's objective is "the promotion of the progressive development of international law and its codification."⁸⁶ By proposing such a rule, the Commission codified (i.e., materialized in a treaty) an already existing rule, which can be verified in the commentaries of the ILC to the "draft articles on the law of treaties": "[T]he Commission concluded that *in codifying the law of treaties* it must start from the basis that *today there are certain rules* from which States are not competent to derogate at all by a treaty arrangement, and which may be changed only by another rule of the same character."⁸⁷

Thus, the *jus cogens* rules exist independently and do not depend on the Vienna Convention.⁸⁸ In *Bosnia-Herzegovina v. Yugoslavia*, ad hoc Judge Lauterpacht states, "The concept of *jus cogens* operates as a concept superior to both customary international law and treaty."⁸⁹ According to this opinion, in the case of an antinomy between *jus cogens* and treaties, UNSC

Id. Additionally, the following comment found in the draft project of the Vienna Convention on the Law of Treaties conveys the difficulty of defining a criterion: "[T]here is no simple criterion by which to identify a general rule of international law as having the character of *jus cogens*." 2 Y.B. Int'l L. Comm'n 172, 247-48, U.N. Doc. A/CN.4/SER.A/1966/Add.1.

84. *International Law Commission*, *supra* note 20, at 248.

85. Martenczuk, *supra* note 17, at 545-46.

86. Statute of the International Law Commission, G.A. Res. 174 (II), at Art. 1 (Nov. 21, 1947), as amended by resolutions 485 (V) of 12 December 1950, 984 (X) of 3 December 1955, 985 (X) of 3 December 1955 and 36/39 of 18 November 1981, available at untreaty.un.org/ilc/texts/instruments/english/statute/statute_e.pdf.

87. *International Law Commission*, *supra* note 20, at 247 (emphasis added).

88. In the decision *Nicaragua v. United States*, the Court refers to the consuetudinary character of the ban against the use of force in the following:

A further confirmation of the validity as customary international law of the principle of the prohibition of the use of force expressed in Article 2, paragraph 4, of the Charter of the United Nations may be found in the fact that it is frequently referred to in statements by State representatives as being not only a principle of customary international law but also a fundamental or cardinal principle of such law.

Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), 1986 I.C.J. 14, 100 (June 27).

89. Lauterpacht opinion, *supra* note 78, at 440.

resolutions, consuetudinary rules, or other rules of International Law, the *jus cogens* norm prevails.

It should be noted that the European Court of First Instance (CFI) also took the view that *jus cogens* is a legal restraint to the powers of the UNSC. According to the CFI,

International law thus permits the inference that there exists one limit to the principle that resolutions of the Security Council have binding effect: namely, that they must observe the fundamental peremptory provisions of *jus cogens*. If they fail to do so, however improbable that may be, they would bind neither the Member States of the United Nations nor, in consequence, the Community.⁹⁰

We note that the topic of *jus cogens* still exhibits many difficulties both for the existing legal doctrine and jurisprudence. However, because the existence and normative hierarchical superiority of *jus cogens* are widely recognized, we find that *jus cogens* indisputably limits the Security Council's power to impose sanctions.

X. CUSTOMARY RULES AND ARTICLE 103 OF THE CHARTER

There might be another potential legal limitation to the Security Council's actions in the customary rules. Specifically, Article 103 of the U.N. Charter establishes the superiority of the members' obligations under the Charter over an "obligation under any other international agreement."

In the *Lockerbie* case, Francisco Rezek, a former ICJ judge, wondered why Article 103 does not "operate to the detriment of customary international law and even less so to the detriment of the general principles of the law of nations."⁹¹ Rezek states that only the U.N. Charter (not a resolution by the UNSC, nor a recommendation by the General Assembly, nor a decision made by the ICJ) enjoys the preeminence outlined in Article 103.

However, we believe that in the event of a conflict between the Charter and the customary rules, both the criterion of speciality (*lex specialis derogat generali*) and the criterion of chronology (*lex posterior derogat priori*) shall be applied. With respect to the distinguished judge's second statement, we conclude that Articles 24(1) and 25 of the Charter outlines the

90. Judgments of 21 September 2005 in Case T-306/01 *Yusuf and Al Barakaat International Foundation v. Council* and Case T-315/01 *Kadi v Council and Commission*; Paragraphs 227 to 231 of *Kadi* were drawn up in terms identical to those of paragraphs 278 to 282 of *Yusuf and Al Barakaat*. However, the European Court of Justice (ECJ) later overruled the decision Court of First Instance. See Joined Cases C-402/05 P & C-415/05 P, *Kadi & Al Barakaat v. Council of the European Union*, 3 C.M.L.R. 41 (2008).

91. Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libya v. U.S.), Preliminary Objections, 1998 I.C.J. 115, 153 (Feb. 27), (separate opinion of Rezek, J.).

members' obligations to execute the UNSC's decisions that are in accordance with the Charter. This obligation may enjoy the preeminence conferred by the aforementioned Article 103 as long as the UNSC's decisions are in harmony with the U.N. Charter.

XI. IN SUM, THE SECURITY COUNCIL IS NOT *LEGIBUS SOLUTUS*

After these considerations, we arrive at the inevitable conclusion that the UNSC is subject to legal limitations derived not only from the Charter itself but also from *jus cogens* and other pertinent treaties. The Chamber of Appeals of the ICC for the former Yugoslavia also drew this conclusion in the *Tadic* case, as shown by the following:

The Security Council is an organ of an international organization, established by a treaty which serves as a constitutional framework for that organization. The Security Council is thus subjected to certain constitutional limitations, however broad its powers under the constitution may be. Those powers cannot, in any case, go beyond the limits of the jurisdiction of the Organization at large, not to mention other specific limitations or those which may derive from the internal division of power within the Organization. In any case, neither the text nor the spirit of the Charter conceives of the Security Council as *legibus solutus* (unbound by law).⁹²

Therefore, having overcome the myth of Prometheus, we should now dispel the myth that an organization created by law can be above it. Moreover, the expectations of an acting Security Council are perfectly compatible with the notion that men and organizations are subject to the law.

92. *Prosecutor v. Tadic*, Case No. IT-94-1-AR72, ¶ 28, Decision on Defence Motion for Interlocutory Appeal on Jurisdiction, ¶ 28 Int'l Crim. Trib. for the Former Yugoslavia (Oct. 2, 1995).

