Tamsin Phillipa Paige, Petulant and Contrary: Approaches by the Permanent Five Members of the UN Security Council to the Concept of ‘threat to the peace’ under Article 39 of the UN Charter

Leiden & Boston: Brill Nijhoff, 2019, 330pp, \$166 hardback, ISBN: 9789004391390

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Published online: 24 July 2021
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In understanding the operation of the United Nations collective security system, no provision of the UN Charter is more important than Article 39. Labelled as a ‘gateway’ provision, Article 39 empowers the Security Council to determine the existence of a “threat to the peace, breach of the peace or act of aggression,” which in turn provides the necessary basis from which the Council may proceed to impose robust enforcement measures in response, including non-military sanctions or the initiation of coercive military measures. Given that in practice the Council avoids labelling situations by the emotionally charged term “act of aggression” and has only applied the term “breach of the peace” on four occasions, the key to understanding its approach to situations which concern it is to consider how it has conceptualised situations as amounting to threats to the peace, a term which has been applied with increased frequency and in a wide range of contexts in the post-Cold War era. In understanding how the Council determines the existence of threats to the peace, we can in turn understand its approach to collective security more generally. Within this process the role of the Council’s permanent members is of course critical. As wielders of the power of veto over any decisions they object to, how the P5 choose to conceptualise threats to the peace is of the utmost importance, their support—or at least, non-opposition—dictating the prospect of any Council response being forthcoming to address any situation giving rise to concern.

This book, by Tamsin Phillipa Paige, is the first notable attempt of its kind to explore the approach taken by the P5 towards determinations that there exists a threat to the peace within the meaning of Article 39. A central contention advanced in the book is that each of the Council’s permanent members has

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its own internal working definition of a “threat to the peace” that is consistent throughout the history of the United Nations. By using a substantial series of case studies, Paige explores the Security Council’s debates in which the existence of a threat to the peace is the focus of its discussion. Through an empirical analysis of the P5’s justificatory discourse, the intention is that their individual understandings of the concept will become evident.

The book is divided into three parts. The first of these comprises two chapters which serve to set out the approach to be taken. Chapter one contains some pertinent observations upon the subject matter. The importance of Article 39 is underlined, it being noted in particular that determinations under this provision may lead to the adoption of binding decisions by the Council relating to the use of force. While only seven findings of the existence of a “threat to the peace” were identified in the period 1946–1986, it is observed that the Council became far more proactive in making use of this terminology in the post-Cold War era. This has not been without controversy at times, there being only limited legal discussion of the Council’s employment of Article 39 determinations. Taking Johnstone’s notion of the interpretive community, Paige’s approach is detailed in chapter two. Using Security Council meeting records as a source of qualitative data, the transcripts are examined of a series of case studies, with particular focus on the reasoning employed by the P5 in determining given situations to amount to (or not) threats to the peace.

Part Two accounts for the bulk of the book’s content and comprises twenty-two case studies. These are drawn from across the entire period of the UN’s existence, although most arise in the post-Cold War era, which is to be expected given the surge in activity on the part of the Security Council since the end of the superpower struggle which paralysed it for most of the Cold War. The case studies begin with consideration of the Spanish Question, the first occasion on which the Council discussed the concept of “threat to the peace” and one of the earliest incidents to find itself on its agenda. In an outcome which saw the P5 divided among themselves, the Council declined to determine the situation arising from the existence of the Franco regime to amount to a threat to the peace. A key difference evident in the reasoning employed by the permanent members concerned the extent to which a threat to the peace could be grounded in political ideology, or should be construed by reference to more formalistic reasoning drawing on UN Charter provisions. The first determination of the existence of a threat to the peace occurred in Resolution 54, pertaining to Palestine and in which the escalation of violence appeared critical to the consensus reached in this case. Subsequent Cold War era case studies included in the book concern the Portuguese African territories, South African apartheid, Vietnam’s intervention in Cambodia, the Iran hostage crisis, and South Africa’s occupation of Namibia. While varying in their circumstances, a common pattern throughout is disagreement between the P5 upon the categorisation of these situations. Although the reasoning employed for their approaches was not always consistent, the extent to which these furthered their political objectives is apparent. Even South African apartheid was only eventually labelled a threat to the peace after having been raised periodically for fourteen years when a turning point in developments prompted a change in attitude on the part of western powers.

Although the P5 have continued to display differences in their approaches to the conceptualisation of threats to the peace, the fifteen post-Cold War case studies utilised in the book evidence the emergence of a greater degree of consensus on their part in finding that a threat to the peace does or does not exist. Vetoes in this period have been relatively few, the use of force against Iraq and the Syrian civil war being among the rare occasions on which they have been exercised. At the same time, a generally harmonious approach is detectable in several situations, including responses to civil war in former Yugoslavia, the Rwandan genocide, East Timor, sexual violence in war, piracy and the use of chemical weapons. Where divisions have existed, these have invariably pitted the western powers, especially the US and UK, against the others.

The case studies are effective in illustrating the key factors which have informed the approaches taken by the P5 towards situations potentially posing threats to the peace, there being no singular factor informing any state's approach across all incidents. However, it is within the book's third and final part that the central characteristics of each permanent member's approach are drawn out. Part III begins with a brief overview of the concept of meta-synthesis and some general observations upon its application to the case studies, before a chapter is given over to each permanent member in turn. It is here that the key factors underpinning the individual approaches of the P5 to the identification of the existence of threats to the peace are drawn out. While the approaches of some of these states have often overlapped, each is shown to have its own distinct approach. It is also demonstrated that no single factor has consistently informed any state's support for or opposition to a determination under Article 39, but rather a number of considerations are evident over time. The US, for example, is found to have opposed Article 39 determinations where it has felt the situation under discussion is lacking in sufficient gravity and/or where peaceful settlement is regarded as preferable. In contrast, it has supported the determination of a threat to the peace on account of violations of international law having occurred, the situation being especially grave or affected parties having failed to comply with Security Council resolutions. There are some similarities in the approach taken by the UK, although it is found to be endowed with a greater degree of legal formalism. France's approach is observed to lack in any of the kinds of overarching arguments found to inform the approaches of the other permanent members, although its opposition to Article 39 determinations is linked to emphasis on the principle of non-interference. Russia has over time demonstrated an increased willingness to find the existence of a threat to the peace, the style of arguments it has deployed over time having shifted. From an earlier emphasis on jurisdictional concerns and a lack of faith in solutions being reached as the basis for opposition to Article 39 determinations, Russia has come to draw on the gravity of situations, their 'international' character and respect for the principle of self-determination as the basis for supporting them. China remains the most sceptical permanent member when it comes to acting under Article 39, its adherence to a stricter attitude towards the non-interference principle a key factor in its opposition or abstention on the adoption of resolutions which proclaim the existence of a threat to the peace. Where China has supported the application of Article 39, its reasoning has been endowed with less clarity.

This book offers a great deal by way of explanation of the P5's approach to the conceptualisation of situations of international concern as threats to the peace. It is comprehensive in the scope of case studies employed, while retaining an eminently readable tone which allows the scholar or student of the UN collective security system to make sense of the underlying factors which drive the Security Council's approach when considering the adoption of chapter VII measures. Its interdisciplinary nature means that it can equally be consulted by lawyers, political scientists or historians of the UN and international diplomacy.

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