



Lancaster University Law School

The Application of the United Nations Collective Security System in Territorial Disputes

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(PhD)**

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Declaration of Authenticity

The author hereby confirms that this thesis contains no material that has been accepted for the award of another degree in another university. To the best of the knowledge of the author, this thesis also contains no material that has been previously published or written by another person.

Author's Note

'WE 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.....AND FOR THIS END, to practice tolerance and live together in peace with one another as good neighbours, and to unite our strength to maintain international peace and security'

-Charter of the United Nations, Preamble

Acknowledgement

After more than 4 years of seemingly endless reading, thinking and writing, I can confirm that a PhD programme is nothing more than a ruthless test of the academic faith and the physical stamina of the corresponding PhD candidate. Over 30 years earlier when I was born, my father was preparing his PhD thesis, and it took him only minutes to think about my name, Bo, which exactly means ‘Doctorate’ in Chinese—now I totally know why he was in such a hurry.

Besides, I would like to thank various people who have accompanied and assisted me during this tough journey of writing up a PhD thesis in Law. First of all, I owe an enormous debt of gratitude to my primary supervisor, Dr. James Summers, as I certainly could not complete this lengthy project without his invaluable supervision. In the second place, I would like to express my gratitude to my secondary supervisor, Prof. Steven Wheatley, and all the members of the School of Law of Lancaster University who have provided their enthusiastic help to me. In the third place, I also would like to express my gratitude to my former lecturers from either Wuhan University or Nottingham University, without whom I could not even acquire my previous degrees. Finally, I must warmly embrace my father, mother and girlfriend, who are Prof. Xingwu Long, Assoc. Prof. Hong Huang and Dr (can). Jia Jia, this thesis is dedicated to them.

Lastly, with regard to my main achievement in the past four years, which is certainly the content of this thesis, I hereby declare that I have read and understood the regulations governing the submission of PhD thesis, including those relating to length and plagiarism, as contained in the Research Student Manual and that this thesis confirms to those regulations.

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School of Law, Lancaster University, November 2018

Abstract

The thesis is an attempt to critique the operation of the UN collective security system, in particular in relation to territorial disputes. In the introduction, the author argues that territorial disputes are an important, common but dangerous type of international disputes which can be, and have been controversially intervened by the UNCSS. Accordingly, the author has found out that the interaction between territorial disputes and the UNCSS is worthy to be studied. In the First main chapter, the author has reviewed the past literatures on either the UNCSS or territorial disputes, and evaluated the traditional route of legal research. Accordingly, the author argues that his research perspective of jointly studying territorial disputes and the UNCSS by combining legal and political theories is rather original, as the existing literatures tend to focus on general studies from their own research fields. Meanwhile, the author also argues that the realistic philosophy and the qualitative library-based literary methods are rather suitable for the current research topic, as they can deviate from the set paradigm without becoming impracticable. In the second main chapter, the author has addressed the inherent nature and the peaceful settlement of territorial disputes. Accordingly, the author argues that the land-territory disputes among member states of the United Nations can be defined as the working objects of study of this thesis. Moreover, the author also argues that the characters of territorial disputes are unfavorable for their settlement, and the peaceful measures are overly affected by the will of the direct parties, thus the intervention of the UNCSS is necessary. In the third main chapter, the author has described the authoritative institutions, operating mechanism and predetermined purposes of the UNCSS in handling territorial disputes. Moreover, the author has also analyzed the relationships between the UNCSS and the peaceful measures, the right of self-defence and definite regional organizations in regard to territorial disputes. Accordingly, the author argues that the UNCSS is responsible for returning the relevant situation to peace, and it has to primarily trust in its own changing structure and ability. In the fourth main chapter, the author has examined the practice of the four sets of forcible or non-forcible measures of the UNCSS in dealing with territorial disputes.

Accordingly, the author argues that none of these measures is perfect, but their effectiveness is generally determined by their coerciveness, or mandatory power. In the fifth main chapter, the author has proposed his thoughts and plan for the reform of the UNCSS in the field of territorial disputes. Accordingly, the author argues that the shortages of the UNCSS related to territorial disputes are both explainable and amendable, so that the future of the application of the UNCSS in territorial disputes is worthy to be anticipated. In the conclusion, the author summarized the entire thesis through listing all his research findings, following the set research questions.

Key Words: UNCSS, Territorial Disputes, Realism, Peace, Security, Mandatory Power, Reform.

Table of Cases

PCIJ Judgments and Advisory Opinions

1. *Mavrommatis Palestine Concessions (Greece v. United Kingdom)* PCIJ Series A No. 2 [1924] 11.

ICJ Judgments and Advisory Opinions

1. *Reparation for Injuries Suffered in the Service of the United Nations* (Advisory Opinion) [1949] ICJ Rep 174.
2. *Advisory Opinion Concerning the Interpretation of Peace Treaties with Bulgaria, Hungary and Romania* (Advisory Opinion) [1950] ICJ Rep 65 & 221.
3. *Case of the Monetary Gold Removed from Rome in 1943 (Italy v. France, United Kingdom and United States)* (Merit) [1954] ICJ Rep 19.
4. *Case concerning the Temple of Preah Vihear (Cambodia v. Thailand)* (Merits) [1962] ICJ Rep 6.
5. *North Sea Continental Shelf Cases (Federal Republic of Germany v. Denmark, Federal Republic of Germany v. Netherlands)* (Judgment) [1969] ICJ Rep 3.
6. *Advisory Opinion on Western Sahara* (Advisory Opinion) [1975] ICJ Rep 12.
7. *Case Concerning United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran)* [1980] ICJ Rep 3.
8. *Case Concerning the Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America)* (Jurisdiction and Admissibility) [1984] ICJ Rep 392.
9. *Maritime Delimitation and Territorial Questions between Qatar and Bahrain*

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Decisions of Other International Courts and Tribunals

1. *Case Concerning the Indo-Pakistan Western Boundary (Rann of Kutch) (India v. Pakistan)* (1968) 17 RIAA 553.
2. *Boundary Disputes Concerning the Taba Area (Egypt v. Israel)* (1988) 27 ILM 1427.
3. *Arbitration for the Brcko Area (Republic of Srpska v. Federal Republic of Bosnia and Herzegovina)* (1997) 36 ILM 396.
4. *Decision Regarding Delimitation of the Border Between the State of Eritrea and the Federal Democratic Republic of Ethiopia (Eritrea v. Ethiopia)* (2002) 41 (5) ILM 1057.
5. *Partial Award Jus Ad Bellum: Ethiopia's Claims 1–8 (Eritrea v. Ethiopia)* (2005) 45 ILM 430.

Decisions of National Courts

1. *Samsung Electronics (UK) Ltd v. Apple Inc* [2012] EWHC 1882 (Pat).

Table of Abbreviations

AU	African Union
ASEAN	Association of Southeast Asian Nations
CIA	Central Intelligence Agency
CIS	Commonwealth of Independent States
CSCE	Commission on Security and Cooperation in Europe
CSTO	Collective Security Treaty Organization
ECOMOG	Economic Community of West African States Monitoring Group
ECOWAS	Economic Community of West African States
ECSC	European Coal and Steel Community
EEZ	Exclusive Economic Zone
EU	European Union
FRY	Federal Republic of Yugoslavia
GDP	Gross Domestic Product
GNI	Gross National Income
Hague I	First Hague Convention for the Pacific Settlement of International Disputes (1899)
ICJ	International Court of Justice

ILC	International Law Commission
ITLOS	International Tribunal for the Law of the Sea
MINURSO	United Nations Mission for the Referendum in Western Sahara
MINUSMA	United Nations Multidimensional Integrated
	Stabilization Mission in Mali
MONUSCO	United Nations Organization Stabilization Mission in
	the Democratic Republic of the Congo
NATO	North Atlantic Treaty Organization
NOAA	National Oceanic and Atmospheric Administration (USA)
OAS	Organization of American states
ONUC	United Nations Operation in the Congo
OPEC	Organization of Petroleum Exporting Countries
OSCE	Organization for Security and Co-operation in Europe
P5	Permanent Members of the UNSC
PBC	United Nations Peacebuilding Commission
PCA	Permanent Court of Arbitration
PCIJ	Permanent Court of International Justice
PIF	Pacific Islands Forum

SCO	Shanghai Cooperation Organization
UK	United Kingdom of Great Britain and Northern Ireland
UN	United Nations
UNASOG	United Nations Aouzou Strip Observer Group
UNCLOS	United Nations Convention on the Law of the Sea
UNCLOS I	First United Nations Conference on the Law of the Sea (1958)
UNCSS	United Nations Collective Security System
UNDPKO	Department for Peacekeeping Operations of the United Nations
UNECOSOC	United Nations Economic and Social Council
UNEF I	First United Nations Emergency Force
UNEF II	Second United Nations Emergency Force
UNGA	United Nations General Assembly
UNIFIL	United Nations Interim Force in Lebanon
UNIKOM	United Nations Iraq-Kuwait Observation Mission
UNISFA	United Nations Interim Security Force for Abyei
UNMEE	United Nations Mission in Ethiopia and Eritrea
UNMIK	United Nations Mission in Kosovo
UNMOGIP	United Nations Military Observer Group in India and Pakistan

UNOSOM II	United Nations Operation in Somalia II
UNPROFOR	United Nations Protection Force
UNSC	United Nations Security Council
UNSF	United Nations Security Force in West New Guinea
UNTAES	United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium
UNTAET	United Nations Transitional Administration in East Timor
UNTSO	United Nations Truce Supervision Organization
USA	United States of America
USSR	Union of Soviet Socialist Republics
WMD	Weapon of Mass Destruction
WTO	World Trade Organization
WWI	World War One
WWII	World War Two

Chapter 1-Introduction

The United Nations Collective Security System (hereinafter ‘the UNCSS’) and territorial disputes are two seemingly distinct topics within the system of modern international law:

The former refers to the forcible mechanism under the name of the United Nations, in which the member states act collectively to guarantee their harmonious internal order, and therefrom further maintaining international peace and security. Theoretically speaking, this mechanism not only enjoys the exclusive command of the UNSC and other organs of the United Nations, but also has the right to recruit the combined strength of all the member states to enforce an extensive range of sanctions (especially the centralized use of force). Unfortunately, due to the repeated failure of its past operating attempts, this mechanism is still being thoroughly criticized by those leading international legal scholars (for the details of this mechanism, see 4.1 below).¹

The latter refers to the disagreement among multiple states over the sovereign ownership or control of a particular piece of territory. Practically speaking, according to its various different definitions, this dispute not only can involve plenty of core actors in the modern international relations, but also can cover most of the geographical spaces in which the human civilizations and activities are existing. Nevertheless, due to the rapid change of its background international situations, this dispute has been largely banished from the present Western world (for the details of this concept, see 3.1 below).²

At the beginning of this thesis, therefore, it is necessary to explain the interrelated importance of the UNCSS and territorial disputes from the perspective of modern international law, so as to show the practical significance and internal connection of this research topic. Naturally, this introductory chapter will also set out the basic structure

¹ Antonio Cassese, *International Law* (2nd edn, OUP 2005) 339; Gary Wilson, *The United Nations and Collective Security* (Routledge 2014) 5-8.

² See e.g. Alan Day & Judith Bell (eds), *Border and Territorial Disputes* (2nd edn, Cartermill International 1987) ch 1.

of the thesis.

1.1 The importance of territorial disputes in the context of international law

International law, or the law of nations, as it is traditionally called, refers to ‘the name for the body of customary and conventional rules which are considered legally binding by civilized states in their relation with each other.’³ In other words, the modern international law, which originates from the era of the Peace of Westphalia, exists and continues to develop on the basis of sovereign states and their need to regulate their mutual relationships.⁴ In addition, it is clear that recent theories of international law have recognized other international political entities, such as inter-governmental organizations⁵ or even individuals,⁶ as the subjects of international law. However, at the moment, sovereign states are still the main focus and core subject of international law.⁷

Correspondingly, the element of territory also holds the primary position among the four basic pre-conditions listed in the Montevideo Convention that must be met for a state to be said to exist.⁸ If an international political entity does not have a defined territory, then it cannot have a permanent population. If it does not have a permanent population, it also cannot form a stable human society, and accordingly there is no need to organize a government. If it does not have a government, and is therefore merely a group of scattered individuals, it can hardly enter into relations with other states.⁹ Meanwhile, according to Morgenthau, territory and the various natural elements attached to it, provide the basic tangible prerequisites for the stable national strength

³ Robert Y. Jennings & Arthur Watts (eds), *Oppenheim's International Law* (9th edn, Longman 1992) 4.

⁴ Matthew Craven, ‘Statehood, Self-Determination, and Recognition’, in Malcolm Evans (ed), *International Law* (3rd edn, OUP 2010) 203 at 208-17.

⁵ See e.g. *Reparation for Injuries Suffered in the Service of the United Nations* (Advisory Opinion) [1949] ICJ Rep 174.

⁶ E.g. International criminal law, see Antonio Cassese, *International Law* (2nd edn, OUP 2005) 143-50.

⁷ See Antonio Cassese, *International Law* (2nd edn, OUP 2005), 71-72.

⁸ See Convention on the Rights and Duties of States (Montevideo Convention) (signed 26 December 1933) 165 LNTS 19, art 1.

⁹ See e.g. Jan Klabbers, *International Law* (CUP 2013) 70-71.

and further development of sovereign states.¹⁰ Territory is therefore one of the core national interests which must be safeguarded by states for the purpose of ensuring their competitive ability in international society.

Owing to this double-tiered relationship between territories and states and states and international law, the abnormal change of the sovereignty ownership of territories is definitely capable of creating serious international disputes. Thereby, this issue could actually further test the effectiveness of international law in the relevant practice:

For example, although many common states tend to adopt a forbearing stance in their diplomatic activities due to their relative weakness,¹¹ but sovereignty and territorial integrity are still uncompromisably necessary for keeping their basic national strength.¹² Similarly, even though the superpowers rarely have to face international disputes which directly relate to their own territories,¹³ but territories remain the original basis on which all the superpowers compete with each other. Meanwhile, territories are an accurate indicator of the rise and fall of the national strength of those superpowers as well.¹⁴ Besides, even in regions where processes of integration have served to weaken the significance of sovereignty, the status of territories is also highly praised by local states. Accordingly, territorial disputes may still have a potentially negative impact on the peace, international co-operation and rule of law over there.¹⁵

¹⁰ Hans J. Morgenthau (author), Kenneth W. Thompson & David Clinton (revised), *Politics among Nations: The Struggle for Peace and Power* (7th edn, McGraw-Hill 2005) ch 9.

¹¹ See e.g. Andrew F. Cooper & Timothy M. Shaw (eds), *The Diplomacies of Small States: Between Vulnerability and Resilience* (Palgrave Macmillan 2009) pt 1.

¹² Hans J. Morgenthau (author), Kenneth W. Thompson & David Clinton (revised), *Politics among Nations: The Struggle for Peace and Power* (7th edn, McGraw-Hill 2005) 318-20.

¹³ CIA, ‘Transnational Issues > Disputes > International by country, All CIA World Factbooks 18 December 2003 to 18 December 2008’ (*NationMaster.com*) <http://www.nationmaster.com/graph/gov_tra_iss_dis_int-government-transnational-issues-disputes-international> accessed 7 January 2014.

¹⁴ E.g. A series of new-born territorial disputes within the borders of the former socialist republics in Eastern Europe, after the collapse of the Soviet Bloc. See CIA, ‘Transnational Issues > Disputes > International by country, All CIA World Factbooks 18 December 2003 to 18 December 2008’ (*NationMaster.com*) <http://www.nationmaster.com/graph/gov_tra_iss_dis_int-government-transnational-issues-disputes-international> accessed 7 January 2014.

¹⁵ E.g. The issue of Gibraltar within the frontier of the EU. See Keith Azopardi, *Sovereignty and the Stateless Nation: Gibraltar in the Modern Legal Context* (Hart Publishing 2009); Nigel White, *Democracy Goes to War: British Military Deployments under International Law* (OUP 2012).

Under the above circumstances, territorial disputes among the sovereign states have certainly formed one of the main international disputes that are both most regularly seen and most likely to directly threaten international peace and security (with regard to the working definition of territorial disputes in the context of this thesis, see chapter 3 below).¹⁶ Consequently, this type of dispute has become a crucial long-term issue within the framework of modern international legal system:

Actually, among those international armed conflicts which both brought about casualties and occurred between 1816 and 2001, approximately half contained some elements of territorial dispute.¹⁷ Besides, those conflicts caused by territorial disputes are also the most bloody and long-lasting conflicts among all types of international armed conflicts.¹⁸ In addition, among all the total interstate wars which took place between 1648 and 1989, more than three quarters contained territorial disputes.¹⁹ As a direct result of this prevalence of territorial disputes, and the risk they pose, just during the period from 1946 to 2002, the ICJ had already judged 16 cases related to land or maritime delimitations. Fortunately, many of which have established authoritative precedents for the future application of international law in territorial disputes.²⁰

In summary, as sovereign states are still the core focus of modern international law and states have a core interest in their territory, there is no doubt that territorial disputes should be seriously concerned by the international legal academia. In addition, while the modern international legal system has pledged to defend ‘international peace and security’, territorial disputes have been threatening its duty for centuries, and they have

009) 174.

¹⁶ For an in-depth explanation of the complex definition of modern territorial disputes, see Paul Huth, *Standing your ground: Territorial Disputes and International Conflicts* (University of Michigan Press 1998) 4-5 & 19-26; with regard to the dangerousness of territorial disputes, see also John A. Vasquez, *The War Puzzle Revisited* (CUP 2009) 135-36.

¹⁷ John A. Vasquez, *What do we know about War* (Roman & Littlefield 2012) ch 1 table 1.3.

¹⁸ Hein E. Goemans & Kenneth A. Schultz, ‘The Politics of Territorial Disputes: A Geospatial Approach Applied to Africa’ (Draft) (2016) 71 (1) International Organizations 31 at 31.

¹⁹ Kalevi J. Holsti, *Peace and War: Armed Conflicts and International Order, 1648-1991* (CUP 1991) 307-10; John A. Vasquez, *What do we know about War* (Roman & Littlefield 2012) ch 1 table 1.3.

²⁰ Nie Hongyi, ‘A Review of the Function and Dilemma of International Law in Settling Territorial Disputes’ (2009) 2009 (2) Heilongjiang Chronicles 137 at 139.

even enhanced the related experience of the ICJ. Thus, this issue is a worthy subject-matter for academic study, just like it is a regular object-matter for judicial institutions.²¹

1.2 The importance of the UNCSS in the context of territorial disputes

Since the end of the WWII, the prohibition of the use of force in international relations has become a worldwide norm of international law.²² Therefore, the processes of settling contemporary international disputes, including territorial disputes, have gradually shifted to peaceful methods.²³ These peaceful forms of dispute settlement, however, are not perfect, nor can they guarantee their effectiveness in any particular international dispute.²⁴ Meanwhile, comparing to common international disputes, territorial disputes are relatively complex, and compromise is harder to achieve since they involve the core interest of states,²⁵ which means that they are less likely to be gently resolved (these arguments will be discussed further in chapter 3).²⁶ Under the pressure of such a dilemma and due to the following reasons, as a substitute method for the traditional use of force by states, the UNCSS is indeed quite meaningful to territorial disputes settlement:²⁷

Firstly, the UNCSS is a key method for legally handling contemporary international disputes by the use of force.

The peaceful settlement of international disputes is both the basic requirement of contemporary international law and a common expectation of the international

²¹ Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, UNGA Res 2625 (XXV) (24 October 1970) UN Doc A/RES/25/2625, see especially the first two principles of the seven principles listed by this declaration.

²² Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, art 2 (4).

²³ Nie Hongyi, 'A Review of the Function and Dilemma of International Law in Settling Territorial Disputes' (2009) 2009 (2) Heilongjiang Chronicles 137 at 138.

²⁴ See e.g. J.G.Merrills, *International Dispute Settlement* (5th edn, CUP 2011) 21-25, 37-40; *Advisory Opinion on Western Sahara* (Advisory Opinion) [1975] ICJ Rep 12.

²⁵ Yang Mian, 'The Peaceful Approaches and Methods of Settling Territorial and Boundary Disputes' (2009) 31 (1) Socialism Studies 109 at 109-10; regarding the general characters of territorial disputes, see below.

²⁶ Nie Hongyi, 'A Review of the Function and Dilemma of International Law in Settling Territorial Disputes' (2009) 2009 (2) Heilongjiang Chronicles 137 at 140.

²⁷ Malcolm Shaw, *International Law* (6th edn, CUP 2008) 1121-22, 1146-47, ch22s3.

community.²⁸ However, once an international dispute cannot be settled by peaceful methods, the related parties are likely to be forced to consider the option of resorting to coercive measures, or even their armed forces. In this situation, and especially in the latter case, the UNCSS is the appropriate route to the legal use of force. In contrast, although the right of self-defence is also a legitimate reason for the use of armed forces, this is only a provisional method which is expected to be supervised of the UNSC, before the situation is eventually transferred back to the UNCSS.²⁹ In addition, being the only universal collective security system in the contemporary international community, the UNCSS is backed by a global inter-governmental organization that includes almost all states on Earth. Needless to say, there is no other measure or institution for the settlement of international disputes which involve the use of force can compare to this character.³⁰ Furthermore, a few past cases have shown that states can greatly benefit from conducting their relevant practice via the platform of the UNCSS:

In terms of those small or weak states, the UNCSS could help them to offset their disparities in national strength, this has been proved by the liberation of Kuwait in 1991 (it is noteworthy that the original design of the UNCSS institutionalised the dominance of the P5 over smaller or weaker states. Thus, the superpowers always keep a conservative attitude towards the expansion of the authority of this mechanism, see below³¹).³² To larger states or the global powers, the UNCSS could be used by them as an excuse to avoid the negative legal consequences of unilateral actions, this has been proved by the invasion of Iraq in 2003.³³

²⁸ Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, art 2 (3) (4).

²⁹ Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, art 51; Christine Gray, *International Law and the Use of Force* (3rd edn, OUP 2008) 124-25.

³⁰ See e.g. The United Nations, 'Member States of the United Nations' <<http://www.un.org/en/members/>> accessed 12 January 2013.

³¹ In regard to a typical expression of the common attitude of small states on the power/reform of the authoritative institutions of the UNCSS, see e.g. Costa Rica, Jordan, Liechtenstein, Singapore and Switzerland Draft Resolution on Improving the Working Methods of the Security Council (17 March 2006) UN Doc. A/60/L.49.

³² E.g. The Liberation of Kuwait during the Gulf War, see William Thomas Allison, *The Gulf War, 1990-91* (Palgrave 2012) chs 7-8.

³³ E.g. The legal justification of the UK for the invasion of Iraq in 2003, see United Kingdom Foreign and Commonwealth Office Memorandum (17 March 2003) 52 ICLQ 812.

Secondly, the UNCSS has plenty of opportunities to be widely applied in territorial disputes.

As past cases have shown, once a dispute has been intensified to the point at which it cannot be peacefully settled and has been determined by the UNSC to be a threat to international peace and security, then the UNCSS might be activated (e.g. the Gulf War, on the inherent limitations of peaceful measures, see 3.2 below).³⁴ Likewise, if the parties to a territorial dispute cannot settle the dispute themselves, they may refer the case to the UNCSS for winning the mutual confrontation.³⁵ Thirdly, under the shadow of superpower politics, if any ally of a superpower is in disadvantageous position in a territorial disputes, that superpower may also intervene as a third party by quoting the UNCSS (e.g. the US intervention in the Korean War). Thereby, the superpowers may ‘legally’ change the result of the relevant territorial disputes through non-peaceful methods, or they may at least force the other side not to act too aggressively.³⁶

Thirdly, the application of the UNCSS in territorial disputes has initiated some controversies.

As aforementioned, territorial disputes are a particular type of international disputes in which the direct parties can hardly express their consent or make any significant concession.³⁷ Therefore, right from when the UNCSS was first established as a legal

³⁴ E.g. The Iraqi invasion of Kuwait before the Gulf War. See Brian Frederking, *The United States and the Security Council: Collective Security since the Cold War* (Routledge 2007) 78-82.

³⁵ E.g. The request for external assistance sent by the government of South Korea to the UNSC on the outbreak of the Korean War, and the request for external assistance sent by the internationally recognized authority of Cambodia to the UNSC on the issue of the occupation of Cambodia by Vietnam & the deployment of the subsequent United Nations peacekeeping operations, see e.g. David L. Bosco, *Five to Rule Them All: The UN Security Council and the Making of the Modern World* (OUP 2009); Benny Widjono, ‘United Nations Transitional Authority in Cambodia (UNTAC)’, in Joachim A. Koops, Norrie MacQueen, Thierry Tardy & Paul D. Williams (eds), *The Oxford Handbook of United Nations Peacekeeping Operations* (OUP 2015) 395 at 395-407.

³⁶ E.g. The military reinforcement offered by the USA towards the government of the Republic of Korea under the name of the ‘UN Forces’ during the Korean War, see UNSC Res 82 (25 June 1950) UN Doc S/RES/82; UNSC Res 83 (27 June 1950) UN Doc S/RES/83; UNSC Res 84 (7 July 1950) UN Doc S/RES/84; David Harris, *Cases and Materials on International Law* (7th edn, Sweet & Maxwell 2010) 806-808.

³⁷ Yang Mian, ‘The Peaceful Approaches and Methods of Settling Territorial and Boundary Disputes’ (2009) 31 (1) *Socialism Studies* 109 at 109-10; Nie Hongyi, ‘A Review of the Function

alternative to the unilateral resort to force by states, there have been controversies related to its application in territorial disputes.³⁸ Even the Gulf War, which is usually seen as a successful model of the application of the UNCSS, also raises questions.³⁹ More seriously, in some cases such as the Korean War, the application of the UNCSS in territorial disputes has further increased the tensions between the related parties, and led to intensified conflict or war.⁴⁰ For their own reasons, however, scholarship on international law, especially in the Western academia,⁴¹ lacks comprehensive and detailed research on the application of the UNCSS in the settlement of territorial disputes (see literature review). Hence, the related actions of the international community cannot be legally and properly regulated, and the maintenance of the international peace and security may be negatively affected as well.

In summary, being the major method of legally using armed forces after the WWII, the UNCSS is a qualified coercive supplementary method to the peaceful measures in the field of settling territorial disputes. Additionally, concerning the related past practice, there is no lack of chance for the application of the UNCSS in territorial disputes, and they have caused definite controversies. Therefore, it is clearly necessary to conduct research on this issue within the system of contemporary international law.

1.3 The structure of the thesis

Given the limitations in time and words inherent in this thesis it will not be possible to examine all the controversial issues related to the application of the UNCSS in territorial disputes. The thesis will, however, creatively and profoundly reflect the unique features of the application of the UNCSS in territorial disputes. Additionally, according to Strong,

and Dilemma of International Law in Settling Territorial Disputes' (2009) 2009 (2) Heilongjiang Chronicles 137 at 140.

³⁸ E.g. The Korean War, David Harris, *Cases and Materials on International Law* (7th edn, Sweet & Maxwell 2010) 806-808.

³⁹ Thomas Frank, 'What Happens Now? The United Nations after Iraq' (2003) 97 AJIL 607; E. Rostow, 'Until What? Enforcement Action or Collective Self-Defense' (1991) 85 AJIL 506.

⁴⁰ See David Harris, *Cases and Materials on International Law* (7th edn, Sweet & Maxwell 2010) 806-808.

⁴¹ Basically due to the political advantages and cultural commonalities, see Malcolm Shaw, *International Law* (6th edn, CUP 2008) 13-42.

a dissertation in law should contain at least four elements, namely ‘Claim-Law-Evaluation-Outcome (CLEO)’ in respect to the research topic of this thesis. This means that the author should answer at least four research questions related to the application of the UNCSS in territorial disputes, namely ‘necessity (Claim), rules (Law), performance and prospect (Evaluation and Outcome)’.⁴² For these purposes, the author would like to set the basic structure of the main body of this thesis as follows:

Firstly, the author will review the research basis of the thesis.

This chapter will entail a review of the existing international legal literature on the UNCSS and territorial disputes, alongside related academic materials from the field of international relations. This review will serve to demonstrate the originality of the detailed content of the subsequent chapters. This will be followed by the systematic illustration of the methodology that the author wishes to apply, so as to show the distinctiveness of the abstract methods adopted in the subsequent chapters.

Next, the author will discuss the background of the application of the UNCSS in territorial disputes settlement.

This chapter will entail a discussion of the working concept of territorial disputes, and the characters of the issue of territorial disputes from the perspective of modern international law. This process will help to define the parameters for the selection of the case studies in the thesis and to illustrate the main challenges that the UNCSS might face in this field. Then the thesis will discuss the various peaceful measures for settling territorial disputes, summarizing their inherent disadvantages, so as to highlight the need to apply the UNCSS in territorial disputes. In short, this part mainly answers such an afore-mentioned research question in relation to ‘necessity’-why the settlement of territorial disputes should be resorted to the UNCSS?

Next, the author will explain the framework of the application of the UNCSS in

⁴² S. I. Strong, *How to Write Law Essays & Exams* (4th edn, OUP 2014) 4-6 & 119-128.

territorial disputes settlement.

This chapter will specify the authoritative institutions, operating mechanisms and predetermined purposes that might be activated/pursued by the UNCSS in the face of territorial disputes. Accordingly, it will collate the process of the UNCSS when this mechanism is participating in the resolution of such disputes, together with its aims. Afterward, this chapter will try to specify the mutual relationship between the UNCSS and other surrounding measures, mechanisms or organizations in the face of territorial disputes. Accordingly, it will clarify the partners of the UNCSS when this mechanism is participating in the resolution of such disputes, together with their interactions. In short, this part mainly answers such an afore-mentioned research question-what are the general ‘rules’ governing the application of the UNCSS in territorial disputes settlement?

Next, the author will analyse the practice of application of the UNCSS in territorial disputes settlement.

This chapter will analyse the different measures under the framework of the UNCSS by using representative cases, so as to explore the practical performance of this international security mechanism in territorial disputes. Afterwards, the thesis will try to analyse the fatal drawbacks of the various measures under the framework of the UNCSS while they are being applied in territorial disputes, so as to inform the subsequent chapter of the thesis. In short, this part mainly answers such an afore-mentioned research question-how is the specific ‘performance’ of the application of the UNCSS in territorial disputes settlement?

Finally, the author will provide the reform plan of the thesis.

This chapter will focus on enforceable self-reform of the UNCSS, generalizing the guiding thoughts and thus offering the practicable suggestions. Meanwhile, this thesis will also assess the potential effect of these reforms by studying a selected recent case of territorial disputes. Afterwards, following the set order of the research questions, as

listed in the present section, the author will summarise his research findings and thereupon conclude the entire doctorate project. In short, this part mainly answers such an afore-mentioned research question in relation to ‘prospect’-what can be improved for the future application of the UNCSS in territorial disputes settlement?

Chapter 2-The research basis of the thesis

As territorial disputes have always threatened the peace, security and stability of the international community, this issue is certainly an important one for international legal scholars. Similarly, as the mechanism allowing the use of force within the only universal inter-governmental organization of the modern international community, the theoretical status of the UNCSS is also unquestionable. Moreover, since it was founded in 1945, this mechanism is also a relatively longstanding one.⁴³ It is unsurprising, therefore, that there has been a lot of research into territorial disputes or the UNCSS within both the scholarship on international law and that on international relations.⁴⁴ In order to identify gaps in this research, and thus justify the originality of this thesis, this chapter systematically assesses the current literature, so as to situate the thesis within the scholarship.

Besides, it should be seen that different scholars would certainly interpret territorial disputes and the UNCSS in different ways. Therefore, two articles/monographs that both put ‘territorial disputes’ or ‘the UNCSS’ into their titles might not have the same detailed content (for example, while they are studying territorial disputes, some scholars may choose not to incorporate boundary disputes, see below). For original research and convenient writing, the author will soon state his personal opinions on the various details of the two key words of his research topic. Nevertheless, for impartially reflecting the related research progress, the author will not ignore any representative material by claiming his disagreement in opinions, provided the material has clearly specified that ‘territorial (disputes)’ or ‘(United Nations) collective security’ is its key

⁴³ With regard to the basic status of the United Nations and the UNCSS, see Antonio Cassese, *International Law* (2nd edn, OUP 2005) 317-20 & 339-40.

⁴⁴ International law and international relations can be seen as like the two sides of one coin, the former primarily studies the issue of how to maintain the normal order of international affairs, and the latter primarily studies the issue of how to explain the contradictions emerging with in international affairs: the former treats the latter as its parallel subject, whilst the latter treats the former as its subordinate subject, but in any case, these two subjects are supplementary to each other, and it is very hard to forcibly divide or separate them, see e.g. Michael Byers, ‘International Law’, in Christian Reus-Smit & Duncan Snidal (eds), *The Oxford Handbook of International Relations* (OUP 2010) 612 at 612-34.

word.

2.1 The literature review of the thesis

2.1.1 Legal and international relations scholarship on territorial disputes

1. Prior to the establishment of the United Nations.

Legal scholarship on territorial disputes has an early start. In the first *magnum opus* of the 20th century, Oppenheim already discussed several traditional norms of international law related to territorial disputes in a general manner.⁴⁵ Indeed, notwithstanding some fundamental differences between traditional international law and contemporary international law, some of Oppenheim's views are still not outdated (e.g. Oppenheim's list of various methods of acquiring territories).⁴⁶ Additionally, in the subsequent development of this masterpiece, Lauterpacht, Jennings and other editors further perfected the theories Oppenheim by re-editing his old-fashioned contents and adding more modern perspectives in the relevant fields (e.g. the abandonment of the second volume of Oppenheim's International Law by Lauterpacht, and the differentiation of territorial disputes and boundary disputes emphasized by Jennings/Watts).⁴⁷

Simultaneously, certain other international legal scholars who were active in early 20th century also discussed territories, and gradually developed new thoughts on these issues which have come to form the basis for contemporary international law. For example, Kelson and Brierley criticised the use of force by states in international disputes and several traditional methods of acquiring territories, including conquest and forced cession⁴⁸. In the relevant academic research before the birth of the UN, however,

⁴⁵ Lassa Oppenheim, *International Law, A treatise* (2nd edn, Longmans & Green 1912) Pt2ch1.

⁴⁶ See Lassa Oppenheim, *International Law, A treatise* (2nd edn, Longmans & Green 1912) Pt2 ch1Sxi.

⁴⁷ See Hersch Lauterpacht (ed), *Oppenheim's International Law* (7th & 8th edns, Longmans & Green 1948, 1952 & 1958) (Note: the 8th edn formally abandoned Volume 2); Robert Y. Jennings & Arthur Watts (eds), *Oppenheim's International Law* (9th edn, Longman 1992) 668-69.

⁴⁸ Hans Kelson, *General Theory of Law and State* (Anders Wedberg tr, Harvard University Press 1945) 207-18; James Leslie Brierley (author), Andrew Clapham (ed), *Brierley's Law of Nations: An Introduction to the Role of International Law in International Relations* (7th edn, OUP 2008) 28

scholars still mainly focused on general issues, such as the legal meaning of territories or the various ways of acquiring territories. Furthermore, they did not completely get rid of the negative impact of traditional international law as well (for example, Brierley was critical of the issue of conquest, but he was quite pessimistic about the ability to regulate illegal conquest within international law, so he never clearly denied the legality of conquest).⁴⁹ Under the threat of war, states usually preferred to use their forces directly for the purpose of settling territorial disputes, and thus there only was very limited space for the application and development of international law.⁵⁰

2. After the establishment of the United Nations.

Into the second half of the 20th century, war as an instrument of national policy was abolished,⁵¹ and the unilateral resort to force by states in their international relations was prohibited.⁵² Accordingly, the methods of settling international disputes started to turn to peaceful means, and the use of force started to be controlled.⁵³ Thus, there was more opportunity to develop international legal theories regarding territorial disputes.

In the same year as the end of WWII, Hill published the first representative monograph of the new era, which studied the territorial demand of states simultaneously from the perspectives of international law and international relations. Although this book is still strongly influenced by Western-Centrism (given that at the time of writing the colonial empires had not yet collapsed, and the developing states which became the primary participants in the subsequent territorial disputes had not yet appeared in large numbers), it nonetheless exhaustively listed a variety of pacific means of settling territorial

012) ch 5.

⁴⁹ See James Leslie Brierly (author), Humphrey Waldock (ed), *The Law of Nations: An Introduction to the Role of International Law in International Relations* (6th edn, Clarendon Press 1963) 3) 317-19.

⁵⁰ Kalevi J. Holsti, *Peace and War: Armed Conflicts and International Order, 1648-1991* (CUP 1991)217-23.

⁵¹ See Treaty Between the United States and Other Powers Providing for the Renunciation of War as an Instrument of National Policy (Pact of Paris) (adopted 27 August 1928, entry into force 24 July 1929) 94 LNTS 57, art 1.

⁵² Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, art 2 (4).

⁵³ Christine Gray, *International Law and the Use of Force* (3rd edn, OUP 2008) 254.

disputes which were recognized in international relations at that time.⁵⁴ Additionally, Hill also emphasized the various non-legal claims which might lead to territorial demands (e.g. strategic claims, economic claims and ethnic claims). In comparison with the legal claims which had been repeatedly highlighted by traditional international law then, such as cession, it should be recognized that these non-legal claims were closer to the original basis used by states to support their territorial demands.⁵⁵

Subsequently, the advance of de-colonization disrupted the status quo in Asia, Africa and Latin-America, since the appearance of newly independent states in large numbers forced the relevant regions to face complex problems of re-distributing territories.⁵⁶ These challenges were exacerbated as the governments and officials of these states usually both lacked experience and were motivated by extreme nationalism and weak national strength. As a result, the number of territorial disputes was growing rapidly in these regions.⁵⁷ This change in the international situation was a further motivation for scholarly interest in and research on the issue of territorial disputes, so that a series of instructional monographs were published.

For example, in his book *The Acquisition of Territories in International Law* published in 1963, Jennings developed Hill's attempts to distinguish legal and non-legal claims and to list various ways of acquiring territories. Additionally, he also clearly stated the illegality of forcibly settling territorial disputes by unilateral resort to force (including conquest). Moreover, Jennings further discussed certain principles of international law related to territorial disputes through case studies (i.e. *Estoppel*).⁵⁸ Furthermore, he briefly evaluated the principle of self-determination with reference to the development

⁵⁴ Norman L. Hill, *Claims to Territories in International Law and Relations* (OUP 1945, reprinted by Greenwood Press in 1976) 198-231.

⁵⁵ Norman L. Hill, *Claims to Territories in International Law and Relations* (OUP 1945, reprinted by Greenwood Press in 1976) chs 3-9, especially chs 4-8.

⁵⁶ John Kent & John W. Young, *International Relations since 1945: A global History* (2nd edn, OUP 2013) chs 3 & 8.

⁵⁷ See Alan Day & Judith Bell (eds), *Border and Territorial Disputes* (2nd edn, Cartermill International 1987).

⁵⁸ Here, Sir R. Jennings used the famous case concerning the Temple of Preah Vihear. In addition to his monographs, see also the judgment of this case: *Case concerning the Temple of Preah Vihear (Cambodia v. Thailand) (Merits)* [1962] ICJ Rep 6.

of the movement of de-colonization at that time.⁵⁹ At last, Jennings even emphasized the differences between boundary disputes and common territorial disputes,⁶⁰ later including these thoughts in the latest edition of *Oppenheim's International Law* which was co-edited by him.

Similar to Jennings, the research of many other international legal scholars during the early years of the Cold War was also deeply affected by de-colonization. For instance, Cukwurah and Shaw published their famous monographs about territorial disputes in the late 1960s and 1970s respectively. Although the focal points of their research are not the same, they do both reflect the important influence of decolonization in the territorial disputes of their era. On one hand, Cukwurah noted that 'Where two states lay claim to conflicting boundary lines, an area of controvertible jurisdiction is bound to arise'.⁶¹ On the other hand, Shaw noted the geographical distribution of territorial disputes, as he found out that post-colonial countries in Africa were seriously affected by this issue.⁶²

3. Recent publications.

After the 1980s, the Western world started to hold an advantageous position in international relations, and the comprehensive integration of the developed states in Europe and America started to be strengthened. Thanks to the change of situation, the traditional territorial disputes directly related to the Western world had significantly decreased.⁶³ Accordingly, the research into territorial disputes began to change in focus, and the achievement of the international relations academia had started to surpass their

⁵⁹ Robert Jennings, *The Acquisition of Territory in International Law* (Manchester University Press 1963) chs 2, 3 & 4, 78-79.

⁶⁰ Robert Jennings, *The Acquisition of Territory in International Law* (Manchester University Press 1963) 12-13.

⁶¹ A. Oye Cukwurah, *The Settlement of Boundary Disputes in International Law* (Manchester University Press 1967) 6.

⁶² Malcolm Shaw, *Title to Territory in Africa: International Legal Issues* (Clarendon Press 1986).

⁶³ John Kent & John W. Young, *International Relations since 1945: A global History* (2nd edn, OUP 2013) pts 5 & 6, especially chs 19-21.

legal colleagues.

Firstly, some international relations scholars began to codify or introduce the existing and past territorial disputes as a whole, but without in-depth discussion, such as *Border and Territorial Disputes* written by Day and Bell. It is no doubt beneficial for their common audiences to recognize and understand the issue of territorial disputes in general, and even in the early 21st century there were still scholars, such as Calvert, who focused on these questions.⁶⁴ On the contrary, some other international relations scholars, including a few international legal scholars, such as Shaw, started to conduct specific case studies on the existing or new-born territorial disputes. They mainly concerned separate cases which occurred between developing/former socialist states, but without considering the issue of territorial disputes as one. Such case studies are more meticulous and in-depth, and also more adaptable to the specific situation of different single case, so that it might provide more accurate information about related practice.⁶⁵

Secondly, in terms of the relevant research of the Western legal academia, because of the above changes, the focus of research had shifted to the study of new types of territorial disputes, such as maritime delimitation (e.g. the discussion of definite disputes over the EEZ by Smith and Thomas).⁶⁶ Even when discussing territorial dispute in the traditional sense, their stance and viewpoints tended to be much more broad and moderate than the corresponding stance or viewpoints of scholars from the developing states (A good example here is the discussion on the issue of Gibraltar, the Western scholars have frequently addressed the possible functions of third-party

⁶⁴ See e.g. Alan Day & Judith Bell (eds), *Border and Territorial Disputes* (2nd edn, Cartermill International 1987); David Downing, *An Atlas of Territorial and Border Disputes* (New English Library 1980); Peter Calvert, *Border and Territorial Disputes of the World* (4th edn, John Harper Publisher 2004).

⁶⁵ See e.g. Fravel M. Taylor, *Strong Borders, Secure Nation: Cooperation and Conflict in China's Territorial Disputes* (Princeton University Press 2008); H. U. Rahman, *The Making of the Gulf War: Origins of Kuwait's Long-standing Territorial Dispute with Iraq* (Ithaca Press 1997); Malcolm Shaw, *Title to Territory in Africa: International Legal Issues* (Clarendon Press 1986).

⁶⁶ See e.g. Robert W. Smith & Bradford L. Thomas, *Island Disputes and the Law of the Sea: An Examination of Sovereignty and Delimitation Disputes* (IBRU 1998).

international entities. Furthermore, the related parties/scholars even used to refer to the possibility of letting the parties share the sovereignty of the disputed territories. In contrast, this kind of viewpoint simply does not exist in the mainstream research of the East Asian states on their territorial disputes).⁶⁷ Meanwhile, several international legal scholars, such as Sharma, had not abandoned their research regarding territorial disputes as a whole. However, since territorial disputes of the Western world were gradually being settled and marginalized, their relevant monographs were still largely successors of the elder scholars, such as Jennings, but rarely provided ground-breaking innovations.⁶⁸

Under these circumstances, the present Western scholarship certainly cannot by itself represent the full scope of the contemporary study of territorial disputes. Nevertheless, if the work of the international legal/relations scholars who do not come from the Western world can be impartially assessed, then the research on territorial disputes after the end of the Cold War still has some positive characters as follows:

Firstly, research from the emerging developing states is booming. For example, two Chinese scholars, Li Fan and Xie Licheng, have published two international relations monographs which have comprehensively reviewed the recent territorial disputes within the regions of East Asia and West Asia. Being published in the early years of the 2010s, these books represent the first work of its kind in the academic history of China.⁶⁹ Concerning the causes of this trend, on one hand this is because these states are facing many more territorial disputes (especially newly arisen territorial disputes, e.g. the territorial disputes among the member states of the former Communist Bloc⁷⁰) than the

⁶⁷ See e.g. Keith Azopardi, *Sovereignty and the Stateless Nation: Gibraltar in the Modern Legal Context* (Hart Publishing 2009); Feng Xuezhi, *The International legal analysis on the Disputes regarding China's Maritime Rights and Interests* (China University of Political Science and Law Press 2013).

⁶⁸ Surya P. Sharma, *Territorial Acquisition, Disputes and International Law* (Brill 1997); Malcolm Shaw, *Title to Territory* (Ashgate Publishing 2005).

⁶⁹ Li Fan, *A Study on the Post-WWII territorial disputes and international relations of the Major States of East Asia* (Jiangsu People's Publishing House 2013); Xie Licheng, *A Study on the Contemporary Boundary and Territorial Disputes Among the Middle East Countries* (China Social Science Press 2015).

⁷⁰ For example, after the collapse of the USSR, approximately 70% of the borders of Russia had not been delimited, since during the Cold War both sides of most of the above borders were

developed states at present. On the other hand, this research interest also reflects the fact that as these states have become stronger, they have become more inclined to attempt to settle their territorial demands by themselves.⁷¹

Secondly, the geographic scope of relevant research has started to be extended. For example, some Western international relations/legal Scholars, including Hayton, Roy and Talmon, have all published on the disputes over the sovereign ownership of the islands/reefs of the South China Sea in the past five years.⁷² With mankind's increasing demand for natural resources, and their improving scientific and exploration abilities, those natural spaces beyond the borders of land territories, such as oceans, have become new breeding grounds for territorial disputes. Thus, the recent research has become to cover fields that were rarely considered in traditional international law, such as maritime disputes.⁷³

Thirdly, special attention is increasingly being paid to the new methods of settling territorial disputes. For example, a Chinese international legal scholar, Guo Rongxing, has listed various forms of 'buffer zone' as ways of relieving territorial disputes. Likewise, a Western international relations scholar, Pinfari, has imagined the act of adding a 'time deadline' for the process of settling territorial disputes.⁷⁴ Given that international law only has limited enforcement abilities,⁷⁵ the means currently available to settle territorial disputes under its framework certainly face the same dilemma in

e under the military control of the Soviet army, there were few disputes related to them. See Lin Jun, *The Draft History of the Diplomacy of Russia* (World Affairs Press 2002) 45.

⁷¹ Guo Rongxing, *Territorial Disputes and Conflict Management: The art of avoiding war* (Routledge 2011); Jin-Hyun Paik, Seok-Woo Lee & Kevin Y. L. Tan, *Asian Approaches to International Law and the Legacy of Colonialism: The Law of the Sea, Territorial Disputes and International Dispute Settlement* (Routledge 2012).

⁷² Bill Hayton, *South China Sea: The Struggle for Power in Asia* (Yale University Press 2014); Nalandra Roy, *The South China Sea Disputes: Past, Present and Future* (Lexington Books 2016); Stefan Talmon & Jia Bingbing, *The South China Sea Arbitration: A Chinese Perspective* (Hart Publishing 2014).

⁷³ A. Oye Cukwurah, *The Settlement of Boundary Disputes in International Law* (Manchester University Press 1967) 69-78; Ralf Emmers, *Geopolitics and Maritime Territorial Disputes in East Asia* (Routledge 2012); Robert F. A. Goedhart, *The never-ending dispute delimitation of air space and outer space* (Frontieres 1996).

⁷⁴ Guo Rongxing, *Territorial Disputes and Conflict Management: the Art of Avoiding War* (Routledge 2014) ch 3; Marco Pinfari, *Peace Negotiations and Time: Deadline Diplomacy in Territorial Disputes* (Routledge 2012) chs 4-5.

⁷⁵ Antonio Cassese, *International Law* (2nd edn, OUP 2005) 5-6.

practice.⁷⁶ Thus, the relevant scholars has been prompted to seek new methods of settling territorial disputes, and the author has been motivated to write this thesis. The rationale for this effort, is so that when the existing means cannot handle specific territorial disputes, and thus international peace and security have been threatened, it may provide supplementary measures for the settlement of the relevant situations.⁷⁷

2.1.2 Legal and international relations scholarship on the UNCSS

1. Early 20th century.

Comparing to the above-stated literature related to territorial disputes, the literature specifically on the UNCSS is relatively new. This is not surprising, as the UNCSS has only been in existence since the end of the Second World War. However, facing the establishment of the United Nations and its collective security system in 1945, the reaction of the jurists was not slow at all.

For example, shortly after the conclusion of the UN Charter, Kelsen had already discussed the new-born UNCSS in the first monograph of the Western academia which aimed at analysing the legal framework of the United Nations.⁷⁸ Then in the initial years of the Cold War, together with other legal scholars, including Bowett, Kelsen published a few more monographs about the UNCSS, highlighting some of the core issues that would constantly hinder the UNCSS until today (e.g. the ‘United Nations Forces’).⁷⁹

⁷⁶ J.G.Merrills, *International Dispute Settlement* (5th edn, CUP 2011) ch1s5, ch2s4.

⁷⁷ It should be acknowledged that currently there is no widely-recognized revolutionary innovation on this issue, and although several new measures have been proposed they do not currently extend the scope of the existing methods. Nonetheless, the appearance of new ideals can undoubtedly provide new vitality to the process of settling territorial disputes, and it also offers a new cornerstone for the development of the various corresponding theoretical systems. See e.g. Marco Pinfari, *Peace Negotiations and Time: Deadline Diplomacy in Territorial Disputes* (Routledge 2012); Jaroslav Tir, *Redrawing the Map to Promote Peace: Territorial Dispute Management via Territorial Changes* (Lexington Books 2006); Paul Diehl & Gary Goertz, *Territorial Changes and International Conflict* (Routledge 2002).

⁷⁸ See e.g. Hans Kelsen, *The Law of the United Nations: A Critical Analysis of Its Fundamental Problems, with Supplement* (Frederick A. Praeger 1950) chs 5, 10 & 18.

⁷⁹ See Hans Kelsen, *Collective Security under International Law* (U.S.G.P.O. 1957) 113-20; D.

Unfortunately, just as the outbreak of the WWII destroyed the fantasies of the traditional great powers and their associated scholarship about the collective security system of the League of Nations, the outbreak of the Cold War froze the UNCSS as well.⁸⁰ Given this disjunction between theory and practice, the Western scholarship began to adopt a more conservative attitude towards the UNCSS in the mid-late period of the Cold War.

On the one hand, several scholars of international law, such as Naidu, continued to explore the existing UNCSS but now with clearly stated concern about its prospects.⁸¹ On the other hand, many scholars began to explore substitute measures. For instance, in the late 1960s, Higgins overviewed the initial practice of the UN Peacekeeping Operations, which had been created as a replacement for the ‘UN Forces’ for the first time in history.⁸² These scholars were comparatively successful in developing and expanding on the inherent contents of the UNCSS, yet the substance of their research had clearly departed from the original operating mechanism and extent of competence of the UNCSS. Thus, they indirectly reflected the compromise and helplessness of the international community when faced with the negative reality of UNCSS.

Alongside the above two schools, there were also a small number of scholars of international law who had lost all confidence in the various efforts of the UN to control the use of force by states. This group of ‘realists’ not only abandoned research on the existing UNCSS, but also cast doubt on the essential principle regarding the prohibition of the use of force under the system of contemporary international law. For instance, the relatively radical scholar, Franck, even directly questioned ‘Who Killed Article 2 (4)?’ in the peak years of the Cold War.⁸³

Ironically, to a certain extent, the dilemma of the legal scholars had helped the

W. Bowett, G. P. Barton & Rosalyn Higgins, *United Nations Forces: A Legal Study* (Frederick A. Praeger 1964).

⁸⁰ Antonio Cassese, *International Law* (2nd edn, OUP 2005) 325.

⁸¹ See e.g. Mumulla V. Naidu, *Collective Security and The United Nations: A Definition of the UN Security System* (Macmillan 1975).

⁸² Rosalyn Higgins, *United Nations Peacekeeping, 1946-1967: Documents and Commentary* (OU P 1969) vol 1-2.

⁸³ Thomas Franck, ‘Who Killed Article 2 (4)?’ (1970) 64 AJIL 809.

emergence of the harvest of the international relations scholars. From the 1950s to the 1990s, the Western international relations scholarship had continually criticized or queried the UNCSS. For example, in his famous book *Politics among Nations*, Morgenthau, as a representative figure of the school of realism, frankly stated that the UNCSS was entirely unable to limit the self-willed acts of the P5. Additionally, in his work *Understanding Global Conflict and Cooperation*, Nye, as the leading expert of the opposite school of liberalism, believed that the UNCSS could ‘only rarely.....be a basis for a new world order’, as it was trapped by the veto power, available resources and intra-state conflicts.⁸⁴ In fact, even Claude, who was a ‘pragmatic liberalism’ scholar who wished to find a third pathway between classic realism and liberalism, possessed a negative attitude towards the UNCSS as well. For instance, he claimed that the UNCSS was not as good as the concept of ‘balance of power’ under the outdated Vienna System, in which the national strength of those European great powers would cancel each other out (so as to maintain absolute peace with relative balance).⁸⁵

2. Recent publications.

Approaching the end of the 20th century, the collapse of the USSR slightly rejuvenated the UNSC.⁸⁶ Moreover, the disappearance of the global antagonism between the Eastern and Western Blocs also paved a way for various states to adjust their own international relations.⁸⁷ Since the end of the Cold War, therefore, the study of the UNCSS in the field of contemporary international law had slowly started to be positively changed,⁸⁸ as was manifested in the following two complementary

⁸⁴ Hans J. Morgenthau (author), Kenneth W. Thompson & David Clinton (revised), *Politics among Nations: The Struggle for Peace and Power* (7th edn, McGraw-Hill 2005) 309-16; Joseph S. Nye Jr. & David A. Welch, *Understanding Global Conflict and Cooperation: An Introduction to Theory and History* (9th edn, Pearson 2014) 214.

⁸⁵ Nejat Dogan, *Pragmatic Liberal Approach to World Order: The Scholarship of Inis L. Claude Jr.* (University Press of America 2014) 91-115.

⁸⁶ Thomas Franck, ‘What Happens Now? The United Nations after Iraq’ (2003) 97 AJIL 607 at 609.

⁸⁷ Guo Xuetang, *All for One, One for All: A Research on the Collective Security System* (Shanghai People’s Publishing House 2010) ch 9.

⁸⁸ For a general overview on a variety of doctrines about the UNCSS that emerged during the early period after the Cold War, see e.g. George W. Downs (ed), *Collective Security beyond the Cold War* (University of Michigan Press 1994).

phenomena.

On the one hand, represented by the short-term conversion of Franck himself,⁸⁹ the more positive predictions about the prospect of the UNCSS gradually began to increase. In the new era, the UNSC had already proved the feasibility of the principle of unanimity in a series of cases, such as the Gulf War and the September 11 attacks.⁹⁰ Meanwhile, the evolution of the process of economic globalization and the expansion of the common interests of the great powers provided new reasons for the former hegemonic states to choose international co-operation when they were involved in international disputes.⁹¹ These developments, naturally, provided some foundation for the increasing confidence of scholars of international law with regard to the UNCSS.⁹²

On the other hand, as represented by the research on the collective security functions of regional organizations conducted by Abass, those extended topics under the framework of the UNCSS were obviously attracting more attention.⁹³ The silence of the UNCSS during its early years of life had impelled the emergence of various surrounding issues, whilst the awakening of the UNCSS in the recent years had stimulated the widespread of these issues.⁹⁴ Taking the research interest of Abass as an example, almost all the collective security functions of those regional organizations which took the UNCSS as their prototype had developed and expanded in the past 20 or more years.⁹⁵

⁸⁹ See e.g. Thomas Franck, *Fairness in International Law and Institutions* (OUP 1998) ch 9; Thomas Franck, 'What Happens Now? The United Nations after Iraq' (2003) 97 AJIL 607 at 608-10.

⁹⁰ Thomas Franck, 'What Happens Now? The United Nations after Iraq' (2003) 97 AJIL 607 at 609-10.

⁹¹ Guo Xuetang, *All for One, One for All: A Research on the Collective Security System* (Shanghai People's Publishing House 2010) 172 & 216-17.

⁹² See e.g. Peter J. Fromuth, 'The Making of a Security Community: The United Nations After the Cold War' (1993) 46 (2) Journal of International Affairs 341; Brian Urquhart, 'The UN and International Security After the Cold War', in Adam Roberts & Benedict Kingsbury (eds), *United Nations, Divided World: The UN's Role in International Relations* (2nd edn, OUP 1993) 81.

⁹³ See e.g. Ademola Abass, *Regional Organisations and the Development of Collective Security: Beyond Chapter VIII of the UN Charter* (Hart Publishing 2004); Alena F. Douhan, *Regional Mechanisms of Collective Security: The New Face of Chapter VIII of the UN Charter?* (L'Harmattan 2013).

⁹⁴ Guo Xuetang, *All for One, One for All: A Research on the Collective Security System* (Shanghai People's Publishing House 2010) 169-83; Adam Roberts & Dominik Zaum, *Selective Security: War and the United Nations Security Council Since 1945* (Routledge 2008) chs 2 & 4.

⁹⁵ Alexander Orakhelashvili, *Collective Security* (OUP 2011) 64-88.

Undoubtedly, this situation was caused by the vacuum left by the collapse of the bipolar system and the inherent need of seeking external security assistance of those small/weak states. Those related legal scholars, however, surely would be willing to spend more time and resources in such a vivifying field.

This apparent optimism, however, cannot fully reflect the opportunities and challenges facing the study of the UNCSS within the system of contemporary international law. The continuous existence of several ‘outlaw states’, such as the USA, has already made the research on some of the relevant issues sensitive and lacking in practical meanings.⁹⁶ In practice, those negative cases directed by these privileged subjects of international law, including the Kosovo War and the Iraq War, are also testing the fragile expectations of the entire international community on the contemporary UNCSS.⁹⁷

Accordingly, throughout the legal or political literature on the UNCSS since the late 1990s, there actually is an emerging body of work which has frankly acknowledged the inherent problems of the UNCSS from the perspective of international relations. For example, Koskenniemi has even critically questioned this mechanism from the classic realistic position. Nevertheless, there is still a lack of studies which aim at assessing the application of the UNCSS in specific areas.⁹⁸ In addition, as the pupils of Morgenthau and Claude, those ‘Neo-realists’ like Waltz and Mearsheimer are still insisting on regarding the international security situation under the framework of the UNCSS as the product of the ‘balance of power’.⁹⁹ More regrettably, certain international relations scholars who used to devote themselves to the assessment of the UNCSS, such as

⁹⁶ E.g. After the USA has successively invented the two concepts of ‘pre-emptive self-defense’ and ‘implied authorization’, it is undoubtedly an unrealistic fantasy to discuss the UNCSS with the Americans, see Christine Gray, *International Law and the Use of Force* (3rd edn, OUP 2008) 209-22 & 354-65.

⁹⁷ Joseph C. Ebegbulem, ‘The Failure of Collective Security in the Post World Wars I and II International System’ (2011) 2 (2) *Transcience* 23 at 24-27.

⁹⁸ Martti Koskenniemi, ‘The Place of Law in Collective Security’ (1996) 17 (2) *Michigan Journal of International Law* 455 at 460-63; With regard to the limited research achievements of the contemporary international legal academia in specific areas, such as the field of human rights, see e.g. Antonios Tzanakopoulos, ‘Collective Security and Human Rights’, in Erika de Wet & Jure Vidmar (eds), *The Hierarchy of International Law: the Place of Human Rights* (OUP 2012) 40.

⁹⁹ Kenneth Waltz, *Theory of International Politics* (McGraw-Hill 1979) 164; John Mearsheimer, *The Tragedy of Great Power Politics* (W.W. Norton 2014).

Thakur and Weiss, have started to change their research interests. Weiss, for example, used to explore ‘collective security in a changing world’, but in his new monograph which aims at comprehensively evaluating ‘what is wrong with the United Nations’ he rarely refers to the UNCSS.¹⁰⁰ Fortunately, another motivation for the writing of this thesis, is to provide new material for changing the negative situation above.

3. New comprehensive monographs.

It is also worth mentioning that in the first five years of the 2010s, scholars such as Orakhelashvili, Tsagourias, White and Wilson had published quite a few monographs on international law which generally introduced or evaluated the UNCSS.¹⁰¹ Previously, the study of collective security from the time of the Kosovo War to the time of the Iraqi War was accompanied by a tendency of marginalization, and in 2003 Franck even painfully asked ‘who killed article 2 (4) again?’¹⁰² The appearance of these academic materials, however, has indicated another renaissance of their research topic in the Western international legal scholarship.

In the initial place, the book written by Orakhelashvili in 2011 under the name ‘Collective Security’ is still largely a monograph which focuses on the legal nature of the various collective security systems. In particular, this book has assessed the various legal issues surrounding the process of application of the various collective security systems in the context of modern international law. Firstly, it has discussed the background issues of the extent of authority/allocation of targets of the relevant institutions. Secondly, it has discussed the determination of the threats to peace and the corresponding applicable reaction before the activation of the various collective security systems. Thirdly, it has discussed the status and functions of the peacekeeping/self-

¹⁰⁰ Ramesh Thakur, *The United Nations, Peace and Security: From Collective Security to the Responsibility to Protect* (CUP 2006) ch 13; Thomas G. Weiss, *What’s Wrong with the United Nations and How to Fix It* (2nd edn, Polity Press 2012) chs 1 & 5.

¹⁰¹ See e.g. Alexander Orakhelashvili, *Collective Security* (OUP 2011); Nicholas Tsagourias & Nigel D. White, *Collective Security: Theory, Law and Practice* (CUP 2013); Gary Wilson, *The United Nations and Collective Security* (Routledge 2014).

¹⁰² Thomas Franck, ‘What Happens Now? The United Nations after Iraq’ (2003) 97 AJIL 607 at 607-608.

defence operations during the process of applying the various collective security systems. Fourthly, it has also discussed the judicial remedies for the related illegal acts/decisions after the application of the various collective security systems.¹⁰³ Furthermore, Orakhelashvili has listed, analysed and evaluated nearly all the ‘regional collective security institutions’ of the contemporary international community within a significant portion of his book. With such an effort, he has systematically explained the mutual relationship and complex hierarchy among those universal and regional collective security systems. Compared to a lot of earlier work that has tended to focus only on the United Nations and its UNCSS, this approach has undoubtedly expanded the subjective visual field and the objective research range of the contemporary study of collective security.¹⁰⁴

In addition, the book written by White and Tsagourias in 2013 under the name ‘Collective Security: Theory, Law and Practice’ is a monograph which acknowledges that political elements and legal elements may simultaneously affect the various collective security systems. As ‘political’ means international relations here, the authors share the viewpoint of Koskenniemi, who also constantly emphasizes the political elements contained by both international law and those various collective security systems under its framework.¹⁰⁵ In particular, from the perspectives of concepts, component, tools, legal management and accountability, this book has successively assessed the complex features of contemporary collective security system (with the UNCSS as their core mechanism). In addition, building on Orakhelashvili, this book has also incorporated new sub-topics, such as the ancient origin of the UNCSS, and the private military companies and the post-conflict reconstruction guided by the UNCSS.¹⁰⁶ It should be clarified, however, that although White and Tsagourias have acknowledged the considerable influence of political elements upon those various

¹⁰³ Alexander Orakhelashvili, *Collective Security* (OUP 2011) chs 3-8.

¹⁰⁴ Alexander Orakhelashvili, *Collective Security* (OUP 2011) 64-88, 175-87, 259-76, 282-88 & 294-314.

¹⁰⁵ Martti Koskenniemi, *The Politics of International Law* (Hart Publishing 2011) chs 1, 3 & 9.

¹⁰⁶ Gary Wilson, “Book Review: Nicholas Tsagourias & Nigel D. White, ‘Collective Security: Theory, Law and Practice’” (2015) 36 Liverpool Law Review 195 at 195-97.

collective security systems, they still praise the monitoring and restraining functions of international law. Being two middle-aged international legal scholars, their viewpoints still have not divorced from the inherent stance of their own academia.¹⁰⁷

Lastly, the book written by Wilson in 2014 under the name ‘The United Nations and Collective Security’ is a monograph which only focuses on the UNCSS, a relatively rare approach in recent years. In particular, this book begins with an introduction of the concepts of the United Nations and its UNCSS. Then, based on the logical order of the increase of coerciveness, this book has successively assessed diplomatic responses, non-military sanctions, peacekeeping and military enforcement actions under the framework of the UNCSS. Finally, this book ends with an overview of the regional arrangements of collective security.¹⁰⁸ In addition, although this book is more ‘student-friendly’ than the monograph of White and Tsagourias which has comparatively profound wording and multifarious content, Wilson has also pointed out the equal importance of the political perspective. Thus, his argument can still be directly traced back to the viewpoint of Koskenniemi.¹⁰⁹ In spite of all these matters, Wilson has also defined the UNCSS as an imperfect international security mechanism which has creativity and flexibility, but which is enslaved by its political selectivity. Compared to those older international law scholars who possess a relatively more negative attitude towards this mechanism, such an opinion is certainly fairer and more impartial. Nevertheless, it has also revealed the compromise made by younger international legal scholars over their evaluation criterion in front of reality.¹¹⁰

Of course, it should be noted that in essence, the above monographs and articles still

¹⁰⁷ Nicholas Tsagourias & Nigel D. White, *Collective Security: Theory, Law and Practice* (CUP 2013) chs 12-13.

¹⁰⁸ Karinne Coombes, “Book Review: Gary Wilson, ‘The United Nations and Collective Security’” (2017) 4 (1) *Journal on the Use of Force and International Law* 210 at 210-22.

¹⁰⁹ Gary Wilson, *The United Nations and Collective Security* (Routledge 2014) 11-14; Martti Koskenniemi, ‘The Place of Law in Collective Security’ (1996) 17 (2) *Michigan Journal of International Law* 455 at 465-80.

¹¹⁰ Gary Wilson, *The United Nations and Collective Security* (Routledge 2014) 220-22; Karinne Coombes, “Book Review: Gary Wilson, ‘The United Nations and Collective Security’” (2017) 4 (1) *Journal on the Use of Force and International Law* 210.

fundamentally aim at generally introducing or evaluating various collective security systems on the basis of the classic theories of international law. In other words, the structure, purposes and conclusions of the works of the relevant international legal scholars are still following the consistent rules of their own academic milieu. Even if we take Koskenniemi, the expert who has taken the lead in highlighting the influence of political elements as an example, his initial motivation is still to clarify ‘the place of law in collective security’ with the assistance of the relevant political factors. Moreover, his conclusion shows that at least to the realistic politicians, law is an irrelevant concept in front of collective security arrangement, which is not an optimistic finding to their colleagues from the legal field. Thus, it can be said that these recent bodies of scholarship are a combination of breakthrough and limitations. Meanwhile, their manner of writing, which is similar to the approach of higher educational textbooks, has indubitably left plenty of room for the in-depth research offered in this thesis.

2.1.3 The problems of the existing literature on the UNCSS and territorial disputes

As described above, although the international legal research on UNCSS and territorial disputes is extensive, it is certainly not comprehensive or perfect. Therefore, in order to delineate the space for the original work of this thesis, this section needs to outline the weaknesses in current knowledge, and they are generally evident in five main areas as follows.

1. With regard to territorial disputes, the research outcome of the international relations academia on territorial disputes is richer than the corresponding research of the international legal academia.

Huth has directly stated that international relations scholars have not paid sufficient attention to the issue of territorial disputes, meaning that their research in this field is limited and unsystematic.¹¹¹ Nonetheless, it can be argued that the progress of their

¹¹¹ Paul Huth, *Standing your ground: Territorial Disputes and International Conflicts* (University of Michigan Press 1998) 7-8; Alexander B. Murphy, ‘Historical Justification for Territorial Claims’ (1990) 80 (4) *Annals of the Association of American Geographers* 531 at 531-32.

study is still comparatively ahead of the corresponding study that has been undertaken in the field of international law.

On the one hand, from the viewpoint of the international relations scholars, international law is only one of the perspectives for researching international relations, and it is just a negative method for promoting/maintaining peace.¹¹² Additionally, international law is not only fighting for the aims of abandoning war and limiting use of force to the largest possible extent, but also influenced by the national will of states.¹¹³ Under the dual-effect of self-limitation and exterior limiting powers, the breadth of research undertaken in this area of international law is far narrower than that in the international relations scholarship. Moreover, generally speaking, the theories of international relations mainly come from the original interests of states and they are more realistic, in contrast, the theories of international law are more ideal.¹¹⁴

Accordingly, international relations' scholarship on the issue of territorial disputes is able to discuss several issues that are 'sensitive' to the jurists (e.g. the direct connection between territorial disputes and war), which gives greater depth to the field.¹¹⁵ In contrast, when considering territorial disputes, the international legal scholarship is relatively much more 'conservative' and thereby it has to face more serious dilemmas (e.g. the realistic international relations scholars insist that 'sovereignty is not negotiable', but the relevant international legal scholars do not have such a firm stance on this matter¹¹⁶). Consequently, the quantity and quality of the related research has

¹¹² David P. Barash & Charles P. Weibel, *Peace and Conflict Studies* (3rd edn, Los Angeles: SA GE 2014) ch 16.

¹¹³ Christine Gray, *International Law and the Use of Force* (3rd edn, OUP 2008) ch 2; David Armstrong, Theo Farrell & Helene Lambert, *International Law and International Relations* (2nd edn, CUP 2012) 125.

¹¹⁴ See e.g. Hans J. Morgenthau (author), Kenneth W. Thompson & David Clinton (revised), *Politics among Nations: The Struggle for Peace and Power* (7th edn, McGraw-Hill 2005) ch 16; also see n76 below.

¹¹⁵ See Kalevi J. Holsti, *Peace and War: Armed Conflicts and International Order, 1648-1991* (CUP 1991) 306-10.

¹¹⁶ Huth believes that one of reasons for the lack of research of the international relations academia on the issue of territorial disputes is because the scholars of international relations normally think that territorial sovereignty is one of the non-negotiable essential national interests of states, whereas in the field of international relations, territorial disputes are one of the constant causes of international conflicts or even warfare. With regard to the numbers of international armed conflicts that have been caused by territorial disputes in the past, it can be defined that t

certainly be affected. For example, in terms of the three ‘positive characters’ of the recent study on territorial disputes since the end of the Cold War, nearly all the aforementioned monographs have come from the international relations scholars (e.g. the monographs of Hayton and Roy on the disputes over the South China Sea). In an opposite manner, international legal scholars usually simply repeating the various measures for legally acquiring territories.

On the other hand, as mentioned above, the traditional territorial disputes directly related to the Western great powers are decreasing, and the concept of sovereignty within the Western world is weakening. As a result, the European and American international legal scholars’ interest in the issue of territorial disputes is declining. Especially since the start of the 21st century, it has become fairly rare to see work from Western scholars which specifically discusses this issue from the perspective of international law.¹¹⁷ On the contrary, the relevant research of the international relations academia which has a wider sphere of vision of research and less self-limitation is less limited by external factors. For example, since 2010, several scholars of international relations, such as Wiegand and Gibler, have published monographs that discuss territorial disputes and the related issues (e.g. the settlement of long-lasting territorial disputes). Accordingly, they have enriched and improved the theoretical system of international relations in this field.¹¹⁸

In fact, the advantages of the international relations academia in terms of their horizons and perspectives have already spread into the existing literature on the UNCSS. As

he stance of scholars of international relations actually fits the nature of the issue of territorial disputes. In contrast, the international legal scholars who are oscillating between the political and judicial (or more accurately, peaceful) settlements of international disputes are usually not so frank. See Paul Huth, *Standing your ground: Territorial Disputes and International Conflicts* (University of Michigan Press 1998) 8; Kalevi J. Holsti, *Peace and War: Armed Conflicts and International Order, 1648-1991* (CUP 1991) 308-309; J.G.Merrills, *International Dispute Settlement* (5th edn, CUP 2011) ch 10.

¹¹⁷ In addition to the research achievements of the related scholars from the developing states, there are a few relevant monographs written by Western scholars, see e.g. Malcolm Shaw, *Title to Territory* (Ashgate Publishing 2005); Kaiyan H. Kaikobad, *Interpretation and Revision of International Boundary Decisions* (CUP 2007).

¹¹⁸ Krista E. Wiegand, *Enduring Territorial Disputes: Strategies of Bargaining, Coercive Diplomacy, and Settlement* (University of Georgia Press, 2011); Douglas M. Gibler, *The Territorial Peace: Borders, State Development, and International Conflict* (CUP 2012).

mentioned above, quite a few international legal scholars from the Western world have lost their confidence in the capacity of the UNCSS. Nevertheless, due to their own academic stance, they still have chosen to seek new ways to effect minor repairs of this mechanism within its existing framework (e.g. the creation of the United Nations peacekeeping operations). In comparison with them, international relations scholars are far less restricted when they are criticizing the idea and design of the UNCSS. Besides, the facilitating impact of the so-called ‘political elements’ on the contemporary study of the UNCSS has even been clearly affirmed by the latest practitioners from the international legal academia (see the above monographs/articles of Koskenniemi and other scholars).

2. With regard to the UNCSS, there is almost no monographs or articles on the application of this mechanism in territorial disputes.

From the above sections, it can be seen that the existing literature on territorial disputes and the UNCSS is not rare. However, for two main reasons, there is hardly any legal research that directly assesses the specific topic of the application of the UNCSS in territorial disputes.

Firstly, one of the purposes and principles of international law is to promote the peaceful settlement of international disputes through international judicial interference. In other words, it needs to maintain ‘the legal order of the international community’.¹¹⁹ Affected by this, international legal scholars usually prefer to discuss the various pacific means of settling international disputes, and rarely assess the coercive methods of international dispute resolution.¹²⁰ Thereby, they may avoid to disobey the inherent requirement of modern international law.¹²¹

¹¹⁹ Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, UNGA Res 2625 (XXV) (24 October 1970) UN Doc A/RES/25/2625.

¹²⁰ For example, in his remarkable monograph about the comprehensive settlement of international disputes, J. G. Merrills discussed coercive methods in only two of eleven chapters, see J. G. Merrills, *International Dispute Settlement* (5th edn, CUP 2011) chs 10 & 11.

¹²¹ Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, art 2 (3); also see

On the contrary, since they have relatively wider research horizons and different research perspectives, international relations scholars could completely put away those rigorous doctrines which limit those legal scholars. Being a subject with the purpose of explaining ‘the political, economic or cultural interaction in the international community’, the international relations scholars do not have to praise the various measures for the peaceful settlement of international disputes. On the same basis, they do not have to specifically discuss the (undesirable) UNCSS when they are talking about the various forcible measures for settling international disputes as well. Also, during the process of explaining a particular type of international dispute which is part of the various ‘international interactions’, they do not have to deliberately study the question of how to solve this issue with a definite type of measure.¹²²

Secondly, the UNCSS receives relatively low evaluations in practice. After over half a century of operation, the UNCSS is still disappointing a large amount of international legal/international relations scholars and is evaluated by them as having ‘failed’.¹²³ In contrast, although the various peaceful measures for the settlement of modern international disputes could not guarantee the complete elimination of those disputes, but they are effectively contributing their own power to this work all the time. Accordingly, these measures could obtain some more positive and objective feedbacks from the international legal academia.¹²⁴ Under these circumstances, the relevant international legal scholars certainly would prefer to emphasize the functions and status of those peaceful measures. In contrast, being a group of people who assume an ambiguous attitude towards the UNCSS, the international relations scholars are even

Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, UNGA Res 2625 (XXV) (24 October 1970) UN Doc A/RES/25/2625.

¹²² Chris Brown & Kirsten Ainley, *Understanding International Relations* (4th edn, Palgrave 2009) ch1.

¹²³ Antonio Cassese, *International Law* (2nd edn, OUP 2005) 339; Thomas Franck, ‘Who Killed Article 2 (4)?’ (1970) 64 AJIL 809 at 809-10; Hans J. Morgenthau (author), Kenneth W. Thompson & David Clinton (revised), *Politics among Nations: The Struggle for Peace and Power* (7th edn, McGraw-Hill 2005) 309-10.

¹²⁴ See e.g. J.G. Merrills, *International Dispute Settlement* (5th edn, CUP 2011) chs 1-7; A. Oye Cukwurah, *The Settlement of Boundary Disputes in International Law* (Manchester University Press 1967) chs 6-8.

less keen to actively assess the performance of this mechanism in the settlement of dangerous international disputes.

More regrettably, even in the limited international legal/international relations literature regarding the relationship between the UNCSS and territorial disputes, there are also some problems:

Firstly, the literature mainly focuses on the various peaceful measures for the settlement of modern international disputes, whilst it rarely discusses the UNCSS. For instance, in *The international regulation of Frontier Disputes* edited by Luard, the authors thoroughly discussed the general process of the peaceful settlement of frontier disputes, yet they just expressed their positive hope for the prospect of the application of the UNCSS in frontier disputes.¹²⁵

Secondly, the literature normally does not specifically review the application of the UNCSS in territorial disputes, but usually just briefly touches upon this issue while it is discussing the entire UNCSS as a package. Alternatively, the literature may also refer to a few isolated cases related to the UNCSS, while it is assessing some other international legal issues. For example, when discussing the dilemma of the UNCSS in terms of the great powers' ignorance and deliberate damage, Simpson frequently mentioned the dispute over the sovereignty of the Kosovo region. However, it is clear that Simpson did not originally intend to assess the Kosovo War by regarding it as a territorial dispute, plus he also did not wish to evaluate the application of the UNCSS in territorial disputes (with regard to the working definition of territorial disputes in the context of this thesis, see the next chapter).¹²⁶

Thirdly, the literature rarely discusses those relevant cases in which the situations are complex or involve certain existing superpowers. Besides, these materials are lacking

¹²⁵ Evan Luard (ed), *The International Regulation of Frontier Disputes* (Praeger Publishers 1970) chs 5-7, 107-108 & 136.

¹²⁶ Gerry Simpson, *Great Powers and Outlaw States: Unequal Sovereigns in the International Legal Order* (CUP 2004) 199-201, 214-22.

in prospective study.¹²⁷ It is therefore reasonable to claim that to the contemporary international legal and international relations scholarship, the precise topic of the application of the UNCSS in territorial disputes is virtually a vacuum.

3. With regard to the academic discipline of the thesis, too many materials cannot break away from the set routine of their own disciplines for evaluating territorial disputes/the UNCSS.

From the discussion above, it can be seen that each of the disciplines that are related to territorial disputes and the UNCSS has its own particular literature. However, when the readers put their eyes on the drafting process of these materials, they might find out that the corresponding experts have overly dwelled on their original field of study and basic academia stance.

In terms of territorial disputes, many international legal scholars, such as Cukwurah and Sharma, start their research with a case study on a particular region. Then, they place their emphasis on the traditionally legal measures for acquiring territories, and end with an analysis of those peaceful measures for settling territorial disputes.¹²⁸ On the contrary, many international relations scholars, such as Huth and Gibler, start their research with the categorization of all the cases from various regions. Then, they place their emphasis on the exploration of the various subjective and objective factors that might initiate territorial disputes, and end with a calculation of the effectiveness of the various forcible/non-forcible routes for handling territorial disputes.¹²⁹

In terms of the UNCSS, meanwhile, many international legal scholars, such as

¹²⁷ For instance, after Russia, which is a permanent member of the UNSC, has invaded Crimea, which is a Russian-speaking autonomous region of Ukraine, how can the UNCSS intervene? There lacks in related literature which specifically discussed these issues, see e.g. Roy Allison, 'Russia "Deniable" Intervention in Ukraine: How and Why Russia Broke the Rules?' (2014) 90 (6) *International Affairs* 1255 at 1258-68.

¹²⁸ See e.g. A. Oye Cukwurah, *The Settlement of Boundary Disputes in International Law* (Manchester University Press 1967); Surya P. Sharma, *Territorial Acquisition, Disputes and International Law* (Brill 1997); Malcolm Shaw, *Title to Territory* (Ashgate Publishing 2005).

¹²⁹ See e.g. Paul Huth, *Standing your ground: Territorial Disputes and International Conflicts* (University of Michigan Press 1998); Douglas M. Gibler, *The Territorial Peace: Borders, State Development, and International Conflict* (CUP 2012).

Orakhelashvili and Wilson, start their research with the interpretation of legal statutes. Then, they place their emphasis on seeking the management and adjustment of the theoretical schemes (although they might equally consider the relevant ‘political elements’) in the operating process of the UNCSS, and end with the acknowledgement of the natural or derived weaknesses of this mechanism. With regard to the specific methods, these scholars would continuously engage with the existing theoretical viewpoints, and they may equally consider the relevant ‘political elements’.¹³⁰ On the contrary, many international relations scholars, such as Morgenthau and Claude, start their research by criticizing the essential idea of collective security. Then, they place their emphasis on advocating the disruption and damage imposed upon the operating process of the UNCSS by the practical obstacles (e.g. superpower politics), and end by rejecting the status quo or future of the UNCSS. With regard to the specific methods, these scholars would continuously engage with the existing practical mechanisms and experiences, and they may inevitably treat the relevant ‘legal elements’ poorly.¹³¹

It can therefore be seen that the roadmaps followed by the various research disciplines are very different to each other. This situation is certainly not helpful in terms of developing an accurate reflection of the issues explored in this thesis, or the proper use of the close relationship between international law and international relations. Tracking the origin of such a problem, the inherent difference between the two disciplines in terms of their specific research methodologies can be blamed (see next section). Moreover, the cause of this situation can also be attributed to the fundamental difference between the international legal scholarship and the international relations scholarship in terms of the schools of thought that they belong to.

Firstly, the classical school of thought of the international legal academia is more

¹³⁰ See e.g. Alexander Orakhelashvili, *Collective Security* (OUP 2011); Gary Wilson, *The United Nations and Collective Security* (Routledge 2014).

¹³¹ See e.g. Hans J. Morgenthau (author), Kenneth W. Thompson & David Clinton (revised), *Politics among Nations: The Struggle for Peace and Power* (7th edn, McGraw-Hill 2005); Nejat Dogan, *Pragmatic Liberal Approach to World Order: The Scholarship of Inis L. Claude Jr.* (University Press of America 2014).

inclined to (though not relying on) the doctrine of idealism. International law is a subject that aims to explore the topic of how to maintain the ‘legal order’ of the international community. Most of its practitioners firmly believe in the assumption that modern international affairs can be bound by morality and regulations, and they also emphasise the self-control of states which relies on natural senses and lacks in superior supervision.¹³² As a result, those international legal scholars are normally good at listing the conceptual breakthroughs and hidden procedural troubles of the UNCSS when it is being applied in territorial or other disputes (e.g. the establishment of a universal mechanism to collectively use armed forces, and the veto power). However, they seldom say much about the actual, especially non-legal limitations of this mechanism (e.g. the origin of the birth of the veto power of the P5). Besides, it is noteworthy that as the predecessor of the UNCSS, the collective security system of the League of Nations was the masterpiece of Wilson, the famous supporter of idealism and the then president of the USA.¹³³

Secondly, the classical school of thought of international relations is more inclined to the doctrine of realism. International relations is a subject which seeks to explain the ‘political interaction’ in the international community. Most of its practitioners firmly believe in the influence of power and interests upon modern international affairs, and they also highly doubt the self-control ability of states which relies on natural senses and lacks in superior supervision.¹³⁴ As a result, international relations scholars normally highlight the actual limitations of the UNCSS when it is being applied in various international disputes, including territorial disputes. However, they do not focus so much on setting out the conceptual breakthroughs and procedural hidden troubles of this mechanism. Besides, it is noteworthy that as a representative liberal scholar, Nye was constantly anxious about the effect of the veto powers of the P5 on the future of the UNCSS, even in the context of the overwhelmingly optimistic atmosphere after the Gulf

¹³² Liang Yunxiang, *International Law and International Relations* (Peking University Press 2012) Introduction & ch1s1.

¹³³ Patrick M. Morgen, *International Security: Problems and Solutions* (CQ Press 2006) 133-43.

¹³⁴ Liang Yunxiang, *International Law and International Relations* (Peking University Press 2012) Introduction & ch1s3.

War.¹³⁵

4. With regard to the purpose of the thesis, there is almost no literature which can provide complete set of reform plan for the application of the UNCSS in a particular field, including territorial disputes.

This problem is the other issue that is caused by the inherent divergence between the legal scholars and the international relations scholars in respect to their set routines of evaluating related matters. As the logic terminal point of the process of relevant research, the reforming plan of the application of the UNCSS in various international disputes is also an important sub-topic in which the progress of research does not go well.

On the one hand, it should be seen that Muller, a scholar of international relations, has already compiled a comprehensive review of successive plans to reform the entirety of the United Nations system, including the UNCSS. However, his edited volume and the works of his colleagues from the international relations academia maintain a consistently negative attitude towards the whole concept of ‘collective security’. Thus, this group of experts could hardly pay extra attention to the specific amendment of the UNCSS in some specific areas.¹³⁶

On the other hand, the international legal scholars are also restricted by the aforementioned conclusion of their corresponding research projects, which is either pacific or negative. Generally, the reform plans drafted by these scholars are either rather palliative, or just indirectly helpful to the UNCSS in that they mainly argue for the other issues of the reform of the United Nations. For example, the creation of the United Nations peacekeeping operation was actualized by putting the UN Charter aside, even though the peacekeeping forces was set to be a substitute for the never-implemented ‘United Nations Forces’ (see below). In another case, during the early years of the 21st

¹³⁵ Joseph Nye Jr, Kurt Biedenkopf & Motoo Shiina, *Global Competition After the Cold War: A Reassessment of Trilateralism* (The Trilateral Commission 1991) 47-48.

¹³⁶ Joachim Muller (ed), *Reforming the United Nations: A Chronology* (Brill 2016), note the fact that this book is the seventh volume of a series of works that have been successively published since 2001.

century, international legal scholars used to be enthusiastic about the reform of the UNSC. Through considering the abolishment of the veto power, certain scholars, such as Niemetz and Nadin, had even touched upon the Achilles heel of the UNCSS. However, the direct purpose of their effort was merely to promote the efficiency of the regular ‘decision-making procedure’ of the UNCSS.¹³⁷

All this said, some comprehensive books recently published in the 2010s, such as the three monographs written by Orakhelashvili, Tsagourias and White, and Wilson, have brought about a few good news. For instance, they have fully examined the hidden procedural troubles of the UNCSS, alongside the substantial limitation of the idea of ‘collective security’ under the influence of political factors. None of these scholars, however, has thoroughly gone beyond their follow-up introduction and evaluation of the new changes of the UNCSS or other collective security systems. Hence, none of them has independently raised their own complete set of reforms for the accomplishment of any particular task (e.g. the settlement of territorial disputes) of the UNCSS. Unquestionably, such an arrangement could barely make the most use of the total length of more than 1000 pages of these books. Nevertheless, to be fair, it is also undeniable that the appreciation of the numerous troubles of the UNCSS by these three monographs has informed the reform plan that is about to be offered by this thesis.

5. With regard to the scope of the thesis, there is also a lack of unanimous agreement on the concept of territorial disputes and the target of the UNCSS.

In comparison with the four issues described above, the problem discussed here is not necessarily linked to the research level or limitations of the scholarship on the application of the UNCSS in territorial disputes. Nonetheless, in order to select the appropriate content for the following chapters of this thesis, a clear concept of territorial disputes and a clear target of the UNCSS is surely very important. Unfortunately,

¹³⁷ See e.g. Martin Daniel Niemetz, *Reforming UN Decision-Making Procedure: Promoting A Deliberative System for Global Peace and Security* (Routledge 2015) ch 4; Peter Nadin, *UN Security Council Reform* (Routledge 2016) chs 4-5.

however, there appears to be no consensus in the literature on these issues:

In terms of territorial disputes, typically, legal and political scholars from the traditional Western powers, such as Shaw, usually tend to endorse the increase in the subjects of territorial disputes, yet oppose the expansion of the objects of territorial disputes.¹³⁸ On the other hand, legal and political scholars from the newly emerging non-Western powers, such as Sharma, usually tend to oppose the increase in the subjects of territorial disputes, yet endorse the expansion of the objects of territorial disputes.¹³⁹ Furthermore, legal and political scholars from most of the ordinary states, such as Cukwurah, usually tend to be the pupils of the scholars from the traditional Western powers, and support the stance of their teachers.¹⁴⁰

In terms of the UNCSS, those international legal scholars, such as Shaw, tend to recognize the unsuccessful records of the UNCSS. However, they still expect that this mechanism can in theory perform an active role that can be appraised as ‘dynamic (and) executive’ in the process of handling severe international disputes.¹⁴¹ On the other hand, those international relations scholars, such as Morgenthau, tend to recognize the noble original intentions of the UNCSS. However, they still doubt the capacity of this mechanism to perform an active role that can be appraised as ‘dynamic (and) executive’ in the process of handling severe international disputes.¹⁴²

¹³⁸ Malcolm Shaw, *International Law* (7th edn, CUP 2014) 143-80 & 352-77; Krista E. Wiegand, *Enduring Territorial Disputes: Strategies of Bargaining, Coercive Diplomacy, and Settlement* (University of Georgia Press, 2011) chs 4-8; Paul Huth, *Standing your ground: Territorial Disputes and International Conflicts* (University of Michigan Press 1998) 19-32; Wolfgang G. Vitzthum (ed), *Volkerrecht* (Wu Yue & Mao Xiaofei trs, 5th edn, Law Press: China 2012) ch3ss2-3 & ch5s1; Pierre-Marie Dupuy, *Droit International Public* (13th edn, Dalloz 2016) pt 1, see especially ch1s2.

¹³⁹ See e.g. Surya P. Sharma, *Territorial Acquisition, Disputes and International Law* (Brill 1997) ch 4; Ralf Emmers, *Geopolitics and Maritime Territorial Disputes in East Asia* (Routledge 2012) chs 4 & 6; Regarding the mainstream viewpoint of the Chinese scholars, see the above-mentioned books or articles written by Li Fan, Xie Licheng and Nie Hongyi.

¹⁴⁰ Chdid Anselm Odinkalu & Soni Ajala, ‘Anthony Oye Cukwurah, pioneer in law of international boundaries (1934-2013)’ (*Vanguard*, 27 August 2013) <<https://www.vanguardngr.com/2013/08/anthony-oye-cukwurah-pioneer-in-law-of-international-boundaries-1934-2013/>> accessed 1 March 2018.

¹⁴¹ Malcolm Shaw, *International Law* (7th edn, CUP 2014) 897-98.

¹⁴² Hans J. Morgenthau (author), Kenneth W. Thompson & David Clinton (revised), *Politics among Nations: The Struggle for Peace and Power* (7th edn, McGraw-Hill 2005) 437-38.

Concerning the origin of such a distinctive situation, there is no doubt that the inherent difference between the schools of thought of the two groups of scholars have played an important role here. Nonetheless, the divergence of opinions of various scholars can actually be attributed to more relevant factors-

Firstly, after the end of the WWII, the notion of ‘territory’ has been widely expanded. The development of the aviation equipment and the maturation of the marine technology have let the large-scale exploration of those geographical areas other than land territories become less difficult. In addition, the accumulation of the treaties related to the law of sea/airspace has endowed the various parties of the relevant disputes with the legal ground of their mutual territorial claims and negotiations.¹⁴³ Moreover, since non-state political entities and even individuals have started to be accepted as new subjects of international law, the number of the participants of modern international disputes has gone far beyond the imagination of the elder generations.¹⁴⁴ In short, the background for defining territorial disputes are sharply shifting.

Therefore, the viewpoints of the various scholars on the concept of territorial disputes normally have no better object to count on but the relatively stable national background of different states. In respect of the Western scholars, their opinions are often based on the relatively fast speed of the development of their academic theories and the relatively fewer practical demands of their motherlands. In respect of the non-Western scholars, their opinions are often based on the relatively slow speed of the development of their academic theories and the relatively more practical demands of their motherlands.

Secondly, since 1945, the practical basis of the UNCSS, as designed by the UN Charter, has gradually collapsed. As afore-stated, the founders of the United Nations believed that its universal collective security system should be the only legal and non-temporary measure for the suppression of severe international disputes through actively using

¹⁴³ Malcolm Shaw, *International Law* (7th edn, CUP 2014) 391-97, 419-28 & 455-66.

¹⁴⁴ Malcolm Shaw, *International Law* (7th edn, CUP 2014) 21-29 & 183-89; Stephen C. Neff, *Justice Among Nations: A History of International Law* (Harvard University Press 2014) ch 10.

armed forces. For securing the success of this mechanism, the P5 would together act as the ‘international policemen’ with the task of maintaining international peace and security.¹⁴⁵ Affected by the outbreak of the Cold War, however, the ability of the UNCSS to intervene in international affairs of the UNCSS had rapidly decreased. The decades of stalemate between the Eastern and Western Blocs destroyed the once friendly relationship among the P5, whilst the abuse of the veto power led to the authoritative institutions of the UNCSS being frequently incapacitated.¹⁴⁶ Additionally, with the establishment of the two military-political alliances of NATO and the Warsaw Pact, the ‘United Nations Forces’ and the Military Staff Committee which were supposed to manage the use of force became useless ornaments. As the result, even when the UNCSS got a chance to lead, it still had to appeal to those extra substitutive measures for help (e.g. the United Nations peacekeeping operations, see below).¹⁴⁷ In short, the background for setting the target of the UNCSS has also shifted a lot.

Therefore, the viewpoints of the various scholars on the target of the UNCSS normally have no better object to count on but the relatively stable doctrines of various schools. In respect of the international legal scholars, their opinions tend to respect the law and believe in the acquired order of the international community.¹⁴⁸ In respect of the international relations scholars, their opinions tend to neglect the law and believe in the acquired disorder of the international community.¹⁴⁹

¹⁴⁵ Antonio Cassese, *International Law* (2nd edn, OUP 2005) 317-35.

¹⁴⁶ An Introductory, but detailed Review of the international relations of the era of the Cold War can be seen in John Kent & John W. Young, *International Relations since 1945: A global History* (2nd edn, OUP 2013) pts 1-5, see especially chs 6 & 9; see also Antonio Cassese, *International Law* (2nd edn, OUP 2005) ch 17.

¹⁴⁷ D. W. Bowett, *United Nations Forces: A Legal Study* (Frederick A. Praeger 1964) pt 2, see especially 12-19 & 266-312.

¹⁴⁸ Malcolm Shaw, *International Law* (7th edn, CUP 2014) 897-929; James Crawford, *Brownlie's Principles of Public International Law* (8th edn, OUP 2012) 746-74; Antonio Cassese, *International Law* (2nd edn, OUP 2005) 339-51; Alexander Orakhelashvili, *Collective Security* (OUP 2011) 188-94 & 223-59; Nicholas Tsagourias & Nigel D. White, *Collective Security: Theory, Law and Practice* (CUP 2013) 18-19 & 92-136; Gary Wilson, *The United Nations and Collective Security* (Routledge 2014) 24-40.

¹⁴⁹ Hans J. Morgenthau (author), Kenneth W. Thompson & David Clinton (revised), *Politics among Nations: The Struggle for Peace and Power* (7th edn, McGraw-Hill 2005) 309-16 & 434-39; Joseph S. Nye Jr. & David A. Welch, *Understanding Global Conflict and Cooperation: An Introduction to Theory and History* (9th edn, Pearson 2014) 120-29 & 210-15; Ramesh Thakur, *The United Nations, Peace and Security: From Collective Security to the Responsibility to Protect*

Besides, regarding the disagreement between the legal and political scholars on the target of the UNCSS, the particularly dangerous attitude possessed by those extreme realists represented by Carr should be separately noted. Unlike common scholars, Carr possessed a strong aversion to any international security mechanisms that might contain elements of idealism, and he derided all attempts at establishing a ‘Wilsonian’ form of collective security system as ‘Utopianism’.¹⁵⁰ Several decades later, the zero-sum logic of Carr was further carried forward by a few other international relations scholars during the early years of the 21st century. For example, when talking about those factors that could restrain ‘wars among superpowers’, Mearsheimer never even mentioning the UNCSS in his monograph which covered the period from the Napoleonic War to the Kosovo War.¹⁵¹ Undoubtedly, this school of thought would not care for any ‘achievable targets’ of the UNCSS.

6. Summary.

In summary, both territorial disputes and the UNCSS are long-term objects of research of the relevant scholars, but the recent study of the political scholars on the former issue is slightly ahead of that of their legal colleagues. However, reviewing the massive existing literature, there have been few genuinely integrated studies of territorial disputes and the UNCSS, and holistic plans to reform the application of the UNCSS in territorial disputes are also hard to find. Moreover, if current researchers wish to fill or further explore the above-stated gap, then they must also consider the concept of territorial disputes and the target(s) of the UNCSS.

Furthermore, it should be highlighted that the core purpose of the literature review of this chapter is to situate the original work in this thesis. Hence, specific emphasis has been placed on identifying ‘what has not been said’ by the relevant scholars in the two

ect (CUP 2006) ch 1 & 13; Thomas G. Weiss, *Collective Security in a Changing World* (Lynn e Rienner Publisher 1993) see especially chs 5, 6 & 8.

¹⁵⁰ E.H. Carr, *The Twenty Years’ Crisis: 1919-1939* (Palgrave Macmillan 2016) 12-41.

¹⁵¹ John Mearsheimer, *The Tragedy of Great Power Politics* (W.W. Norton 2014) see especially chs 9-10.

research fields of territorial disputes and the UNCSS, rather than evaluating ‘what has been said’ by the relevant scholars. The necessary engagement of the viewpoints of the author and the relevant scholars on definite issues will be written in the corresponding sub-sections of the main body of this thesis. Concerning the general introductory nature of the present section, there is no need to have more extra discussion in this part.

2.2 The methodology of the thesis

International law is a discipline of social science, and the two dominant research methodologies in social science are quantitative research and qualitative research.¹⁵² Similarly, there are numerous schools of thought, but the relevant scholars always have to face realism and idealism, the two philosophical approaches that are essential to their studies¹⁵³. Accordingly, it is clear that the author needs to find its methodology which fits the research topic from the above four categories, and this approach should show some originality.

2.2.1 General philosophy

According to Goldsmith and Posner, international legal scholars are usually abided by the psychological assumption that ‘states follow international law for non-instrumental reasons.....because it reflects morally valid procedure, or consent, or internal value set’. However, they have also stated that while this perspective does not deny the fact that states may pursue their own national interests, it has overly emphasized the natural ability of common morality and international legal regulations to bind the behaviour of states.¹⁵⁴ In other words, the traditional works of international law put too much confidence in ‘good public order and moral’, which means that they are more likely to analyse international law by using comparatively idealistic critique. Unfortunately, the success of this approach has rather strict pre-conditions, it depends on the mightiness

¹⁵² Alan Bryman, *Social Research Methods* (5th edn, OUP 2015) ch 2.

¹⁵³ Robert Crawford, *Idealism and Realism in International Relations: Beyond the Discipline* (Routledge 2000) chs 1-3.

¹⁵⁴ Jack L. Goldsmiths & Eric A. Posner, *The Limits of International Law* (OUP 2006) 15.

of international law, and the restraining effect exerted by social morality upon private desire.

Therefore, at least to the present research topic, which involves both the core interests of states and the coercive enforcement of law, the continuous use of the traditional philosophy is inappropriate. This philosophy cannot offer an original perspective for this thesis, and such an approach would risk embedding an incorrect portrayal of the actual behaviour of states and the actual background of the thesis.¹⁵⁵ In contrast, as the opposing philosophy to traditional international legal approach, the nature of realism can rightly match this thesis:

Firstly, realists are known for their frequent criticisms of the inherent shortfalls of the UNCSS, and even underestimating the entire modern international legal system. Nonetheless, even Morgenthau, one of the most famous realists, has recognized that the thought of ‘collective security’ is theoretically rather ‘perfect’ in his book.¹⁵⁶ Objectively speaking, the stance of this approach which tends to deal with a matter on its own merits is very suitable to be used to study those practical topics which may contain both successful cases and unsuccessful cases in the same plane.

Secondly, realists place emphasis on ‘national interests’ and ‘national powers’, and these words largely contradict the preferred values of the modern international legal system. However, the former term has fairly reflected the direct motivation of the various parties of territorial disputes or other various international disputes (see below). In addition, the latter term has also helped the formation of the hierarchy of the participating states of the UNCSS.¹⁵⁷ Objectively speaking, this approach, which tends to talk straightforwardly and honestly, is very suitable to be used to study those complex topics in which the initial design and the later management are different with each other.

¹⁵⁵ Jack L. Goldsmiths & Eric A. Posner, *The Limits of International Law* (OUP 2006) 15.

¹⁵⁶ Hans J. Morgenthau (author), Kenneth W. Thompson & David Clinton (revised), *Politics among Nations: The Struggle for Peace and Power* (7th edn, McGraw-Hill 2005) 434-35.

¹⁵⁷ He Zhipeng & Gao Yue, ‘The Critical Realism as A Research Method of International Law’ (2014) 117 *Law and Social Development* 148 at 150-56.

Thirdly, realists usually prefer ‘primarily to explain, rather than prescribe, international behaviour’. However, in comparison with the traditional legal scholars or those idealistic political scholars, the realistic scholars still put more emphasis on the ‘instrumental’ reasons for the detailed policy-making of states.¹⁵⁸ Objectively speaking, this approach, which tends to refrain from making presumptuous assumptions, is very suitable to be used to study those controversial topics in which lies a gap between expectation and effect.

From the above discussion, it can be seen that the advantages of the realist approach are a good fit with the topic of this thesis. Adopting a general philosophy of realism will enable a critical analysis of the application of the UNCSS in territorial disputes and the relevant legal statutes with better comprehensiveness, impartiality and creativity. In fact, when introducing the political and other interdisciplinary elements in their discussion, this approach has been partly implemented by several international legal scholars, such as Koskenniemi and Wilson.¹⁵⁹

2.2.2 Specific methods

As aforementioned, mainstream research methods in contemporary social science studies can be divided into quantitative research methods and qualitative research methods. Given the detailed substance of these methods, along with a few other reasons below, this thesis will apply the ‘qualitative literary based study’ method which relies on the related literature, legal statutes and case reports:¹⁶⁰

Firstly, it is not easy to collect first-hand resources for the substance of this thesis. The UNCSS and territorial disputes are two issues which have very strong practicality. Thus, the most appropriate and original method should be the collection of first-hand resources on the spot, then empirically analysing them. Unfortunately, the UNCSS is a

¹⁵⁸ Jack L. Goldsmiths & Eric A. Posner, *The Limits of International Law* (OUP 2006) 16.

¹⁵⁹ Martti Koskenniemi, *The Politics of International Law* (Hart Publishing 2011) 79-88; Gary Wilson, *The United Nations and Collective Security* (Routledge 2014) 11-14.

¹⁶⁰ Paul Chynoweth, ‘Legal Research’, in Andrew Knight & Les Ruddock (eds), *Advanced Research Methods in the Built Environment* (Wiley-Blackwell 2008) 28 at 31-37.

forceable type of international security mechanism, and territorial disputes are all over the world. Accordingly, it is also unrealistic to try to investigate the application of the UNCSS in territorial disputes from within the affected areas. This thesis has therefore been left with making use of the second choice of the libraries which have large collections of academic materials, although these may include first-hand records collected by previous scholars.

Secondly, the conclusion of this thesis cannot be reached via mathematical calculation. Historically speaking, the verification of research conclusion through calculation is a research method of natural science, and was adopted disciplines of social science later.¹⁶¹ To be fair, the preciseness of mathematical calculation has to be acknowledged, yet there is a reason for the absence of this method in traditional work on international law. On the one hand, the status and value of law is not a question that can be calculated, as memorably stated by Berman, ‘law has to be believed in, or it will not work’.¹⁶² On the other hand, the application and function of law is also not a question that can be calculated, whether the offenders would bend to law or the victims would resort to law is a subjective matter that is full of uncertainty. For example, the P5 has never passively obeyed the rules of international law in history, but the Philippines still sued China. Therefore, the author is not obligated to try this tactic.

Thirdly, the topic of this thesis is a question of isness. Just as above-stated, the integrated study of the UNCSS and territorial disputes is still a gap in the research field of the modern international legal academia, and the drafters of the UN Charter used to positively fancy the role of the UNCSS. However, the situation in the 2010s is no longer as same as the situation in the 1950s when Kelsen had just published his first monograph that thoroughly introduced the UNCSS. The UNCSS has already been applied in territorial disputes, and it has already aroused a few controversies. Therefore, as the

¹⁶¹ E.g. In his monograph related to territories disputes, Huth has quantified the various causes of territorial disputes and their statistical weight, see Paul Huth, *Standing your ground: Territorial Disputes and International Conflicts* (University of Michigan Press 1998) ch 4.

¹⁶² Harold J. Berman, *The Interaction of Law and Religion* (Abingdon Press 1974) 29.

background conditions of the study of the questions of isness is comparatively ripe, the author hardly leave too much space for proposing hypothesis and establishing matched models.

In summary, this thesis will be a doctoral project that is written by applying the general philosophy of realism and the specific method of ‘qualitative literary based study’. The realist framework will enable the author to assess his research topic with apt approach, and to pay particular attention to interdisciplinary elements of the international legal studies. Meanwhile, the qualitative literary method will ensure that the author will not overly deviate from the classic research paradigm of legal studies.

Besides, it should be noted that according to the findings of the literature review, there lacks special literature which jointly studies territorial disputes and the UNCSS. Therefore, it is true that the general articles and books on the entire pack of territorial disputes and the UNCSS, written by authoritative scholars, need to be critically used for reference. However, the over reliance on the method of criticizing the broad viewpoints expressed by these general materials, cannot accurately improve the present practical study on the application of a particular mechanism in a specific field. In contrast, the rather realistic route which put more emphasize on directly demonstrating the drawbacks of the related mechanism, the limitations of the related thoughts and the results of the related practice with the help of the related literature, is equally worthy to be followed by the author.

Chapter 3-The background of the application of the UNCSS in territorial disputes settlement

3.1 The nature of territorial disputes

Just as the textbooks of international law would primarily discuss the nature of international law, it is also appropriate to start a study on territorial disputes by assessing their nature.¹⁶³ Specifically speaking, here the author should at least answer two preparatory issues that are parts of the nature of territorial disputes, namely their concept and unique characters:

Pertaining to the concept, Paul Huth, a leading scholar in this field, has pointed out that 'an essential first step is to develop a clear and valid definition of the concept of a territorial dispute between states...a well-grounded definition is critical...to both theory building and empirical testing'.¹⁶⁴ Obviously, according to his teaching, the basis of the study of territorial disputes is to define the concept of territorial disputes, and the concept of territorial disputes will systematically affect, or even decide, the progress of any relevant research.

Pertaining to the unique characters, as a particular type of international dispute that could easily trigger international armed conflicts,¹⁶⁵ territorial disputes surely have their individual features which separate them from others. According to Huth again, it is the comprehensive effect of a series of unique characters of territorial disputes that has turned them into a special type of international disputes which can more easily initiate a war. Otherwise, this issue cannot become a vital object of concern of the various measures for the settlement of international disputes, including the UNCSS.¹⁶⁶

¹⁶³ E.g. For British textbook, see Malcolm Shaw, *International Law* (6th edn, CUP 2008) 1-9 & 35-47; for American textbook, see Sean Murphy, *Murphy's Principle of International Law* (2nd edn, West Law School 2012) ch1s2.

¹⁶⁴ Paul Huth, *Standing your ground: Territorial Disputes and International Conflicts* (University of Michigan Press 1998) 19.

¹⁶⁵ Kalevi J. Holsti, *Peace and War: Armed Conflicts and International Order, 1648-1991* (CUP 1991) ch 12, see especially 306-307, table 12.1 & 12.2.

¹⁶⁶ Paul K. Huth, 'Territory: why are territorial disputes between states a central cause of international conflicts?', in John A. Vasquez (ed), *What do we know about war?* (Rowman & Little

However, given the importance of the characters of territorial disputes in practice, the past relevant scholars still tend to either ignore or conflate these elements in their research. For example, even Huth himself used to excessively emphasize the various values of the objects of territorial disputes, whilst he ignored the abundant characters of territorial disputes in other aspects.¹⁶⁷

Therefore, before further explore the settlement of territorial disputes, this thesis should clarify their concept and characters. With the help of the substance of the present section, the author may understand the range of choice of his case studies, and the UNCSS may also know its head-to-head opponent whilst it is being applied in actual practice.

3.1.1 The concept of territorial disputes

1. The range of the subjects of territorial disputes.

As its name has suggested, in the context of the modern international legal theories, only those legitimate subjects of international law can become the subjects, or parties of the various international disputes. In accordance with the authoritative *Oppenheim's International Law*, the 'subjects of international law' not only have covered a large geographical area in present days, but are also continuously expanding:

In the firstly place, the literal meaning of 'international law' has already clearly explained the simple substance of the subjects of international law during the early years of this term-the common sovereign states. In addition, both Oppenheim and the early international treaties claimed that only those European or American states from the 'civilized world' were exclusively qualified to recognize other sovereign states.¹⁶⁸ Afterwards, with gradual improvement of legal theories after the WWII, the traditional

field 2000) 85 at 94.

¹⁶⁷ Paul K. Huth, 'Territory: why are territorial disputes between states a central cause of international conflicts?', in John A. Vasquez (ed), *What do we know about war?* (Rowman & Littlefield 2000) 85 at 96-106.

¹⁶⁸ Lassa Oppenheim, *International Law: A Treatise* (2nd edn, Longmans, Green & Co. 1912) 1 30-35; Hersch Lauterpacht, *International Law: Collected Papers* (CUP 1975) vol 2, 489.

international organizations represented by the United Nations gained wide acceptance as new subjects of international law. At the same time, the outdated idea of ‘civilized world’ was also abandoned by the international community.¹⁶⁹ Finally, thanks to the birth of human rights law and other new departments of international law, together with de-colonization movement and other new types of international affairs, recently the concept of ‘subjects of international law’ has been further expanded. These include a lot of diversified political entities, such as *sui generis* territorial entities (e.g. national liberation movement¹⁷⁰), non-governmental organizations and individuals.¹⁷¹

However, regarding the application of the UNCSS in territorial disputes, not all the various subjects of international law are qualified to become the objects. This is owing to three reasons as follows:

One, some of the subjects of international law do not have their own, solid territories. Undoubtedly, the objects that the numerous parties of territorial disputes fight over, are tangible territories. If there is no solid piece of territories under a subject of international law, then such a given political entity should not participate in the related territorial disputes. Consequently, newly emerged subjects of international law which do not have previously-formed or well-defined territorial claims, such as national liberation movement and IGOs, are not suitable to be incorporated into the substance of this thesis¹⁷².

Besides, it should be noted that the UN Charter has stipulated a separate type of subject of international law, namely the non-self-governing territories, which also possess the four essential elements of those common sovereign states, and comparatively stable

¹⁶⁹ Liu Wenming, ‘The Standard of “civilization” in the international legal theories of Europe of the 19th century’ (2014) 224 *World History* 32 at 32-42.

¹⁷⁰ Robert Y. Jennings & Arthur Watts (eds), *Oppenheim’s International Law* (9th edn, Longman 1992) pt 1; With Regard to the latest viewpoints about the list of the subjects of international law, see Malcolm N. Shaw, *International Law* (7th edn, CUP 2014) ch 5.

¹⁷¹ Anders Aslund, Martha B. Olcott & Sherman W. Garnett, *Getting It Wrong: Regional Cooperation and the Commonwealth of Independent States* (Brookings Institution Press 1999) chs 1-3.

¹⁷² Malcolm N. Shaw, *International Law* (7th edn, CUP 2014) 162-78, 189-90 & 352-58.

boundaries.¹⁷³ Nevertheless, limited by their nature as areas administrated by designated sovereign states, non-self-governmental territories cannot independently retain key national powers, including the right to manage their defence and diplomatic affairs. Therefore, the other subjects of international law which cast their eye on non-self-governmental territories could only compete with the corresponding administrating powers¹⁷⁴.

Two, some of the subjects of international law not only do not have their own, solid territories, but also do not even need any piece of territories. Carrying forward the logic of the last paragraphs, there is no doubt that the disputed territories must be quite meaningful to the parties of the relevant territorial disputes (see above and below). If the existence, development and diplomatic communication of a subject of international law does not rely on any solid piece of territory, then this political entity clearly does not need to participate in the related territorial disputes as a party. Consequently, those subjects of international law that are more active in the field of private law, such as individuals, transnational corporations and NGOs, should be excluded from the substance of this thesis.¹⁷⁵

Three, some of the subjects of international law are not governed by the UNCSS, and here the author refers to the political entities that are similar to sovereign states but have not been widely recognized (hereinafter the ‘semi-states’). Undoubtedly, semi-states are a regular type of subject of international law which possesses all the four key elements of ‘territory, population, government and capacity to enter into diplomatic relations’. Thus, those semi-states have the ability and the motivation to act as parties of a particular territorial disputes.¹⁷⁶ Regrettably, in comparison with those common sovereign states, the territorial claims of those semi-states are usually regarded by the entire international community as a domestic problem of the related common sovereign

¹⁷³ Malcolm N. Shaw, *International Law* (7th edn, CUP 2014) 162-64.

¹⁷⁴ See Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, art 73; James Crawford, *The Creation of States in International Law* (2nd edn, OUP 2006) 606-20 & 637-48.

¹⁷⁵ Malcolm N. Shaw, *International Law* (7th edn, OUP 2014) 172-89 & 352-58.

¹⁷⁶ Malcolm N. Shaw, *International Law* (7th edn, OUP 2014) 224-42.

states. Therefore, their claims really cannot acquire sufficient support under modern international law. For example, all the 176 states with official diplomatic relations with China have adopted the ‘One China’ policy. However, the endorsement of this policy means that those states have recognized that the question of Taiwan is not a classic territorial dispute, but the ‘reunification’ of the separated old China. Accordingly, it is difficult for these states to broach the question of Taiwan by invoking international law.¹⁷⁷

More importantly, from the specific perspective of assessing the territorial disputes applied by the author, semi-states are not able to share the protection offered by the UNCSS with other common sovereign states. Tracking the origin of this phenomenon, the emergence of such a dilemma actually involves the fundamental nature of the UNCSS and the criteria for judging what is ‘not widely recognized’.

On the one hand, unlike the idea of ‘collective self-defense’ which can easily be obfuscated with its inter-connected concept (see next chapter below), the idea of ‘collective security’ upon which the UNCSS is based, effectuates the slogan of ‘all for one, one for all’. It combines the power of all the relevant member states to prevent internal challenges, but not against external threats.¹⁷⁸ Although the UN Charter allows the UNCSS to sanction or protect non-member states of the United Nations for the maintenance of ‘international peace and security’, the UNCSS has only exercised this right once and that can be dated back to the Korean War.¹⁷⁹ A famous example in this respect is the case of Kosovo, the final arrangement settling this dispute was the complete separation of this region, as an entire piece of territory, from Serbia.

¹⁷⁷ The prohibition on the use of force by sovereign states in their international relations is only a principle of international law, it can exert certain morally guiding effect upon internal affairs of states, but it is not binding in this field, see Antonio Cassese, *International Law* (2nd edn, OUP 2005) 213-17; Zhang Naigen, *The Principles of International Law* (2nd edn, Fudan University Press 2012) 51-58.

¹⁷⁸ Guo Xuetang, *All for One, One for All-A Research on the Collective Security System* (Shanghai People’s Publishing House 2010) 80-81.

¹⁷⁹ Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, art 2; During the Korean War period, neither North Korea nor South Korea was member state of the United Nations, see United Nations, ‘Member States’ (2018) <<http://www.un.org/en/member-states/index.html>> accessed 1 April 2018.

Nevertheless, the core document which led to the intervention of the UNCSS in the process of independence of Kosovo, resolution 1244 of the UNSC, had emphasized that it was only willing to settle ‘the grave humanitarian situation in Kosovo’. In the meantime, this resolution had also clearly stated ‘the commitment of all member states to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia’.¹⁸⁰

On the other hand, unlike the four essential elements of the common sovereign states, ‘not widely recognized’ is an ambiguous term. Can Kosovo, a country widely recognized by European and American states, but not by others, be treated as a ‘not widely recognized’ semi-state? Can Palestine, a country widely recognized by others, but not by European and American states, be treated as a ‘not widely recognized’ semi-state? Until now, the Eastern and Western Blocs not only have endlessly quarreled over this topic, but also have frequently misinterpreted the relevant legal regulations for covering their political stances.¹⁸¹ Consequently, according to Shaw, only the 193 member states of the United Nations are the common sovereign states of the international community, whilst the identity of other ‘sui generis territorial entities’ as ‘sovereign states’ is still questionable.¹⁸² A famous case in this respect is China’s United Nations membership. From 1949 to 1971, the seat of China was occupied by Taiwan as the Republic of China, and Taiwan had long-term control over the largest island/reef within the area of the South China Sea, the Itu Aba Island. Nevertheless, although the South China Sea Arbitration in 2016 had repeatedly cited the official documents of the former Republic of China, but the court never gave Taiwan the status of a state party of this case.¹⁸³

¹⁸⁰ UNSC Res 1244 (10 June 1999) UN Doc S/RES/1244.

¹⁸¹ E.g. The list of states which have recognized Kosovo largely overlaps with the list of member states of the former Western Bloc, so does the list of states of the former Eastern Bloc with regard to the recognition of Palestine, see Ministry of Foreign Affairs of Kosovo, ‘Kosovo Thanks You: Thank You from the Kosovo People’ (2018) <<https://www.kosovothanksyou.com/>> accessed 1 April 2018.

¹⁸² Malcolm N. Shaw, *International Law* (7th edn, OUP 2014) 162-77.

¹⁸³ The Liberty Times Net, ‘The South China Sea Arbitral Tribunal Does Not Recognize Taiwan As A State, the “Taiwan Authority of China” Has Appeared 12 Times’ (13 July 2016) <<http://news.ltn.com.tw/news/politics/breakingnews/1760993>> accessed 1 April 2018.

In short, although there are variety of subjects of international law, but after screening the key words ‘UNCSS’ and ‘territorial disputes’, the real subjects of territorial disputes in the context of this thesis can only refer to those member states of the United Nations. Besides, it is noteworthy that there is another special type of political entity within the system of the United Nations, which is the ‘observers’ of the UNGA. In essence, the nature of observers and the member states of the United Nations are almost identical, the only difference is the former cannot participate in the voting procedure while attending UN meetings. Thus, this thesis should not ignore their territorial disputes.¹⁸⁴ Fortunately, concerning the fact that most of the former observers of the UNGA have become member states of the United Nations, and considering the stable status of the territories of the Holy See, the author only needs to notice one special observer-Palestine.¹⁸⁵

2. The classification of the objects of territorial disputes.

Unlike the subjects, the objects of territorial disputes are a rather changeless concept which only refer to substantial territories themselves, or the geographical spaces covered by the sovereignty of states.¹⁸⁶ However, several examples, such as the Scarborough Shoal dispute between China and Philippines, demonstrate that pertaining to the application of selected norms of international law, the objects of territorial disputes can be divided into different types.¹⁸⁷ Meanwhile, Diehl has also pointed out that the classification of territorial disputes could help practitioners to select key cases

¹⁸⁴ Simon Chesterman, Ian Johnstone & David M. Malone, *Law and Practice of the United Nations: Documents and Commentary* (2nd edn, OUP 2016) 196-212, see especially 197-206.

¹⁸⁵ UNGA ‘List of Non-Member States, Entities and Organizations Having Received A Standing Invitation to Participate as Observers in the Sessions and the Work of The General Assembly’ (19 October 2017) 72th Session (2017) UN Doc A/INF/72/5.

¹⁸⁶ Robert Y. Jennings & Arthur Watts (eds), *Oppenheim’s International Law* (9th edn, Longman 1992) 563-65.

¹⁸⁷ In the case, one of the main reasons that China opposes Philippines to submit this dispute to international arbitration, is China believes that this dispute belongs to land-territory dispute, not dispute regarding the maritime delimitation, therefore it is beyond the scope of jurisdiction of the ITLOS and the UNCLOS. See United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3 (UNCLOS) art 2 98; Luo Guoqiang, ‘A review of the legal management of Philippines when submitting the dispute of South China Sea to international arbitration’ (2014) 2014 (1) Journal of East China Normal University (Humanities and Social Sciences) 61 at 63-65.

worthy of intensive study.¹⁸⁸ Therefore, it is necessary to specifically classify territorial disputes at the beginning of the main body of this thesis.

In terms of the basis of classification, previous international legal scholars relied on the legal or political characters of territories, but today they prefer to divide territories into land territories, territorial sea and territorial airspace.¹⁸⁹ According to Sharma, law and politics are interdependent in the field of territorial disputes, thus the above-mentioned theoretical way of classifying territories could render the various territorial disputes indistinguishable.¹⁹⁰ Other than that, any geographical area beyond the administrative and controlling ability of human beings (e.g., the earth's core or outer space¹⁹¹) has no practical meaning.¹⁹² Consequently, it is clearer to classify territorial disputes by referring to the geographical nature of actual territories. On this basis, the author will also analyse the research value of three types of disputed territories in order-land-territory disputes, maritime disputes and airspace disputes.

Firstly, land-territory disputes.

Despite the Antarctic where the territorial claims have been suspended,¹⁹³ there no longer exists any 'terra nullius'.¹⁹⁴ Thus, most of the present land-territory disputes examined by the international legal academia are land-territory disputes among

¹⁸⁸ Paul Diehl, 'Territorial Disputes', in Lester R. Kurtz, Jennifer E. Turpin (eds), *Encyclopedia of Violence, Peace and Conflict* (Academic Press 1999) vol 3, 487 at 491.

¹⁸⁹ Robert Y. Jennings & Arthur Watts (eds), *Oppenheim's International Law* (9th edn, Longman 1992) 572-73; Antonio Cassese, *International Law* (2nd edn, OUP 2005) 81; Surya P. Sharma, *Territorial Acquisition, Disputes and International Law* (Brill 1997) 30-34; Chiu Hung-Ta (auth or), Chen Chun-I (ed), *Modern International Law* (3rd edn, San Min Book Publisher 2012) 10 00.

¹⁹⁰ Surya P. Sharma, *Territorial Acquisition, Disputes and International Law* (Brill 1997) 30.

¹⁹¹ Early in the 1960s, various states' sovereignty claim in relation to the outer space had already been denied by the Outer Space Treaty, see Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (adopted 27 January 1967, entered into force 10 October 1967) 610 UNTS 205.

¹⁹² See Alexandra Proelss, 'Raum und Umwelt im Volkerrecht', in Wolfgang G. Vitzthum (ed), *Volkerrecht* (Wu Yue & Mao Xiaofei trs, 5th edn, Law Press·China 2012) 365 at 372-78.

¹⁹³ Antarctic Treaty (adopted 1 December 1959, entered into force 23 June 1961) 12 UNTS 79 4, art 4.

¹⁹⁴ Here those new land territories that formed by natural causes are not considered. See Ben Chigara, 'Terra Nullius', in Peter Cane, Joanne Conaghan (eds) *The New Oxford Companion to Law* (OUP 2008) 1160-61.

different states. Just like the primary status of land territories among all types of territories, as confirmed by the *Oppenheim's International Law*,¹⁹⁵ the land-territory disputes have a primary status in territorial disputes as well. In particular, their importance stems from two aspects:

First, the proportion of the land territories in the entire area of all types of national territories. The scope of the land territories covered by states' sovereignty includes all the continents, islands and the subsoil within their borders.¹⁹⁶ Needless to say, the entire area of these land territories are much larger than the entire area of the corresponding territorial sea.¹⁹⁷ Additionally, Akehurst and Malanczuk also argue that the internal water which used to be treated as part of the sea in the traditional legal sense¹⁹⁸ is now part of the land territories.¹⁹⁹ Moreover, owing to its natural characteristics, airspace is not the same as land territories or the sea in territorial disputes (see below). Thus, in spite of several archipelago states which only have relatively small land territories (e.g. Nauru), land territories unquestionably account for an overwhelming proportion of the territories of the majority of states.

Second, the proportion of the land-territory disputes in the entire pack of territorial disputes. In correspondence with the proportion of the land territories in the total area of territories, land-territory disputes also account for a very high proportion among all the various cases of territorial disputes.²⁰⁰ More importantly, as land territories are the

¹⁹⁵ Robert Y. Jennings & Arthur Watts (eds), *Oppenheim's International Law* (9th edn, Longman 1992) 572.

¹⁹⁶ Robert Y. Jennings & Arthur Watts (eds), *Oppenheim's International Law* (9th edn, Longman 1992) 572.

¹⁹⁷ Currently the entire area of all the territorial sea recognised by the world only approximately equals to the area of the former USSR. See NOAA Office of General Counsel, 'Maritime Zones and Boundaries' (12 August 2013) <http://www.gc.noaa.gov/gcilm_maritime.html> accessed 25 March 2014.

¹⁹⁸ See United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3 (UNCLOS) art 8; Peter Malanczuk, *Akehurst's Modern Introduction to International Law* (7th edn, Routledge 1997) 173 & 175-76.

¹⁹⁹ The major difference between the internal water and other areas under the law of the sea is the existence/non-existence of the right of innocent passage, whilst the internal water that is discussed by the law of the sea is only part of the internal water in the broad sense as well. See Malcolm Shaw, *International Law* (6th edn, CUP 2008) 556-57; Robert Y. Jennings & Arthur Watts (eds), *Oppenheim's International Law* (9th edn, Longman 1992) 572; Yoshifumi Tanaka, *The International Law of the Sea* (CUP 2012) 76.

²⁰⁰ See e.g. Alan Day & Judith Bell, *Border and Territorial Disputes* (2nd edn, Cartermill Inter

foundation for setting the baselines for maritime/airspace delimitation,²⁰¹ even in complex territorial disputes which involve other areas, land territories usually hold a core status as well. For example, although the East China Sea dispute between China and Japan is a competition for the economic resources within the relevant continental shelves and EEZs, but its focus is the inconspicuous Diaoyu/Senkaku Island, which belongs to the land territories.²⁰²

In short, relying on its advantageous status in terms of the total relative proportion, at least until today, the land-territory disputes are still the most important type of territorial dispute. Actually, most of the traditional rules pertaining to territories within the international legal system are all developed in view of land territories and the relevant disputes, and this fact has also proved the importance of land territories from a lateral perspective.²⁰³

Besides, it is noteworthy that some scholars have claimed that common territorial disputes and boundary disputes should be clearly separated.²⁰⁴ However, although common territorial disputes usually involve a change of the sovereignty ownership of large pieces of territories, whilst boundary disputes usually involve small sections of border lines, they are not completely opposite issues.²⁰⁵ Moving border lines could certainly lead to the change of ownership of territories, and the change of ownership of territories could definitely cause a shift in border lines, these acts are essentially interdependent.²⁰⁶ For example, Sharma once stated that in order to decide the

national 1987); Blatant Independent Media, ‘Disputed Territories’ (2014) <<http://www.disputedterritories.com/>> accessed 23 March 2014.

²⁰¹ See *Maritime Delimitation in the Black Sea (Romania v. Ukraine)* (Judgment) [2009] ICJ Rep 61.

²⁰² If either China or Japan have gain the control of the Diaoyu/Senkaku island, then the scope of the EEZ claimed by the other state party will definitely be seriously squeezed. Meanwhile, because the Diaoyu/Senkaku island lays on the west side of the Ryukyu Trench, therefore the ascription of it may have serious influence on the rules applied for the delimitation of the continental shelves of China and Japan. See Pan Zhongqi, ‘Sino-Japanese Dispute over the Diaoyu/Senkaku Islands: The Pending Controversy from the Chinese Perspective’ (2007) 12 (1) *Journal of Chinese Political Science* 71 at 72 & 84.

²⁰³ See e.g. James Crawford, *Brownlie’s Principles of Public International Law* (8th edn, OUP 2012) ch 9, especially 215.

²⁰⁴ Surya P. Sharma, *Territorial Acquisition, Disputes and International Law* (Brill 1997) 24-25.

²⁰⁵ Surya P. Sharma, *Territorial Acquisition, Disputes and International Law* (Brill 1997) 23-24.

²⁰⁶ Yang Mian, ‘What Do Borders and Territories Mean?’ (*World Affairs* 2011) <<http://www.glo>>

ownership of the region of the Temple of Preah Vihear, the ICJ had applied certain rules of international law which were usually applied to delimit national borders.²⁰⁷ In this thesis, therefore, the author will not be entangled in the differences between common territorial disputes and boundary disputes.

Secondly, maritime disputes.

From the perspective of international law, the unique feather of maritime disputes rest with the fact that they should be divided into the territorial sea of states and other sea areas in which states may enjoy sovereign rights. Each will now be explained.

First, the territorial sea of states.

Similar to land territories, states enjoy full sovereignty over their territorial sea, seabed and subsoil.²⁰⁸ Early in the era of Grotius, various European states had already begun to debate the rights of littoral states on the sea,²⁰⁹ which directly led to the birth of the concept of territorial sea.²¹⁰ Later with the gradual expansion of the scope of territorial sea, along with scientific and military developments, the territorial sea claimed by different states overlapped and clashed,²¹¹ so that the territorial sea disputes had become a major part of territorial disputes.

balview.cn/ReadNews.asp?NewsID=25021> accessed 25 May 2014.

²⁰⁷ It is noteworthy that also Sharma himself believed that the core issue of this case was the dispute over the territories surrounding the Temple Preah Vihear, but this case is normally categorised as a case concerning national borders. See Surya P. Sharma, *Territorial Acquisition, Disputes and International Law* (Brill 1997) 27.

²⁰⁸ Convention on the territorial sea and contiguous zone (adopted 29 April 1958, entered into force 10 September 1964) 516 UNTS 205, art 2; Despite the territorial sea in the common sense, those archipelagos states also enjoy sovereignty on the archipelagos waters, but the relevant rules regarding this area is not as same as those rules for the regulation of the territorial sea, whilst due to the length of this thesis, there is no need to further discuss them. See United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3 (UNCLOS) pt 4, especially art 53.

²⁰⁹ See Hugo Grotius, *The Free Sea: With William Welwod's Critique and Grotius's Reply* (Richard Hakluyt tr, Liberty Fund Inc 2004); John Selden, *Mare Clausum. of the Dominion, Or, Ownership of the Sea* (Law Book Exchange 2014).

²¹⁰ See William Welwod, *An abridgement of all seas-Lawes: gathered forth of all writings and monuments, which are to be found among any people or nation, vpon the coasts of the great ocean and Mediterranean Sea* (Clark Johnson 1973) 1613.

²¹¹ W. L. Schachte Jr., 'The History of the Territorial Sea from a National Security Perspective' (1990) 1 Terr. Sea J. 143.

For instance, before the conclusion of the UNCLOS, Greece and Turkey respectively announced that the width of their territorial sea was 6 nm. Although this allowed Greece to control nearly half of the Aegean Sea, Turkey did not intensely respond. After UNCLOS I, however, Greece gradually claimed that the width of its territorial sea was 12 nm, establishing this claim through formal legislation after the conclusion of the UNCLOS. With this policy the sovereignty of Greece could cover almost all of the Aegean Sea, and Turkey argued against this claim as it threatened her original interests. Thereby, a serious dispute over territorial sea was initiated.²¹²

Fortunately, despite the related troubles, the UNCLOS does provide a series of principles, rules and measures for the delimitation of territorial sea and the settlement of disputes. Meanwhile, it has created the ITLOS to assist the peaceful settlement of international disputes within the law of the sea as well.²¹³ With the help of this complete legal system, currently most of the major states' territorial sea has been delimited, and the remaining controversies are concentrating on just two perspectives which do not need the rules governing territorial sea²¹⁴ -

The first is the disputed islands surrounded by the relevant maritime areas. The key point of this perspective is not the territorial sea around the disputed islands, but the small pieces of land territories, which are the disputed islands themselves, encircled by the territorial sea. Back into the detailed practice, the Scarborough Shoal dispute between China and Philippines is a typical case in this field.²¹⁵ The second is the continental shelf disputes which have been heard on many occasions by the ITLOS. The

²¹² Wu Chuanhua, 'An analysis on the Aegean Sea dispute between Turkey and Greece' (2011) 2011 (2) Western Asia & Africa 18 at 21.

²¹³ The provisions in the UNCLOS with regard to the delimitation of the territorial sea are actually inherited from the Convention on the Convention on the territorial sea and contiguous zone, see United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3 (UNCLOS) art 15, pt 15 & annex 6; Convention on the territorial sea and contiguous zone (adopted 29 April 1958, entered into force 10 September 1964) 516 UNTS 205, art 12.

²¹⁴ The PEW Charitable Trust, 'Sea around us project: fisheries, ecosystems & biodiversity' <<http://www.seaaroundus.org/highsea/>> accessed 26 March 2014.

²¹⁵ Ellen Tordesillas, 'Chinese "occupation" of Bajo de Masinloc could reduce PH territorial waters by 38 percent' (ABS-CBN News and Current Affairs, 1 January 2013) <http://www.philnews.com/headlines/2013/headline_news_0314ah.htm> accessed 26 March 2014.

key point of this perspective is not a fight for the sovereignty of territories, but a fight for the economic resources covered by ‘sovereign rights’ (see next paragraphs below). Back into the detailed practice, the maritime delimitation and territorial questions between Qatar and Bahrain is a typical case in this field.²¹⁶ Accordingly, it can be said that the status quo of those disputes over territorial sea are comparatively optimistic, and a large part of this issue which actually involves sovereignty controversies can indeed be absorbed into land-territory disputes.

Second, the other sea areas in which states may enjoy ‘sovereign rights’.

The UNCLOS not only established the present system of territorial sea, but it also established or created the present systems of continental shelf and EEZ.²¹⁷ By this means, it not only widely expanded the behaviour space of states on the high seas, but also left certain hidden troubles to the emergence of the relevant international disputes. As territorial sea disputes are progressively subsiding, a significant amount of the existing maritime disputes in the present international community pertain to the EEZ/continental shelves, and their focus are the natural resources within the relevant maritime regions. For instance, the North Sea Continental Shelf Case settled before the conclusion of the UNCLOS is basically a typical case in this field.²¹⁸

However, although states may enjoy ‘sovereign rights’ in their EEZ/continental shelf regions, this is not tantamount to the complete national sovereignty which applies to common territorial seas. Strictly speaking, ‘sovereign rights’ are economic privileges of exploring, exploiting and conserving natural resources of the sea, the extent of which are far narrower than the political concept of national sovereignty.²¹⁹ More to the point, ‘sovereign rights’ can also be divided into multiple specific duties, which cannot affect

²¹⁶ The ITLOS, ‘List of Cases’ <<http://www.itlos.org/index.php?id=35&L=0%2525255CoOpensinterrnallinkincurrwindow>> accessed 26 March 2014.

²¹⁷ United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3 (UNCLOS) pts 5 & 6.

²¹⁸ See *North Sea Continental Shelf Cases (Federal Republic of Germany v. Denmark, Federal Republic of Germany v. Netherlands)* (Judgment) [1969] ICJ Rep 3.

²¹⁹ United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3 (UNCLOS) art 56 & 77.

the legal rights or freedom of other nearby states in the corresponding maritime regions.²²⁰ Hence, as the scientific technology develops, it is predictable that the EEZ/continental shelf will become more important, but there is also no need to confuse the EEZ/continental shelf under the ‘sovereign rights’ with territorial seas under national sovereignty.

Thirdly, airspace disputes.

Unlike land territories or maritime regions, airspace is formed by airflow that has no mass or smell. Accordingly, no method can actualise the stable control of its content (which is air) in practice, so that the sovereignty over airspace called by international law virtually only has theoretical meaning.²²¹ Meanwhile, the nature of airspace means it has no clear frontier, thereby the scope of airspace under the sovereignty of a definite state can only be delimited by its land territories and territorial sea.²²² Consequently, airspace disputes only have minimum independent research value which derives from the relevant land-territory disputes or maritime disputes. For instance, the airspace dispute in the Aegean Sea between Greece and Turkey is a typical case.²²³

Greece and Turkey share historically disputed islands, territorial sea and continental shelves. According to the UNCLOS stipulation that the width of the territorial sea can be extended to 12 nm, Greece claims that its territorial airspace frontier is 10 nm from its coastline.²²⁴ However, because Greece controls most of the islands in the Aegean Sea, and the Greek islands in the east part of this region are very close to the Turkish

²²⁰ United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3 (UNCLOS) art 58 & 78.

²²¹ Antonio Cassese, *International Law* (2nd edn, OUP 2005) 81; see also Alexandra Proelss, ‘Raum und Umwelt im Volkerrecht’, in Wolfgang G. Vitzthum (ed), *Volkerrecht* (Wu Yue & Mao Xiaofei trs, 5th edn, Law Press·China 2012) 365 at 377-81.

²²² Convention on International Civil Aviation (adopted 7 December 1944, entered into force 4 April 1947) 15 UNTS 295, arts 1 & 2.

²²³ In terms of a comprehensive introduction of the Greece-Turkey dispute in the Aegean Sea region, see Wu Chuanhua, ‘An analysis on the Aegean Sea dispute between Turkey and Greece’ (2011) 2011 (2) *Western Asia & Africa* 18 at 18-26.

²²⁴ Jon Van Dyke, ‘An Analysis of the Aegean Disputes under International Law’ (2005), 85, as cited in Wu Chuanhua, ‘An analysis on the Aegean Sea dispute between Turkey and Greece’ (2011) 2011 (2) *Western Asia & Africa* 18 at 21.

territories, Turkey continuously objects the claim of Greece. Based on the old rules concerning the width of territorial sea and the relevant international conventions, such as the Chicago Convention, Turkey claims that the largest extent of the Greek territorial airspace should be 6 nm from the Greek coastline²²⁵. This disagreement has precipitated provocation and military confrontation, in which the incident of the collision of military aircrafts in 2006 even caused several casualties of their military personnel. However, so far the negotiation between Greece and Turkey over the sea area of the Aegean Sea still has not made any breakthrough, thus the settlement of the airspace dispute in this region is even more out of the question.²²⁶

Fourthly, special situation.

Despite the above-mentioned standard territorial disputes, it is worthy to mention that there are well-known examples containing clear elements of territorial disputes, but are discussed as a separate category. Classic examples of this type include the Korean War, the Gulf War and the more recent Crimea Crisis. Undoubtedly, the key words of the above disputes are ‘annexation’ and ‘invasion’, and in comparison with scholars of territorial law, scholars from the disciplines like the law of war, or the law of international organizations are more interested in these cases.²²⁷ However, based on the following two reasons, the author will still discuss these disputes in this thesis:

On the one hand, all direct parties of these cases were formal members of the United Nations (although more accurately, North Korea and South Korea joined the United Nations after their initial clash²²⁸). Moreover, the objects of fighting were pieces of land territories. In other words, these theoretical features certainly fit the range of research

²²⁵ The Ministries of Foreign Affairs of Greece, ‘Unilateral Turkish Claims in the Aegean’ <<http://www.hri.org/MFA/foreign/bilateral/aegean.htm#g>> accessed 25 May 2014; Christos Kassimeris, ‘NATO and the Aegean Disputes’ (2008) 24 (2) Defense & Security Analysis 165 at 171-74.

²²⁶ Wu Chuanhua, ‘An analysis on the Aegean Sea dispute between Turkey and Greece’ (2011) 2011 (2) Western Asia & Africa 18 at 21 & 25-26.

²²⁷ See e.g. Paul W. Kahn, ‘Lessons for International Law from the Gulf War’ (1993) 45 Stanford Law Review 425 at 427-40.

²²⁸ Avram Agov, ‘North Korea’s Alliances and the Unfinished Korean War’ (2013) 18 (2) The Journal of Korean Studies 225 at 239-50.

of the thesis established in this section. On the other hand, regardless of whether it is an act of ‘invasion’ or an act of ‘annexation’, the nature of these terms is a specific measure used by attackers to illegally acquire territories from victims. In other words, these practical actions could separate the ‘good’ and ‘evil’ parties, but they cannot change the theoretical nature of the actual case.

Therefore, there are some differences between the territorial expansion of the member states of the United Nations through armed actions and those common territorial disputes under the control of modern international law. Nevertheless, the former is still qualified to become an object of study of this thesis. Taking the length of a doctorate thesis into account, the subsequent chapters will not separately emphasize the particularity of this type of cases again.

3. Summary.

In summary, the ‘territorial disputes’ discussed in this thesis will mainly refer to the disagreement among member states of the United Nations over the sovereignty ownership of land territories. Besides, the author will not exclude a few manifestations of territorial disputes, such as invasion or annexation (hereinafter may call them ‘standard’ territorial disputes). In addition, this thesis will only mention Palestine, and territorial sea disputes which derive from land-territory disputes, when absolutely necessary. Furthermore, while the legal academia has not reached an agreement upon the definition of ‘territorial disputes’, this thesis will not extensively cover the maritime areas where states may enjoy ‘sovereign rights’, the airspace and other subjects of international law. Lastly, since this thesis does not wish to deliberately incorporate the territorial issues of the non-member states of the United Nations, the relevant parties certainly cannot use excuses like ‘internal affairs’ or ‘sovereignty’ to reject the intervention of the UNCSS. But say, Tsagourias and White have already stated that according to the original idea of the UN Charter on this matter, the ‘enforcement

measures' of the UNCSS are always higher than 'domestic matters'.²²⁹

3.1.2 The characters of territorial disputes

As afore-mentioned, the characters of territorial disputes can partly explain the fact that this dispute could easily initiate wars, and attract the attention of various measures for settling international disputes, including the UNCSS. Unfortunately, and perhaps surprisingly, the corresponding research is slim. On one hand, the viewpoints of certain authoritative scholars, such as Huth, are more or less one-sided (see above). On the other hand, for example, some other scholars from developing states have even attributed the causes of these characters to 'the remaining questions of history'.²³⁰ Consequently, this thesis certainly need to summarize the unique characters of territorial disputes to fill the gap in the literature and to assist the writing of the next chapters. Bearing this aim and the inherent crucial status of states, territories and other relevant elements in mind (see introduction above), the author believes that the special characters of territorial disputes are as follows:

1. The uniqueness of the subjects of territorial disputes.

The normal subjects of territorial disputes are sovereign states, which in the context of this thesis are member states of the United Nations. In comparison to sovereign states, neither the international organizations and transnational corporations, nor the individuals have or need solid territories, so that territorial disputes are not a problem for them.²³¹ In fact, even if the author is willing to take other subjects of international law which actually need solid territories into account, he still can hardly find any appropriate past practical record for his research:

²²⁹ Nicholas Tsagourias & Nigel D. White, *Collective Security: Theory, Law and Practice* (CUP 2013) 285.

²³⁰ E.g. Yang Mian, 'The Peaceful Approaches and Methods of Settling Territorial and Boundary Disputes' (2009) 31 (1) *Socialism Studies* 109 at 109-10.

²³¹ With regard to the potential subjects of common international disputes, see J.G. Merrills, *International Dispute Settlement* (5th edn, CUP 2011) 1.

First, after gaining independence, those non-self-governing territories and national liberation movements will defend their territorial claims, but before then, the direct parties of the relevant disputes should still be the old dominating power. For instance, the sovereignty issue of the Falkland Islands is a territorial dispute between Argentina and the UK, not a territorial dispute between Argentina and the local government of the Falkland Islands.²³²

Second, due to their limited status and strength (for example, as the richest semi-state, the GDP of Taiwan is equal to 5% of the mainland China's GDP²³³), it is common to find cases in which semi-states act as if they are not involved in any territorial dispute. For instance, from 2013 to 2016, Taiwan was practically reticent about the South China Sea Arbitration between China and Philippines, only once announcing that it would 'not accept the result of the arbitration' after receiving the tribunal's final decision.²³⁴

2. The invaluableness of the objects of territorial disputes.

As above-stated, territories (here specifically refers to land territories) are not only the sole object of territorial disputes, but also the primary pre-condition for a political entity to be qualified as state.²³⁵ After all, without territories there is no state, whilst without states there is no emergence of any international dispute, or even international law. Therefore, the inherent value of territories is surely exceptionally important, and thus territories surely have noticeable prominence in the eyes of the entire international community. Besides, as the physical space upon which the various subjects of international law co-exist, develop and compete with each other, the acquired value attached to territories should not be underestimated as well.²³⁶

²³² Marcelo Kohen & Facundo Rodriguez, *The Malvinas/Falklands Between History and Law* (CreateSpace Independent Publishing 2017) 233-50.

²³³ The Economist, *Pocket World in Figures 2018* (Profile Books 2018) 24.

²³⁴ Neyla Zennia, 'Taiwan rejects ruling on South China Sea with Taiping Island defined as "rocks"' (TOC, 14 July 2016) <<https://www.theonlinecitizen.com/2016/07/14/taiwan-rejects-ruling-on-south-china-sea-with-taiping-island-defined-as-rocks/>> accessed 1 April 2018.

²³⁵ Malcolm N. Shaw, *International Law* (7th edn, OUP 2014) 352.

²³⁶ Antonio Cassese, *International Law* (2nd edn, OUP 2005) 81; Paul Diehl, 'Territorial Dispute s', in Lester R. Kurtz, Jennifer E. Turpin (eds), *Encyclopedia of Violence, Peace and Conflict*

For instance, in order to explain the arguments used by states to support their territorial claims, many scholars have summarized the non-legal claims proposed by various states against the disputed territories.²³⁷ The most exhaustive list provided by Strausz-Hupe and Possony, *inter alia*, contains as many as 12 items, including linguistic, religion, culture, military, economy, history, administration, ideology, geography, race, sociology and psychology.²³⁸ Since no state would carelessly seek excuses for its potentially dangerous desire, this list has indeed proved that territories may possess abundant and significant value which cannot be easily renounced by any state in as many as 12 aspects. Needless to say, such a figure surely has highlighted the ‘abundant value’ of this particular object, namely land territories.

More attractively, even if the thesis put the above number, or quantity aside, the quality of the value of other objects and that of territories are also incomparable. For example, in the *Monetary Gold Removed from Rome in 1943* case, Italy and Albania chose to appeal to the ICJ for the ownership of merely several tons of Gold (around 1 million British pounds then)²³⁹. In contrast, nearly 30 years ago, to purchase the tiny Virgin Islands from Denmark in 1917, the USA had already spent over 25 million dollars.²⁴⁰

Back into the relevant practice, the high-value nature of territories makes states pay much more attention to territories than other objects of international disputes, thus increasing the sensitiveness and hence the possibility of territorial disputes²⁴¹. In fact, Mancini and Gibler have pointed out that ‘how willing a state is to compromise over a disputed territory seems to depend on the value attributed to it...valueless lands hold

(Academic Press 1999) vol 3, 487 at 491.

²³⁷ Norman L. Hill, *Claims to Territories in International Law and Relations* (OUP 1945, reprinted by Greenwood Press in 1976) 39 & chs 4-9; Norman J. G. Pounds, *Political Geography* (2nd edn, McGraw-Hill 1972) 252-63; Andrew F. Burghardt, ‘The Bases of Territorial Claims’ (1973) 63 (2) *Geographical Review* 225 at 228.

²³⁸ Robert Strausz-Hupe & S. T. Possony, *International Relations in the Age of the Conflict between Democracy and Dictatorship* (2nd edn, McGraw-Hill 1954) 327.

²³⁹ See *Case of the Monetary Gold Removed from Rome in 1943 (Italy v. France, United Kingdom and United States)* (Merit) [1954] ICJ Rep 19.

²⁴⁰ Issac Dookhan, *A History of the Virgin Islands of the United States* (Canoe Press 1994) 25 9.

²⁴¹ Yang Mian, ‘The Peaceful Approaches and Methods of Settling Territorial and Boundary Disputes’ (2009) 31 (1) *Socialism Studies* 109 at 109.

little potential for conflict'.²⁴² In other words, according to the related authoritative scholars, the direct cause of territorial disputes may even have nothing to do with the status of territories as a core interest of states. Conversely, the abundance of the comprehensive value of territories is sufficient to arouse the interest of the relevant parties, and thus determine the policies applied by those states upon them. On this basis, the change of national policies and stances could certainly determine the possibility of dispute, or even armed conflict.²⁴³

3. The difficultness of the process of settling territorial disputes.

After discussing the subjects and objects of territorial disputes, this thesis certainly should turn to the actual settlement of territorial disputes. Pertaining to the process, certain Chinese scholars have described it as complex and lengthy,²⁴⁴ whilst this author believes a more accurate word is difficulty, plus it is closely linked to the above two characters of states and territories:

On the one hand, the uniqueness of the subject of territorial disputes means that sovereign states are usually the only participants of territorial disputes. However, as the most essential and complete subject of international law, states normally have stronger comprehensive strength and coordinated will (compared to other subjects) for enduring mutual competition and confrontation.²⁴⁵ On the other hand, the invaluableness of the object of territorial disputes also means that it is impossible for states to easily make

²⁴² Francesco Mancini, 'Uncertain Borders: Territorial Disputes in Asia' (2013) <http://www.ispioonline.it/sites/default/files/pubblicazioni/analysis_180_2013_0.pdf> accessed 20 February 2014. It is noteworthy that Mancini also summarized the various values of territories that might lead to territorial disputes, including the tangible political and economic values, and the invisible ethnic, nationalism and symbolic values; Douglas M. Gibler, *Territorial Peace: Borders, State Development, and International Conflicts* (CUP 2012) 14.

²⁴³ It should be noted that the value of definite territories towards a particular state party might change with the passage of time. For instance, there used to be a long-term territorial dispute between Poland and the USSR, but after the WWII, these two states became allies and the ongoing dispute had become meaningless. Therefore, Poland and the USSR quickly determined their borders and signed the related treaty. See e.g. Treaty between the Polish Republic and the Union of Soviet Socialist Republics concerning the Polish-Soviet State Frontier (adopted 16 August 1945) 10 UNTS 193.

²⁴⁴ Yang Mian, 'The Peaceful Approaches and Methods of Settling Territorial and Boundary Disputes' (2009) 31 (1) *Socialism Studies* 109 at 109-10.

²⁴⁵ Antonio Cassese, *International Law* (2nd edn, OUP 2005) 71-72.

concessions in respect of the relevant disputes. One thing leads to another, it is certainly even more difficult for states to passively obey any common solution that is moderate or simple.²⁴⁶

Under such an unsatisfactory circumstance, despite the apparently increased possibility of territorial disputes, the difficulty of the settlement of territorial disputes would inevitably be increased as well. Return to the related cases, this trend is naturally reflected by the length of the process and the complexity of the measures that have been mentioned by other scholars:

For example, pertaining to the international commercial dispute between two of the largest mobile phone manufacturers (Apple and Samsung), the British court spent only one month.²⁴⁷ In contrast, from the delivery of the initial judgment to the recent Cambodian application for the interpretation of the judgment, the Temple Preah Vihear case between Cambodia and Thailand has been ongoing for 50 years and is still not settled.²⁴⁸ For another instance, even those international trade disputes between states are generally settled by negotiations, and they rarely need to be submitted to the WTO.²⁴⁹ In contrast, ever since the end of the colonial rule of the UK, India and Pakistan has been fighting over Kashmir for 70 years without a settlement of this territorial dispute.²⁵⁰

²⁴⁶ Yang Mian, 'The Peaceful Approaches and Methods of Settling Territorial and Boundary Disputes' (2009) 31 (1) *Socialism Studies* 109 at 110-11.

²⁴⁷ *Samsung Electronics (UK) Ltd v Apple Inc* [2012] EWHC 1882 (Pat).

²⁴⁸ See *Case concerning the Temple of Preah Vihear (Cambodia v. Thailand)* (Merits) [1962] I CJ Rep 6; *Request for Interpretation of the Judgment of 15 June 1962 in the Case Concerning the Temple of Preah Vihear (Cambodia v. Thailand)* (Application) (28 April 2011) <<http://www.icj-cij.org/files/case-related/151/16470.pdf>> accessed 8 May 2014.

²⁴⁹ E.g. The trade dispute between China and the EU regarding the Photovoltaics once escalated to the level that the EU sought to appeal to the WTO, but finally this dispute was still settled by concluding an ultimate solution through bilateral negotiation. See Nilima Choudhury, 'China files anti-subsidy complaint against EU with WTO' (*PV-Tech*, 5 November 2012) <http://www.pv-tech.org/news/mofcom_files_anti_subsidy_complaint_against_eu_with_wto> accessed 8 May 2014; 'EU, China reach amicable settlement in PV trade dispute' (*SETIS*) <<http://setis.ec.europa.eu/setis-magazine/solar-power/eu-china-reach-amicable-settlement-pv-trade-dispute>> accessed 10 May 2014.

²⁵⁰ Christopher Snedden, *Understanding Kashmir and Kashmiris* (C Hurst & Co Publishers 2015) 239-43, 245-57 & 255-57.

However, speaking from the opposite perspective, it is the difficulty of settling territorial disputes, the value of territories, and states' endurance for defending their interests that have paved the way for the application of the UNCSS here. Since the peaceful settlement of international dispute has become a principle of the contemporary international law,²⁵¹ only those specially challenging crises could initiate forcible measures, and thus inspire the writing of this thesis. Therefore, the dilemma in the relevant practice caused by the above characters of territorial disputes might also become a chance for the improvement and development of the relevant legal norms of international security mechanisms.

4. The uncertainty of the results of the settlement of territorial disputes.

If the two inherent characters of territorial disputes could affect the process of settling territorial disputes, then they certainly could affect the results of the settlement of territorial disputes as well. Interestingly, by analysing the details of these two characters, it could be seen that the factors which endow them with the ability to affect this sub-topic are opposite to each other:

On one hand, the national strength of states is not unchangeable, and as it changes, a state's ambition and aggressiveness also change. On the other hand, the value of territories is changeable (e.g. when Russia sold Alaska to the USA, this region was a negative asset to the Tsar²⁵²). However, to a great extent, territories always remain a treasury that states cannot easily abandon in history. For example, while the USSR was the largest state in the world, during the WWII the Soviet commissars still used to say, 'Russia is big, but there is nowhere to retreat'.²⁵³

Under the combined effect of these two key factors above, in comparison with other international disputes, the results and obedience of the settlement of territorial disputes

²⁵¹ See Manila Declaration on the Peaceful Settlement of International Disputes, UNGA Res 37/10 (approved 15 November 1982) UN Doc A/RES/37/10.

²⁵² Frank A. Golder, 'The Purchase of Alaska' (1920) 25 (3) The American Historical Review 411 at 413.

²⁵³ K. K. Rokossovsky, *A Soldier's Duty* (Progress Publishers 1985) 74.

cannot always be guaranteed. Any change in the values of territories or the strengths of states, or the intervention by the third parties, all of these matters can increase the uncertainty of the results of the settlement. Besides, even within the relevant states themselves, any change in their domestic affairs, such as the rise of a nationalist regime, may also lead to the relapse of their territorial disputes,²⁵⁴ thus creating successive obstacles for the study and practice of territorial disputes.

Taking the Alsace-Lorraine case before the birth of the UNCSS for instance. As its key point was the confrontation for the non-movable natural resources, a large portion of the early stage of this case was territorial dispute.²⁵⁵ Accordingly, the escalation of the tension in this region had led to repeated armed conflicts and the change of sovereignty ownership of this region: Initially, due to the Franco-Prussian War, Germany acquired Alsace-Lorraine which originally owned by France, but thanks to the Great War, this land was returned to France. Then, Germany occupied Alsace-Lorraine again at the beginning of the WWII, yet as one of the eventually victorious states, France regained the sovereignty of this land in 1945.²⁵⁶

In contrast, after the later plan for settling this case had put the element of territorial disputes aside, it was obeyed properly and chronically. When Schuman, the then French minister of foreign affairs proposed to actualise the Coal and Steel Community by holding territorial disputes in abeyance after the WWII, his plan was rapidly accepted by Germany. Afterwards, the ECSC which was established with the joint contribution of France and Germany became the pioneer of the European integration, and the

²⁵⁴ Yang Mian, 'The Peaceful Approaches and Methods of Settling Territorial and Boundary Disputes' (2009) 31 (1) *Socialism Studies* 109 at 110.

²⁵⁵ Thomas Hoepel, 'The French-German Borderlands: Borderlands and Nation-Building in the 19th and 20th Centuries' (*EGO European History Online*, 23 August 2012) paras 16, 30 & 39 <<http://ieg-ego.eu/en/threads/crossroads/border-regions/thomas-hoepel-the-french-german-borderlands>> accessed 28 February 2014.

²⁵⁶ See Treaty of Frankfurt (signed 10 May 1871) 143 CTS 163, art 1; Treaty of Peace between the Allied and Associated Powers and Germany (Treaty of Versailles) (signed 28 June 1919, entered into force 10 January 1920) 225 CTS 188, art 51; Armistice Agreement between the German High Command of the Armed Forces and French Plenipotentiaries at Compiègne (Second Armistice at Compiègne) (signed 22 June 1940) art 2; Treaty on the Final Settlement with Respect to Germany (signed 12 September 1990) 29 ILM 1186, art 1.

successful operation of this organization eventually lasted for almost 50 years.²⁵⁷

5. Summary.

In summary, territorial disputes are a type of international disputes which has a relatively complex background situation caused by its multiple characters. No matter their 'unique' subjects, or their 'precious' objects, all of these characters can bring about numerous obstacles for the success of those simple and moderate measures here. Consequently, unless the parties are willing to let a territorial dispute to continue, otherwise the import of the coercive measures would definitely become a logical choice, setting the scene for the application of the UNCSS in territorial disputes settlement.

Besides, for the convenience of writing, when recalling the substance of this section in the subsequent chapters, the author will use shorter phrases like 'complex situation', 'abundant value' and 'difficult compromise'. In the corresponding sections below, these phrases will refer to the details of these above-mentioned characters, and the higher overall difficulties of settling territorial disputes which are caused by them.

3.2 The peaceful settlement of territorial disputes

Prior to the abolishment of war, the use of force by states was undoubtedly a common measure for settling international disputes, and it was broadly recognized as a legal instrument of national policy.²⁵⁸ However, since the establishment of the United Nations, the peaceful settlement of various international disputes and the prohibition of the threat or use of force have become two basic principles of international law.²⁵⁹ In

²⁵⁷ See e.g. John Fairhurst, *Law of the European Union* (9th edn, Pearson 2013) 5-6.

²⁵⁸ See e.g. Jan Klabbers, *International Law* (CUP 2013) 287; Treaty Between the United States and Other Powers Providing for the Renunciation of War as an Instrument of National Policy (Pact of Paris) (adopted 27 August 1928, entry into force 24 July 1929) 94 LNTS 57, art 1; Richard B. Bildner, 'An Overview of International Dispute Settlement' (1986) 1 (1) Emory Journal of International Dispute Settlement 1 at 20.

²⁵⁹ Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, art 2; If ignore the relevant early practice that are not widely and strictly binding in this place, the attempt of prohibiting the use of force can also be traced back to the period of the League of Nations and the Pact of Paris, see Antonio Cassese, *International Law* (2nd edn, OUP 2005) 278-79.

fact, according to the findings of Tsagourias and White, 'Both CS actors and institutions are empowered to facilitate the peaceful settlement of disputes'.²⁶⁰ Therefore, before further discussing the UNCSS which involves the use of force, the author needs to review the peaceful settlement of territorial disputes, so as to clarify the necessity of bringing coercive mechanism into this field.

3.2.1 An overview of the various measures for the peaceful settlement of territorial disputes

Reviewing the relevant provisions of the UN Charter and other credentials of international law, it can be seen that the international community recognizes nearly 10 measures for the peaceful settlement of international disputes²⁶¹. According to Wallace-Bruce, despite their inherently diversified nature, the preponderant criteria for categorizing these measures is the level of intervention of third parties.²⁶² Unfortunately, although there are quite a few practical options for the peaceful settlement of territorial disputes, none are perfect, each with disadvantages.

1. Negotiation.

Regardless of the type of international disputes, negotiation is always the most common and fruitful peaceful measure.²⁶³ According to Cassese, the advantage of negotiation is that 'the solution is left entirely to the parties concerned, without any undue pressure from the outside'.²⁶⁴ In other words, negotiation basically excludes the external influence of the third parties, so that it is always highly praised by those sovereign states.

²⁶⁰ Nicholas Tsagourias & Nigel D. White, *Collective Security: Theory, Law and Practice* (CUP 2013) 163.

²⁶¹ Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, art 33; United Nations Office of Legal Affairs: Codification Division, *Handbook on the Peaceful Settlement of Disputes between States* (United Nations 1992) <<http://legal.un.org/cod/books/HandbookOnPSD.pdf>> accessed 7 August 2014; Manila Declaration on the Peaceful Settlement of International Disputes, UNGA Res 37/10 (15 November 1982) UN Doc A/RES/37/10.

²⁶² Nii Lante Wallace-Bruce, *The Settlement of International Disputes: The Contribution of Australia and New Zealand* (Martinus Nijhoff 1998) 28.

²⁶³ John Collier and Vaughan Lowe, *The Settlement of Disputes in International Law: Institutions and Procedures* (OUP 1999) 20.

²⁶⁴ Antonio Cassese, *International Law* (2nd edn, OUP 2005) 279.

However, although negotiation could play an important role that is not neglectable, but it is not perfect, as it also has several drawbacks.

Firstly, negotiation must rely on the consent of the various parties of the relevant international disputes. If one of the parties lacks the intention of initiating a negotiation, then it is impossible for the negotiation to be initiated. Secondly, the parties usually need to consider all the related, major or minor factors during negotiation. Thus, they might make unnecessary compromise on definite aspects for the purpose of achieving their overall goals.²⁶⁵ Thirdly, the character of negotiation of excluding the intervention of third parties makes this measure lacks in external supervision. Thereby, it may offer the space of making ‘backroom deals’ to definite parties. Fourthly, during negotiation, as the parties must directly and autonomously compete with each other, those relatively more powerful parties could pressure their opponents more easily. Therefore, it can be said that ‘negotiation may turn out to be a way by which global powers bend the will of lesser states, settling the issue to their own advantage’.²⁶⁶

As the result, the pure application of negotiation cannot guarantee the complete settlement of any international dispute, especially those where the parties have severe contradictions. Reviewing the history, with their complex situations, abundant values and different compromises, territorial disputes are certainly not an exception:

For instance, the Sino-Russian negotiation concerning the demarcation of their boundaries have possessed all the above-mentioned disadvantages. Firstly, during the Yalta conference the ‘big three’ secretly decided that the region of Outer Mongolia, which was then a part of China then, should be included in the USSR’s sphere of influence, thereby depriving China of 1.56 million square kilometres.²⁶⁷ Afterwards, the deterioration of Sino-Soviet relations during the Cold War reduced both states’ intention and motivation for initiating negotiation, and it led to a series of armed

²⁶⁵ Martin Dixon, *Textbook on International Law* (7th edn, OUP 2013) 287.

²⁶⁶ Antonio Cassese, *International Law* (2nd edn, OUP 2005) 279.

²⁶⁷ Bruce A. Elleman, *Diplomacy and Deception: The Secret History of Sino-Soviet Diplomatic Relations, 1917-1927* (M.E. Sharpe 1997) 231-34.

conflicts between the two states.²⁶⁸ Finally, in order to quickly and effectively settle the few remaining territorial disputes between the two states, both China and Russia made certain utilitarian concessions in the early 1990s, ceasing to obey the relevant rules of international law.²⁶⁹

In summary, although negotiation is being called ‘the simplest and most utilized’ peaceful measure,²⁷⁰ it cannot completely meet the international community’s expectation of peacefully settling territorial disputes. Consequently, the international community surely need to seek new way for the maintenance of international peace and security, so that here come the other peaceful measures which involve the intervention of the third parties.

2. Mediation.

Bearing the limitations of negotiation in mind, the UN Charter has listed a new measure which involves the intervention of third parties for the peaceful settlement of international disputes-mediation (Note: the good offices and mediation are almost identical in practice, and their names are even usually ‘interchangeable’²⁷¹)²⁷². In comparison with negotiation, the main advantage of mediation is the third parties would present non-binding suggestions on the basis of the consent of the various parties. Thereby, they may ‘persuade the parties to a dispute to reach satisfactory terms for its termination by themselves’²⁷³. However, despite the above improvement, mediation is also not the perfect measure for the peaceful settlement of territorial disputes or other

²⁶⁸ Duan Jielong, *International Law in China: Cases and Practice* (Law Press·China 2011) ch 5; Zhu Wenqi, *Modern International Law* (Commercial Press 2013) 421.

²⁶⁹ Xiao Dan, ‘A review of the issue of Bolshoy Ussuriysky Island in the Sino-Soviet (Russian) boundary negotiation’ (2011) 221 *The Research and Teaching of the History of the CCP* 52 at 56-58.

²⁷⁰ Malcolm N. Shaw, *International Law* (6th edn, OUP 2008) 1014-15.

²⁷¹ Anthony Aust, *Handbook of International Law* (2nd edn, CUP 2008) 400.

²⁷² Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, art 33; Zhang Naigen, *The Principles of International Law* (2nd edn, Fudan University Press 2012) 450.

²⁷³ Malcolm N. Shaw, *International Law* (6th edn, OUP 2008) 1018; J.G.Merrills, *International Dispute Settlement* (5th edn, CUP 2011) 33-36; Carla S. Copeland, ‘The Use of Arbitration to Settle Territorial Disputes’ (1999) 67 *Fordham* 3073 at 3104.

international disputes, as it has its own drawbacks as well.

First, mediation is essentially a political method in which the third parties would prompt the initiation of the relevant negotiation. Thus, in favour of its efficiency, the process of mediation may ignore the necessary fairness.²⁷⁴ Second, Merrills has argued that the activation and application of mediation is largely relying on the consent of the various parties and the good faith of the third parties. Thus, the success of this measure in practice usually rest with the sense of urgency of the parties and the neutral stance of the third parties.²⁷⁵ Third, since the actual effect of mediation is to prompt the initiation of negotiation,²⁷⁶ this measure can actually be seen as a ‘pre’ process of negotiation. Therefore, eventually the relevant disputes still have to be peacefully settled by the latter, which means that the corresponding parties still may have to face all the drawbacks of negotiation.

As the result, the application of mediation still cannot perfectly cover the problems of negotiation. Besides, its shortage of leaving hidden troubles behind has coincidentally matched with a particular character of territorial disputes, which is the uncertainty of the results of the settlement of these disputes. Hence, resorting to this measure might easily exert certain adverse effect on the corresponding situations:

As an example, the mediation chaired by the Pope helped Argentina and Chile settled their territorial dispute in the region of the Beagle channel in 1978, even though this case could not even be handled by judicial arbitration.²⁷⁷ However, in another similar mediation just 4 years later, the joint effort of the then Secretary-General of the United Nations and the US Secretary of State retrieved nothing but the pretended cordiality of the Argentinean junta on the negotiating table against the UK. Partly due to this failure,

²⁷⁴ Anthony Aust, *Handbook of International Law* (2nd edn, CUP 2008) 400.

²⁷⁵ J.G.Merrills, *International Dispute Settlement* (5th edn, CUP 2011) ch 2, see especially 37-40.

²⁷⁶ Antonio Cassese, *International Law* (2nd edn, OUP 2005) 280.

²⁷⁷ Papal Proposal in the Beagle Channel Dispute-Proposal of the Mediator (12 December 1980) (1985) 24 ILM 7; John Collier and Vaughan Lowe, *The Settlement of Disputes in International Law: Institutions and Procedures* (OUP 1999) 28.

the Falklands War broke out between the two parties.²⁷⁸

Overall, the act of bringing third parties into during the application of mediation should not be underestimated, but it cannot always peacefully settle territorial disputes in a more thorough and effective way. For such purpose, the international community and the relevant scholars still need to introduce other measures that can further strengthen the general mechanism for the peaceful settlement of international disputes.

3. Inquiry and conciliation.

Next to mediation, the UN Charter has also listed a few other peaceful measures which may fill the gap of negotiation, including inquiry, conciliation, resort to regional organizations and other peaceful measures.²⁷⁹ Nevertheless, the regional organizations are just a user of those peaceful measures which involve the intervention of third parties, whilst ‘the other peaceful measures’ are largely a save clause. Therefore, among all the above four tactics, only inquiry and conciliation are independent measures.²⁸⁰

With regard to their advantages, it can be seen that the third parties of inquiry would assist the parties to ascertain the facts. In addition, on the basis of their own investigation, the third parties of conciliation can suggest an array of solutions, so that this measure ‘combines the characteristics of inquiry and mediation’.²⁸¹ However, although the role of third parties have been further strengthened during the application of inquiry and conciliation, but in front of various international disputes, especially territorial disputes, both of them still have some fatal defects.

²⁷⁸ John Collier and Vaughan Lowe, *The Settlement of Disputes in International Law: Institutions and Procedures* (OUP 1999) 29.

²⁷⁹ Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, art 33.

²⁸⁰ Jan Klabbers, *International Law* (CUP 2013) 142.

²⁸¹ The Hague Convention for the Pacific Settlement of International Disputes (adopted 29 July 1899, entry into force 4 September 1900) 187 CTS 410 (Hague I) arts 9 & 14; United Nations Office of Legal Affairs Codification Division, *Handbook on the Peaceful Settlement of Disputes between States* (United Nations 1992) 45 <<http://legal.un.org/cod/books/HandbookOnPSD.pdf>> accessed 7 August 2014; Ivor Roberts (ed), *Satow’s Diplomatic Practice* (6th edn, OUP 2009) 474, in Zhang Naigen, *The Principles of International Law* (2nd edn, Fudan University Press 2012) 450.

Firstly, before applying inquiry in territorial disputes, the various parties must accept that ‘their version of event may be shown to be wrong’ and ‘the determination of the relevant circumstances would simply not aid a settlement’.²⁸² In other words, the application of inquiry in territorial disputes may make the parties to face the dilemma that their territorial claims have been denied by the third parties, whilst the relevant territorial disputes still have not been completely and ideally settled. Secondly, ‘combines the characteristics of inquiry and mediation’ means conciliation has also combined the numerous drawbacks of inquiry and mediation in the related practice. For example, after they have accepted the corresponding solutions, the various parties still need to negotiate for the details of the successive implementation of these solutions. Needless to say, such a measure which contains diversified risks is not expected by the various parties during the settlement of any severe international dispute, including territorial disputes.²⁸³

Consequently, comparing to negotiation or mediation, inquiry and conciliation are not two measures that have been widely applied in the practice of peacefully settling territorial disputes. Honestly speaking, it is quite rare to see those cases in which inquiry or conciliation have been successfully applied in territorial disputes:²⁸⁴

In terms of inquiry, the most famous case of this measure ever since it was originally stipulated by The Hague I, is still the Lytton commission organized by the League of Nations, which is the predecessor of the United Nations. This commission had made a partly thorough investigation on the facts that Japan seized Northeast China, but it did not prevent the situation from further deterioration.²⁸⁵ In terms of conciliation, since the end of the WWII the number of conciliation cases has significantly decreased,²⁸⁶ and its success in settling territorial disputes is limited. For example, as a particular

²⁸² J.G.Merrills, *International Dispute Settlement* (5th edn, CUP 2011) 57; Malcolm N. Shaw, *International Law* (6th edn, OUP 2008) 1022.

²⁸³ J.G.Merrills, *International Dispute Settlement* (5th edn, CUP 2011) 80-81.

²⁸⁴ J.G.Merrills, *International Dispute Settlement* (5th edn, CUP 2011) 53-54 & 79-81.

²⁸⁵ Martyn Housden, *The League of Nations and the Organization of Peace* (Routledge 2011) 9 8-102.

²⁸⁶ J.G.Merrills, *International Dispute Settlement* (5th edn, CUP 2011) 69 & 79.

measure proposed by the relevant parties, the application of conciliation was unsuccessful in the Egypt-Israel territorial dispute regarding the region of Taba.²⁸⁷ More embarrassingly, in some other cases related to territorial disputes, the solutions provided by conciliation commissions were simply rejected.²⁸⁸

Therefore, inquiry and conciliation could fill part of the gap of the other measures, and they have been applied in the settlement of territorial disputes before. Nevertheless, their own drawbacks still have determined that in the field of dealing with territorial disputes, they are not welcomed by the various parties. Accordingly, it is surely reasonable to see these parties turn to apply or induct other peaceful measures.

4. Arbitration.

Unlike the above four types of measures, arbitration is a judicial method supported by the UN Charter.²⁸⁹ The main advantages of this measure that the results are legally binding, and the entire process is generally controlled by the actual parties without undermining the necessary flexibility²⁹⁰. However, the original design of arbitration is not completely positive, at least in the field of peacefully settling territorial disputes, the inherent drawbacks of this particular measure is quite clear.

Firstly, arbitration itself is still largely limited by the will of the various parties. From the appointment of the arbitrators to the jurisdiction and applicable legal rules of the tribunals, plus even the enforcement of the decision of the tribunals, all these matters are almost completely managed by the relevant parties.²⁹¹ Secondly, as the process of arbitration is generally swayed by the will of those parties, when the process of arbitration is applied in territorial disputes it may be either overtly or covertly resisted

²⁸⁷ J.G.Merrills, *International Dispute Settlement* (5th edn, CUP 2011) 70 & 80.

²⁸⁸ J.G.Merrills, *International Dispute Settlement* (5th edn, CUP 2011) 81.

²⁸⁹ Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, art 33.

²⁹⁰ Carla S. Copeland, 'The Use of Arbitration to Settle Territorial Disputes' (1999) 67 Fordham Law Review 3073 at 3074-75; Ian Brownlie, 'The Peaceful Settlement of International Disputes' (2009) 8 Chinese JIL paras 30-38.

²⁹¹ Chiu Hung-Ta (author), Chen Chun-I (ed), *Modern International Law* (3rd edn, San Min Book Publisher 2012) 1015-22; Ivor Roberts (ed), *Satow's Diplomatic Practice* (6th edn, OUP 2009) 475.

by the relevant parties *ab initio*. Accordingly, arbitration may lose its flexibility or working efficiency.²⁹² Thirdly, in comparison with permanent international judicial institutions which largely rely on the financial support of the relevant international organisations, the parties must pay all the expenses of arbitration²⁹³.

Consequently, on the one hand, arbitration may after all be accepted as a crucial measure for the peaceful settlement of territorial disputes. Moreover, it has successfully been applied in certain territorial disputes, such as the Rann of Kutch case and the Taba Area case.²⁹⁴ On the other hand, in the relevant practice after the end of the Cold War, there is also no lack of cases in which the attempts of arbitration have failed:

For example, in the late 1990s the application of arbitration did not settle the tripartite territorial dispute that occurred in the Brcko region of Bosnia-Herzegovina.²⁹⁵ Afterwards, while both parties of the Ethiopia-Eritrea territorial dispute had accepted the right of adjudication of the arbitral tribunal established for this case and the binding nature of its final decision, Ethiopia eventually did not obey the result. Thereby, this dispute was not settled through the application of arbitration.²⁹⁶ Furthermore, the latest application of the mechanism of the PCA is the South China Sea Arbitration between China and Philippines which started in 2013. However, even at its very beginning, China had already indicated that it would not accept or participate in this case. Hence, it is predictable that the result of this arbitration could only offer limited help to the settlement of the various territorial disputes within the South China Sea region.²⁹⁷

²⁹² Ian Brownlie, 'The Peaceful Settlement of International Disputes' (2009) 8 Chinese JIL para 38.

²⁹³ Malcolm N. Shaw, *International Law* (6th edn, OUP 2008) 1055.

²⁹⁴ *Case Concerning the Indo-Pakistan Western Boundary (Rann of Kutch) (India v. Pakistan)* (1968) 17 RIAA 553; *Boundary Disputes Concerning the Taba Area (Egypt v. Israel)* (1988) 2 7 ILM 1427; Carla S. Copeland, 'The Use of Arbitration to Settle Territorial Disputes' (1999) 67 Fordham Law Review 3073 at 3077-85.

²⁹⁵ *Arbitration for the Brcko Area* (Rep. Srpska v. Fed. of Bosn. & Herz.) (1997) 36 ILM 396; Carla S. Copeland, 'The Use of Arbitration to Settle Territorial Disputes' (1999) 67 Fordham Law Review 3073 at 3085-102.

²⁹⁶ *Decision Regarding Delimitation of the Border between the State of Eritrea and the Federal Democratic Republic of Ethiopia (Eritrea v. Ethiopia)* (2002) 41 (5) ILM 1057; Ivor Roberts (ed), *Satow's Diplomatic Practice* (6th edn, OUP 2009) 475.

²⁹⁷ The PCA Press Release, 'Arbitration between the Republic of the Philippines and the Peopl

Taking these shortcomings into account, the international community definitely must seek new measures which may suitable for the peaceful settlement of various international disputes, including territorial disputes. Benefiting from this trend, as ‘the most important international judicial institutions’, the permanent international judicial institutions surely has acquired its own opportunity of making public appearance.²⁹⁸

5. Resort to permanent international judicial institutions.

Resorting to permanent international judicial institutions (hereinafter the ‘permanent institutions’) is also a measure supported by the UN Charter,²⁹⁹ but unlike arbitration, the permanent institutions would not be assembled or dissolved on account of a definite case.³⁰⁰ Thus, to a certain extent, the exterior influence from the various related parties can be eliminated by this measure.³⁰¹ Comparing to other peaceful measures, the permanent institutions would not excessively consider too many factors, other than the legitimate rights and interests of the various parties, and their judgments are also ‘decisive’.³⁰² However, although the measure of resorting to permanent international

e’s Republic of China: Arbitral Tribunal Establishes Rules of Procedure and Initial Timetable’ (27 August 2013) <http://www.pca-cpa.org/showfile.asp?fil_id=2313> accessed 6 September 2014;

It should be noted that concerning the fact that China used to make a conservation on the basis of the relevant provisions of the UNCLOS and in the reservation China claimed that it would not accept any international disputes related to territorial disputes and maritime delimitation, thus in its indictment, Philippines did not ask the arbitral tribunal of this case to directly decide the sovereignty ownership of the disputed islands, but it asked the tribunal to deny the relevant claims of China and offer endorsement for the corresponding claims of Philippines & other rights of Philippines derived from these claims-this type of requirement certainly cannot conceal the real goal of Philippines that it aims at striving for the sovereignty ownership of the relevant disputed regions, See Lu Fanghua, ‘A research on the South China Sea dispute arbitration from the perspective of international law and the response of China’ (*People’s Forum*, 2013) vol. 23 <http://paper.people.com.cn/rmlt/html/2013-08/11/content_1295043.htm> accessed 10 September 2014.

²⁹⁸ J.G.Merrills, *International Dispute Settlement* (5th edn, CUP 2011) 116.

²⁹⁹ Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, art 33.

³⁰⁰ See Statute of the International Court of Justice (adopted 26 June 1945) 3 Bevans 1179, ch 1.

³⁰¹ It should be noted that in contrast to the character of arbitration that the intervention of other various parties is strictly eliminated, under definite circumstances stipulated by the Statute of the ICJ, the cases which have resorted to permanent international judicial institutions may allow other parties to intervene, see C. M. Chinkin, ‘Third-Party Intervention Before the International Court of Justice’(1986) 80 (3) AJIL 495 at 495-99; Ian Brownlie, ‘The Peaceful Settlement of International Disputes’ (2009) 8 Chinese JIL para 38; Statute of the International Court of Justice (adopted 26 June 1945) 3 Bevans 1179, arts 62-63.

³⁰² Statute of the International Court of Justice (adopted 26 June 1945) 3 Bevans 1179, art 33; The Hague Convention for the Pacific Settlement of International Disputes (adopted 18 October

judicial institutions has a variety of advantages, but it is still not flawless. According to Copeland, at least in terms of the peaceful settlement of territorial disputes, its shortages could limit its actual performance.

Firstly, the judicial nature of resorting to permanent institutions can lead to a situation that is similar to the ‘zero-sum game’. This may make the relevant parties do not dare to submit their territorial disputes, which involve the change of abundant valuable territories, to the permanent institutions.³⁰³ Secondly, the permanent institutions would rarely consider those non-legal factors related to any international dispute, whilst territorial disputes is a particular type of international dispute which involves a lot of non-legal factors (e.g. the abovementioned ‘non-legal claims’).³⁰⁴ Thirdly, the adversarial proceeding applied by the permanent institutions could easily escalate the contradictions and hostilities among the relevant parties, not to mention the negative effect of the characters of territorial disputes here.³⁰⁵

Consequently, the measure of resorting to permanent institutions has only offered noticeable, but also limited direct help to the peaceful settlement of territorial disputes. Reviewing the relevant past cases, it can be seen that the specific achievement of the permanent institutions is far away from its theoretical status:

Firstly, the bulk of the closed cases related to territorial disputes was heard by the ICJ,³⁰⁶

1907, entry into force 26 January 1910) 1 *Bevans* 577 (Hague I) art 85; Stuart Dutson, Andy Moody & Neil Newing, *International Arbitration: A Practical Guide* (Globe Law and Business 2012) 189; Carla S. Copeland, ‘The Use of Arbitration to Settle Territorial Disputes’ (1999) 67 *Fordham Law Review* 3073 at 3106; Richard B. Bilder, ‘International Third Party Dispute Settlement’ (1989) 17 *Denv. J. Int’l. & Pol’y* 471 at 489.

³⁰³ Carla S. Copeland, ‘The Use of Arbitration to Settle Territorial Disputes’ (1999) 67 *Fordham Law Review* 3073 at 3106-107.

³⁰⁴ Carla S. Copeland, ‘The Use of Arbitration to Settle Territorial Disputes’ (1999) 67 *Fordham Law Review* 3073 at 3106-107.

³⁰⁵ Richard B. Bilder, ‘International Third-Party Dispute Settlement’ (1989) 17 *Denv. J. Int’l. & Pol’y* 471 at 490.

³⁰⁶ Nie Hongyi, ‘A Review of the Function and Dilemma of International Law in Settling Territorial Disputes’ (2009) 2009 (2) *Heilongjiang Chronicles* 137 at 139; regarding the commentary on part of the representative cases, see Brian T. Sumner, ‘Territorial Disputes at the International Court of Justice’ (2004) 53 *Duke Law Journal* 1779, especially 1792-803.

whilst quite a few other permanent institutions actually take the management of human rights litigations as their primary duty (the PCA is an arbitrary body, as aforementioned).³⁰⁷ Secondly, not only just a restricted amount of permanent institutions have heard cases related to territorial disputes, but also just a restricted amount of territorial disputes have been heard by the relevant permanent institutions. Taking the ICJ as an example, considering the over 100 cases heard by it from 1946 to 2008, only 14 of them involved territorial disputes.³⁰⁸ Thirdly, even if the permanent institutions have made their final decisions, they and the direct parties still need to face the potential difficulties emerged from the process of executing the judgments. For another example, until 2008, at least 6 cases related to territorial disputes had found the judgements difficult to execute, together they accounted for approximately 43% of all the related cases heard by the ICJ then.³⁰⁹

In summary, resorting to permanent institutions is a judicial measure which both has advantages and disadvantages. At least to those related parties, it is not the perfect measure for the peaceful settlement of territorial disputes. In other words, facing this particular type of international dispute, the United Nations belief that ‘in conformity with the principles of justice and international law, adjustment or settlement of international dispute or situations which might lead to a breach of the peace’ is still nothing more than a wishful expectation.³¹⁰

3.2.2 The common disadvantages of the various measures for the peaceful settlement of territorial disputes

Reviewing the various peaceful measures listed by the above sections, it can be seen

³⁰⁷ John Merrills, ‘The Means of Dispute Settlement’, in Malcolm D. Evans (ed), *International Law* (4th edn, OUP 2014) 563 at 574.

³⁰⁸ Nie Hongyi, ‘A Review of the Function and Dilemma of International Law in Settling Territorial Disputes’ (2009) 2009 (2) Heilongjiang Chronicles 137 at 138-39; Xu Chuxu, ‘An Exploration of the Enforcement of the ICJ judgment on Contentious Cases’ (2009) 5 Northern Legal Science 140 at 141.

³⁰⁹ Xu Chuxu, ‘An Exploration of the Enforcement of the ICJ judgment on Contentious Cases’ (2009) 5 Northern Legal Science 140 at 141.

³¹⁰ Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, art 1 (1).

that more or less, they all have some disadvantages that can reduce the peaceful settlement of territorial disputes. However, some of the disadvantages can be compensated by the corresponding advantages of other measures, only those common disadvantages shared by multiple peaceful measures have to be assisted by ‘special’, non-peaceful arrangements.³¹¹ Therefore, before further study the UNCSS, it is necessary to properly summarise the common disadvantages of the above measures in respect to territorial disputes settlement. By comparing all the peaceful measures mentioned in this chapter, the author has found that in front of territorial disputes, these measures generally have three common disadvantages as follows:

1. The activation of the peaceful measures is reliant on the consent of the related parties.

As aforementioned, the acquisition of the consent of the relevant parties is the essential pre-requisite for the initiation of negotiation, otherwise no negotiation can be started. In addition, although mediation, inquiry and conciliation let the independent third parties act as the middleman, but the consent of the relevant parties is still the pre-requisite for the initiation of these supplementary political measures. If the relevant parties have no intention to accept the help offered by the third parties with regard to the corresponding international disputes, then the third parties certainly have no reason to actively take over the sovereign rights of other states.³¹²

In terms of the two measures which are inclined to adjudication, again as above-stated, the entire process of arbitration is controlled by the will of the relevant parties, and this obviously includes the initial activation of arbitration. Similarly, the use of permanent institutions is also depending on whether the relevant parties have shown their consent to accept adjudication of the corresponding institutions (e.g. the ICJ) or not³¹³.

³¹¹ J.G.Merrills, *International Dispute Settlement* (5th edn, CUP 2011) 284-85.

³¹² Chiu Hung-Ta (author), Chen Chun-I (ed), *Mordern International Law* (3rd edn, San Min Book Publisher 2012) 1008-10.

³¹³ Xu Chuxu, ‘An Exploration of the Enforcement of the ICJ judgment on Contentious Cases’ (2009) 5 Northern Legal Science 140 at 140.

Admittedly, there are some international legal rules which refer to the mandatory application of adjudication. Nevertheless, Cassese has argued that the application of these regulations is exceptional in practice, and the right of mandatory adjudication cannot automatically increase the compliance of those direct parties.³¹⁴

Back to the relevant cases, a typical example with regard to this common disadvantage is the South China Sea Arbitration. At the beginning, Philippines wished to submit the territorial dispute to the UN for mediation, but this proposal was rejected by China, so that the use of mediation was abandoned. Afterwards, Philippines turned to international arbitration for help, yet the absence of China rendered the result of the mandatory adjudication of the arbitral tribunal useless. More sarcastically, the escalation of the South China Sea dispute between China and Philippines can actually be traced back to 2012, but more than 5 years later, the relevant negotiation still has not begun.³¹⁵

2. The operation of the peaceful measures is reliant on the co-operation of the relevant parties.

As the only peaceful measure which does not involve a third party, negotiation certainly needs the co-operation of both sides. Once a side has decided to drop out of a definite negotiation or boycott it, then the relevant negotiation would directly become an unsuccessful memory. Similarly, as subsidiary peaceful measures that usually do not in charge of the direct settlement of international disputes, the process of mediation, inquiry and conciliation is even more deeply affected by the co-operation of the relevant parties. Once the related parties have shown their uncooperative attitude, then the operation of these peaceful measures would quickly be trapped in troubles.³¹⁶

In terms of the two measures which are inclined to adjudication, since it is deeply dominated by the will of the relevant parties, arbitration certainly has no chance to

³¹⁴ Antonio Cassese, *International Law* (2nd edn, OUP 2005) 287-88.

³¹⁵ Fox News, 'China rejects Philippine effort at UN mediation over South China Sea territorial dispute' (19 February 2013) <<http://www.foxnews.com/world/2013/02/19/china-rejects-philippine-effort-at-un-mediation-over-south-china-sea/>> accessed 4 October 2014.

³¹⁶ J.G.Merrills, *International Dispute Settlement* (5th edn, CUP 2011) 37-38.

despise the co-operation of the related parties. The past practice has proved that even if a party has applied an uncooperative attitude in minor matters such as the appointment of arbitrators, then the entire process of arbitration might still fall into a dangerous situation.³¹⁷ In comparison with arbitration, Merrills and certain other scholars have also pointed out that the uncooperative attitude of the relevant parties can seriously hinder the identification of the background facts by the permanent institutions as well. Besides, such an attitude may also force the permanent institutions to use ‘inferences.....public knowledge and circumstantial evidence’ as the basis of their judgments. As the result, the authority of these institutions and the value of the relevant decisions could be weakened³¹⁸. Therefore, even if the relevant parties are tried in *absentia*, the permanent institutions would still seek their co-operation via informal channels before they deliver any judgment.³¹⁹

Back to the relevant cases, a typical example with regard to this common disadvantage is the maritime delimitation and territorial questions between Qatar and Bahrain. In this case, the two parties had used up various methods, including accusing their opponent of forging documents and unilaterally drafting principles of delimitation, to delay settlement. As the result, the former King of Saudi Arabia spent 15 years on his mediation work without gaining anything, so that the ICJ had to take over this case. Subsequently, the ICJ also spent 4 years to determine that it had the power to judgment this dispute, so that the entire length of the process of this case was further extended to 25 years.³²⁰

3. The success of the peaceful measures is reliant on the enforcement of their results

³¹⁷ *Advisory Opinion Concerning the Interpretation of Peace Treaties with Bulgaria, Hungary and Romania* (Advisory Opinion) [1950] ICJ Rep 65 & 221.

³¹⁸ J.G.Merrills, *International Dispute Settlement* (5th edn, CUP 2011) 143; Keith Hight, ‘Evidence, the Court and the Nicaragua Case’ (1987) 81 AJIL 1.

³¹⁹ Michael Bohlander, *International Criminal Justice: A Critical Analysis of Institutions and Procedures* (Cameron May Ltd 2007) 18n20.

³²⁰ Maurice Mendelson, ‘The Curious Case of Qatar v. Bahrain in the International Court of Justice’ (2002) 72 (1) BYIL 183 at 183-211; *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v Bahrain)* [1994] ICJ Rep 112.

by the relevant parties.

Undoubtedly, as negotiation has eliminated the intervention of the third parties, the enforcement of its results is repeatedly under threat. Bearing the remarkable value of territories in mind, even the basic principle of international law, namely *pacta sunt servanda*, cannot prevent more powerful parties from abrogating existing agreements. Additionally, the third parties of mediation, inquiry and conciliation would simply provide suggestion for the settlement of the relevant international disputes *per se*. The advices of the mediator cannot straightforwardly settle any international dispute, including territorial disputes, whilst the solutions offered by the conciliation commission cannot directly bind the relevant parties as well.³²¹ Consequently, the fate of the latter three subsidiary measures is also in the hand of the related parties, whilst their achievements can be easily blocked only because they are not in conformity with the will of a few states.

In terms of the two measures which are inclined to adjudication, although the relevant decisions are legally binding in theory, but Brownlie has pointed out that '(arbitration and Adjudication) have enforcement problems'.³²² Specifically in terms of territorial disputes, the key difference between these two judicial measures is the permanent institutions are more independent. However, unless some parties have designed additional preventive or remedial measures, otherwise both of the two measures still have to count on the voluntary execution of the corresponding decisions by the related parties.³²³

Back to the relevant cases, a typical example with regard to this common disadvantage is the joint announcement regarding the South China Sea, issued by China and the ASEAN. In this announcement concluded after rounds of negotiation, the parties

³²¹ Chiu Hung-Ta (author), Chen Chun-I (ed), *Modern International Law* (3rd edn, San Min Book Publisher 2012) 1008-10.

³²² Ian Brownlie, 'The Peaceful Settlement of International Disputes' (2009) 8 Chinese JIL para 38.

³²³ J.G.Merrills, *International Dispute Settlement* (5th edn, CUP 2011) 113-15 & 156-61.

declared that concerning their disagreement about sovereignty of the relevant islands and reefs, they would ‘exercise self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability’. Unfortunately, only 10 years later, thanks to the change of the international situation and its own national strength, China started its land reclamation projects in this region.³²⁴ Successively, the South China Sea arbitration in the 2010s was also boycotted by the Chinese government, so that until today, the judicial result of this case is still nothing more than a piece of academic material.³²⁵

4. Summary.

In summary, from the very beginning to the end, the biggest challenge for the above-mentioned peaceful measures is always the private will of the parties. If any intermediate step of any peaceful measure cannot acquire the consent of the related parties, then the peaceful settlement of territorial or other disputes is not effectuated. More seriously, as afore-mentioned, if a territorial dispute cannot be satisfactorily settled via peaceful measures, then historically there is no lack of cases in which the related parties resorting to armed conflicts. In this manner, the ‘maintenance of international peace and security’ emphasized by the United Nations and the ‘centralized control of the use of force’ pursued by the UNCSS would certainly become moot.³²⁶

Hence, the application of all the lawful methods for ensuring that no party could abuse its own desire, has become a primary task that needs to be pursued by the international community when handling territorial or other disputes. In particular, such an act should help or replace the peaceful approach to control any dangerous will of the related parties,

³²⁴ Declaration on the Conduct of Parties in the South China Sea (adopted 4 November 2002) art 5 <http://www.fmprc.gov.cn/web/wjb_673085/zzjg_673183/yzs_673193/dqzz_673197/nanhai_673_325/t848051.shtml> accessed 2 July 2017; United States Department of Defence, ‘Annual Report to Congress: 2016 China Military Power Report’ (26 April 2016) 7-11 & 13-20 <<https://www.defense.gov/Portals/1/Documents/pubs/2016%20China%20Military%20Power%20Report.pdf>> accessed 2 July 2017; Bill Hayton, *South China Sea: the Struggle for Power in Asia* (Yale 2014) chs 4, 7 & 9.

³²⁵ Anthea Roberts, *Is International Law International?* (OUP 2017) 240-53.

³²⁶ Christine Gray, *International Law and the Use of Force* (3rd edn, OUP 2008) 254-55.

or at least prompt these states not to violently pursue their indefensible claims by disobeying the principles of modern international law. Thereupon, when this mission has to resort to coercive measures for overcoming the deliberate resistance of certain parties, as the only lawful measure through which states can actively use armed forces, at least the UNCSS seems to be a theoretically reasonable choice.³²⁷

³²⁷ Theoretically, the collective self-defense operations conducted by multiple states can also meet the three characters listed here, but no matter the Nicaragua case related to the concept of collective self-defense or the Iraq War which involves the concept of anticipatory self-defense (or more accurately, pre-emptive ‘self-defense’), both of them are much more controversial than the collective security system favored by the UN Charter.

Chapter 4-The framework of the application of the UNCSS in territorial disputes settlement

4.1 The essential issues governing the application of the UNCSS in territorial disputes settlement

4.1.1 The authoritative institutions of the UNCSS under the pressure of territorial disputes

Following the customary academic rules, before assessing the actual application of the UNCSS in territorial disputes, the author ought to illustrate the diversified substance of this mechanism. According to its original design of 1945, as the higher-authoritative international organization of the only universal collective security system of the modern international community, the United Nations is mainly formed by six subsidiary institutions. These institutions include the UNGA, the UNSC, the UNECOSOC, the UN Trusteeship Council, the UN Secretariat and the ICJ.³²⁸ However, specifically in terms of applying the universal collective security systems in territorial disputes, the operation of the UNCSS does not need to involve all the subsidiary institutions. For example, many scholars feel that normally the UNCSS only involves the UNSC and the UNGA, even though the studies of Orakhelashvili and Shaw have proved that certain international disputes may also activate the UN Secretariat and the ICJ within the UNCSS.³²⁹

Therefore, at the beginning of formally assessing the application of the UNCSS in territorial disputes, it is necessary to analyze the subsidiary institutions of the United Nations closely linked to this mechanism in this field. By this means, the author could accurately delimit the scope of study of the subsequent sections or chapters on the actual

³²⁸ Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, art 7.

³²⁹ See Nicholas Tsagourias & Nigel D. White, *Collective Security: Theory, Law and Practice* (CUP 2013) 91; Gary Wilson, *The United Nations and Collective Security* (Routledge 2014) 30 -32; Alexander Orakhelashvili, *Collective Security* (OUP 2011) 22 & 55-56; Malcolm Shaw, *International Law* (7th edn, CUP 2014) 921-23.

application of the UNCSS in territorial disputes.

1. Core institution.

Just as its name shows, in the eyes of the decision-makers of the United Nations, the UNSC is both the core institution that is responsible for the maintenance of international peace and security, and the core institutions of the UNCSS.³³⁰ According to the UN Charter, the incomparable status of the UNSC in the UNCSS is not merely reflected by the general duties of the council, but also related to the numerous privileges exclusively owned by this institution:

Firstly, unlike the UNGA resolutions and the judgments of the ICJ,³³¹ the resolutions of the UNSC are legally binding to all United Nations member states.³³² Thereby, theoretically speaking, the council at least can ask the relevant states to respect its will (although it certainly cannot use this privilege to unilaterally change the status quo of any international dispute, including territorial disputes, such as assume the role of state parties and announce that a particular territory belongs to a particular state).³³³

Secondly, unlike the UNGA and the UN Secretariat which only possess the right to make suggestions in the field of international peace and security,³³⁴ the UNSC has the right to determine the application of the coercive measures in international disputes. Thereby, theoretically speaking, the council at least can press the relevant states to execute its will.³³⁵

³³⁰ Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, art 24.

³³¹ Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, arts 10-12; Statute of the International Court of Justice (adopted 26 June 1945) 3 Bevans 1179, art 36.

³³² Regarding the general scale and the comprehensive national strength of the present 193 member states of the United Nations, in reality, the scope of validity of the resolutions of UNSC is the entire world, see United Nations, ‘Member States’ <<http://www.un.org/en/members/>> accessed 1 March 2015.

³³³ Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, art 25.

³³⁴ Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, art 10, 11, 98 & 99.

³³⁵ Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, ch 7, see especially art 48; Dai Yi, *A Research on the Issue of Reform of the UNCSS* (Chinese Social Science Press 2014) 7.

Thirdly, unlike the comparatively more democratic procedures of the UNGA and the ICJ,³³⁶ the UNSC endows the P5 with the veto power. Thereby, theoretically speaking, the council at least can persuade the relevant states to support its will (or more accurately, the coordinated will of the P5 without interference from minor states).³³⁷

Under this circumstance, although it used to be frozen by the Cold War, and the ideal ‘United Nations Forces’ have failed to be materialized,³³⁸ the UNSC has still obtained sufficient authority and efficiency for interfering territorial disputes via utilizing the new-born universal collective security system—

For instance, among all the previous United Nations ‘peace operations’ deployed because of territorial disputes, only the UNEF I deployed in 1956 almost had nothing to do with the UNSC.³³⁹ Meanwhile, when the ICJ judgments pertaining to territorial disputes faced implementation difficulties in the past, the UNSC had also been invited to provide low-level military assistance in certain regions, such as the Aouzou Strip.³⁴⁰ Accordingly, by right of its comprehensive advantages in terms of general status, theoretical power and practical records, no matter which extra subsidiary institution might be involved in the UNCSS, the UNSC is always the core organ that it relies on when it is facing territorial disputes.

2. Supplementary institutions.

Despite the UNSC, the UN Charter does not leave any space of activity to the other five subsidiary institutions of the United Nations in the UNCSS. In fact, as the most critical legal basis of the UNCSS,³⁴¹ every article of chapter 7 of the UN Charter starts with the subject ‘the Security Council’.³⁴² Unfortunately, the Cold War destroyed the

³³⁶ Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, art 18; Statute of the International Court of Justice (adopted 26 June 1945) 3 Bevans 1179, art 55.

³³⁷ Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, art 27.

³³⁸ J.G.Merrills, *International Dispute Settlement* (5th edn, CUP 2011) 244-45 & 251.

³³⁹ Paul F. Diehl & Alexandru Balas, *Peace Operation* (2nd edn, Polity 2014) 43-46.

³⁴⁰ Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, art 94.

³⁴¹ John Allphin Moore Jr. & Jerry Pubantz, *The New United Nations: International Organization in the Twenty-First Century* (Pearson 2006) 168 & 170-71.

³⁴² Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, chs 7; Karen A. M

optimistic arrangement of the drafters of the UN Charter. Restricted by the intense confrontation between the Eastern and Western Blocs, the UNSC fell into the state of ‘inability’ for over 40 years.³⁴³ Therefore, the other subsidiary institutions of the United Nations were allowed to gradually play their own roles on the platform of the UNCSS, and subsequently started to make contact with territorial disputes.

First, in order to work around the problem of the abuse of the veto power by the P5, the UNGA extensively interpreted and created its right to make suggestions and convene emergency special sessions by adopting the famous ‘Uniting for Peace’ resolution in 1950. Later on one occasion, it even took over several duties that primarily belonged to the UNSC during the Suez Crisis, a case which involved the territorial dispute in the Sinai Peninsula.³⁴⁴

Second, to ensure the successful performance of alternatives of the ‘United Nations Forces’, such as the United Nations peacekeeping operations,³⁴⁵ the UN Secretariat started to frequently intervene the early ‘peace operations’ deployed by the UNSC. These operations include the famous UNEF I which defended the sovereignty and territorial integrity of Egypt, leading to the accidental death of the then Secretary-General of the United Nations, Hammarskjold.³⁴⁶

Third, in order to monitor the operation of the UNCSS, the ICJ examined the range of

ingst & Margaret P. Karns, *The United Nations in the 21st Century* (4th edn, Westview Press 2011) 104.

³⁴³ It should be noted that the word ‘inability’ here is only referred to the original expectation set by the UN Charter, whilst actually in order to avoid the complete failure of the collective security system, the UNSC has already done plenty of beneficial works, see Antonio Cassese, *International Law* (2nd edn, OUP 2005) 324-26 & ch 17.

³⁴⁴ Theoretically, the right of making suggestions in the field of international peace and security of the UNGA is strictly limited by the UNSC, if the UNSC has started to handle a particular international dispute, then the UNGA cannot make any further suggestion to the settlement of this dispute, see Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, art 12; The ‘Uniting for Peace’ Resolution, UNGA Res 377 (V) (adopted 3 November 1950) UN Doc A/RES/377 (V); Malcolm Shaw, *International Law* (7th edn, CUP 2014) 923-24; John Alpin Moore Jr. & Jerry Pubantz, *The New United Nations: International Organization in the Twenty-First Century* (Pearson 2006) 173-74.

³⁴⁵ Alex J. Bellamy, Paul D. Williams & Stuart Griffin, *Understanding Peacekeeping* (2nd edn, Polity 2010) 81-88, see especially 82-83.

³⁴⁶ Roger Lipsey, *Hammarskjold: A Life* (University of Michigan Press 2013) chs 12-17.

competence and the legality of the resolutions of the UNSC in definite cases which involved territorial disputes. Typical examples here include the ‘Armed Activities on the Territory of the Congo’ case during which Uganda occupied the Ituri region of Congo. Besides, to a certain extent, the ICJ even helped the development of the so-called ‘Collective Security Law’ through judging all these cases.³⁴⁷

Nonetheless, whilst the above cases have demonstrated the functions of the UNGA, the UN Secretariat and the ICJ, they are, after all, supplementary options for deterring territorial disputes and maintaining international peace and security. Comparing to the ‘specialized’ structure of the UNSC, these subsidiary institutions seriously lack in the required authorities for controlling the UNCSS:

On the one hand, the UN Charter illustrates that ‘any question dealing with international peace and security on which action was necessary had to be referred to the Security Council’. This allows the member states of the United Nations to oppose the corresponding resolutions of the UNGA relate to the initiation of the UNCSS by simply questioning the legality of these official documents.³⁴⁸ On the other hand, the right of making suggestions of the UN Secretariat and the right of judicial review of the ICJ are not active rights. The former needs the notice or entrustment of the UNSC, and the latter needs the request or consent of the UNSC, thus the fate of these two institutions in the UNCSS is directly depending on the attitude of the UNSC.³⁴⁹

Consequently, even though the subsidiary institutions of the United Nations were once expressly vigorous in the UNCSS, they rarely took charge of this mechanism to fight against those severe international disputes. In particular, with regard to territorial disputes, the unsuccessful UNEF I and the then Secretary-General who was killed in his own action have represented all the unhappy memories of these supporting organs in

³⁴⁷ *Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Rwanda)* [2005] ICJ Rep 168 at 209-13; Malcolm Shaw, *International Law* (7th edn, CUP 2014) 921-23; Alexander Orakhelashvili, *Collective Security* (OUP 2011) 22.

³⁴⁸ Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, art 11; Malcolm Shaw, *International Law* (7th edn, CUP 2014) 924-25.

³⁴⁹ Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, arts 96, 98 & 99.

the indicated field.³⁵⁰

3. Summary.

In summary, the UNCSS may involve four subsidiary institutions of the United Nations, namely the UNSC, the UNGA, the ICJ and the UN Secretariat. Among them, the UNSC is the only institution that often participate in the settlement of territorial disputes within the framework of this mechanism. In addition, it should be noted that numerous territorial disputes have been either judged by the ICJ or mediated by the Secretary-General of the United Nations. However, in essence, these cases are under the aegis of the peaceful measures discussed in the previous chapter.

Besides, theoretically speaking, the inherent goal of the UN Trusteeship Council is to avoid the occurrence or escalation of territorial disputes as well. Nevertheless, with regard to its functions, past experiences and present status, this institution is clearly beyond the default scope of research of this thesis.³⁵¹ Hence, due to limited length of this thesis, here is no further discussion on the role of the UN Trusteeship Council.

4.1.2 The operating mechanism of the UNCSS under the threat of territorial disputes

As it is known to all, the UN Charter highly praises those simple and peaceful measures for the settlement of international disputes, and it instructs the member states of the United Nations to primarily consider these methods.³⁵² Nevertheless, specifically in

³⁵⁰ Sarcastically, the UNEF I precisely revealed the questionable problem of legality of the UN GA in the field of collective security-owing to such a defect, initially this operation was boycotted by several states from the aspect of financial expenses, then due to the obvious objection raised by one of the state-parties (Egypt), this operation was even forced to be withdrawn from the set area where it was deployed, and thereby it failed to prevent the outbreak of the Six-Day War, see David L. Bosco, *Five to Rule Them All: The UN Security Council and the Making of the Modern World* (OUP 2009) 104-108 & 126-31; Malcolm Shaw, *International Law* (7th edn, CUP 2014) 923-25; with regard to the activities of Hammarskjold in & around the province of Katanga, see also David L. Bosco, *Five to Rule Them All: The UN Security Council and the Making of the Modern World* (OUP 2009) 82-89.

³⁵¹ United Nations, 'Trusteeship Council' <<http://www.un.org/en/mainbodies/trusteeship/>> accessed 9 March 2015.

³⁵² Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, arts 2 & 33.

terms of applying the UNCSS in territorial disputes, the afore-mentioned measures and instructions have been selectively forgotten by both the UNCSS and the new-born territorial disputes emerged after 1945. In fact, as the only universal collective security system of the modern international community, the exact nature of the UNCSS is neither relatively single nor absolutely peaceful.³⁵³ Meanwhile, territorial disputes have directly triggered multiple international armed conflicts,³⁵⁴ which represent all the actual combat experiences of the UNCSS in the field of traditional international disputes.³⁵⁵

Therefore, at the beginning of formally assessing the application of the UNCSS in territorial disputes, it is necessary to appraise the operating mechanism of the UNCSS from the perspective of territorial disputes. By this means, the author could clearly exhibit the focus of the research of the subsequent sections or chapters on the actual application of the UNCSS in territorial disputes.

1. Supplementary legal provisions.

With regard to the operating mechanism of the UNCSS, it can be seen that the mainstream international law textbooks normally focus on the corresponding provisions of chapter 7 of the UN Charter.³⁵⁶ However, a large number of international law monographs separately claim that chapter 6 of the UN Charter is the genuine starting point for the UNCSS³⁵⁷. Firstly, the latter decree can form the substantial basis for

³⁵³ Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, chs 6-8; Gary Wilson, *The United Nations and Collective Security* (Routledge 2014) 33-41.

³⁵⁴ E.g. the Korean War, although the United Nations intervened the situation of Korea early in 1947 at the request of the USA, but after the respective independence of South Korea and North Korea, the war virtually broke out immediately, see Leon Gordenker, *The United Nations and the Peaceful Unification of Korea: the Politics of Field Operations, 1947-50* (Martinus Nijhoff 1959) chs 7-8; Norrie MacQueen, *The United Nations: A Beginner's Guide* (Oneworld 2010) 61-66.

³⁵⁵ Karen A. Mingst & Margaret P. Karns, *The United Nations in the 21st Century* (4th edn, Westview Press 2011) 104-109; Malcolm Shaw, *International Law* (7th edn, CUP 2014) 909-12.

³⁵⁶ Jan Klabbers, *International Law* (CUP 2013) 171-76; Admola Abass, *Complete International Law: Text, Cases and Materials* (2nd edn, OUP 2014) 376-92, see especially 387; Malcolm Shaw, *International Law* (7th edn, CUP 2014) 897-921; Christine Gray, 'The Use of Force and the International Legal Order', in Malcolm Evans (ed), *International Law* (4th edn, OUP 2014) 618 at 636-40.

³⁵⁷ See e.g. John Alphin Moore Jr. & Jerry Pubantz, *The New United Nations: International O* 110

decision-making during the preparatory period of chapter 7 before this chapter has been activated.³⁵⁸ Secondly, it also can provide the nominal legal reference for the replacements of chapter 7 after this chapter has been frozen.³⁵⁹ Thirdly, it even can sustain the proper operation of the UNCSS together with chapter 7 while this chapter is being utilized.³⁶⁰ Thereby, the above viewpoint has gained excessive popularity among recent international disputes and authoritative international legal scholars.³⁶¹

Unfortunately, although chapter 6 may potentially supplement or correct chapter 7 within the UNCSS, it is still devoted to the peaceful settlement of international disputes. Bounded by its own core aim and value which are partial to ‘non-violent’ notion, the operating mechanism of this chapter generally lacks ‘collective security’ elements:

For example, the UNSC ought to be the supreme institution in charge of maintaining or restoring international peace and security within the UNCSS, whilst chapter 6 only endues it with the right to investigate international disputes and offer advice.³⁶² Additionally, the United Nations peacekeeping operations ought to be the bridge between the UNCSS and the peaceful measures for settlement of international disputes,

rganization in the Twenty-First Century (Pearson 2006) 168-72; Nicholas Tsagourias & Nigel D. White, *Collective Security: Theory, Law and Practice* (CUP 2013) 163 & 169-76; Gary Wilson, *The United Nations and Collective Security* (Routledge 2014) 33-34; Alexander Orakhelashvili, *Collective Security* (OUP 2011) 26-32.

³⁵⁸ Theoretically speaking, none of the various international disputes can directly activate chapter 7 of the UN Charter, whilst in the words of Orakhelashvili, one of the vital function of chapter 6 of the UN Charter is no other than ‘guide the Council in determining whether the dispute or situation has matured to justify the activation of Chapter VII’, see Alexander Orakhelashvili, *Collective Security* (OUP 2011) 26.

³⁵⁹ Some international legal scholars prefer to use the term ‘legal basis’ to picture the relationship between chapter 6 of the UN Charter and the United Nations peacekeeping operations, but concerning the original wording of this chapter and the connected resolutions of the UNSC (see below), this term is far from being accurate or rigorous, see also Michael W. Doyle & Nicholas Sambanis, ‘Peacekeeping Operations’, in Thomas G. Weiss & Sam Daws (eds), *The Oxford Handbook on the United Nations* (OUP 2008) 323 at 324-25; James Sloan, *The Militarisation of Peacekeeping in the Twenty-First Century* (Hart 2011) 107.

³⁶⁰ Alexander Orakhelashvili, *Collective Security* (OUP 2011) 27.

³⁶¹ John Allphin Moore Jr. & Jerry Pubantz, *The New United Nations: International Organization in the Twenty-First Century* (Pearson 2006) 171-72.

³⁶² Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, arts 33-36; Alexander Orakhelashvili, *Collective Security* (OUP 2011) 27; Dai Yi, *A Research on the Issue of Reform of the UNCSS* (Chinese Social Science Press 2014) 8.

whilst there is no provision in chapter 6 addressing the concept of ‘peacekeeping’.³⁶³

Thus, chapter 6 may be reasonably regarded as a controversial starting point of the UNCSS, but it can hardly participate in the daily operation of the UNCSS. Thereby, this chapter also cannot independently guide the UNCSS to handle major international disputes, especially territorial disputes which combine complex situation and abundant value. In fact, if people ignore the commonly seen United Nations peacekeeping operations deployed in disputed territories like the Middle East, then chapter 6 nearly has never appeared in those resolutions about applying the UNCSS in territorial disputes (according to the figures and explanations given by the official documents of the United Nations, the UNSC ‘need not refer to a specific Chapter of the Charter when passing a resolution authorizing the deployment of a UN peacekeeping operation and has never invoked Chapter VI’³⁶⁴).³⁶⁵

2. Core legal provisions.

In contrast to chapter 6 of the UN Charter which primarily emphasizes the peaceful settlement of international disputes, chapter 7 of the UN Charter is exclusively designed for the UNCSS which focuses on the forcible settlement of international disputes.³⁶⁶ By approving its detailed substance, it can be seen that the 13 articles of this chapter have kept a progressive relationship in which these provisions mutually supplement each other.³⁶⁷

³⁶³ Michael W. Doyle & Nicholas Sambanis, ‘Peacekeeping Operations’, in Thomas G. Weiss & Sam Daws (eds), *The Oxford Handbook on the United Nations* (OUP 2008) 323 at 345.

³⁶⁴ United Nations Peacekeeping, ‘Mandates and the legal basis for peacekeeping’ <<http://www.un.org/en/peacekeeping/operations/pkmandates.shtml>> accessed 12 April 2015.

³⁶⁵ John Allphin Moore Jr. & Jerry Pubantz, *The New United Nations: International Organization in the Twenty-First Century* (Pearson 2006) 171-72; Michael W. Doyle & Nicholas Sambanis, ‘Peacekeeping Operations’, in Thomas G. Weiss & Sam Daws (eds), *The Oxford Handbook on the United Nations* (OUP 2008) 323 at 328-32; Alex J. Bellamy & Paul D. Williams, *Understanding Peacekeeping* (2nd edn, Polity 2010) pt 2.

³⁶⁶ Karen A. Mingst & Margaret P. Karns, *The United Nations in the 21st Century* (4th edn, Westview Press 2011) 100-101; Antonio Cassese, *International Law* (2nd edn, OUP 2005) 323-24 & ch 17.

³⁶⁷ For an overview of the operating mechanism of the UNCSS provided by chapter 7 of the UN Charter, see Bruno Simma, Daniel-Erasmus Khan, Georg Nolte, Andreas Paulus & Nikolai Wessendorf (eds), *The Charter of the United Nations: A Commentary, Vol 1* (3rd edn, OUP 2011) 112

First of all, as the start of chapter 7, articles 39 and 40 authorize the UNSC to determine that whether a definite international dispute has threatened or breached international peace and security. In addition, they also request the council to devise provisional measures for preventing the further aggravation of the matters. These may include ‘several measures for “cooling down” the escalation of the corresponding disputes..... (such as) the cessation of hostile actions (and) the withdrawal of armed forces from certain regions’.³⁶⁸

In the second place, as the crux of chapter 7, articles 41 and 42 authorize the UNSC to apply coercive measures in an international dispute for restoring international peace and security. In addition, they also allow the council to consider both non-military sanctionative measures and military enforcement measures. These may include ‘complete or partial interruption of economic relations.....and the severance of diplomatic relations’ and the stricter measure of ‘demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations’.³⁶⁹

In the third place, as the indemnificatory part of chapter 7, articles 43 to 50 authorize the UNSC to create a Military Staff Committee responsible for commanding the armed forces under the aegis of the United Nations. In addition, they have also listed the basic rights and obligations of the member states of the United Nations when these countries are participating or involved in the armed operations under the name of the United Nations.³⁷⁰

At last, as the miscellaneous provision of chapter 7, article 51 authorizes the member states of the United Nations to keep their rights of unilateral and collective self-defense. On this ground, this regulation might atone for the chronic drawbacks of the UNCSS,

2) ch 7.

³⁶⁸ Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, arts 39-40; Dai Yi, *A Research on the Issue of Reform of the UNCSS* (Chinese Social Science Press 2014) 56.

³⁶⁹ Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, arts 41-42; Dai Yi, *A Research on the Issue of Reform of the UNCSS* (Chinese Social Science Press 2014) ch4s1 & ch5s1.

³⁷⁰ Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, arts 43-50.

that the rate of reaction of this mechanism is usually hysteretic.³⁷¹

Regretfully, notwithstanding that the structure of chapter 7 is relatively more meticulous,³⁷² the key institutions behind this chapter have not totally extricated themselves from the same fate of their predecessor, namely the League of Nations. The fall of the ‘iron curtain’ paralyzed the fragile UNSC,³⁷³ and the indivisible Military Staff Committee and ‘United Nations Forces’ thereupon became ineffective as well.³⁷⁴ Affected by such a predicament, chapter 7 remains an incomplete programmatic statute at the moment. The absence of the units in charge of its execution makes it impossible for this chapter to follow an ideal route map for regulating major international disputes, and territorial disputes are definitely one of them:³⁷⁵

On one hand, shortly after the birth of the United Nations, the UNSC had already handed the power of commanding the ‘United Nations Forces’ to the USA during the Korean War, with similar coalition only recurring once during the Gulf War.³⁷⁶ On the other hand, the UNSC always fears sanctioning the actions of territorial expansion of the P5, and the international sanctions committee administrated by it even frequently ignores the offensive acts of regional powers (e.g. the Crimea Crisis, see below).³⁷⁷

³⁷¹ Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, art 51; for a comprehensive discussion on the right of self-defence, see Huang Yao, *Reviewing the Principle of the Prohibition on the Use of Force: A Judicial Analysis of Article 2 (4) of the Charter of the United Nations* (Peking University Press 2003) 278-309.

³⁷² Xu Nengwu, *International Security Regime’s Theories and Analysis* (China Social Science Press 2008) 112-114.

³⁷³ The specific manifestation is the abuse of the veto power by the P5, see Nigel D. White, *The Law of International Organisations* (2nd edn, Manchester University Press 2005) 144-51.

³⁷⁴ Adam Roberts, ‘Proposal for UN Standing Forces: A Critical History’, in Vaughan Lowe, Adam Roberts, Jennifer Welsh & Dominik Zaum (eds), *The United Nations Security Council and War: the Evolution of Thought and Practice since 1945* (OUP 2008) 99 at 101-25.

³⁷⁵ The sovereign states had become the primary role of the international arena since the conclusion of the Peace of Westphalia, and they were also the primary object that was threatened by territorial disputes, see Henry Kissinger, *World Order* (Allen Lane 2014) 3-8 & 24-31.

³⁷⁶ UNSC Res 84 (7 July 1950) UN Doc S/RES/84; UNSC Res 678 (29 November 1990) UN Doc S/RES/678; D. W. Bowett, *United Nations Forces: A Legal Study* (Frederick A. Praeger 1964) 29-60; Benedetto Conforti, *The Law and Practice of the United Nations* (3rd edn, Martinus Nijhoff 2005) 204-205.

³⁷⁷ E.g. the annexation of Goa by India and the annexation of Crimea by Russia, see Nikolas Sturzler, *The Threat of Force in International Law* (CUP 2007) 178-84; Antonio Cassese, *International Law* (2nd edn, OUP 2005) 340-43, see especially 341-42; Security Council Report, ‘UN Sanctions’ (26 November 2013) no. 3, 3-5 <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/special_research_report_sanctions_2013.pdf> accessed 16 April 2015; Ashley M. Williams, ‘Russia vetoes U. N. resolution on Crimea’s future’

Consequently, if the United Nations refuses to further amend chapter 7, then it has no choice but to search for effective reinforcements for the ‘teeth of the UNCSS’.³⁷⁸ Naturally, this way would lead to the emergence of compromised measures which diverge from the scope of the UN Charter, such as the United Nations peacekeeping operations and the United Nations authorized use of force by states.³⁷⁹

3. Summary.

In summary, chapters 6 and 7 of the UN Charter jointly describe the operating mechanism of the UNCSS. Nevertheless, when interpreting the relevant operations which are responsible for settling territorial disputes, none of them could completely reflects the gradual evolution of this system. Besides, in theory chapter 8 of the UN Charter also regulates the ‘regional arrangements’ of the UNCSS. However, as its fundamental function is to ‘devolve enforcement powers, allocated to the Security Council under Chapter VII, on regional organizations through delegated authority’, this chapter is more suitable to serve the collective security functions of the regional organizations connected to the UNCSS.³⁸⁰ Therefore, taking the length of this section into account, here the author will not continue to discuss the details of chapter 8.

4.1.3 The predetermined purposes of the UNCSS under the influence of territorial disputes

Of the numerous provisions of the UN Charter mentioning the UNCSS, most of them are about the authoritative institutions and operating mechanism of this mechanism, but none directly states the predetermined purposes of the UNCSS. However, a systematic mechanism should never lack in a complete structure, and the existence of clear

(USA Today, 15 March 2014) <<http://www.usatoday.com/story/news/world/2014/03/15/russia-vetoes-un-resolution-crimea/6456495/>> accessed 16 April 2015.

³⁷⁸ Kenneth Manusama, *The United Nations Security Council in the Post-Cold War Era: Applying the Principle of Legality* (Martinus Nijhoff 2006) 35.

³⁷⁹ Antonio Cassese, *International Law* (2nd edn, OUP 2005) 343-51.

³⁸⁰ Dai Yi, *A Research on the Issue of Reform of the UNCSS* (Chinese Social Science Press 2014) 8; Ademola Abass, *Regional Organisations and the Development of Collective Security: Beyond Chapter VIII of the UN Charter* (Hart 2004) 27.

purposes could offer firm standards for judging the success or failure of this mechanism. Meanwhile, the previous chapter has stated that the UNCSS is meant to help or replace other gentler measures to restrain the excessive will of the relevant parties, yet it does not clarify the expected effect that the UNCSS ought to achieve here. In other words, until now this thesis itself has also only explained the rather general bit of the detailed purposes of the UNCSS in the field of territorial disputes, whilst the specific outcome which symbolizes the success of this mechanism is still awaiting to be confirmed.

Therefore, at the beginning of formally assessing the application of the UNCSS in territorial disputes, this section needs to ascertain the predetermined purposes of the UNCSS in this field. By this means, the author could objectively evaluate the objects of study of this chapter or even this thesis.

1. Legal Regulations.

As afore-mentioned, there is no provision in the UN Charter which has specifically discussed the final target of the application of the UNCSS. Fortunately, this statute has provided a few clues that are worthy to be discussed. Perusing chapter 6-8 of the UN Charter, the only phrase appearing repeatedly and seemingly describing the effect of the application of the UNCSS is ‘maintain international peace and security’.³⁸¹ In addition, as the starting and key provisions of the core chapter related to the UNCSS, articles 39 and 42 of the UN Charter have added the words ‘restore international peace and security’ on the basis of the afore-listed phrase.³⁸² Bearing these facts in mind, and for the following reasons, this thesis believes that this combined phrase is the predetermined purpose of the application of the UNCSS in various international disputes, including territorial disputes:

Firstly, ‘maintain or restore international peace and security’ fits the purpose of the parent organization of the UNCSS. Although the UN Charter does not mention the name

³⁸¹ Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, arts 33-34, 37, 39, 42-43, 47-48, 51, 52 & 54; Antonio Cassese, *International Law* (2nd edn, OUP 2005) 323-26.

³⁸² Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, arts 39 & 42.

or purpose of the UNCSS, it has listed the purposes of the parent organization of this mechanism. According to article 1 of the UN Charter, the primary purpose of the United Nations is ‘to maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to peace’.³⁸³ Thereby, it can be seen that the purposes of the parent organization of the UNCSS have already contained ‘maintain (or restore) international peace and security’. In addition, the special measure used by the organization for realizing this purpose is exactly the application of the UNCSS. Thus, in view of the requirement that the subordinate mechanism is obligated to obey the will of its parent organization,³⁸⁴ the author can see ‘maintain or restore international peace and security’ as the predetermined purpose of the UNCSS.

Secondly, ‘maintain or restore international peace and security’ fits the responsibilities of the authoritative institution of the UNCSS. Although the UN Charter does not mention the name or purpose of the UNCSS, it has illustrated the responsibilities of the authoritative institution of this mechanism. According to articles 24 and 26 of the UN Charter, the core responsibilities of the UNSC are ‘the establishment and maintenance of international peace and security’. Besides, according to the same articles, the privilege of the UNSC upon which it could undertake its due responsibilities has also been ‘laid down in Chapter VI, VII, VIII and XII’.³⁸⁵ Thereby, it can be seen that the responsibilities of the authoritative institution of the UNCSS have already contained ‘maintain (or restore) international peace and security’. In addition, the special tool used by the institution for implementing these responsibilities is again the UNCSS. Thus, in view of the requirement that the subsidiary mechanism is obligated to work in with the duties of the institutions in charge,³⁸⁶ the author can see ‘maintain or restore

³⁸³ Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, art 1.

³⁸⁴ Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, art 24; Dai Yi, *A Research on the Issue of Reform of the UNCSS* (Chinese Social Science Press 2014) 5-6.

³⁸⁵ Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, arts 24 & 26.

³⁸⁶ Dai Yi, *A Research on the Issue of Reform of the UNCSS* (Chinese Social Science Press 2014) 6-9.

international peace and security' as the predetermined purpose of the UNCSS.

Thirdly, 'maintain or restore international peace and security' fits the functions of the sanctionative measures of the UNCSS. Although the UN Charter does not mention the name or purpose of the UNCSS, it has clarified the functions of the sanctionative measures of this mechanism. According to articles 39 and 42 of the UN Charter, the only function of the two sets of measures involve the use of force under the framework of the UNCSS is 'maintain or restore international peace and security'.³⁸⁷ Thereby, it can be seen that the functions of the sanctionative measures of the UNCSS have already contained 'maintain (or restore) international peace and security'. In addition, the special platform on which these measures could function effectively is again the UNCSS. Thus, in view of the requirement that the abstract mechanism is obligated to echo its substantial works, the author can see 'maintain or restore international peace and security' as the predetermined purpose of the UNCSS.

Besides, it is noteworthy that although the academia has not reached any agreement upon the predetermined purposes of the UNCSS, the above method of analyzing existing statutes is supported by the related scholars. Taking the three monographs of Orakhelashvili, Tsagourias, White and Wilson as an example. None of these international legal scholars has specifically discussed the predetermined purposes of the UNCSS in relation to territorial disputes, or any other particular international dispute. However, all four of them have explained the purposes of the entire system of the United Nations in-depth, and their emphasis on the judicial interpretation of the provisions of the UN Charter is almost as same as the present section. Moreover, none of these monographs have excessively separated the purposes of the UNCSS in their subsequent studies, yet they claim, 'the purposes of the UN give the first indication of the broad conception of collective security envisaged for it'.³⁸⁸ Therefore, it can be seen that the

³⁸⁷ Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, arts 39 & 42.

³⁸⁸ Nicholas Tsagourias & Nigel D. White, *Collective Security: Theory, Law and Practice* (CUP 2013) 92-97; Gary Wilson, *The United Nations and Collective Security* (Routledge 2014) 24-26; Alexander Orakhelashvili, *Collective Security* (OUP 2011) 11-21.

thought of the author here has its mature precedent, so that it is not a groundless talk.

In short, in the original design of the drafters of the UN Charter, the predetermined purposes of the UNCSS are simply the maintenance or restoration of ‘international peace and security’ to the best of the ability of this mechanism. However, based on the literal meaning of this phrase, ‘maintain or restore international peace and security’ refers only to the act of creating a favorable environment for the following process of settling territorial and other disputes.³⁸⁹ In contrast, based on the judgment of the PCIJ on the Mavrommatis Palestine Concessions case, ‘settlement’ asks for the elimination of the ‘disagreement over a point of law or fact (among parties)’ via written protocols. That is to say, merely preventing the relevant situations from being escalated into ‘a threat to international peace and security’ is not enough.³⁹⁰ Therefore, the role of the UNCSS on paper contradicts the ultimate requirement of completely ‘settling’ territorial disputes, so that the actual status of this mechanism in territorial dispute is yet to be verified by the relevant practical cases.

2. Practical operations.

As aforementioned, in a judicial sense, the phrase ‘maintain (or restore) international peace and security’ is not tantamount to ‘settling (international disputes)’. Bearing this fact in mind, and taking the research topic of this thesis into account, this thesis will continuously explore the actual status of the UNCSS from the perspective of territorial disputes. Reviewing the past world history, as two cases of which the origin could be traced back to territorial disputes between sovereign states and the use of force via UNCSS had been activated, the Korean War and the Gulf War are undoubtedly two proper examples here.³⁹¹

At the end of the Korean War, the ‘United Nations Forces’ signed the Korean Armistice

³⁸⁹ Bruno Simma, Daniel-Erasmus Khan, Georg Nolte, Andreas Paulus & Nikolai Wessendorf (eds), *The Charter of the United Nations: A Commentary*, Vol 1 (3rd edn, OUP 2012) 109-13.

³⁹⁰ *Mavrommatis Palestine Concessions (Greece v. United Kingdom)* PCIJ Series A No. 2 [192 4] 11.

³⁹¹ Malcolm Shaw, *International Law* (7th edn, CUP 2014) 909-10.

Agreement with the Allied Forces of China and North Korea, thus they established a ‘Demilitarized Zone’ which roughly across the 38th parallel.³⁹² In the next 65 years until recent days, there was no large-scale exchange of fire between the armies of North Korea and South Korea, nor had the conflicts involved the armies of a third party (the successive exchanges of fire between the USA and North Korea occurred in the Sea of Japan, and were irrelevant to South Korea).³⁹³ Correspondingly, despite the American troops stationed in South Korea as required by bilateral military agreements, the armed forces of other 15 contributing states of the ‘United Nations Forces’ quickly left this region after approving the Armistice.³⁹⁴ Besides, the ‘United Nations Command’ commanding the ‘United Nations Forces’ had been gradually transformed into the ROK/US Combined Forces Command, and the UNGA even passed a specific resolution in 1975 calling for the revocation of this institution.³⁹⁵

However, although the intervention of the UNCSS successfully ‘restored’ the peace and security of the Korean Peninsula, the territorial dispute between North Korea and South Korea remains unsettled. On the one hand, to this day, each party is still claiming the ownership of all the territories of the Korean Peninsula. Thereinto, North Korea has established the Committee for the Peaceful Reunification of the Fatherland, whilst South Korea has established the Ministry of Unification.³⁹⁶ On the other hand, the Korean Armistice Agreement is only a political document which terminated the state of belligerency, and the armistice demarcation line does not coincide with the 38th parallel. Just as the Armistice of 1918 cannot replace the Peace of Versailles, the provisions of this agreement never address the legal delimitation of the disputed territories.³⁹⁷ By combining the above-stated facts, it can be said that the real purposes of the UNCSS are

³⁹² The Korean Armistice Agreement (signed 27 July 1953) 4 UST 234, art 1.

³⁹³ Michael J. Seth, *North Korea: A History* (Palgrave 2018) chs 3-7.

³⁹⁴ The Institute of Military History of the Republic of Korea, *The History of the United Nations Forces in the Korean War* (Ministry of National Defense of the Republic of Korea 1972) V ol 6.

³⁹⁵ Question of Korea, UNGA Res 3390 (XXX) (adopted 18 November 1975) UN Doc A/RES/3390 (XXX); Kim Jung-Ik, *The Future of the US-Republic of Korea Military Relationship* (Macmillan 1996) 48-65.

³⁹⁶ Korea Overseas Information Service, *Handbook of Korea* (11th edn, Hollym 2003) 118-36 & 214; Robert L. Worden, *North Korea: A Country Study* (5th edn, GPO 2008) 214-15.

³⁹⁷ The Korean Armistice Agreement (signed 27 July 1953) 4 UST 234, arts 2-3.

definitely no more than ‘maintain or restore international peace and security’, whilst the ‘settlement of territorial disputes’ in the legal sense is not really set for this mechanism.

Almost 40 years later, the policy adopted by the Coalition Forces and the UNSC after the end of the Gulf War repeated Korean War scenario. Firstly, after the Saddam regime accepted resolution 687 of the UNSC and withdrew its troops from the territories of Kuwait, the Coalition Forces assembled to enforce the decision of the UNSC were dissolved.³⁹⁸ Secondly, although the UNSC deployed the UNIKOM soon afterwards, this operation was obligated to ‘monitor.....a demilitarized zone’, limiting it to ‘deter.....potential threats to peace’. In other words, this operation would not participate in the work of reconfirming the Iraq-Kuwait border.³⁹⁹ Thirdly, Saddam only announced that Iraq would abandon its territorial claims against Kuwait at the end of 2002 under the threat of the USA, not to mention that 11 years had already passed since the initial intervention of the UNCSS.⁴⁰⁰ Fourthly, the mandate of the UNIKOM was terminated on October 6th of 2003, but 6 months earlier, this operations had already been expelled from the disputed border line between Iraq and Kuwait by the Iraq War (and the Saddam regime which started this dispute was no longer in existence then).⁴⁰¹ By combining the above-stated facts, it can be said that the real purposes of the UNCSS are always no more than ‘maintain or restore international peace and security’. In addition to this, the ‘settlement of territorial disputes’ in the legal sense has been left to the officials/advisors of the various parties, backed up by the other measures available to them.

In short, these typical cases have proved that the predetermined purposes of the

³⁹⁸ Joseph P. Englehardt, ‘Desert Shield and Desert Storm: A Chronology and Troop List for the 1990-1991 Persian Gulf Crisis’ (Strategic Studies Institute 1991) <<http://www.dtic.mil/cgi/tr/fulltext/u2/a234743.pdf>> accessed 1 May 2018.

³⁹⁹ UNSC Res 687 (3 April 1991) UN Doc S/RES/687; UNSC Res 689 (9 April 1991) UN Doc S/RES/689.

⁴⁰⁰ CBC News, ‘Saddam apologizes to Kuwait’ (8 December 2002) <<https://www.cbc.ca/news/world/saddam-apologizes-to-kuwait-1.340943>> accessed 1 May 2018.

⁴⁰¹ Report of the Secretary-General on the activities of the United Nations Iraq-Kuwait Observation Mission for the Period 16 June-1 October 2003 (2 October 2003) UN Doc S/2003/933, paras 17-21; Jan Bury, ‘The UN Iraq-Kuwait Observation Mission’ (2003) 10 (2) International Peacekeeping 71 at 72-88.

application of the UNCSS in territorial disputes are the maintenance or restoration of ‘international peace and security’. To adopt the wording of the above sub-section, intervention conducted by the UNCSS may produce a favorable environment, but it could not guarantee the elimination of the ‘disagreement over a point of law or fact’. Objectively speaking, this result is consistent with the role of the UNCSS on paper, as stipulated by the UN Charter.

3. Judging standards.

Since its predetermined purposes do not require the UNCSS to ‘settle’ the relevant cases in person, it is not appropriate to judge the UNCSS with the standards set for the above-mentioned peaceful measures. Fortunately, by referring to the UN Charter and other valuable literature, this problem is not too difficult to resolve. Specifically, this thesis argues that there are two standards for judging the success/failure of the application of the UNCSS in territorial disputes.

The first standard corresponds to when the relevant territorial dispute is only threatening ‘international peace and security’. According to article 39 of the UN Charter, under this circumstance, the successful application of the UNCSS is symbolled by the deterrence of the escalation of the corresponding situations, thus achieving the target of ‘maintaining international peace and security’.⁴⁰² However, Simma has pointed out that the above-stated ‘threat to peace’ mainly includes disarmament and arms control, terrorism, intra-state armed conflicts, piracy, the breach of human rights law or principles of democracy, and the threat of force in international relations.⁴⁰³ From this list, it is not hard to find out that only the threat of force can occur in the ‘land-territory disputes among member states of the United Nations’ which is being studied by this thesis. Therefore, it is clear that the specific task of the UNCSS at this stage is to prompt the parties which have threatened to use armed forces to renege.

⁴⁰² Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, art 39.

⁴⁰³ Bruno Simma, Daniel-Erasmus Khan, Georg Nolte, Andreas Paulus & Nikolai Wessendorf (eds), *The Charter of the United Nations: A Commentary*, Vol 2 (3rd edn, OUP 2012) 1280-88.

The second standard corresponds to when the relevant territorial disputes have breached ‘international peace and security’. According to article 39 of the UN Charter, under this circumstance, the successful application of the UNCSS is symbolled by the suppression of the further out of control of the corresponding situations, thus achieving the target of ‘restoring international peace and security’.⁴⁰⁴ Moreover, Simma has also pointed out that the above-stated ‘breach of peace’ mainly includes international armed conflicts and acts of invasion.⁴⁰⁵ From this list, it is not hard to find out that both of them can occur in the ‘land-territory disputes among member states of the United Nations’ which is being studied by this thesis. Therefore, it is clear that the specific task of the UNCSS at this stage is to prompt the parties which have initiated the armed conflict or illegally occupied the territories of other states to stop (including the successive withdrawal of the armed forces from the occupied territories).

In short, if the UNCSS in territorial disputes could ensure the relevant situation would not be threatened/breached by multilateral armed conflicts or unilateral invasions, then it is deemed a success. Besides, this sub-section does not deny the possibility of prompting the parties to directly return to peaceful measures after the intervention of the UNCSS, but from the results of the Korean War and the Gulf War, it can be seen that the UNCSS is not responsible for guaranteeing this outcome.

4. Summary.

In summary, the predetermined purposes of the application of the UNCSS in territorial disputes are summarized by the phrase ‘maintain or restore international peace and security’. In addition, pertaining to settling territorial disputes, the specific tasks of the UNCSS are either to deter the threat of force or to suppress international armed conflicts/invasions, so as to eliminate ‘a threat to peace (or) a breach of the peace’. Lastly, it should be noted that there still is a gap between these purposes and the inherent

⁴⁰⁴ Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, art 39.

⁴⁰⁵ Bruno Simma, Daniel-Erasmus Khan, Georg Nolte, Andreas Paulus & Nikolai Wessendorf (eds), *The Charter of the United Nations: A Commentary*, Vol 2 (3rd edn, OUP 2012) 1290-94.

shortages of the peaceful measures. The parties of territorial disputes may refuse to peacefully settle their problem, but keep the stalemate without affecting international peaceful and security. Under such a circumstance, the UNCSS should not be activated, as in order to resort to this mechanism in the field of territorial disputes, there must exist ‘a threat to peace’ or ‘a breach of the peace’ in advance (e.g. the Sino-Soviet border negotiation used to be suspended for 18 years, but as same as the issue of Gibraltar, even the UNGA had never followed this issue⁴⁰⁶).

4.2 The surrounding issues accompanying the application of the UNCSS in territorial disputes settlement

4.2.1 The intersection of the UNCSS and the peaceful measures in territorial disputes settlement

Since the UNCSS is not the first choice for handling various international disputes, including territorial disputes, it is also not the parties’ only choice. In other words, the UNCSS needs to interact with other measures in the relevant practice, whilst this thesis should not ignore this issue. Thereinto, as the detailed substance of the primary principle of modern international law, the afore-mentioned peaceful measures are the primary surrounding sub-issue of the application of the UNCSS in territorial disputes as well.

Originally, there was very limited overlap between this system and the peaceful measures for the settlement of various international disputes. The core values and statutes pursued by these two schemes for settling international disputes were incompatible. In addition, as highly placed as the supreme administrative institution of the UNCSS, the UNSC merely played a supplementary role that was ‘supervisory’ in the field of the peaceful settlement of international disputes as well.⁴⁰⁷ However, with

⁴⁰⁶ Duan Jielong, *International Law in China: Cases and Practice* (Law Press· China 2011) ch 5.

⁴⁰⁷ Comparatively speaking, the UNCSS prefers those inflexible norms, such as ‘an eye for an eye’, whilst the various peaceful measures certainly insist those flexible norms, such as ‘peaceful co-existence’, plus the dependency of most of the peaceful measures on those third-parties is far more less than the same type of dependency of the UNCSS, see Guo Xuetang, *All for One, One for All-A research on the Collective Security System* (Shanghai People’s Publishing Ho

the ossification of the international political situation and the change of the international judicial philosophy after the WWII, the gap between the fundamental functions of the UNCSS and the peaceful measures had gradually lessened in practice:⁴⁰⁸

On one hand, the stalemate between the Eastern and Western Blocs and the reduction in international armed conflicts let the UNCSS lose its default operational background. Thus, it had to incorporate more moderate methods to rebuild its own vigor and authority.⁴⁰⁹ On the other hand, the sublimation of the recent international legal norms and the amendment of the latest international judicial regulations increased the advantageous status of the peaceful measures and thereby overrode their past position while resort to war was still acceptable. Thus, they could be used to deeply improve those forcible methods for the purpose of consummating the vitality and authority of others.⁴¹⁰

Consequently, the peaceful measures for the settlement of modern international disputes have become part of the surrounding issues that cannot be neglected by the UNCSS. Regarding the application of the UNCSS in territorial disputes, the connection between these two sets of measures is mostly presented in two mutually independent aspects, namely the quasi-judicial power of the UNSC, and the right of the parallel application of various peaceful measures.

1. The quasi-judicial power of the UNSC.

Reviewing the evolution of international law since 1648, obviously the quasi-judicial power of the UNSC is very recent. Its prototype cannot even be traced to the League of

use 2010) 78.

⁴⁰⁸ David Armstrong, Lorna Lloyd & John Redmond, *International Organisation in World Politics* (3rd edn, Palgrave Macmillan 2013) ch 3, see especially 40-43.

⁴⁰⁹ Peter Hough, 'Regional Security Organisations', in Peter Hough, Shahin Malik, Andrew Moran & Bruce, Pilbeam (eds), *International Security Studies: Theory and Practice* (Routledge 2015) 319 at 334; Alex J. Bellamy, Paul D. Williams & Stuart Griffin, *Understanding Peacekeeping* (2nd edn, Polity 2010) ch 3, see especially 77-84.

⁴¹⁰ Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, art 2 (3); Gary Wilson, *The United Nations and Collective Security* (Routledge 2014) 60.

Nations before the birth of the United Nations.⁴¹¹ However, since 1945, in which the UNCSS has been applied to territorial disputes settlement, this power has been palpably active.

Early during the ‘Six-Day War’ in 1967, the UNSC had already condemned the occupation of the Sinai Peninsula and the Golan Heights as ‘inadmissible acquisition of territories by war’ of Israel. Accordingly, it established the judicial ‘road map’ of the UNEF II.⁴¹² Afterward, regarding some other territorial disputes such as Iraq-Kuwait, the UNSC also adopted a series of resolutions implying enormous imprints of legal judgment, and accordingly it effectively guided the related United Nations peacekeeping operations.⁴¹³

Concerning the causes of the above situation, ideologically, the UNCSS is not only an international disputes settlement mechanism emphasizing the ‘value of morals in international disputes’, but also casts itself on the ‘sense of justice in international conflicts’. Hence, the quasi-judicial power of the UNSC surely can promote the authority and efficiency of the UNCSS in settling territorial disputes.⁴¹⁴ Unfortunately,

⁴¹¹ As the direct predecessor of the UNSC, the functions of the council of the League of Nations focused on the narrow concept of ‘administration’, and they were seriously overlapping with the common functions of the assembly of the League of Nations, see Covenant of the League of Nations (adopted 28 June 1919) 225 CTS 195, arts 3-5.

⁴¹² UNSC Res 242 (22 November 1967) UN Doc S/RES/242; UNSC Res 338 (22 October 1973) UN Doc S/RES/338; UNSC Res 340 (25 October 1973) UN Doc S/RES/340; UNSC Res 341 (27 October 1973) UN Doc S/RES/341; Nigel D. White & Matthew Saul, ‘Legal Means of Dispute Settlement in the Field of Collective Security: The Quasi-Judicial Powers of the Security Council’, in Duncan French, Matthew Saul & Nigel D. White (eds), *International Law and Dispute Settlement: New Problems and Techniques* (Hart 2010) 191 at 207-208.

⁴¹³ Marc Perrin De Brichambaut, ‘The Role of the United Nations Security Council in the International Legal System’, in Michael Byers (ed), *The Role of Law in International Politics: Essays in International Relations and International Law* (OUP 2001) 269 at 272-73; Nigel D. White & Matthew Saul, ‘Legal Means of Dispute Settlement in the Field of Collective Security: The Quasi-Judicial Powers of the Security Council’, in Duncan French, Matthew Saul & Nigel D. White (eds), *International Law and Dispute Settlement: New Problems and Techniques* (Hart 2010) 191 at 209 & 212-13.

⁴¹⁴ The UNCSS requires the member states of the United Nations to ‘have a unanimous understanding of the nature of war (or international armed conflicts after the WWII).....the (injustice) parties should be punished, and the (justice) parties should be assisted on the basis of moral norms’, see Guo Xuetang, *All for One, One for All-A research on the Collective Security System* (Shanghai People’s Publishing House 2010) 77-78; Nigel D. White & Matthew Saul, ‘Legal Means of Dispute Settlement in the Field of Collective Security: The Quasi-Judicial Powers of the Security Council’, in Duncan French, Matthew Saul & Nigel D. White (eds), *International Law and Dispute Settlement: New Problems and Techniques* (Hart 2010) 191 at 208.

even though the quasi-judicial power of the UNSC has frequently co-operated with the UNCSS, but it is still not perfect, when facing the challenge of territorial disputes, the latter actually cannot completely compatible with the former.

Firstly, the UNSC is, after all, a non-judicial institution which mostly takes ‘primary responsibility for the maintenance of the international peace and security’. Thus, it obviously may choose to evade the legal demands in international affairs under the pressure of political factors.⁴¹⁵ Secondly, the UNCSS is, after all, an international disputes settlement mechanism which lacks in ‘self-owned armed forces’. Thus, it obviously may choose to sacrifice the demand of fairness in international affairs under the pressure of exogenous factors.⁴¹⁶ Thirdly, territorial disputes are, after all, a dangerous type of international dispute which involves ‘sensitive national interests’. Thus, the authoritative institutions of the UNCSS obviously may choose to reject the demand of justice in international affairs under the pressure of working efficiency.⁴¹⁷

Affected by these negative conditions, the UNSC could not prevent its quasi-judicial power from descending into a ‘tactical device in the armory of rhetoric’ in settling territorial disputes within the framework of the UNCSS⁴¹⁸. For example, one of the prerequisites for the intervention of the UNSC during the Iran-Iraq War was ‘the non-identification of the (illegal) aggressor, namely Iraq’. Otherwise, the corresponding

⁴¹⁵ In other words, the UNSC must primarily maintain the political balance in international affairs, see Nigel D. White & Matthew Saul, ‘Legal Means of Dispute Settlement in the Field of Collective Security: The Quasi-Judicial Powers of the Security Council’, in Duncan French, Matthew Saul & Nigel D. White (eds), *International Law and Dispute Settlement: New Problems and Techniques* (Hart 2010) 191 at 191-92.

⁴¹⁶ In other words, the UNCSS can hardly disobey the individual will of those member states of the United Nations which have the potentialities to provide the ‘standing/temporary forces’ required by this mechanism, see Adam Roberts & Dominik Zaum, *Selective Security: War and the United Nations Security Council since 1945* (Routledge 2008) chs 2 & 4; Nigel D. White & Matthew Saul, ‘Legal Means of Dispute Settlement in the Field of Collective Security: The Quasi-Judicial Powers of the Security Council’, in Duncan French, Matthew Saul & Nigel D. White (eds), *International Law and Dispute Settlement: New Problems and Techniques* (Hart 2010) 191 at 200-201 & 208.

⁴¹⁷ E.g. the UNSC adopted numerous resolutions which contained massive signs of legal judgment on the Bosnian War (see above), but the Dayton Peace Accords which ended this war neglected the discrimination of justice and injustice, see Guo Xuetang, *All for One, One for All-A Research on the Collective Security System* (Shanghai People’s Publishing House 2010) 77.

⁴¹⁸ Rosalyn Higgins, ‘The Place of International Law in the Settlement of Disputes by the Security Council’ (1970) 64 AJIL 1 at 4.

draft resolutions might have been vetoed by the P5 which were backing Iran or Iraq.⁴¹⁹

2. The right of the parallel application of various peaceful measures.

Unlike the quasi-judicial power of the UNSC, the right of the parallel application of the peaceful measures reveals the sequential relationship between them and the UNCSS in settling territorial disputes. Meanwhile, its implementation also does not need to fully rely on a definite institution within the framework of the UNCSS.⁴²⁰ When these characters are reflected in the detailed practice about the sovereignty ownership of territories, the right of the parallel application of various peaceful measures mainly involves two sub-areas. They are the right of the parallel intervention of the political/judicial measures and the right of the independent review of the ICJ.

On one hand, in terms of the right of the parallel intervention of the political/judicial measures for the settlement of territorial disputes. As its name suggests, it means the act of submitting certain international disputes to the authoritative institutions of the UNCSS by the relevant parties could not exclude the intervention of the peaceful measures.⁴²¹ Seeking the root of this right, by taking the overall perspective of this thesis into account, the researcher should notice that the emergence of such a rule is largely caused by the macroscopic background which must be faced by it:

Firstly, the peaceful settlement of international disputes and the centralized control/prohibition of the use of force are fundamental principles of the modern international legal system existing since the end of the WWII. They allow the UNCSS to be used to intervene in any international dispute in the first place, while not enabling the UNCSS to prioritize different measures. Besides, the UNCSS should not be utilized

⁴¹⁹ Guo Xuetang, *All for One, One for All-A research on the Collective Security System* (Shanghai People's Publishing House 2010) 77-78.

⁴²⁰ For an overview of the working mechanism of the various peaceful measures from the perspective of the United Nations, see e.g. J.G.Merrills, *International Dispute Settlement* (5th edn, CUP 2011) 219-36.

⁴²¹ Yang Zewei (ed), *Liang Xi's International Institutional Law* (6th edn, Wuhan University Press 2011) 178-80.

by its practitioners to compress the living space of those peaceful measures as well.⁴²²

Secondly, the UNSC and its supplementary units (e.g. the UNGA) are the core institutions which are in charge of the regular operation of the UNCSS, but not the peaceful measures. This allows them to take the primary responsibility for ‘the maintenance of international peace and security’, yet not to disturb the independent activation and de-activation of those peaceful measures. Besides, these authoritative institutions also should not stop certain parties from resorting to accessible peaceful measures, so as to reduce the efficiency of settling territorial disputes or other international disputes.⁴²³

Thirdly, as mentioned before, territorial disputes are among the most problematic international disputes of the last 400 years, with dangerous progress and unpredictable outcomes. This allows those restraining measures which put special emphasis on forcible tactics to compensate for the deficiencies of non-forcible measures. Nevertheless, this does not mean that those forcible measures can undertake the absolute right of handling territorial disputes. More importantly, those forcible measures should not be used to deny the inbuilt advantage of those non-forcible measures in terms of relieving tense atmosphere as well.⁴²⁴

Affected by all these factors, since 1945, it has been common to witness certain cases in which the UNCSS and various peaceful measures co-operate. Interestingly, territorial disputes are a typical target of their co-operation:

For instance, being the only actual activation of the ‘United Nations Forces’, much of

⁴²² Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, arts 1-2 & 33; Christine Gray, *International Law and the Use of Force* (3rd edn, OUP 2008) 30-33 & 254; with regard to the direct and almost immediate application of the forcible measures of the UNCSS in territorial disputes, the relevant researchers can pay attention to the decision-making progress of the UNSC during the early stage of the Korean War, see e.g. David L. Bosco, *Five to Rule Them All: The UN Security Council and the Making of the Modern World* (OUP 2009) 55-57.

⁴²³ Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, art 24; Malcolm Shaw, *International Law* (7th edn, CUP 2014) 884-88; Edward C. Luck, *UN Security Council: Practice and Promise* (Routledge 2006) ch 3.

⁴²⁴ Guo Rongxing, *Territorial Disputes and Conflict Management: the Art of Avoiding War* (Routledge 2012) chs 3-4.

the Korean War was accompanied by the bilateral negotiation between the American-South Korean Bloc under the UN Flag and the Chinese-North Korean Bloc.⁴²⁵ More than 40 years later, as the symbol of the brief revive of the UNCSS, after the start of economic sanctions during the early stages of the Gulf War, the channel of diplomatic communication between the Saddam Regime and the international community was kept open.⁴²⁶ Besides, even in the difficult years of the Cold War, the sacrifice made by Hammarskjold and his colleagues for the success of the United Nations peacekeeping operations and the settlement of territorial disputes was equally memorable to the world.⁴²⁷

On the other hand, with regard to the right of the independent review of the ICJ, its character in the present field is similar to the right of the parallel intervention of the political/judicial measures. According to Merrills, the judgments of the ICJ in the Case Concerning the Military and Paramilitary Activities in and Against Nicaragua (hereinafter ‘the Nicaragua Case’) and the Case Concerning United States Diplomatic and Consular Staff in Tehran (hereinafter ‘the Tehran Case’) have already proved that ‘the reference of a dispute to the Security Council is no bar to consideration of the same matter by the court.....legal and political means of settling disputes are complementary’. In other words, the act of submitting certain international disputes to the authoritative institutions of the UNCSS by the relevant parties also could not exclude the supervision of the ICJ or other tribunals under its command.⁴²⁸ As a judicial organ, the ICJ inherently possess the basic power of hearing or re-examining different international disputes which have been received by it. In addition, thanks to the Nicaragua and Tehran Cases, which have nothing to do with territorial disputes, this institution has also acquired the power of controlling and regulating the written policies

⁴²⁵ Max Hastings, *The Korean War* (Simon & Schuster 2010) 345-50.

⁴²⁶ Marc Weller, *Iraq and the Use of Force in International Law* (OUP 2010) 17-24 & 40.

⁴²⁷ David L. Bosco, *Five to Rule Them All: The UN Security Council and the Making of the Modern World* (OUP 2009) 83-89.

⁴²⁸ J.G.Merrills, *International Dispute Settlement* (5th edn, CUP 2011) 235.

that have been adopted by the UNSC and the UNCSS.⁴²⁹

In the Nicaragua Case, the ICJ announced that ‘the Charter accordingly does not confer exclusive responsibility upon the Security Council for the purpose (of maintaining international peace and security).....both organs (the UNSC and the ICJ) can therefore perform their separate but complementary functions with respect to the same events.....the Court is asked to pass judgment on certain legal aspects of a situation which has also been considered by the Security Council, a procedure which is entirely consonant with its position as the principal judicial organ of the United Nations’. Thereby, the ICJ has enabled itself to track the steps of the UNCSS at any moment without UNSC intervention.⁴³⁰

In the Tehran Case, the ICJ announced that ‘it does not seem to have occurred to any member of the Council that there was or could be anything irregular in the simultaneous exercise of their respective functions by the Court and the Security Council.....the reasons are clear.....it is for the Court, the principal judicial organ of the United Nations, to resolve any legal questions that may be in issue between parties to a dispute; and the resolution of such legal questions by the Court may be an important, and sometimes decisive, factor in promoting the peaceful settlement of the dispute’. Thereby, the ICJ has enabled itself to correct the mistakes of the UNCSS at any moment without UNSC intervention.⁴³¹

Regretfully, although it has the above two privileges, the ICJ still lacks experience in independently reviewing those doubtful issues surrounding the application of the UNCSS in territorial disputes. Among all the cases heard by the ICJ until now, the only exception is the guiding significance of the ICJ Advisory Opinion on West Sahara

⁴²⁹ J.G.Merrills, *International Dispute Settlement* (5th edn, CUP 2011) 231-36.

⁴³⁰ *Case Concerning the Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America) (Jurisdiction and Admissibility)* [1984] ICJ Rep 392 at 434-46; J.G.Merrills, *International Dispute Settlement* (5th edn, CUP 2011) 231-32.

⁴³¹ *Case Concerning United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran)* [1980] ICJ Rep 3 at 22-23; J.G.Merrills, *International Dispute Settlement* (5th edn, CUP 2011) 232-34.

towards the MINURSO. Unfortunately, this case is not directly connected to the corresponding United Nations peacekeeping operation, since there is a gap of 16 years between the judgment and the deployment of the peacekeepers.⁴³² Nevertheless, concerning the necessity of impartially settling serious international disputes, and the accumulation of the new missions of the UNCSS, the author believes that the ICJ will have its chance to defend the reputation of the UNCSS in the field of territorial disputes.⁴³³

3. The other potential intersection-the United Nations territorial administration system.

Despite the above two regimes, there is another regime with a name which seems to combine the key words of the UNCSS, the peaceful measures and territorial disputes, that is the United Nations territorial administration system. Broadly speaking, the prototype of this system could be traced back to either the 100-years-old system of condominiums and the system of protectorates, or the United Nations trusteeship system. Nonetheless, during the later years of the 20th century, the United Nations territorial administration system had merely gained few chances to administrate definite regions in several cases that had no clear connection with territorial disputes:⁴³⁴

In 1960, the outbreak of the Congo Crisis led the region of the former Belgian Congo into civil war and anarchy. In order to resolve this, the ONUC stationed there was forced to extend the mandate of the ‘traditional peacekeeping operations’ (see 4.2.2 below). Thereby, it temporarily took over a few domestic functions of a national government in the territories of a sovereign state for the first time in history.⁴³⁵ Several decades later,

⁴³² Stephen Zunes & Jacob Mundy, *Western Sahara: War, Nationalism, and Conflict Irresolution* (Syracuse University Press 2010) 106-10 & 200-210.

⁴³³ Nie Hongyi, ‘A Review of the Function and Dilemma of International Law in Settling Territorial Disputes’ (2009) 2009 (2) *Heilongjiang Chronicles* 137 at 139-40.

⁴³⁴ Alina Kaczorowska-Ireland, *Public International Law* (5th edn, Routledge 2015) 182-83 & 1 91; Carsten Stahn, *The Law and Practice of International Territorial Administration: Versailles to Iraq and Beyond* (CUP 2010) chs 2-3.

⁴³⁵ Accurately speaking, early in 1947, the UNGA had already proposed to implement international territorial administration in the region of Palestine, but this imagination never overcame the divergence of interests of the various states parties, see Future government of Palestine, UNG

the Kosovo War in 1999 Resulted in the absence of administrative power in the then autonomous province of Kosovo of the FRY⁴³⁶. In order to resolve this, the UNSC was again forced to authorize the UNMIK to further extend the mandate of the ‘complex peacekeeping operations’.⁴³⁷ Thus, this operation adopted nearly all the domestic functions of a national government in the territories of a sovereign state for the first time in history.⁴³⁸

In terms of the causes of the above situations, it should be seen that Vis-à-vis its predecessors, the United Nations territorial administration system is charged by a theoretically neutral international organization. Consequently, this mechanism cannot expand the sphere of influence of any powerful state, nor enlarge the traditional territories of any weak state, though it can put the disputed territories under its jurisdiction.⁴³⁹ Affected by its nature, over a long period of time the United Nations territorial administration system was certainly not welcomed by those parties which aimed at putting disputed territories under their own dominance. Nevertheless, even though the United Nations territorial administration system is not quite popular, it is still an important invention that could work closely with the UNCSS. In particular, when confronting with those ‘standard’ territorial disputes, the former actually could offset a

A Res 181 (II) (adopted 29 November 1947) UN Doc A/RES/181 (II); UNSC Res 143 (14 July 1960) UN Doc S/RES/143; Meir Ydit, *Internationalised Territories-Form the 'free City of Cracow' to the 'free City of Berlin'* (Sythoff 1961) 273-314; Carsten Stahn, *The Law and Practice of International Territorial Administration: Versailles to Iraq and Beyond* (CUP 2010) 243-45.

⁴³⁶ It is worthy to mention that the very first ‘Republic of Kosovo’ announced its independence early in 1992, but only Albania recognized the existence of this regime, and the political structure of its higher-level governing body was quite immature as well, see Noel Malcolm, *Kosovo: A Short History* (Macmillan 1998) 346-47.

⁴³⁷ Kai Michael Kenkel, ‘Five Generations of Peace Operations: From the “Thin Blue Line” to “Painting a Country Blue” ’ (2013) 56 (1) Rev. Bras. Polit. Int. 122 at 132-35, see especially 133.

⁴³⁸ Accurately speaking, the UNTAES deployed in 1996 was a little bit earlier than the UNMIK, but as its direct opponent, the ‘Republic of Serbian Krajina’ never acquired the *de jure* recognition of any other states, see UNSC Res 1037 (15 January 1996) UN Doc S/RES/1037; UNSC Res 1244 (10 June 1999) UN Doc S/RES/1244; James Summers, ‘Kosovo: From Yugoslav Province to Disputed Independence’, in James Summers (ed), *Kosovo: A Precedent?* (Martinus Nijhoff 2011) 3 at 18-37; Alina Kaczorowska-Ireland, *Public International Law* (5th edn, Routledge 2015) 190; Ralph Wilde, *International Territorial Administration: How Trusteeship and the Civilizing Mission Never Went Away* (OUP 2010) 141-44.

⁴³⁹ Until now, all the disputed territories which were comprehensively administrated by the United Nations (namely Kosovo and Timor-Leste) had headed to the road of voluntarily independence, see Alina Kaczorowska-Ireland, *Public International Law* (5th edn, Routledge 2015) 191.

lot of the shortages of the latter:

Firstly, from the ‘United Nations Forces’ to the ‘Coalition Forces’, the exclusive application of the UNCSS was very likely to seriously rely on the military forces of the relevant states while handling territorial disputes. In this case, the introduction of the United Nations territorial administration system might moderately enrich the corresponding measures of management of the UNCSS.⁴⁴⁰ Secondly, from the Korean War to the Gulf War, the exclusive application of the UNCSS was very likely to seriously threaten the normal living environment of the relevant civilians while handling territorial disputes. In this case, the introduction of the United Nations territorial administration system might moderately avoid the corresponding destructive impact of the UNCSS.⁴⁴¹ Thirdly, from the Korean Peninsula to the Persian Gulf, the exclusive application of the UNCSS was very likely to leave seriously obstacles to the restoration of the normal international relations of the relevant regions while handling territorial disputes. In this case, the introduction of the United Nations territorial administration system might moderately safeguard the corresponding future efficacy of the UNCSS.⁴⁴²

Inspired by these positive effects, in the same year when Kosovo was taken over by the United Nations territorial administration system, the UNSC duplicated the UNMIK in Timor-Leste by deploying the practically identical UNTAET.⁴⁴³ As the original parties

⁴⁴⁰ E.g. The UNMIK possesses ‘all executive, legislative, and judicial authority’ within the region of its missions, whilst a few years earlier, the ‘Coalition Forces’ led by the USA was just a pure military striking force, see William R. Keylor, *The Twentieth-Century and Beyond: An International History since 1900* (6th edn, OUP 2012) 522-23; Kai Michael Kenkel, ‘Five Generations of Peace Operations: From the “Thin Blue Line” to “Painting a Country Blue” ’ (2013) 56 (1) Rev. Bras. Polit. Int. 122 at 133.

⁴⁴¹ E.g. The Korean War caused the death of more than one million people, whilst the UNMIK is substantially a military-civil hybrid mission which aimed at ‘peace-building’, see William R. Keylor, *The Twentieth-Century and Beyond: An International History since 1900* (6th edn, OUP 2012) 353-60; Kai Michael Kenkel, ‘Five Generations of Peace Operations: From the “Thin Blue Line” to “Painting a Country Blue” ’ (2013) 56 (1) Rev. Bras. Polit. Int. 122 at 133.

⁴⁴² E.g. Along the two sides of the military demarcation line of the Korean Peninsula, there still are millions of armed forces of both parties, whilst on the contrary, the unilateral independence of Kosovo did not completely reverse the peace process of the Balkan Peninsula, see The International Institute of Strategic Studies (IISS), *The Military Balance 2015* (Routledge 2015) ch 6, see especially 226-27; Ilir Deda, ‘Kosovo After the Brussels Agreement: From Status Quo to An Internally Ethically Divided States’ (*Policy Briefs Kosovo* 2013) <http://www.kas.de/wfd/oc/kas_36473-1522-1-30.pdf?131223120626> accessed 3 June 2015.

⁴⁴³ UNSC Res 1272 (25 October 1999) UN Doc S/RES/1272; Ian Martin & Alexander Mayer-Rieckh, ‘The United Nations and East Timor: From Self-Determination to State-Building’ (2005)

of this case, namely Indonesia and Timor-Leste, were member states of the United Nations, the deployment of the UNTAET was a significant step in intervening territorial disputes in the context of this thesis. Besides, as the duties of the ‘complex/coercive peacekeeping operations’ are gradually becoming more diversified, there is no reason to say that the United Nations territorial administration system will not be used again in the future cases involving the UNCSS and the ‘standard’ territorial disputes.⁴⁴⁴

4. Summary.

In summary, in terms of handling territorial disputes, the connection between the UNCSS and the peaceful measures is mainly manifested as the quasi-judicial power of the UNSC and the right of the parallel application of various peaceful measures. Thereinto, the former has consolidated the authority of the UNCSS in this field, yet the hidden problems of this power cannot be rapidly solved, so that it is still a supporting character at the moment. In contrast, the latter is not an independent right, but it could largely be seen as a ‘backup’, assisting the UNCSS in this field. Furthermore, the name of the United Nations territorial administration system is related to territorial disputes, and it also can potentially work with the UNCSS in this field. However, the relevant evidence suggests that this system still has not been widely applied in territorial disputes among member states of the United Nations.

Besides, it is noteworthy that notionally speaking, the United Nations peacekeeping operations also involve peaceful elements. Nevertheless, as the direct substitute of the ‘United Nations Forces’, they are certainly more suitable to be treated as part of the UNCSS, not an independent right or regime.⁴⁴⁵ Hence, the details of the United Nations peacekeeping operations should not be discussed here.

12 (1) International Peacekeeping 125 at 125-45.

⁴⁴⁴ Kai Michael Kenkel, ‘Five Generations of Peace Operations: From the “Thin Blue Line” to “Painting a Country Blue” ’ (2013) 56 (1) Rev. Bras. Polit. Int. 122 at 135-37.

⁴⁴⁵ See e.g. James Sloan, *The Militarisation of Peacekeeping in the Twenty-First Century* (Hart 2011) chs 4-6; Linda Fasulo, *An Insider’s Guide to the UN* (3rd edn, Yale University Press 2015) ch 9.

4.2.2 The hierarchy between the UNCSS and the right of self-defence in territorial disputes settlement

Assessing the development of international law since the end of WWII, it can be seen that the general target of the drafters of the UN Charter was to ‘centralize control of the use of force in the Security Council under Chapter VII’.⁴⁴⁶ Even so, the UNCSS is still not the only measure for the legal resort to force by the modern sovereign states. According to article 51 of the UN Charter, both the United Nations authorities and all the member states of the United Nations do not have the right to oppose or deny ‘the inherent right of individual or collective self-defence if an armed attack occurs against a member of the United Nations’.⁴⁴⁷ Nevertheless, in terms of the application of the UNCSS in various international disputes, this mechanism and the right of self-defense are not two independent coercive measures. On the contrary, from the perspective of their origins, it can be seen that they are mutually contradicting and mutually intersecting:

On one hand, the UN Charter defines the right of self-defence as a natural right for supplementing and strengthening the UNCSS, whilst the UNCSS can also ‘usefully complement an action in self-defence and facilitate its success’. Thus, they can be rated as a pair of ‘harmonious’ partners.⁴⁴⁸ On the other hand, the UNCSS is an introversive international security mechanism bred by the idealistic political norms, whilst the right of self-defence is an extroversive international security right bred by the realistic political norms. Thus, they can be rated as a pair of ‘antagonistic’ opponents as well.⁴⁴⁹

⁴⁴⁶ Christine Gray, *International Law and the Use of Force* (3rd edn, OUP 2008) 254.

⁴⁴⁷ Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, art 51; Bardo Fassbender, *The United Nations Charter as the Constitution of the International Community* (Brill 2009) 86-115.

⁴⁴⁸ More widely speaking, most of the international organisations which contain the norm of ‘collective security’ are either emerged from the old-fashioned ‘Defence Alliance’, or undertaking certain level of ‘self-defence’ missions, see Alexander Orakhelashvili, *Collective Security* (OUP 2011) 277; Yu Mincai, *The Implementing Mechanism of the Right of Self-Defence in International Law* (China Renmin University Press 2014) 125-29.

⁴⁴⁹ Nico Krisch, ‘Self-Defence and Collective Security’ (2001) 151 Beitrage Zum Auslandischen Offentlichen Recht und Volkerrecht 405 at 405 <<http://www.mpil.de/files/pdf2/beitr151.pdf>> accessed 1 July 2015.

Therefore, for practical convenience, the hierarchy between the UNCSS and the right of self-defence must be clarified in any related international dispute. As a perilous object most likely to cause sovereign states to actively or passively resort to force since 1648, territorial disputes are certainly not an exception.⁴⁵⁰

1. Prior to the activation of the UNCSS.

Before the activation of the UNCSS, this system certainly needs some time to consider and co-ordinate the overall interests of the various member states of the UNSC (especially the P5).⁴⁵¹ Thereby, the issue that has really initiated a debate among the Western scholars in this place is whether the prior exercise of the right of self-defence relies on the authorization of the UNSC or not.⁴⁵² Fortunately, the past territorial disputes since the birth of the United Nations have revealed that the right of self-defence is always not a derived right which casts itself on the recognition of the UNCSS.

For instance, the Korean War started on July 25th, 1950. The South Korean armed forces immediately launched firm resistance against the aggressive act of North Korea. Afterwards, the successive resolutions of the UNSC simply re-affirmed ‘(the right) to repel the armed attack and restore international peace and security in the area’ which had already been implemented by South Korea.⁴⁵³ Forty years later, Iraq attacked Kuwait on August 2nd, 1990. The Kuwaiti armed forces immediately launched firm resistance against the aggressive act of Iraq as well. Afterward, the successive resolutions of the UNSC also simply re-stated ‘the inherent right of individual or

⁴⁵⁰ Kalevi J. Holsti, *Peace and War: Armed Conflicts and International Order, 1648-1991* (CUP 1991) 306-10.

⁴⁵¹ In other words, the UNCSS is a ‘passive’ international security mechanism, whilst the right of self-defence which only needs to consider the private interests of the states parties is a more agile ‘automatic’ international security right, see Loraine Sievers & Sam Daws, *The Procedure of the UN Security Council* (4th edn, OUP 2014) ch 6, see especially 296-327 & 350-55.

⁴⁵² See e.g. Eugene V. Rostow, ‘Until What? Enforcement Action or Collective Self-Defence?’ (1991) 85 (3) AJIL 506 at 510-14; Malvina Halberstam, ‘The Right to Self-Defence Once the Security Council Takes Action’ (1996) 17 Mich. J. Int’l L. 229 at 231-27.

⁴⁵³ UNSC Res 83 (27 June 1950) UN Doc S/RES/83; UNSC Res 84 (7 July 1950) UN Doc S/RES/84; Max Hastings, *The Korean War* (Simon & Schuster 2010) 54-55.

collective self-defence' which had already been implemented by Kuwait.⁴⁵⁴

Tracking the causes of these situations, it can be seen that the right of self-defence is substantially an inherent right originating from the sovereignty of states and the norms of customary international law.⁴⁵⁵ Contemporary territorial disputes, which are surrounded by high-tech armed forces and WMDs, can hardly give their parties adequate buffer space for receiving early warning. This makes the discussion about 'whether the prior exercise of the right of self-defence relies on the authorization of the UNSC or not' contradictory to both abstract legal principles and the concrete logic.⁴⁵⁶ Thus, if removing the old constraining conditions like 'necessity' and 'proportionality',⁴⁵⁷ then in settling territorial disputes, sovereign states only need to undertake an optional obligation of 'reporting the measures that have been applied by them while exercising the right of self-defence to the UNSC'.⁴⁵⁸

2. After the activation of the UNCSS.

After the activation of the UNCSS, the identification of the hierarchy between this mechanism and the right of self-defence has increased in practical value. In this field, the related Western legal literature can be split into two opposing camps:

One of them, represented by Kelsen and Franck, argues that the right of self-defence

⁴⁵⁴ UNSC Res 661 (6 August 1990) UN Doc S/RES/661; UNSC Res 678 (29 November 1990) UN Doc S/RES/678; Kenneth M. Pollack, *Arabs at War: Military Effectiveness, 1948-1991* (University of Nebraska Press 2002) ch 2, see especially 235-37.

⁴⁵⁵ Kelsen even claimed that the right of self-defence is a *Jus Cogens*, see Hans Kelsen, *The Law of the United Nations: A Critical Analysis of its Fundamental Problems* (Praeger 1950) 80 3.

⁴⁵⁶ Yoram Dinstein, *War, Aggression and Self-Defence* (5th edn, CUP 2011) 191-93; Malvina Hoberstam, 'The Right to Self-Defence Once the Security Council Takes Action' (1996) 17 Mich. J. Int'l L. 229 at 238-39; Myres S. McDougal & Florentino P. Feliciano, *Law and Minimum World Public Order: the Legal Regulation and International Coercion* (Yale University Press 19 61) 219; Yu Mincai, *The Implementing Mechanism of the Right of Self-Defence in International Law* (China Renmin University Press 2014) 123-24.

⁴⁵⁷ Tom Ruys, *Armed Attack and Article 51 of the UN Charter: Evolution in Customary Law and Practice* (CUP 2010) 91-125.

⁴⁵⁸ Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, art 51; Christine Gray, *International Law and the Use of Force* (3rd edn, OUP 2008) 121-24; Yoram Dinstein, *War, Aggression and Self-Defence* (5th edn, CUP 2011) 239-41; Yu Mincai, *The Implementing Mechanism of the Right of Self-Defence in International Law* (China Renmin University Press 2014) 133-39.

should be subservient to the UNCSS, suggesting the latter can suspend or absorb the right of self-defence.⁴⁵⁹ In contrast, the opposing camp, represented by Halberstam and Bowett, insists that right of self-defence parallels the UNCSS, meaning that the intervention of the latter cannot suspend or absorb the right of self-defence.⁴⁶⁰

However, analyzing the past territorial disputes since 1945, it can be seen that the situation in practice is not that complex, since the UNCSS has never been a complementary mechanism to the right of self-defence. For example, during the Korean War, the South Korean armed forces accepted the unified command of the 'United Nations Forces' led by the USA. In addition, today the US forces stationed in South Korea still hold the highest controlling power of the South Korean armed forces.⁴⁶¹ Similarly, during the Gulf War, the Kuwaiti armed forces also accepted the unified command of the 'Joint Forces' led by Saudi-Arabian officers. Meanwhile, the 'Joint Forces' was subordinated to the 'Coalition Forces' led by the USA as well.⁴⁶²

Tracking the causes of these situations, it should be noted that the UNCSS is, after all, a mechanism of intervention with the slogan of 'all for one, one for all'. Not only can it bring the strength of third-parties (especially the P5) to the right of self-defence,⁴⁶³ but it can also endow injured states with the authoritative support from third parties.⁴⁶⁴

⁴⁵⁹ Alexander Orakhelashvili, *Collective Security* (OUP 2011) 278-79; Hans Kelsen, 'Collective Security and Collective Self-Defense Under the Charter of the United Nations' (1948) 42 (4) A JIL 783 at 793; Thomas Franck & Faiza Patel, 'UN Police Action in Lieu of War: "The Old Order Changeth" ' (1991) 85 (1) AJIL 63 at 63 & 73-74; Malvina Halberstam, 'The Right to Self-Defence Once the Security Council Takes Action' (1996) 17 Mich. J. Int'l L. 229 at 236-37.

⁴⁶⁰ Alexander Orakhelashvili, *Collective Security* (OUP 2011) 279-80; Malvina Halberstam, 'The Right to Self-Defence Once the Security Council Takes Action' (1996) 17 Mich. J. Int'l L. 229 at 238-48; D. W. Bowett, *Self-Defence in International Law* (Praeger 1958) 195-97.

⁴⁶¹ William j. Webb, *The Korean War-The Outbreak* (U.S. Army Center of Military History 2002) 10-24 <http://www.history.army.mil/html/books/019/19-6/CMH_Pub_19-6.pdf> accessed 3 July 2015; Ankit Panda, 'US, South Korea Discuss Operational Control (OPCON) Transfer' (*The Diplomat* 2014) <<http://thediplomat.com/2014/06/us-south-korea-discuss-operational-control-opcon-transfer/>> accessed 3 July 2015.

⁴⁶² Thomas D. Dinackus, *Order of Battle: Allied Ground Forces of Operational Desert Storm* (Hellgate Press 2000) chart 29.

⁴⁶³ Both South Korea at the early stage of the Korean War and Kuwait at the early stage of the Gulf War nearly subjugated their nations, whilst the intervention of the UNCSS at the later stages of the armed conflicts re-seized the independent status for these two states, see Max Hastings, *The Korean War* (Simon & Schuster 2010) chs 2-5; Kenneth M. Pollack, *Arabs at War: Military Effectiveness, 1948-1991* (University of Nebraska Press 2002) ch 2.

⁴⁶⁴ E.g. During the Korean War, the Chinese government continuously refused to recognize the

Besides, the contemporary territorial disputes which involve so many values and core national interests can hardly give their parties enough free space for weighing efficiency and fairness (e.g. those actions which exercise the right of self-defence that contravene the will of the UNSC may suffer indiscriminate sanctions imposed by the UNCSS⁴⁶⁵).⁴⁶⁶ Thus, if the UNSC has already applied ‘measures necessary to maintain international peace and security’ when handling territorial disputes in line with the UNCSS, then this system only needs to undertake the remedial obligation of ‘(allowing the right of self-defence to) revive if the measures (of the UNCSS have been) prove ineffective’.⁴⁶⁷

3. Summary.

In summary, pertaining to the settlement of territorial disputes, the right of self-defence is initially independent from the UNCSS before its activation, then will be suspended or absorbed by the UNCSS after its activation. Besides, it should be noted that article 51 of the UN Charter cannot be used by the parties of international disputes to ‘justify anticipatory, preventative, or pre-emptive action’.⁴⁶⁸ Furthermore, the scope of the use of the right of self-defence also cannot exceed the aforementioned elementary requirements determined by the international law of peace, such as ‘necessity’ and

Syngman Rhee regime of South Korea, but the Chinese armed forces which were deployed in the territories of Korea still kept calling themselves as the ‘Chinese People’s Volunteer Army’, according they never had the courage to nominally challenge the endorsement provided by the United Nations to the South Korean government, see e.g. Mark E. Ryan, David M. Finkelstein & Michael A. McDevitt, *Chinese Warfighting: The PLA Experience since 1949* (M.E. Sharpe 2003) 125.

⁴⁶⁵ Yu Mincai, *The Implementing Mechanism of the Right of Self-Defence in International Law* (China Renmin University Press 2014) 132-33.

⁴⁶⁶ E.g. Before the signature of the armistice agreement of the Korean War, the South Korean government used to threat that it would withdraw from the ‘unfair’ negotiation between the ‘United Nations Forces’ and the Communists Bloc, plus it claimed that it would ‘fight alone’, but sarcastically, this attitude led to unnecessary extra battle (the battle of Kumsong) and territory loses, see Walter G. Hermes, *Truth Tent and Fighting Front: US Army in the Korean War* (Government Printing Office 1966) vol 2, ch 21, see especially 470-78; Hu Haibo, *Memorandum of the Korean War: 1950-1953* (Yellow River Press 2009) ch 16.

⁴⁶⁷ Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, art 51; Alexander Orakhelashvili, *Collective Security* (OUP 2011) 278-80; Nigel D. White, *Keeping the Peace: The United Nations and the Maintenance of International Peace and Security* (Manchester University Press 1997) 56.

⁴⁶⁸ Alexander Orakhelashvili, *Collective Security* (OUP 2011) 277; Olivier Corten, *The Law against War: The Prohibition on the Use of Force in Contemporary International Law* (Hart Publishing 2010) 406-70; Report of the Secretary-General’s High-level Panel on Threat, Challenge, and Change, ‘A More Secure World: Our Shared Responsibility’ (2004) UN Doc A/59/565, paras 188-92.

‘proportionality’ (e.g. the aggressive wars launched by Nazi Germany with the pretense of self-defence were certainly illegal⁴⁶⁹).⁴⁷⁰ Fortunately, in territorial disputes since 1945, there is a dearth of these aforesaid concepts, which are beyond the traditional scope of the right of self-defence⁴⁷¹.

4.2.3 The inter-relationship between the UNCSS and the power of regional organizations in territorial disputes settlement

Proverbially, the UN Charter has endowed the UNSC with the primary responsibility for the maintenance of international peace and security, and it has designed a full set of international security mechanism for this institution. However, as they understood the limitations of the UNSC, the drafters of the UN Charter still prepared reinforcements originating in other inter-governmental organisations for the UNCSS.

According to chapter 8 of the UN Charter, ‘the Security Council shall encourage the development of pacific settlement of local disputes through (such) regional arrangements or by (such) regional agencies.....the Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority’.⁴⁷² In addition, concerning the need to centrally control the use of force, the UNSC retains the final explanatory, monitoring and managing rights of ‘no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council’.⁴⁷³

⁴⁶⁹ See e.g. Antony Best, Jusi Hanhimaki, Joseph A. Maiolo & Kirsten E. Schulze, *International History of the Twenties Century and Beyond* (3rd edn, Routledge 2014) 187-94 & 201-209.

⁴⁷⁰ Michael Wood, ‘Self-Defence and Collective Security: Key Distinctions’, in Marc Weller, Al exia Solomou & Jake William Rylatt (eds), *The Oxford Handbook of the Use of Force in International Law* (OUP 2015) 649 at 652; Olivier Corten, *The Law against War: The Prohibition on the Use of Force in Contemporary International Law* (Hart Publishing 2010) 470-94.

⁴⁷¹ A rare exception is the ‘Six-Day War’ in 1967, but the UNSC did not reach a consensus on the issue of the legality of the ‘anticipatory action’ of Israel, see Anthony C. Arend, ‘International Law and the Preemptive Use of Military Force’ (2003) 26 (2) *The Washington Quarterly* 89 at 94-95.

⁴⁷² Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, arts 52-53; for a general commentary on the functions of chapter 8 of the UN Charter, see e.g. Ademola Abass, *Regional Organisations and the Development of Collective Security: Beyond Chapter VIII of the UN Charter* (Hart Publishing 2004) ch 2.

⁴⁷³ Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, art 53; Christine Gr 141

Regretfully, with the rapid change of the world order after the WWII, the efforts of the elders of the 1940th have failed to establish a positive interaction between the UNCSS and the regional organisations. On the contrary, based on a series of past practice, their relationship has evolved in two opposing directions:

On one hand, from the Northern Hemisphere to the Southern Hemisphere, there are myriad regional organisations that possess the function of collective security, covering most of the areas which contain or conceal international disputes.⁴⁷⁴ On the other hand, from the old-fashioned military-political alliances, to the newly-developed complex regional organisations, they have all conducted many military enforcement actions which arrogate the scope of control of the UNCSS. Unsurprisingly, this has caused both the states and relevant scholars to challenge and query the authority of the United Nations.⁴⁷⁵

Bearing these situations in mind, the related research programs would certainly be attracted to explore the relationship between the UNCSS and the collective security functions of the regional organisations in settling various international disputes. As one of the dangerous international disputes which always threats the contemporary international community, territorial disputes are clearly not an exception.

1. Positive relationship.

Logically, this sub-section should start with the positive relationship between the

ay, *International Law and the Use of Force* (3rd edn, OUP 2008) 254-55.

⁴⁷⁴ E.g. The SCO of Asia, the Warsaw Pact/CSTO of the region of the sphere of influence of the former USSR, the NATO/OSCE of Western Europe & North America, the AU/ECOWAS of Africa, the OAS of America and the PIF of Oceania, see The North Atlantic Treaty (signed 4 April 1949) 34 UNTS 243, art 5; Treaty of Friendship, Cooperation and Mutual Assistance (Warsaw Pact) (signed 14 May 1955) 219 UNTS 3, art 4; Alexander Orakhelashvili, *Collective Security* (OUP 2011) 64-88; Peter Wallensteen & Anders Bjurner (eds), *Regional Organizations and Peacemaking: Challengers to the UN?* (Routledge 2015) app 2.

⁴⁷⁵ E.g. The Kosovo War and a series of military intervention operations implemented by the ECOWAS in the region of Western Africa, see Christine Gray, *International Law and the Use of Force* (3rd edn, OUP 2008) 400-407 & 411-17; Nico Krisch, 'Unilateral Enforcement of the Collective Will: Kosovo, Iraq, and the Security Council' (1999) 3 Marx Planck UNYB 59 at 7 9-86; Ademola Abass, 'The New Collective Security Mechanism of ECOWAS: Innovations and Problems' (2000) 5 J. Conflict & Sec. L. 211 at 220-28.

UNCSS and the collective security functions of the regional organisations in territorial disputes settlement. After acquiring the authorization of the UNSC, these two mechanisms can perform three levels of progressively positive interaction:

Firstly, if the UNCSS has not or could not be activated, then the collective security functions of the regional organisations can act as the emergency measure for preventing the deterioration of the related situations.⁴⁷⁶ Secondly, if the intervention of the UNCSS seems to be powerless, then the collective security functions of the regional organisations can act as the supplementary measure for suppressing the escalation of the related situations.⁴⁷⁷ Thirdly, if the intervention of the UNCSS seems to be tardy, then the collective security functions of the regional organisations can act as the substitutive measure for deferring the wide spread of the related situations.⁴⁷⁸

More importantly, back into the relevant practice of handling territorial disputes, the above positive interaction between the UNCSS and the collective security functions of the regional organisations does not only rest on paper. In contrast, it could frequently be seen in several past cases-

For instance, in the early 1960th, the League of Arab States assumed the national defense affairs of Kuwait. By deploying well-directed regional peacekeeping operations, the League earned sufficient time for Kuwait to become a member state of the United Nations. Accordingly, Kuwait could then enjoy the security protection provided by the UNCSS, and therefrom the government of Iraq was forced to recognize its independence.⁴⁷⁹ Thirty years later, under the aegis of the UNSC, the CSCE also sent

⁴⁷⁶ Dai Yi, *A Research on the Issue of Reform of the UNCSS* (Chinese Social Science Press 2014) 78-79.

⁴⁷⁷ Alena F. Douhan, *Regional mechanisms of collective security: The new face of Chapter VIII of the UN Charter?* (L' Hamattan 2013) 133-39.

⁴⁷⁸ Anders Liden, 'United Nations after the Cold War: Power, Regions and Groups', in Peter Wallensteen & Anders Bjurner (eds), *Regional Organizations and Peacemaking: Challengers to the UN?* (Routledge 2015) 39 at 44-52.

⁴⁷⁹ UNSC Res 184 (16 December 1963) UN Doc S/RES/184; Ademola Abass, *Regional Organizations and the Development of Collective Security: Beyond Chapter VIII of the UN Charter* (Hart Publishing 2004) 142; Rodrigo Tavares, *Regional Security: the Capacity of International Organizations* (Routledge 2009) 112.

a peacekeeping force to the Nagorno-Karabakh region of Azerbaijan in 1994, monitoring the armistice agreement between Azerbaijan and Armenia.⁴⁸⁰

Regarding the causes of these good examples, as afore-mentioned, territorial disputes are a particular type of severe international dispute with intricate origin, dangerous process and unpredictable consequence. Thus, the international mechanisms which wish to control territorial disputes must have the ability to understand the background of the relevant cases. Then, they must efficiently intervene the settlement of the relevant cases, and constantly track the escalation of the relevant cases as well⁴⁸¹. Under such a circumstance, since territorial disputes are both diversified and all over the world, the regional organizations and their collective security functions would automatically become the superior choice. To name some of their asymmetric advantages but a few, they are closer to the disputed territories, have better knowledge of the local situations, and enjoy a tighter connection with the corresponding parties. Moreover, members of regional organizations may reach an agreement more easily, as they have lesser core states which are similar to the P5. In comparison with the UNCSS or the UNSC which is always being trapped by the global powers and their affairs, these advantages definitely can help the regional organisations to meet the afore-mentioned requirements more easily.⁴⁸²

⁴⁸⁰ UNSC Res 853 (29 July 1993) UN Doc S/RES/853; UNSC Res 874 (14 October 1993) U N Doc S/RES/874; Moorad Mooradian & Daniel Druckman, 'Hurting Stalemate or Mediation? The Conflict over Nagorno-Karabakh, 1990-95' (1999) 36 (6) *Journal of Peace Research* 709 at 710; Sheng Hongsheng, *A Study on the Legal Issues of the United Nations Peacekeeping Operations* (Current Affairs Press 2006) 125.

⁴⁸¹ Paul K. Huth, *Standing Your Ground: Territorial Disputes and International Conflict* (University of Michigan Press 1998) 1-5; Krista Eileen Wiegand, *Enduring Territorial Disputes: Strategies of Bargaining, Coercive Diplomacy and Settlement* (University of Georgia Press 2011) 9-15 & 81-93; A. Oye Cukwurah, *The Settlement of Boundary Disputes in International Law* (Manchester University Press 1967) ch 4.

⁴⁸² E.g. There is surely no veto power of either Russia or China in the decision-making processes of the NATO, whilst the AU is more familiar with the historical origins of those boundary disputes among the various states or even tribes within its own scope of jurisdiction, see Gary Wilson, *The United Nations and Collective Security* (Routledge 2014) 190; Philippe Sands, *Bowett's Law of International Institutions* (6th edn, Sweet & Maxwell 2009) 151-57; Peter Wallensteen, 'International Conflict Resolution, UN and Regional Organizations: the Balance Sheet', in Peter Wallensteen & Anders Bjurner (eds), *Regional Organizations and Peacemaking: Challenges to the UN?* (Routledge 2015) 13 at 23-24, note the viewpoint of the author on the double-edged effect of these factors of the collective security functions of the regional organizations; Dai Yi, *A Research on the Issue of Reform of the UNCSS* (Chinese Social Science Press 2014)

Therefore, since the establishment of the United Nations in 1945, the positive interaction between the UNCSS and collective security functions of the regional organisations has been continuously praised and encouraged. In fact, the successive Secretaries-General of the United Nations have put high expectations on the relationship between these two mechanisms, surpassing the original design in chapter 8 of the UN Charter.⁴⁸³

2. Negative relationship.

Nevertheless, although the collective functions of the regional organisations can help the UNCSS to deal with territorial disputes, their relationship is not always harmonious. Reviewing the relevant past cases, numerous examples exist where regional organisations have either distressed or humiliated authoritative institutions of the United Nations:

For instance, as a famous case which was not a ‘standard’ territorial dispute but ended up with the change of ownership of a piece of territory, the issue of Kosovo is a typical example here. The unilateral armed attack launched by the NATO against the former Yugoslavia did not acquire the explicit authorization of the UNSC. Meanwhile, this operation also forced the observer group of the OSCE which aimed at peacefully monitoring the situation in the region of Kosovo to momentarily leave its post. Then, the new-born ‘hybrid’ peacekeeping operation under the UNCSS aegis merely got the chance to clean up the situation after the former Yugoslavia succumbed to the powerful NATO.⁴⁸⁴

78-80 & 98-99.

⁴⁸³ Report of the Secretary-General, ‘An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace-keeping’ (17 June 1992) UN Doc A/47/277-S/24111, paras 60-65; Report of the Secretary-General, ‘In Larger Freedom: towards Development, Security and Human Rights for All’ (26 May 2005) UN Doc A/59/2005/Add. 3, paras 213-15; Report of the Secretary-General, ‘A More Secure World: Our Shared Responsibility’ (2 December 2004) UN Doc A/59/565, paras 2 70-73.

⁴⁸⁴ For a detailed overview of the military intervention of the NATO upon the former Yugoslavia, see e.g. James Summers, ‘Kosovo: From Yugoslav Province to Disputed Independence’, in James Summers (ed), *Kosovo: A Precedent? The Declaration of Independence, the Advisory Opinion and Implications of Statehood, Self-Determination and Minority Rights* (Martinus Nijhoff 2

Similarly, the long-term military confrontation between the Eastern and Western regional organisations during the Cold War almost froze the normal operation of the UNSC, which was the central institution of the UNCSS. In addition, this competition directly induced or escalated the territorial contradictions among many small/weak states which were involved in the NATO/Warsaw Pact system.⁴⁸⁵ More alarmingly, even when facing other controversies, such as domestic human rights issues, it is still possible that the UNCSS might be selectively ignored by the collective security functions of the regional organisations. Afterwards, the UNSC often can merely answer or conceal its dilemma with subsequent ratification.⁴⁸⁶

Tracking the root of these ‘bad’ examples, it can be said that owing to their scope of jurisdiction and legal basis, the perspective and purposes of the United Nations and the regional organisations are already different.⁴⁸⁷ Other than that, it is also clear that the ideological sources of the UNCSS and the collective security functions of the regional organisations are significantly different from each other as well:

As the only universal security mechanism of the modern world, the former emphasizes the voluntary mutual protection of the internal order of its member states. Thus, its norm follows the slogan of ‘all for one, one for all’, which is an invention of the classical thought of collective security.⁴⁸⁸ In contrast, as a smaller type of international security

011) 3 at 16-28 & 37-52; UNSC Res 1244 (10 June 1999) UN Doc S/RES/1244; Guo Xuetan g, *All for One, One for All-A research on the Collective Security System* (Shanghai People’s Publishing House 2010) 178-80 & 189.

⁴⁸⁵ E.g. The wars of separation and reunification of North Korea and South Korea, North Vietnam and South Vietnam, plus the Mainland of China and Taiwan, see Immanuel Wallerstein, ‘What Cold War in Asia? An Interpretive Essay’, in Zheng Yangwen, Liu Hong & Michael Szonyi (eds), *The Cold War in Asia: The Battle for Hearts and Minds* (Brill 2010) 15 at 21-23.

⁴⁸⁶ E.g. The intervention of the ECOWAS upon the domestic situations of Cote D’Ivoire and Sierra Leone, see e.g. Erika de Wit, ‘The Evolving Role of ECOWAS and the SADC in Peace Operations: A Challenge to the Primacy of the United Nations Security Council in Matters of Peace and Security?’ (2014) 27 (2) Leiden Journal of International Law 353 at 360-63; for a general assessment of the peacekeeping opponent of the ECOWAS, which is the ECOMOG, see David J. Francis, *Uniting Africa: Building Regional Peace and Security Systems* (Ashgate Publishing 2006) 150-71.

⁴⁸⁷ In other words, it refers to the mutual restriction of ‘global responsibility’ and ‘local interests’, besides, for the content of collective security of the statutes and regulations of the various regional organisations which is different from the UN Charter, see Alexander Orakhelashvili, *Collective Security* (OUP 2011) 280-87; Sheng Hongsheng, *A Study on the Legal Issues of the United Nations Peacekeeping Operations* (Current Affairs Press 2006) 127-28.

⁴⁸⁸ Lawrence Ziring, Robert E. Riggs & Jack C. Plano, *The United Nations: international Orga* 146

mechanism which covers a definite region, the latter emphasizes the passive mutual assistance of its member states against their external threats. Thus, its norm follows the concept of ‘collective defense’ which can be dated back to the system of the balance of power.⁴⁸⁹

Under the influence of these differences, it is unavoidable that the UNCSS and the collective security functions may make contradicting decisions when jointly handling complex and severe international disputes, including territorial disputes.⁴⁹⁰ Besides, while they have praised the positive relationship between these two international security mechanisms, some legal scholars are still cautious about the future of the co-operation between the UNCSS and the collective security functions of the regional organisations.⁴⁹¹

3. Summary.

In summary, the UNCSS and the collective security functions of the regional organisations have a double-edged inter-relationship during their joint process of settling territorial disputes. This relationship combines both advantages and disadvantages, but after all, they are two different kinds of international security mechanism. Consequently, when engaging territorial disputes in practice, the UNCSS

nization and World Politics (4th edn, Wadsworth Publishing 2004) 171.

⁴⁸⁹ Arnold Wolfers, *Discord and Collaboration: Essays on International Politics: Essays in International Politics* (John Hopkins University Press 1962) 183; Huang Yao, *Reviewing the Principle of the Prohibition on the Use of Force: A Judicial Analysis of Article 2 (4) of the Charter of the United Nations* (Peking University Press 2003) 296-304; Guo Xuetang, *All for One, One for All-A research on the Collective Security System* (Shanghai People’s Publishing House 2010) 80-81.

⁴⁹⁰ E.g. The contradictory interpretations of the issue of legality of the Kosovo War by the then Secretary-General of the NATO, George Robertson, and the then Secretary-General of the United Nations, Kofi Annan, see Kofi Annan, *We the People: A UN for the Twenty-First Century* (Routledge 2015) 90; George Robertson, ‘Kosovo One Year On: Achievement and Challenge’ (2000) 24 <<http://www.nato.int/Kosovo/repo2000/report-en.pdf>> accessed 25 November 2015.

⁴⁹¹ See e.g. Gary Wilson, *The United Nations and Collective Security* (Routledge 2014) 219; Dave Winther, *Regional Maintenance of Peace and Security under International Law: The Distorted Mirror* (Routledge 2013) 227-40, note also the last component entitled ‘co-operation with the United Nations’ of each section of this monograph; Chester A. Crocker, Fen Osler Hampson & Pamela Aall, ‘Regional Security through Collective Conflict Management’, in Chester A. Crocker, Fen Osler Hampson & Pamela Aall (eds), *Rewiring regional Security in a Fragmented World* (United States Institute of Peace Press 2011) 529 at 535-36.

still must predominantly trust in its own power, and that is the topic of the next chapter of this thesis.

Chapter 5-The practice of the application of the UNCSS in territorial disputes settlement

As aforesaid, the land-territory disputes among member states of the United Nations are a particular type of severe international dispute, since their subjects can endure heavy external pressure, and their objects are invaluable. Given this, and the fact that their entire process of application is limited by the commitment of individual parties, the various peaceful measures cannot guarantee a good result in intervening territorial disputes. In this context, the UNCSS has been endowed with a chance to demonstrate its ability. Specifically in the relevant practice, since the literal meaning of 'settling' various international disputes contracts the pre-determined purposes of the UNCSS, this mechanism actually has two mutually independent tasks (see 4.1.3):

Firstly, if a definite party of the relevant territorial dispute has threatened to use its force, then the UNCSS ought to compel this state to retract this threat, so as to 'return to peace'. Secondly, if a definite party of the relevant territorial dispute has already resorted to force, then the UNCSS ought to compel this state to stop the act of using armed forces, so as to 'return to peace'. Based on these two requirements, this chapter will set out the various measures that can be used by the UNCSS to bring about 'peace and security' in territorial disputes, and assess their respective success or failure.

5.1 The performance of the non-forcible measures of the UNCSS in territorial disputes settlement

5.1.1 The theoretical role and practical records of the United Nations authorized diplomatic sanctions in territorial disputes settlement

Reviewing the relevant articles of the UN Charter, it can be seen that as the survivors of the WWII who had the dream of 'peacefully settling international disputes', the architects of the United Nations designed two sets of progressive practical plan

according to their ideas for the gestating UNCSS.⁴⁹²

The first set of plan applies to such situation in which the UNSC has determined that a definite international dispute has formed ‘any threat to the peace, breach of the peace, or act of aggression’. In this case, the UNSC has the authority to urge every member state of the United Nations to impose various non-forcible sanctions not involving the use of force on those parties to the dispute that are suspected of threatening or breaching international peace and security, so as to maintain or restore international peace and security.⁴⁹³ The second set of plan applies to such situation in which the UNSC has determined that a definite international dispute has formed ‘measures provided for in article 41 (of the UN Charter) would be inadequate or have proved to be inadequate’. In this case, the UNSC has the authority to deploy the ‘United Nation Forces’ against those parties to the dispute that are suspected of threatening or breaching international peace and security, so as to maintain or restore international peace and security.⁴⁹⁴

From these words, it is not difficult to realize that although the UNCSS has envisaged the use of force, but the UN Charter does not contain explicit provision that stipulate the hierarchy between the above plans. Thus, if taking the existing principles of the United Nations into account, then it can be argued that the intention of the drafters was still in favor of restricting the frequency with which those non-peaceful measures might be used.⁴⁹⁵ Due to this, and the freezing effect of the Cold War on the UNSC and the ‘United Nations Forces’,⁴⁹⁶ ever since its establishment, the United Nations has always valued those measures of the UNCSS without resorting to armed forces.⁴⁹⁷ As the result, the United Nations authorized diplomatic sanctions which put more emphasis on the

⁴⁹² Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, preamble & art 1; Stanley Meisler, *United Nations: A History* (Grove Press 2011) 2-19.

⁴⁹³ Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, arts 39 & 41.

⁴⁹⁴ Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, art 42.

⁴⁹⁵ Michael Bothe, ‘Friedenssicherung und Kriegsrecht’, in Wolfgang Graf Vitzthum (ed), *Volksrecht* (5th edn, De Gruyter 2010) paras 44 & 48-49.

⁴⁹⁶ See e.g. Antony Best, Jusi Hanhimaki, Joseph A. Maiolo & Kirsten E. Schulze, *International History of the Twenties Century and Beyond* (3rd edn, Routledge 2014) 221-25 & 234-42; Antonio Cassese, *International Law* (2nd edn, OUP 2005) 339 & 346.

⁴⁹⁷ Vaughan Lowe, Adam Roberts, Jennifer Welsh & Dominik Zaum (eds), *The United Nations Security Council and War: the Evolution of Thought and Practice since 1945* (OUP 2008) app 4.

gentle derogation of reputation rather than the fierce deprivation of interests have reasonably become the proper starting point of the relevant legal studies.⁴⁹⁸ Specifically in terms of territorial disputes, through revising the viewpoints of the relevant authoritative legal scholars, it can be found that the subsequent development of the preliminary rules in the UN Charter has generally evolved three measures of diplomatic sanction. These include the open condemnation, the announcement of non-recognition and the severance of diplomatic relations, which are both inter-connected and different from each other.⁴⁹⁹

1. The theoretical role and practical records of open condemnation.

The open condemnation, as its name suggests, refers to the situation where a competent institution of the United Nations, normally the UNSC (the ‘recommendation’ of the UNGA cannot guarantee the stable operation of the UNCSS, see above⁵⁰⁰) adopts a resolution to denounce the stance, policies or activities of certain parties of a definite international dispute as absolutely ‘unfounded’, since they have violated the basic norms of international law⁵⁰¹. In other words, once open condemnation has been applied to handle territorial disputes and various other international disputes, it usually can lead to the following consequences on multiple levels:

The first consequence of open condemnation is that, with the assistance of the clarification provided by the corresponding resolutions, the officials of the United Nations can identify the guilty parties of the relevant international disputes (meaningfully, in the Badme case and a few other territorial disputes, the UNSC only identified the unlawful activities themselves, but avoided an assessment of the

⁴⁹⁸ See e.g. Gary Wilson, *The United Nations and Collective Security* (Routledge 2014) chs 4-5.

⁴⁹⁹ See e.g. Antonio Cassese, *International Law* (2nd edn, OUP 2005) 340-43; James Crawford, *Brownlie’s Principle of Public International Law* (8th edn, OUP 2012) 763-65; Thomas Franck, Simon Chesterman & David Malone, *Law and Practice of the United Nations: Documents and Commentary* (OUP 2008) 27-32 & 342-48; Gary Wilson, *The United Nations and Collective Security* (Routledge 2014) 84-86.

⁵⁰⁰ Margaret Doxey, ‘International Sanctions in Theory and Practice’ (1983) 15 (2) Case Western Reserve Journal of International Law 273 at 275.

⁵⁰¹ Henry C. Black, *Black’s Law Dictionary* (2nd edn, West Publishing 1910) 239.

correctness and the wrongfulness of the various parties⁵⁰²). The second consequence of open condemnation is that, with the legal basis founded by the corresponding resolutions, the officials of the United Nations can activate the entire procedure for investigating the guilty parties of the relevant international disputes⁵⁰³. The third consequence of open condemnation is that, with the widespread of the corresponding resolutions, the officials of the United Nations can expose the guilty parties of the relevant international disputes to the world (e.g. as the UNSC condemned North Korea in 1950, it also clarified the issue of ‘who shot first’ between North Korea and South Korea while these two parties were blaming each other⁵⁰⁴).⁵⁰⁵

From the above list, it can be seen that being solely an ‘oral criticism’ (in the form of ‘written statement’), the open condemnation has simple form, concise content and restrained goals. Thereby, this measure is well adapted as an initial step while the entire set of following UNCSS actions is gradually being activated. Realistically speaking, however, despite the ‘mental stress’ which is praised by some idealistic officials of the United Nations, since open condemnation is reliant purely on the power of words, it is a measure that cannot directly deprive the interests of its targets. Therefore, the open condemnation can rarely exert enough pressure on the relevant parties to force them to make meaningful compromises, and thus it cannot individually assume the duty of ‘maintaining or restoring international peace and security’. Back into the topic of this thesis, as a definite type of international dispute which combines a few characters that are unfavorable for making easy compromises, territorial disputes are certainly not a

⁵⁰² See UNSC Res 1177 (26 June 1998) UN Doc S/RES/1177; UNSC Res 1227 (10 February 1999) UN Doc S/RES/1227.

⁵⁰³ From the perspectives of legislative techniques and enforcement procedure, it can be said that the resolutions of the open condemnation have offered the theoretical basis and practical excuse for the remaining sanctionative methods (e.g. the United Nations authorized economic sanctions/military enforcement actions) within the framework of the UNCSS, see e.g. Dai Yi, *A Research on the Issue of Reform of the UNCSS* (Chinese Social Science Press 2014) 84-86.

⁵⁰⁴ UNSC Res 82 (25 June 1950) UN Doc S/RES/82; Max Hastings, *The Korean War* (Simon & Schuster 2010) chs 1-2.

⁵⁰⁵ See e.g. Patrik Johansson & Ramses Amer, ‘From Condemnation to Legitimization of Outcome: The United Nations and the Use of Force in Inter-State Relations’, in Ashok Swain, Ramses Amer & Joakim Orendal (eds), *The Democratization Project: Opportunities and Challenges* (Anthem Press 2011) 39 at 39-66; Antonio Cassese, *International Law* (2nd edn, OUP 2005) 34 2.

counter-example-

For instance, in a series of resolutions related to the Korean War, the decision-makers of the UNSC omitted the phase of condemning the invaders in written form. Instead, they rapidly chose to deploy the ‘United Nations Forces’ in their third corresponding resolution in succession.⁵⁰⁶ Moreover, after Iraq had suddenly invaded Kuwait in August of 1990, the UNSC quickly and openly condemned the aggressive operation of the Saddam regime.⁵⁰⁷ However, this method did not stop the annexation of Kuwait by Iraq,⁵⁰⁸ and this crisis was only reversed by the Gulf War, which involved the use of force.⁵⁰⁹

In short, with regard to territorial disputes and several other international disputes with similar features, the open condemnation has only served to declare the start of an escalating process of intervention by the UNCSS. Apart from that, in comparison with other measures with higher mandatory power, it can be said that the open condemnation cannot in itself meet the aim of ‘maintaining or restoring international peace and security’. Therefore, the open condemnation can provide nominal help to the management of territorial disputes, but the authoritative institutions of the UNCSS also have realistic reasons to occasionally abandon this ‘initial step’.

2. The theoretical role and practical records of the announcement of non-recognition.

As with the open condemnation, the announcement of non-recognition is also a diplomatic measure within the framework of the UNCSS which intends to handle various international disputes via ‘written statement’. According to articles 9 to 11 of

⁵⁰⁶ Thomas Franck, Simon Chesterman & David Malone, *Law and Practice of the United Nations: Documents and Commentary* (OUP 2008) 271-74.

⁵⁰⁷ UNSC Res 660 (2 August 1990) UN Doc S/RES/660.

⁵⁰⁸ Mark Fineman, ‘Iraq Remaps Kuwait as Province 19’ (*Los Angeles Times*, 29 August 1990) <http://articles.latimes.com/1990-08-29/news/mn-176_1_kuwait-city> accessed 12 December 2015.

⁵⁰⁹ See e.g. UNSC Res 661 (6 August 1990) UN Doc S/RES/661; UNSC Res 687 (3 April 1991) UN Doc S/RES/687; George A. Lopez & David Cortright, ‘Containing Iraq: Sanctions Worked’ (2004) 83 (4) Foreign Affairs 90 at 91.

the Draft Declaration on Rights and Duties of States, every state ‘has the duty to refrain from recognizing any territorial acquisition by another states acting in violation ofthe duty to refrain from.....the threat or use of force against the territorial integrity or political independence of another states’.⁵¹⁰ However, although the open condemnation and the announcement of non-recognition share the same form, but by means of examining their substance, it still can be found out that the nature of these measures is indeed different from each other:

On the one hand, the mode of ‘oral criticism’ seen with the former focuses on reducing the illusory reputation of the guilty parties of the relevant international disputes. In contrast, through refusing to ‘recognize any territorial acquisition’, the mode of boycotting ‘de facto situation’ seen with the latter focuses on reducing the actual benefits that may be acquired by the guilty parties.⁵¹¹ On the other hand, the primary target of punishment of the former is always the subjects of the relevant international disputes (namely the various parties). In contrast, by refusing to endorse the legality of the unlawful actions of the guilty parties, the primary target of punishment of the latter has been transferred to the objects of the relevant international disputes (e.g. disputed territories).⁵¹² A typical example for explaining the above argument is the Crimea case, which involves a territorial dispute. Affected by the ‘non-recognition’ policy of most of the member states of the United Nations, it is clear that the region of Crimea can hardly become a sub-beneficiary party of the trade agreements between Russia and other states in the predictable future. Meanwhile, the key industries of this peninsula have also lost a large amount of their international market, thus forcing the central government of Russia to commit to continually investing its own resources into this region.⁵¹³

⁵¹⁰ Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, UNGA Res 2625 (XXV) (adopted 24 October 1970) UN Doc A/RES/25/2625 (XXV); Draft Declaration on the Rights and Duties of States, UNGA Res 375 (adopted 6 December 1949) UN Doc A/RES/375 (IV); Malcolm Shaw, *International Law* (7th edn, CUP 2014) 338-40.

⁵¹¹ Malcolm Shaw, *International Law* (7th edn, CUP 2014) 338-40.

⁵¹² Peter Liberman, ‘Trading with the Enemy: Security and Relative Economic Gains’ (1996) 21 (1) *International Security* 147 at 167-73, see especially 169.

⁵¹³ See e.g. Richard Galpin, ‘Russians count the cost a year after Crimea annexation’ (BBC News 154

Summing up the impact of these differences, researchers are justified in claiming that the announcement of non-recognition is a diplomatic measure which has a slightly higher mandatory power than the open condemnation. Realistically speaking, unless the officials of the United Nations have blind faith in ‘oral criticism’, this measure can clearly bring about heavier and more precise external pressure. However, since the announcement of non-recognition does not primarily target the subjects of the relevant disputes and their inherent interests, this measure allows the guilty parties to retain some prestige. Thereby, the corresponding states have also acquired definite room for maneuver that is at their own discretion. Besides, Cassese has further sharply illustrated that the pre-condition for the application of the announcement of non-recognition is that the United Nations must ‘not in a position to terminate, or against which it proved unable to recommend or enjoin sanctions on unlawful behavior of states’.⁵¹⁴ In other words, although it seems that the announcement of non-recognition has recognized the importance of depriving potential benefit from illegal interests, but indeed, its efficacy is still resting idealistically on the self-consciousness of the guilty parties.

Given such a circumstance, it should be admitted that there is a visible gap between the degree of punishment arising from the announcement of non-recognition and that arising from open condemnation on paper. Nevertheless, to the corresponding parties, when these measures are being implemented in practice, they are not very different to the corresponding parties. On the one hand, it is true that the illegal interests newly acquired by the guilty parties are not recognized by the United Nations, but neither has the inherent strength of these states been undermined by international sanctions. Thus, it certainly let the guilty parties have the will and ability to seek the recognition of the international community. On the other hand, it is true that inherent strength of the victims has been undermined by the guilty parties, but it is also the case that their legitimate interests are still recognized by the United Nations. Thus, it certainly gives the victims an incentive to take back their losses. Paradoxically, therefore, it seems that

ws, 20 March 2015) <<http://www.bbc.co.uk/news/world-europe-31962156>> accessed 30 December 2015.

⁵¹⁴ Antonio Cassese, *International Law* (2nd edn, OUP 2005) 341.

the announcement of non-recognition has spoken boldly in defense of ‘international peace and security’, but in fact, this measure has also created hidden troubles for ‘maintenance or restoration’. Back into the topic of this thesis, as a definite type of international dispute which has invaluable objects, territorial disputes are, again, certainly not a counter-example-

For instance, the UNSC once adopted a series of resolutions in the early 1980s, refusing to recognize Israel’s annexation of the disputed territories between itself and its neighbors. Unfortunately, the effective occupation of these territories by Israel was not meaningfully interrupted by these resolutions, and the armed conflicts among different local states were also endless.⁵¹⁵ Likewise, during the Gulf Crisis which almost can be seen as a textbook case for the UNCSS, the ‘non-recognition’ resolution adopted by the UNSC regarding the annexation of Kuwait also did not impede the wilful regime of Saddam. As proven by the relevant historical records, much tougher measures than simply announcements of non-recognition were required to force the Iraqi invaders to make concessions.⁵¹⁶

In short, the announcement of non-recognition is a diplomatic measure that, while having more mandatory power than simply condemnation, remains unable to ‘maintain or restore international peace and security’. Actually, in comparison with condemnation which focuses on damaging the reputation of its targets, the policy of non-recognition may even provoke the relevant parties to ‘threaten or breach’ international peace and security. After all, even though this measure can touch upon the realistic interests of the parties, its mandatory power is still not enough. Therefore, when facing those severe international disputes, including territorial disputes, the authoritative institutions of the UNCSS need powerful measures that are more effective.

⁵¹⁵ UNSC Res 478 (20 August 1980) UN Doc S/RES/478; UNSC Res 497 (17 December 1981) UN Doc S/RES/497; Ahron Bregman, *Cursed Victory: A History of Israel and the Occupied Territories* (Penguin 2014) pt 2.

⁵¹⁶ UNSC Res 662 (9 August 1990) UN Doc S/RES/662; UNSC Res 687 (3 April 1991) UN Doc S/RES/687; Thomas Franck, Simon Chesterman & David Malone, *Law and Practice of the United Nations: Documents and Commentary* (OUP 2008) 52-63.

3. The theoretical role and practical records of the severance of diplomatic relations.

As with the open condemnation and the announcement of non-recognition, the severance of diplomatic sanctions is still a diplomatic measure which intend to handle various international disputes largely via ‘written statement’. According to the definition given by Giegerich, the severance of diplomatic relations will ‘effectively ends all direct official communications between (the) two governments.....by express notification’.⁵¹⁷ Fortunately, however, if one examines the numerous details involved in this measure, it still can be seen that the severance of diplomatic relations does contain features that highlight its higher mandatory power:

Firstly, unlike the open condemnation which sticks with ‘oral criticism’, the severance of diplomatic relations makes it impossible for guilty parties in international disputes to develop formal international relations on the inter-governmental level with the member states of the United Nations. Thus, this measure is bound to touch upon the realistic national interests of these states.⁵¹⁸ Secondly, unlike the announcement of non-recognition which prefers to ‘punish the objects’, the severance of diplomatic relations makes it impossible for guilty parties in international disputes to compete with other states by only resorting to their newly acquired illegal interests. Thus, this measure is bound to undermine the inherent national strength of these states.⁵¹⁹

From the above discussion, it can be seen that while the severance of diplomatic relations continues to use the form of ‘written statement’, its substance has been actively changed. On the one hand, in comparison with the open condemnation, the severance of diplomatic relations is a more pragmatic measure. On the other hand, in comparison

⁵¹⁷ Thomas Giegerich, ‘Article 63: Severance of Diplomatic or Consular Relations’, in Oliver D orr & Kirsten Schmalenbach (eds), *Vienna Convention on the Law of Treaties: A Commentary* (Springer 2011) 1105 at 1110.

⁵¹⁸ Bhagvatula S. Murty, *International Law of Diplomacy: The Diplomatic Instrument and World Public Order* (Springer 1989) 253.

⁵¹⁹ John P. Grant & J. Craig Barker, *Parry and Grant Encyclopedic Dictionary of International Law* (3rd edn, OUP 2009) 554; The editors, ‘Article 25: Effect of Severance of Diplomatic Relations’ (1935) 29 AJIL 1055 at 1055-56.

with the announcement of non-recognition, the severance of diplomatic relations is a measure which does not allow the guilty parties to retain their prestige or react at their own discretion. Therefore, it can be argued that this measure is the strictest diplomatic measure under the framework of the UNCSS, and is therefore never rashly activated by its authoritative institutions in practice. In reality, the United Nations has only adopted a series of resolutions that called for the severance of diplomatic relations on one occasion against South Africa, and there is no other similar case.⁵²⁰

However, although the severance of diplomatic relations has the highest mandatory power among its own kind, but this measure is not perfect. After all, it is still a measure which belongs to the field of diplomacy, so that it cannot break away from its exterior facade as part of diplomatic sanctions. Realistically speaking, the problems observed above in respect to open condemnation and the announcement of non-recognition may also apply to the severance of diplomatic relations-

Firstly, politically isolating a state cannot directly undermine its inherent strength. The subsequent suspension of the corresponding international economic interactions which is the natural next step to this measure, is the penalty which really works (see below). In other words, the severance of diplomatic relations needs the co-operation of other measures, such as the economic sanctions, otherwise it may turn out to be another empty talk in the form of ‘written statement’ as well. Secondly, if definite guilty parties have some unique political/economic advantages (e.g. possessing rare mineral resources), then those third parties may be encouraged to continue ‘unofficial’ interaction with them, bypassing the United Nations. In other words, the severance of diplomatic relations needs to choose the suitable objects of sanction, otherwise it may turn out to be an ineffective punishment as well.

Therefore, even though the severance of diplomatic relations can directly target the

⁵²⁰ See e.g. The Policies of Apartheid of The Government of The Republic of South Africa, U NGA Res 1761 (XII) (adopted 6 November 1962) UN Doc A/RES/1761 (XII); UNSC Res 283 (29 July 1970) UN Doc S/RES/283.

guilty parties, it is highly likely that the decline of the resistance of the latter is very slow. In this manner, the predetermined purposes of ‘maintaining or restoring international peace and security’ of the UNCSS may still go beyond the capacity of this measure. Coincidentally, in the only case of the United Nations authorized severance of diplomatic relations-South Africa, both of the above-mentioned weaknesses can be seen by the researchers, and this case actually contains a few territorial elements.⁵²¹

According to the related resolutions, the initial intention of the authoritative institutions of the UNCSS was to politically isolate the racist regime of South Africa, and it had nothing to do with territorial disputes.⁵²² Nonetheless, after South Africa had illegally occupied Namibia, the UNSC added the phrase of ‘in violation of the international status of the territory’ to its reasons for authorizing sanctions.⁵²³ Unfortunately, the development of the situation had proved that the exclusive application of the severance of diplomatic relations not only could not ‘maintain or restore’ the international peace and security of Southern Africa, but also might reveal the shortages of this measure-

Firstly, each of the two official resolutions of the United Nations on diplomatic sanctions against South Africa also made reference to the use of economic sanctions. In addition, a series of supplementary resolutions of them had only concentrated on expanding the economic sanctions as well.⁵²⁴ Secondly, after the adoption of the aforementioned resolutions, the biggest punishment received by South Africa was the suspension of its participation in the UNGA, yet it still retained its UN membership. Besides, the overall national strength of South Africa only started to decrease appreciably after the Western superpowers had joined in the economic sanctions in the

⁵²¹ Hersch Lauterpacht, *Recognition in International Law* (CUP 1947) 381-83; Thomas Giegerich, ‘Article 63: Severance of Diplomatic or Consular Relations’, in Oliver Dorr & Kirsten Schmalenbach (eds), *Vienna Convention on the Law of Treaties: A Commentary* (Springer 2011) 110 5 at 1110-11.

⁵²² The Policies of Apartheid of The Government of The Republic of South Africa, UNGA Res 1761 (XII) (adopted 6 November 1962) UN Doc A/RES/1761 (XII).

⁵²³ UNSC Res 283 (29 July 1970) UN Doc S/RES/283.

⁵²⁴ The Policies of Apartheid of The Government of The Republic of South Africa, UNGA Res 1761 (XII) (adopted 6 November 1962) UN Doc A/RES/1761 (XII); UNSC Res 283 (29 July 1970) UN Doc S/RES/283; UNSC Res 481 (26 November 1980) UN Doc S/RES/481; UNSC Res 591 (28 November 1986) UN Doc S/RES/591.

1980s.⁵²⁵ Thirdly, although the diplomatic sanctions were initiated in the 1960s, it took until the 1990s for the regime to change in South Africa and for Namibia to be granted independence. During this period, both Namibia and South Africa had to experience the lengthy Namibian War of Independence.⁵²⁶

In short, although the severance of diplomatic relations has addressed some of the drawbacks of open condemnation and the announcement of non-recognition, it cannot even plainly resolve the domestic crisis of a regional power. More seriously, while the corresponding case of South Africa only loosely involved a few minor territorial issues, this measure still could not pledge to ‘maintain or restore’ the local peace and security. On this account, it is not surprising to know that the severance of diplomatic relations is absent from those ‘standard’ territorial disputes which have frequently threatened or breached international peace and security.

4. Summary.

In summary, territorial disputes may successively engage a number of United Nations authorized diplomatic sanctions ranging from the open condemnation, the announcement of non-recognition to the severance of diplomatic relation. Regretfully, all three methods are intrinsically supplementary measures which are not quite effective on their own in terms of achieving the purpose of ‘maintaining or restoring international peace and security’ of the UCNSS. Actually, in their newly published monograph, White and Tsagourias have stated that in the field of collective security, the narrow sense of the word ‘sanction’ tends to be used to refer purely to ‘economic sanctions’. This, then, is the subject of research of the next section of this thesis.⁵²⁷

5.1.2 The theoretical role and practical records of the United Nations authorized

⁵²⁵ Richard Knight, ‘Sanctions, Disinvestment, and U.S. Corporations in South Africa’, in Robert E.G. Edgar (ed), *Sanctioning Apartheid* (Africa World Press 1990) 67 at 67-69.

⁵²⁶ See e.g. UNSC Res 283 (29 July 1970) UN Doc S/RES/283; Richard Dale, *The Namibian War of Independence, 1966-1989: Diplomatic, Economic and Military Campaigns* (McFarland 2014) pt 1 & 133-38.

⁵²⁷ Nicholas Tsagourias & Nigel D. White, *Collective Security: Theory, Law and Practice* (CUP 2013) 219.

economic sanctions in territorial disputes settlement

Reviewing the original wording of the UN Charter, it can be seen that as with the argument in the preceding section, the United Nations authorized diplomatic sanctions are largely supplementary measure with limited effect. In contrast, it is the United Nations authorized economic sanctions that can truly be called ‘the most important method among all the sanctions that might be imposed on a state’.⁵²⁸ Quoting the stipulations of chapter 7 of this statute, the UNSC has the right to ‘decide what measures not involving the use of armed force are to be employed to give effect to its decisions.....these may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations’.⁵²⁹ In other words, it is true that the drafters did not straightly elucidate the hierarchy of those non-forcible measures within the framework of the UNCSS. Nevertheless, the economic elements still account for an overwhelming proportion that is far beyond the proportion of the diplomatic elements in the non-exhausted list of specific measure given by this provision.⁵³⁰

Exploring the root of this arrangement, it is clear that this measure has initially replaced the indirect reduction of the diplomatic reputation of the targeted states with the direct deprivation of the economic interests of those states. Then, it has also replaced the passive ‘written statement’ with active substantial sanctions (e.g. ‘interruptions of economic relations’).⁵³¹ From a realistic perspective, therefore, the United Nations authorized economic sanctions can not only overcome some of the drawbacks of the diplomatic measures, but can also establish a ‘middle ground’ between ‘force’ and ‘peace’.⁵³² As the result, from the successive past cases since 1945 until today, it can

⁵²⁸ Dai Yi, *A Research on the Issue of Reform of the UNCSS* (Chinese Social Science Press 2014) 86.

⁵²⁹ Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, art 41.

⁵³⁰ Edward C. Luck, *UN Security Council: Practice and Promise* (Routledge 2006) 58.

⁵³¹ UNSC Res 660 (2 August 1990) UN Doc S/RES/660; UNSC Res 661 (6 August 1990) UN Doc S/RES/661.

⁵³² UNGA ‘A More Secure World: Our Shared Responsibility’ (2 December 2004) UN Doc A/59/565, para 178.

be seen that the United Nations authorized economic sanctions have gradually become a notable and widely applied ‘weapon’ of the UNCSS. On this basis, they have naturally acquired the opportunity to handle the various severe international disputes, including territorial disputes.⁵³³

1. The practical records of the United Nations authorized economic sanctions.

As with its parent mechanism, the early years of the United Nations authorized economic sanctions were not memorable. As afore-mentioned, although the UN Charter denied the legality of the so-called ‘hot wars’,⁵³⁴ but in virtue of the veto power of the P5, the outbreak of the Cold War immediately after the founding of the United Nations still paralyzed the entire UNCSS.⁵³⁵ Consequently, the United Nations authorized economic sanctions were activated only twice from 1945 to 1990, in both cases in respect to the domestic racist regimes of South Africa and South Rhodesia respectively. Additionally, with regard to the narrow field of territorial disputes, merely in the latter case did the UNCSS indirectly offered limited assist to the independence of Namibia. This was a special case, however, with only a limited territorial component in the terms meant by this thesis, and there was no lack of certain details which had ‘threatened’ or ‘breached’ international peace and security in this case (see above).⁵³⁶ More disappointingly, during the Korean War while the absence of the USSR from the voting procedure briefly untied the UNSC, this institution even skipped the option of economic

⁵³³ See Gary Clyde Hufbauer *et al.*, *Economic Sanctions Reconsidered* (3rd edn, Peterson Institute for International Economics 2009) 9-18; Jeremy M. Farrell, *United Nations Sanctions and the Rule of Law* (CUP 2007) app 2.

⁵³⁴ Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, art 2.

⁵³⁵ Geir Lundestad, *East, West, North, South: International Relations since 1945* (7th edn, SAG E 2014) chs 2-6; Vaughan Lowe, Adam Roberts, Jennifer Welsh & Dominik Zaum (eds), *The United Nations Security Council and War: the Evolution of Thought and Practice since 1945* (OUP 2008) app 5.

⁵³⁶ Another similar case is the resolution of voluntary arms embargo adopted by the UNSC on the issue of Palestine, but regarding the consequences of the successive wars in the Middle East region, it can be said that the effect of this resolution upon the territorial disputes among the Arabic states and Israel is very limited, see UNSC Res 221 (9 April 1966) UN Doc S/RES/221; UNSC Res 418 (4 November 1977) UN Doc S/RES/ 1977; David Cortright, George A. Lopez & Linda Gerber Stellingwerf, ‘Sanctions’, in Thomas G. Weiss & Sam Daws (eds), *The Oxford Handbook on the United Nations* (OUP 2008) 349 at 349; Edward C. Luck, *UN Security Council: Practice and Promise* (Routledge 2006) 59-61.

sanctions, and move straight to sending the 'United Nations Forces' to the war zone.⁵³⁷

Entering the 1990s, the end of the Cold War finally gave the United Nations a chance to break free from being 'a tool of superpower' for the first time in its lifetime. Meanwhile, the rapid formation of the new world order in which the Western Bloc held the dominant position also permitted the UNCSS to shortly regain its vitality.⁵³⁸ Affected by these new alterations, since the end of the Cold War, the frequency of the application of the United Nations authorized economic sanctions has increased, and their content has also broadened. In recent years, therefore, the UNCSS has developed some noticeable experience in the practical application of economic sanctions in respect to various international disputes other than territorial disputes⁵³⁹.

According to the statistics calculated by Cortright and several other scholars, from around 1990 to 2006, the UNSC had already imposed dozens of economic sanctions involving arms embargo, traffic blockade, freezing of assets and restriction of trading activities upon over 10 states. Thanks to these sanctions, the appropriate settlement of many cases which used to threaten international peace and security, including the Lockerbie bombing, the coup d'état in Haiti and the civil war in Angola, had been promoted.⁵⁴⁰ Furthermore, with the subsequent economic sanctions imposed on the Ahmadinejad regime of Iran, the Gaddafi regime of Libya and the Kim regime of North Korea, the use of this measure has continued to grow since then.⁵⁴¹

⁵³⁷ UNSC Res 84 (7 July 1950) UN Doc S/RES/84; Edward C. Luck, *UN Security Council: Practice and Promise* (Routledge 2006) 59.

⁵³⁸ Thomas Franck, 'What Happens Now? The United Nations after Iraq' (2003) 97 (3) AJIL 6 07 at 609-10; Nicola Ann-Hardwick, 'The UN during the Cold War: "A Tool of Superpower Influence Stymied by Superpower Conflict?"' (*E-International Relations Student*, 10 June 2011) <<http://www.e-ir.info/2011/06/10/the-un-during-the-cold-war-a-tool-of-superpower-influence-stymied-by-superpower-conflict/>> accessed 28 February 2016.

⁵³⁹ Because of the active performance of the United Nations authorized economic/diplomatic sanctions, the 1990th is also called 'the sanctions decade', see David Cortright & George A. Lopez, *The Sanctions Decade: Assessing UN Strategies in the 1990s* (Lynne Rienner 2000) 1-2.

⁵⁴⁰ David Cortright, George A. Lopez & Linda Gerber Stellingwerf, 'Sanctions', in Thomas G. Weiss & Sam Daws (eds), *The Oxford Handbook on the United Nations* (OUP 2008) 349 at 3 53-56; Vaughan Lowe, Adam Roberts, Jennifer Welsh & Dominik Zaum (eds), *The United Nations Security Council and War: the Evolution of Thought and Practice since 1945* (OUP 2008) app 4; Edward C. Luck, *UN Security Council: Practice and Promise* (Routledge 2006) 61-62.

⁵⁴¹ See e.g. UNSC Res 1718 (14 October 2006) UN Doc S/RES/1718; UNSC Res 1737 (23 D 163

However, despite this apparently encouraging trend in terms of handling other international disputes, the United Nations authorized economic sanctions have not had much success in respect to latest territorial disputes. On the contrary, this measure has even caused a number of obvious problems in the relevant practice:⁵⁴²

Firstly, comparing to its repeated appearances in other international disputes, economic sanctions have only been used occasionally in territorial disputes after the 1990s, such as in the case of the dispute between Iraq and Kuwait and that between Ethiopia and Eritrea. Meanwhile, even in the limited opportunities to show their usefulness, this measure has had a tendency to create new troubles, such as the ‘humanitarian crisis’ in Iraq partly caused by the economic sanctions against the Saddam regime.⁵⁴³ Besides, it is worth mentioning that the Iraq case is also one that initially began with territorial dispute, but soon turned to other controversies (e.g. the WMDs). Objectively speaking, considering the date of adoption of resolution 687 of the UNSC and the details of this case which occurred soon afterwards, it can be said that the starting point and the focus of this particular economic sanction were not in respect to the same matter.⁵⁴⁴

Secondly, comparing to its successful appearances in other international disputes, economic sanctions cannot guarantee the ‘maintenance or restoration of international peace and security’ in territorial disputes. Taking the two above-stated cases as an example, during the Eritrean–Ethiopian War, Ethiopia actually annihilated more Eritrean troops and occupied more disputed territories after the adoption of resolution 1298 of the UNSC.⁵⁴⁵ Similarly, during the Gulf Crisis, Iraq continued to prepare for the upcoming war after the adoption of resolution 661 of the UNSC, plus it also formally

ecember 2006) UN Doc S/RES/1737; UNSC Res 1970 (26 February 2011) UN Doc S/RES? 1 970; UNSC Res 2270 (2 March 2016) UN Doc S/RES/2270.

⁵⁴² Jeremy M. Farrell, *United Nations Sanctions and the Rule of Law* (CUP 2007) app 2, see especially 288-97 & 345-53.

⁵⁴³ David Cortright & George A. Lopez, *The Sanctions Decade: Assessing UN Strategies in the 1990s* (Lynne Rienner 2000) 39-43 & 76-81.

⁵⁴⁴ UNSC Res 687 (3 April 1991) UN Doc S/RES/687.

⁵⁴⁵ UNSC Res 1298 (17 May 2000) UN Doc S/RES/1298; Andrea Charron, *UN Sanctions and Conflict: Responding to Peace and Security Threats* (Routledge 2013) 26-28; Jeremy M. Farrell, *United Nations Sanctions and the Rule of Law* (CUP 2007) 395-400; Leeco Lata, ‘The Ethiopia-Eritrea War’ (2003) 30 (97) *Review of African Political Economy* 369 at 382.

annexed Kuwait where it deployed dozens of its army divisions in this short period.⁵⁴⁶

More seriously, even if the author taking the delay caused by the characters of the subjects of territorial disputes into account, the long-term effect of economic sanctions may still be as unpleasant as their short-term effect. For instance, although both Ethiopia and Eritrea are among the ‘least developed states’, but more than ten years after the United Nations started to intervene, they were still fighting each other along their border (see below). Similarly, it is true that an economic downturn can undermine the potential for the territorial expansion of a state. However, as the Iraq-Kuwait dispute shows, over ten years after the initiation of the economic sanctions, the Iraqi army which was directly responsible for breaching international peace and security could still play a non-ignorable role in the Iraq War in 2003.⁵⁴⁷

Thirdly, while economic sanctions have been generally fairly applied in cases related to ‘ordinary’ states, they are impotent in the face of the annexation of the territories of their neighbours by the superpowers. Therefore, the use of this measure in such cases could result in the rapid deterioration of the ‘international peace and security’ situation of the disputed regions (e.g. Crimea).⁵⁴⁸ Indeed, if certain key regional powers, such as Israel or India/Pakistan, have gained the support of superpowers, then it is usually also impossible to apply United Nations authorized economic sanctions against their territorial annexations. A clear example here is the stalemate in the Middle East. Although Israel has occupied the territories of its neighbors for a long time, but owing to the objection of the USA, the ‘United Nations authorized economic sanctions against

⁵⁴⁶ UNSC Res 661 (6 August 1990) UN Doc S/RES/661; George K. Walker, ‘The Crisis over Kuwait, August 1990-February 1991’ (1991) 1 Duke Journal of Comparative & International Law 25 at 32-40; William Thomas Allison, *The Gulf War, 1990-91* (Palgrave 2012) ch 4.

⁵⁴⁷ The Reuters, ‘Eritrea says it killed 10 Ethiopian troops’ (3 January 2010) <<https://af.reuters.com/article/topNews/idAFJOE60206K20100103>> accessed 1 August 2018; Pesach Malovany, *Wars of Modern Babylon: A History of the Iraqi Army From 1921 to 2003* (University Press of Kentucky 2017) 565-86 & pt 4.

⁵⁴⁸ In fact, unless the global powers or those regional powers which own the nuclear weapons are willing to sanction themselves, otherwise no matter from the perspective of procedure or from the perspective of effect, it is meaningless to propose/impose sanctions upon this type of states, see e.g. Jeremy M. Farrell, *United Nations Sanctions and the Rule of Law* (CUP 2007) 2 11-17; Dai Yi, *A Research on the Issue of Reform of the UNCSS* (Chinese Social Science Press 2014) 89-91.

Israel' appealed by the Arabs have never come true.⁵⁴⁹

Facing such a chequered history of performance, the real ability of the United Nations authorized economic sanctions to 'maintain or restore international peace and security' has certainly been questioned by the related scholars.⁵⁵⁰ For instance, as an American scholar, Bennis once claimed that a series of recent cases related to territorial disputes (e.g. the Gulf War) had proven that the non-forcible measures of the UNCSS only served the interests of 'the United States and its allies'.⁵⁵¹ In other words, even in the eyes of some scholars from the Western superpowers, the function of economic sanctions has deviated from the predetermined purposes of the UNCSS.

2. The inherent disadvantages of the United Nations authorized economic sanctions in respect to territorial disputes.

Refining the discussion of the above paragraphs, the United Nations authorized economic sanctions can be defined as a moderate type of 'collective security' measure which is not very popular in territorial disputes settlement. Additionally, there is no guarantee that this measure can maintain or restore 'international peace and security'. Tracking its origin from the realistic perspective, despite the intrinsic problems suffered by all the UNCSS economic and diplomatic sanctions (e.g. they are slow to take effect, see below), it can be seen that economic sanctions themselves also have two particular disadvantages:

Firstly, the United Nations authorized economic sanctions may easily impair the legal rights and interests of the civilians of the sanctioned states by mistake.

In contrast to diplomatic measures which focus on 'oral criticism', the United Nations

⁵⁴⁹ Ian Black, *Enemies and Neighbours: Arabs and Jews in Palestine and Israel, 1917-2017* (Penguin 2017) chs 8-24.

⁵⁵⁰ See e.g. Gary Clyde Hufbauer *et al.*, *Economic Sanctions Reconsidered* (3rd edn, Peterson Institute for International Economics 2009) 7-9 & 158-60; Dai Yi, *A Research on the Issue of Reform of the UNCSS* (Chinese Social Science Press 2014) 89-94.

⁵⁵¹ Phyllis Bennis & Tony Benn, *Calling the Shots: How Washington Dominates Today's UN* (Arris Books 2004) ch 7.

authorized economic sanctions seek the ‘gradual paralysis’ of the economy and the livelihood of the civilians of the corresponding guilty parties. Thus in theory, the plain application of this measure may realistically undermine the ability of the sanctioned states to pursue their territorial expansion.⁵⁵² Both Merrills and Farrell, however, have pointed out that owing to the fragile ability of ordinary people to protect themselves, compared to that of their rulers, the use of this measure might ‘(firstly victimize) the civilian population and not the government of the delinquent’. Besides, if taking the fact that the territorial disputes usually persist for years into account as well, then it should be admitted that the lengthy economic sanctions can easily push the civilians of the sanctioned states into a humanitarian crisis.⁵⁵³

Using the case of Iraq as an example. The lengthy economic sanctions imposed by the UNSC on Iraq as a result of the invasion of Kuwait and thereafter the suspected development of WMDs by Iraq fully destroyed the ability for territorial expansion of the Saddam regime by obliterating 80% of Iraqi economy.⁵⁵⁴ However, due to the political structure of authoritative states, this punishment also led to a massive widening of the inequality in income and in quality of life between the innocent Iraqi citizens and the leaders of the Ba'ath Party. Until the eve of the outbreak of the Iraqi War in 2003, the civilians of Iraq could not even obtain sufficient medical products, whilst by using the imported goods and materials, Saddam was still enjoying a luxurious life in his palaces. Therefore, the United Nations authorized economic sanctions actually forced the UNSC to be criticized by the wider international community and several human rights organizations. To find a way out of this dilemma, the UNSC had to adopt a few opposite resolutions, and thus invented the compensative ‘Oil for Food’ programme

⁵⁵² Meinhard Schroder, ‘National Responsibility, International Criminal Law, the Settlement of Disputes and Sanctions’, in Wolfgang G. Vitzthum (ed), *Volkerrecht* (5th edn, De Gruyter Recht 2010) 585 at 636-37.

⁵⁵³ J.G. Merrills, *International Dispute Settlement* (5th edn, CUP 2011) 244; Jeremy M. Farrell, *United Nations Sanctions and the Rule of Law* (CUP 2007) 224-27.

⁵⁵⁴ World Bank, ‘Data: Iraq’(2017) <<https://data.worldbank.org/country/iraq>> accessed 1 August 2018.

which undermined the power of the economic sanctions.⁵⁵⁵

Secondly, the United Nations authorized economic sanctions may easily impair the legal rights and interests of the governments of the sanctioning states by mistake.

In contrast to the forcible measures of the UNCSS, economic sanctions do not require the third parties of the various international disputes to make excessive compromise or sacrifice (see below). Hence, they can offset the apprehension of the sanctioning states on deeply intervening territorial disputes.⁵⁵⁶ Both Merrills and Farrell, however, have pointed out that owing to the multilateral nature of international commercial relations, the use of this measure might ‘(negatively) affecting not only the delinquent state, but also its trading partners’. In other words, as international economic interactions are not a unilateral phenomenon, the use of the economic weapon is indeed a double-edged sword. Besides, if taking the endurance of the subjects of territorial disputes into consideration, then it should be admitted that the governments of the sanctioning states often have no other choice but to ostensibly obey the UNCSS.⁵⁵⁷

Using the case of Iraq as an example again. In March of 2000, the then trade minister of the Saddam clique, Salah, announced that the 10-years-long economic sanction imposed by the UNSC had caused Iraq to lose over 140 billion US dollars. Nevertheless, he simultaneously claimed that the world economy had also ‘suffered a total loss of over 200 billion US dollars’. Thereinto, Russia had lost 40 US billion dollars, France had lost 35 billion US dollars, plus the USA, the UK and China had lost 25 billion US dollars respectively. Since Iraq was still the fourth largest oil exporter in the world with the fifth largest oil reserves even after the chaotic year of 2003, these figures listed by Salah was

⁵⁵⁵ See UNSC Res 986 (14 April 1995) UN Doc S/RES/986; David Cortright, George A. Lopez & Linda Gerber Stellingwerf, ‘Sanctions’, in Thomas G. Weiss & Sam Daws (eds), *The Oxford Handbook on the United Nations* (OUP 2008) 349 at 350-52 & 357-58; Zhao Zhou, ‘The United Nations Collective Economic Sanctions and the Protection of the Trade and Investment Rights of the Third Parties: Consideration on the basis of the external implementation of the “One Belt, One Road” Strategy’ (2016) 18 (1) J. of Wuhan Uni. Of Sci. & Tech. (Social Science Edition) 74 at 76.

⁵⁵⁶ See e.g. Malcolm N. Shaw, *International Law* (7th edn, CUP 2014) 901-907.

⁵⁵⁷ J.G.Merrills, *International Dispute Settlement* (5th edn, CUP 2011) 244; Jeremy M. Farrell, *United Nations Sanctions and the Rule of Law* (CUP 2007) 228-29.

probably not just a well-designed lie to intimidate the international community.⁵⁵⁸ Consequently, just shortly after the Gulf Crisis, several allies of the USA had already started to request the termination of the economic sanctions against Iraq, as they did not want to be the injured third parties anymore.⁵⁵⁹

3. Summary.

In summary, the United Nations authorized economic sanctions are a non-forcible form of sanction but one which may inevitably hurt the third parties. This character not only has negatively affected their performance in territorial disputes, but also means that the international community must be cautious about applying them in practice. Undoubtedly, when making its decision on the basis of practicalities, no state is willing to be hurt for doing the right thing, not to mention that they are simply third parties which assist the UNCSS to ‘maintain or restore international peace and security’. Under such a circumstance, the United Nations authorized economic sanctions certainly cannot be widely applied in the territorial disputes as understood in the context of this thesis. Moreover, this measure can hardly achieve the predetermined purposes of ‘maintain or restore international peace and security’ of the UNCSS as well.

5.1.3 The shared weaknesses of the non-forcible measures of the UNCSS in territorial disputes settlement: a case study of the United Nations authorized non-forcible sanctions against Ethiopia/Eritrea

From the previous sections, it can be seen the United Nations authorized diplomatic sanctions and economic sanctions are two types of non-forcible, but imperfect measures of the UNCSS. In particular, the former is largely trapped by the form of ‘oral criticism’, the latter could hurt the innocent third parties, and such characters have disturbed the brilliant performance of these measures in territorial disputes. However, as stated earlier,

⁵⁵⁸ The CIA, ‘Crude oil - exports is the total amount of crude oil exported’ (The World Fact Book 2017) <<https://www.cia.gov/library/publications/the-world-factbook/rankorder/2242rank.html>> accessed 1 August 2018.

⁵⁵⁹ Qiu Guirong, ‘The Sanctions Regime of the United Nations’ (2002) 3 International Materials & Information 6 at 7.

since the measures of same category might be mutually complementary, it is the shared weaknesses of all the non-forcible measures that might primarily hinder the successful use of this approach in territorial disputes.⁵⁶⁰ Besides, concerning the balance between the width and the depth of this thesis, the last two sub-sections have focused on broadly enumerating the records of applying the non-forcible measures of the UNCSS in territorial disputes from the perspective of ‘collective security’. Hence, at the end of the first half, the present sub-section should focus on specifically examining the progress of applying the non-forcible measures of the UNCSS in territorial disputes from the perspective of ‘territorial disputes’.

Therefore, in the last part that concerns the present issue, the author will arrange a detailed case study on one relevant case, so as to more thoroughly reveal the shared weaknesses of the non-forcible measures of the UNCSS. In terms of selecting the suitable incident, as one of the two recent territorial disputes which is related to both of the two non-forcible measures of the UNCSS, the Eritrean-Ethiopian War and its successive development in the next decade are undoubtedly a perfect choice.⁵⁶¹

1. Historical background.

Throughout the African history of the 19th century, Ethiopia was a glorious name—it was one of the few surviving independent states.⁵⁶² In contrast, from the 16th century to the end of the 19th century, the region of Eritrea on the western coast of the Red Sea was continuously under the control of the Ottoman Empire. Afterwards, with the decline of the Ottoman Empire, Italian influence in the region started to increase from the 1880s, and it formally annexed this region and changed its status to an Italian colony in 1890.

⁵⁶⁰ J.G.Merrills, *International Dispute Settlement* (5th edn, CUP 2011) 284-86.

⁵⁶¹ According to the official figures counted by the United Nations, this organization has established 30 economic sanctions regimes from 1966 until recent days, and they focused on supporting political settlement of disputes, non-proliferation of nuclear technology and anti-terrorism. Among them, only the Ethiopia/Eritrea case not only involves diplomatic sanctions and economic sanctions at the same time, but also has nothing to do with forcible measures. See UNSC, ‘Sanctions’ (2017) <<https://www.un.org/sc/suborg/en/sanctions/information>> accessed 1 August 2018.

⁵⁶² Stuart Munro-Hay, *Ethiopia, the Unknown Land: A Cultural and Historical Guide* (I. B. Tauris 2002) 33-36.

Through this foothold in the Horn of Africa, Italy repeatedly invaded Ethiopia during the next decade, yet it eventually met with a military disaster which was seldom seen in the colonial history of European states.⁵⁶³

Entering the early 20th Century, the exhausted Italians were forced to sign a series of treaties which defined the border line between Ethiopia and Eritrea with the Ethiopians.⁵⁶⁴ However, Italy did not abandon its hope of annexing Ethiopia, and the substance of these treaties was deliberately simple and unclear, so that they had stored up hidden troubles for future territorial disputes.⁵⁶⁵ In 1936, the regime of Mussolini eventually occupied Ethiopia in the Second Italo-Ethiopian War. For convenience of colonial management, the main body of Ethiopia was divided into four governorates of the Italian East Africa, and the remaining Ethiopian lands were given to Italian Eritrea and Somalia.⁵⁶⁶

During and after the WWII, Ethiopia and Eritrea freed themselves from the control of Italy, respectively. The former regained its independence early in 1941, and the latter was put under the administration of the UK, waiting for the decision of the international community regarding its future status.⁵⁶⁷ In 1952, based on the suggestion of the UNGA, Ethiopia and Eritrea formed a united federation, and their border line was set back to its old status in 1935, before the Italian invasion of Ethiopia.⁵⁶⁸ Unfortunately, such an arrangement ignored the disparity between the national strength of Ethiopia and that of Eritrea, and it also ignored the independent will of the Eritreans. Thus, even from its date of birth, this federation had already bogged down in crisis. In 1962, Ethiopia declared the abolishment of the federal system, and Eritrea accordingly became the 14th

⁵⁶³ Harold G. Marcus, *A History of Ethiopia* (University of California Press 2002) 91-114.

⁵⁶⁴ See e.g. Treaty for the Delimitation of the Frontiers between Ethiopia and Eritrea and the Sudan (Ethiopia-Great Britain-Italy) (15 May 1902) 191 CTS 180.

⁵⁶⁵ Edward Ullendorff, 'The Anglo-Ethiopian Treaty of 1902' (1967) 30 (3) Bulletin of the School of Oriental and African Studies 641 at 641-54.

⁵⁶⁶ Ruth Ben-Ghiat & Mia Fuller (eds), *Italian Colonialism* (Palgrave Macmillan 2005) xxii.

⁵⁶⁷ Bereket H. Selassie, *Eritrea and the United Nations and Other Essays* (Red Sea Press 1989) 28.

⁵⁶⁸ Bereket H. Selassie, *Eritrea and the United Nations and Other Essays* (Red Sea Press 1989) ch 2.

province of Ethiopia.⁵⁶⁹

Undoubtedly, this new system was inherently unstable. One after another, the Eritreans established numerous armed groups which devoted themselves to the national liberation movement, while in Ethiopia, the coup d'état in 1974 initiated the Ethiopian Civil War which would last until 1991.⁵⁷⁰ During this lengthy struggle, the opposition movements within Ethiopia/Eritrea reached a consensus on allowing the local Eritreans to hold a referendum after the overthrow of the dictatorial Mengistu regime.⁵⁷¹ Accordingly, in April of 1993, under the agreement of the new government of Ethiopia and the supervision of the United Nations, Eritrea ended its nearly 60-years-long history of being subsumed within Ethiopia. Simultaneously, the territorial issue which was left behind by the colonial days was put back on the negotiating table by this independence:⁵⁷²

Firstly, it was true that during the Ethiopian Civil War, the opposition faction of Ethiopia and the national liberation movement of Eritrea had reached an agreement to use the existing provincial border line as their post-war border.⁵⁷³ Nevertheless, such an idealistic design did not survive the disappearance of their common enemy. Indeed, as two newly formed governments which still had to stabilize their dominance, the current ruling groups of either Ethiopia or Eritrea certainly could ill-afford any compromise left over by history.

Secondly, from the end of the civil war in 1991 until 1997, the governments of the two states established several special committees in succession, as they sought to settle their

⁵⁶⁹ Martin Plaut, *Understanding Eritrea: Inside Africa's Most Repressive State* (OUP 2017) 11.

⁵⁷⁰ Martin Plaut, *Understanding Eritrea: Inside Africa's Most Repressive State* (OUP 2017) 11-2.

⁵⁷¹ Martin Plaut, *Understanding Eritrea: Inside Africa's Most Repressive State* (OUP 2017) 12-2 3.

⁵⁷² Bereket H. Selassie, *Eritrea and the United Nations and Other Essays* (Red Sea Press 1989) ch 4.

⁵⁷³ Martin Plaut, *Understanding Eritrea: Inside Africa's Most Repressive State* (OUP 2017) 22; Justin Pearce, 'Facts on the Ground: War and Peace in the Horn of Africa, May-June 2000' (2 000) 8 (2) IBRU Boundary and Security Bulletin 74 at 75.

territorial dispute via various peaceful measures.⁵⁷⁴ Regretfully, although both of them were willing to handle the potential crisis in conformity of law, the legal materials available to them were still those treaties/agreements concluded between Italy and Ethiopia over 90 years ago. As aforementioned, the substance of these documents was too simple and unclear, meaning that the governments of the two parties could interpret them in their own national interests. Therefore, the advisors from the special committees could not persuade the parties to accept any solution which was only drafted on the basis of the original words of the treaties/agreements. Meanwhile, the failure of the diplomatic units had retroactively led to the further deterioration of the situation.⁵⁷⁵

Thirdly, as well as the disputed national interests, the private background of the senior leaders of the two sides also militated against agreement in respect to the disputed border. On the one hand, the former opposition group that won the Ethiopia Civil War originated from the north of this state, and the hometown of their president, Meles, was located in the Tigray province which contained much of the disputed territories.⁵⁷⁶ On the other hand, as the ‘North Korea of Africa’, the dictator of Eritrea, Isaias, also desperately needed to use the disputed territories to strengthen his domestic and international authority.⁵⁷⁷ In other words, even if the work of the special committees was productive, their achievements still could hardly escape from the fate of being rejected by the relevant leaders.

As a result, the efforts of Ethiopia and Eritrea to peacefully settle their territorial dispute eventually came to a dead end after nearly seven years of delay. In May of 1998, the Eritrean army marched into the most controversial Badme region, thus initiating the Eritrean-Ethiopian War.⁵⁷⁸ One week later, when Ethiopia started its counter-attack, the

⁵⁷⁴ Dominique Jacquin-Berdal & Martin Plaut, *Unfinished Business: Eritrea and Ethiopia at War* (Red Sea Press 2005) 112.

⁵⁷⁵ G. L. Abbink, ‘Badme and the Ethio-Eritrean Border: The Challenge of Demarcation in the Post-war Period’ (2003) 58 (2) *Journal of the International African Institute* 219 at 224-25.

⁵⁷⁶ G. L. Abbink, ‘Badme and the Ethio-Eritrean Border: The Challenge of Demarcation in the Post-war Period’ (2003) 58 (2) *Journal of the International African Institute* 219 at 221 & 226.

⁵⁷⁷ G. L. Abbink, ‘Badme and the Ethio-Eritrean Border: The Challenge of Demarcation in the Post-war Period’ (2003) 58 (2) *Journal of the International African Institute* 219 at 221.

⁵⁷⁸ G. L. Abbink, ‘Badme and the Ethio-Eritrean Border: The Challenge of Demarcation in the Post-war Period’ (2003) 58 (2) *Journal of the International African Institute* 219 at 221.

territorial dispute between these two states formally turned into an armed conflict without declaration of war. On June 5th, the air force of Ethiopia attacked the capital airport of Eritrea, and in response, the Eritrean army soon bombed the hub airports of Northern Ethiopia as well. The attack launched by the two parties on each other's civilian facilities eventually made international intervention inevitable.⁵⁷⁹

2. The performance of the UNCSS.

An armed conflict between two of the least developed states in a region lacking in natural resources was definitely not an ideal environment for United Nations intervention, yet the reaction of the UNSC was not slow at all.⁵⁸⁰ On June 26th, the UNSC unanimously adopted resolution 1177 which openly condemned the use of force by both Ethiopia and Eritrea, and urged the two parties to settle their territorial dispute peacefully.⁵⁸¹ Afterwards, the two belligerent states welcomed the intervention of the United Nations respectively, and the disputed territories began to enter a 'quiet period', which it can be argued was a result of the nature of the non-forcible measures of the UNCSS:⁵⁸²

Firstly, as an international organization which was established in 1945, the most essential aim of the United Nations was to prevent or suppress the recurrence of the illegal territorial expansion conducted by the former 'enemy states', such as Germany, Italy and Japan. Correspondingly, the escalation of the territorial dispute between Ethiopia and Eritrea brought this case clearly within the natural scope of jurisdiction of this essential aim.⁵⁸³ Secondly, as a type of international security mechanism which

Post-war Period' (2003) 58 (2) Journal of the International African Institute 219 at 223.

⁵⁷⁹ University of Pennsylvania-African Studies Centre, 'Horn of Africa, May-June 1998' (17 June 1998) <<http://www.africa.upenn.edu/Hornet/HOA0598.html>> accessed 1 August 2018.

⁵⁸⁰ United Nations Economic Analysis & Policy Division, 'LDCS at a Glance' (March 2018) <<https://www.un.org/development/desa/dpad/least-developed-country-category/ldcslat-a-glance.html>> accessed 1 August 2018.

⁵⁸¹ UNSC Res 1177 (26 June 1998) UN Doc S/RES/1177.

⁵⁸² Justin Pearce, 'Facts on the Ground: War and Peace in the Horn of Africa, May-June 2000' (2000) 8 (2) IBRU Boundary and Security Bulletin 74 at 76-79.

⁵⁸³ See e.g. Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, preamble & art 107; Edward C. Luck, 'A Council for All Reasons: The Creation of the Security Council and Its Relevance Today', in Vaughan Lowe, Adam Roberts, Jennifer Welsh & Dominik Zau

emphasizes the principle of unanimity, the bane of the UNCSS has been the deliberate resistance or ignorance of any member of the P5. Correspondingly, in this case none of the P5 had any perceived vital interests at stake that would cause them to stand in the way of the operation of the UNCSS, as the warring parties were two agriculture-based states of the Horn of Africa.⁵⁸⁴ Thirdly, as a set of non-forcible measures that contains several types of side-effect, the fundamental challenge in respect to activating the diplomatic/economic sanctions of the UNCSS is to ensure that the estimated gains must surpass or offset the estimated losses. Correspondingly, there was no doubt that neither Ethiopia nor Eritrea had the ability to resist or even reject international sanctions.⁵⁸⁵

Regretfully, despite these positive conditions, the non-forcible measures of the UNCSS were still unable to settle the territorial issue between the two parties in the subsequent practice. Using the opportunity offered by the armistice period, Ethiopia and Eritrea respectively finished the mobilization of their various resources and resumed their military actions in early 1999. This in turn forced the UNSC to initiate a new round of non-forcible sanctions:

From February of 1999, Ethiopia restarted its attack, with the war spreading to the Eritrea's midlands, where used to be less controversial.⁵⁸⁶ For more than a year after this, Ethiopia pretended to be willing to negotiate with Eritrea, whilst it used old-fashioned 'trench warfare' to wear down Eritrea in tandem with gradually building up more military resources of its own. On May 12th of 2000, the well-prepared Ethiopian army suddenly started a new general offensive operation, and quickly pierced through the defensive line of the Eritrean army. Thereby, the direct intervention of the UNCSS

m (eds), *The United Nations Security Council and War: the Evolution of Thought and Practice since 1945* (OUP 2008) 61 at 64-70; Stephen C. Schlesinger, *Act of Creation-The Founding of the United Nations: A Story of Super Powers, Secret Agents, Wartime Allies and Enemies, and Their Quest for a Peaceful World* (Basic Books 2004) 79-80.

⁵⁸⁴ Peter Calvocoressi, *World Politics since 1945* (9th edn, Routledge 2009) 577-84.

⁵⁸⁵ Gary Clyde Hufbauer *et al.*, *Economic Sanctions Reconsidered* (3rd edn, Peterson Institute for International Economics 2009) chs 2-4.

⁵⁸⁶ Justin Pearce, 'Facts on the Ground: War and Peace in the Horn of Africa, May-June 2000' (2000) 8 (2) IBRU Boundary and Security Bulletin 74 at 77-78; Gebru Tareke, *The Ethiopian Revolution: War in the Horn of Africa* (Yale University Press 2009) 345.

now became pressing.⁵⁸⁷

On May 18th of 2000, the UNSC unanimously adopted resolution 1298, which formally initiated economic sanctions against Ethiopia and Eritrea. According to the wording of this resolution, every member state of the United Nations must stop to ‘sale or supply.....arms and related material of all types..... (or provide) technical assistance or training related to the provision, manufacture, maintenance or use of the items (above)’ to the belligerent states. In short, since both Ethiopia and Eritrea were lacking in military industrial capacity, the UNSC wanted to force the two states to disengage each other by effecting an arms embargo.⁵⁸⁸

Ironically, only one week after the adoption of resolution 1298, the Ethiopian army started its largest full-attack on Eritrea, using its existing materials in storage. On May 24th, the Ethiopian army completely destroyed the main force of the Eritrean army after two days of fighting, and even began to threaten the outskirts of the capital of Eritrea. By the end of May, Ethiopia had occupied almost all the disputed territories, and then announced that it would suspend its military action. Simultaneously, Ethiopia even made the gesture of making compromise right in front of the UNSC, offering to retreat to the line of actual control of May 6th, 1998 provided that Eritrea stop intimidating Ethiopia by threatening to use its armed forces.⁵⁸⁹

In early June of 2000, the envoys of Ethiopia and Eritrea returned to the negotiating table for the third time in the past two years. On June 18th, exactly one month after the adoption of resolution 1298, the two parties reached a settlement, in which they agreed to cease fire and submit their territorial dispute to the PCA. On July 31st, the UNSC adopted resolution 1312, through which it established a security zone along the two

⁵⁸⁷ UNSC Res 1277 (30 November 1999) UN Doc S/RES/1277; Gebru Tareke, *The Ethiopian Revolution: War in the Horn of Africa* (Yale University Press 2009) 346.

⁵⁸⁸ UNSC Res 1298 (17 May 2000) UN Doc S/RES/1298; The BBC, ‘Will Arms Ban Slow War?’ (18 May 2000) <<http://news.bbc.co.uk/1/hi/world/africa/750789.stm>> accessed 1 August 2018.

⁵⁸⁹ Fiona Lorton, ‘The Ethiopia-Eritrea Conflict: A Fragile Peace’ (2000) 9 (4) African Security Review 101 at 106-107.

sides of the entire length of the disputed borderline, and decided to deploy the UNMEE to separate the armies of the two parties. On December 12th, the ministers of foreign affairs of the two parties formally signed the Algiers Agreement which aimed at peacefully settling the subsequent issues, the Eritrean-Ethiopian War was thus brought to an end.⁵⁹⁰

With the signing of the peace agreement and the submission of the case to the PCA, it seemed that the international community could believe that the ‘international peace and security’ of the Horn of Africa had been restored. On May 15th 2001, the UNSC terminated the economic sanctions against Ethiopia and Eritrea imposed by resolution 1298 in the form of a presidential statement.⁵⁹¹ However, to the surprise of the United Nations, the intervention of the international judicial institutions and the United Nations peacekeeping forces not only did not help to settle this territorial dispute in the long term. On the contrary, this arrangement even further promoted the mutual hostility between Ethiopia and Eritrea:

In terms of peaceful measures, on April 13th of 2002, the arbitration committee delivered its award which was meant to be legally binding. According to its plan, the disputed territories would be divided equally between the two parties, but the key region of Badme would be put under the sovereignty of Eritrea.⁵⁹² Naturally, such an award which attempted to implement ‘egalitarianism’ was quite provocative to Ethiopia. For more than two years after this, the government of Ethiopia repeatedly sought to overturn the judgment of the arbitration committee. It was only in early December 2005 that Ethiopia, under pressure from the international community, gradually started to withdraw its armed forces from the disputed territories that it had occupied.⁵⁹³

⁵⁹⁰ UNSC Res 1312 (31 July 2000) UN Doc S/RES/1312; Agreement between the Government of the State of Eritrea and the Government of the Federal Democratic Republic of Ethiopia (Algiers Agreement) (signed 12 December 2000) 2138 UNTS 94; Fiona Lorton, ‘The Ethiopia-Eritrea Conflict: A Fragile Peace’ (2000) 9 (4) African Security Review 101 at 107.

⁵⁹¹ UNSC Presidential Statement 14 (2001) UN Doc S/PRST/2001/14.

⁵⁹² *Decision Regarding Delimitation of the Border between The State of Eritrea and The Federal Democratic Republic of Ethiopia (Eritrea v. Ethiopia)* (2002) 41 ILM 1057, paras 173-79.

⁵⁹³ The BBC, ‘Ethiopia to Reduce Border Force’ (10 December 2005) <<http://news.bbc.co.uk/1/h>

Nevertheless, just three weeks after Ethiopia started to soften its attitude, a subsidiary department of the PCA found that the Eritrea had in fact started the original attack in 1998, thus it violated international law before its opponent.⁵⁹⁴ Taking advantage of this opportunity, Ethiopia sent its troops back to the disputed territories, whilst the Eritrean army which had been reorganized in the preceding five years also actively prepared to fight back. Consequently, for nearly the next ten years until the 2010s, although the officials of the United Nations warned that they might reactivate the economic sanctions, but small-scale skirmishes between the two parties continued.⁵⁹⁵

In terms of the UNCSS, at the end of July of 2000, the UNMEE was formally deployed in the security zone along the borderline between Ethiopia and Eritrea. According to resolution 1320 of the UNSC, the major mission of this operation was to monitor the ceasefire and separate the armies of the two parties, so as to create a positive environment for the application of the peaceful measures.⁵⁹⁶ Therefore, after Ethiopia had announced that it would accept the award of the arbitration committee, the UNMEE began to cut down the number of its peacekeepers from mid-December of 2005.⁵⁹⁷

However, after the resumption of the military confrontation between Ethiopia and Eritrea, the prospect of the UNMEE started to make a turn in the course of this event. Eritrea, being disappointed in the United Nations peacekeeping operations, began to refuse to provide fuel for UNMEE patrols, and Ethiopia kept its silence like a bystander. By February of 2008, the remaining peacekeepers were forced to withdraw from the security zone due to the lack of fuel. Five months later, the UNSC decided to end the

[i/world/africa/4516754.stm](http://world/africa/4516754.stm) accessed 1 August 2018.

⁵⁹⁴ *Partial Award Jus Ad Bellum: Ethiopia's Claims 1–8 (Eritrea v. Ethiopia)* (2005) 45 ILM 430, paras 15–16.

⁵⁹⁵ The BBC, 'Eritrea Profile-Timeline' (1 August 2018) <<https://www.bbc.co.uk/news/world-africa-13349395>> accessed 1 August 2018.

⁵⁹⁶ UNSC Res 1320 (15 September 2000) UN Doc S/RES/1320; Patrick Cammaert and Andrea Sugar, 'United Nations Mission in Ethiopia and Eritrea (UNMEE)', in Joachim Koops, Norrie Macqueen, Thierry Tardy & Paul D. Williams (eds), *The Oxford Handbook of United Nations Peacekeeping Operations* (OUP 2015) 671 at 673.

⁵⁹⁷ The UN News, 'Some UN Staff will Temporarily Relocate Out of Eritrea but Military Presence will Continue, Security Council Decides' (14 December 2005) <<https://news.un.org/en/story/2005/12/163732-some-un-staff-will-temporarily-relocate-out-eritrea-military-presence-will>> accessed 1 August 2018.

mission of the UNMEE by adopting resolution 1827, thus leaving the field open for the approximately 200,000 troops of Ethiopia and Eritrea to continue to fight their small-scale skirmishes along the disputed borderline.⁵⁹⁸

Besides, it should be mentioned that on July 9th of 2018, when the draft of this thesis had already been finished, Ethiopia and Eritrea suddenly signed a joint declaration seeking to settle their territorial dispute through cooperation. Based on the consent of the heads of state of the two parties, the award of the arbitration committee would be effectively implemented, whilst their political and economic interaction would also return to normal.⁵⁹⁹ Nonetheless, this occurred more than fifteen years after the signing of the Algiers Agreement and the delivery of the award of the arbitration committee. In addition, there was also a remarkable gap of ten years between this moment and the end of the mission of the UNMEE. This joint declaration could therefore be seen as a victory gained by the direct communication between the governments of the two parties, but not as a success of the intervention of any third party. Of course, the relevant international judicial institutions did provide the authoritative references and legal basis for handling this case, and the objective value of their intervention deserved to be affirmed and praised.

3. Assessment and Analysis.

Taking a panoramic view of the journey of the non-forcible measures of the UNCSS in the Ethiopia-Eritrea territorial dispute, their function of containing large-scale international warfare should surely be appreciated. Unfortunately, however, the United Nations authorized diplomatic/economic sanctions failed to achieve their predetermined purposes of ‘maintain or restore international peace and security’. Additionally, these

⁵⁹⁸ UNSC Res 1827 (30 July 2008) UN Doc S/RES/1827; Patrick Cammaert and Andreas Suga r, ‘United Nations Mission in Ethiopia and Eritrea (UNMEE)’, in Joachim Koops, Norrie Macq ueen, Thierry Tardy & Paul D. Williams (eds), *The Oxford Handbook of United Nations Peace keeping Operations* (OUP 2015) 671 at 678-80.

⁵⁹⁹ The Eritrea Ministry of Information, ‘Joint Declaration of Peace and Friendship between Eritrea and Ethiopia’ (9 July 2018) <<http://www.shabait.com/news/local-news/26639-joint-declaration-of-peace-and-friendship-between-eritrea-and-ethiopia>> accessed 1 August 2018.

measures did not independently lead the various parties to follow the path of peacefully settling territorial disputes as well. Furthermore, Ethiopia even gained its decisive victory after the adoption of resolution 1298 of the UNSC, whilst Eritrea launched its own ‘economic sanctions’ against the UNMEE after the end of the real economic sanctions. Regarding the origins of such performance from the realistic perspective, despite the individual shortages of the various non-forcible measures, there are several following weaknesses shared by the diplomatic sanctions and the economic sanctions that might also be blamed:

Firstly, the intensity of punishment of the non-forcible measures of the UNCSS is comparatively moderate.

Analyzing the known details of the case, it can be seen that the emergence of this shortcoming is directly caused by the character of the objects of territorial disputes. On one hand, the status of territories and the various values possessed by territories mean that the relevant parties are usually willing to pay a high price before considering their abandonment (see 3.1.2). On the other hand, limited by the idea of ‘non-violence’, the diplomatic measures normally just focus on undermining the reputation of the guilty parties, whilst the economic measures would selectively focus on a particular field of economy. Therefore, it seems that the non-forcible measures of the UNCSS may good at handling other international disputes. However, when facing the proprietorship of several territories that have a high cost-performance ratio, these measures could frequently end up with no significant impact on the case at all.

Taking the territorial dispute between Ethiopia and Eritrea as an example. Through invading and occupying all the disputed territories, the two parties could at least acquire the following noticeable profits-

Firstly, as afore-mentioned, the Tigray province which contained most of the disputed territories were the birth-land and base camp of the current ruling party of Ethiopia, whilst Eritrea also had a typical dictatorial regime. Thus, the capture of the disputed

territories could either improve the internal unity of the leaders of Ethiopia, or promote the prestige of the leaders of Eritrea. In other words, no matter which party had controlled the disputed territories, it could always use them as an effective tool for stabilizing its domestic dominance.⁶⁰⁰

Secondly, as afore-mentioned, technically speaking, this case was a competition between the border line of the Italian colonies and the border line of the provinces of the former Ethiopian Empire. Thus, although the common people might have limited consciousness of this, to the social elite of the two parties, this territorial dispute could easily be turned into a serious issue of nationalism. In other words, the sovereign ownership of the disputed territories related to this case not only could determine the unity of the relevant leaders, but could also determine the popularity of the two governments among their social elite (Not to mention the reality that due to the level of education of the least developed states, it can be said that gaining the support of the rare social elite is more crucial than gaining the internal unity of the leaders over there).⁶⁰¹

Thirdly, although the two parties had little status or influence internationally, Ethiopia was still a regional power of East Africa, whilst its capital city was also the seat of the headquarters of the AU. Thus, unlike the newly independent Eritrea, Ethiopia had a certain regional status to live up to, and also faced historic threats from other neighbours (e.g. Somalia, see the history of the Ogaden War⁶⁰²). In other words, maybe the loss of the Badme region would not severely undermine the inherent national strength of Ethiopia, its inability to suppress the weakest neighbor might encourage the territorial ambitions of its other neighbors.⁶⁰³ Likewise, if Eritrea chose simply to concede the disputed territories to Ethiopia in its first international dispute after its independence,

⁶⁰⁰ G. L. Abbink, 'Badme and the Ethio-Eritrean Border: The Challenge of Demarcation in the Post-war Period' (2003) 58 (2) *Journal of the International African Institute* 219 at 221 & 226.

⁶⁰¹ Martin Plaut, *Understanding Eritrea: Inside Africa's Most Repressive State* (OUP 2017) 13-16.

⁶⁰² Tim Cooper, *Wings over Ogaden: The Ethiopian-Somali War 1978-79* (Helion & Company Ltd 2015) chs 1 & 5.

⁶⁰³ Peter Woodward, *The Horn of Africa: Politics and International Relations* (British Academic Press 2003) ch 4.

then it could hardly deter its other neighbours from imitating the act of Ethiopia in later similar cases.⁶⁰⁴

Under the influence of these multi-level problems, it was unsurprising that Ethiopia and Eritrea would be unmoved by the oral criticism and written statements issued by the United Nations. More seriously, since resolution 1298 focused only on an arms embargo because it took the livelihood of the common people into account, the pressure imposed by the one-year-long economic sanctions was not completely intolerable. Consequently, the reaction of the two parties upon resolutions 1177 and 1298 was to follow a path of only ostensible obedience. In addition, after the end of the arms embargo, Ethiopia and Eritrea resumed their military confrontation within the disputed area.⁶⁰⁵ Furthermore, although the UNSC had threatened to reactivate economic sanctions, this could only help to avoid large-scale war, whilst the small-scale armed conflicts between the two parties continued to recur until the 2010s.⁶⁰⁶

Secondly, the speed at which the non-forcible measures of the UNCSS take effect is comparatively slow.

Analyzing the known details of the case, it can be seen that the emergence of this shortcoming is jointly caused by the character of the subjects of territorial disputes (see 3.1.2). On one hand, the comprehensive strength of a state in different sorts of fields can usually guarantee the basic endurance of those parties while they are defending the territories claimed by them.⁶⁰⁷ On the other hand, the relative powerlessness of the measures effected by the non-forcible measures can actually bolster the confidence of the parties, and over time, they can actually become more inured to them (see above). Therefore, it may seem that the non-forcible measures of the UNCSS are vigorous at

⁶⁰⁴ Peter Woodward, *The Horn of Africa: Politics and International Relations* (British Academic Press 2003) chs 6 & 8.

⁶⁰⁵ The BBC, ‘Eritrea Profile-Timeline’ (1 August 2018) <<https://www.bbc.co.uk/news/world-afric-a-13349395>> accessed 1 August 2018.

⁶⁰⁶ The BBC, ‘Eritrea Profile-Timeline’ (1 August 2018) <<https://www.bbc.co.uk/news/world-afric-a-13349395>> accessed 1 August 2018.

⁶⁰⁷ Antonio Cassese, *International Law* (2nd edn, OUP 2005) 71-72.

handling weaker states in territorial disputes, but while dealing with stronger states, they are rather less effective.

Taking the territorial dispute between Ethiopia and Eritrea as an example. Although both parties were least developed states, but in the years around the beginning of the 21st century, their armies and national strength definitely were capable of sustaining a significant military engagement-

On the one hand, Ethiopia deployed a total of over 300,000 troops in the relevant large-scale offensive operations, and it also deployed a few hundred pieces of heavy weapons, including main battle tanks and advanced jet fighters. Thanks to its military capacity, during and after the period of economic sanctions, Ethiopia could continuously station its armed forces in the disputed territories for five years.⁶⁰⁸ On the other hand, as the weaker party, Eritrea had also mobilized more than ten divisions of armed forces in practice, and it could maintain an uninterrupted battle line even after it had lost thousands of soldiers. Thanks to its military capacity, during and after the period of economic sanctions, Eritrea could reorganize its troops as well, and this army once kept an authorized strength of more than 250,000 servicemen.⁶⁰⁹

Safeguarded by the above-mentioned conditions, Ethiopia and Eritrea were surely capable of enduring the economic sanctions which only had a ‘moderate intensity of punishment’, not to mention the less powerful diplomatic sanctions. As a result, whilst the international community had not yet even got enough time to make a list of the prohibited weapons, Ethiopia had already won its decisive victory in the next two weeks after the adoption of resolution 1298.⁶¹⁰ Besides, as a similar but more typical case, in the roughly six months from the adoption of resolutions 660/661 of the UNSC to the outbreak of the Gulf War, the international community had enough time to exert

⁶⁰⁸ Fiona Lorton, ‘The Ethiopia-Eritrea Conflict: A Fragile Peace’ (2000) 9 (4) African Security Review 101 at 103.

⁶⁰⁹ Fiona Lorton, ‘The Ethiopia-Eritrea Conflict: A Fragile Peace’ (2000) 9 (4) African Security Review 101 at 103.

⁶¹⁰ Gebru Tareke, *The Ethiopian Revolution: War in the Horn of Africa* (Yale University Press 2009) 346-49.

comprehensive economic sanctions on Iraq. However, during this period, the Saddam regime not only did not show any sign of decline, but it completed the legal procedure of annexing Kuwait in an orderly way, plus it had arranged its preparation for war against the Coalition. In fact, Iraq only approved the ‘Oil-for-Food’ programme which symbolized that it could not endure the economic sanctions anymore in May 1996, after various sorts of unnecessary delay.⁶¹¹

Thirdly, the execution of non-forcible measures of the UNCSS is comparatively depending on the private will (and coordination) of a few particular member states of the United Nations.

Analyzing the details of the case that are already known, it can be seen that the emergence of this shortcoming is indirectly caused by the privilege of some third parties of territorial disputes. On the one hand, the veto power of the P5 of the UNSC can determine the activation or de-activation of the non-forcible measures of the UNCSS.⁶¹² On the other hand, the total volume of international trade of the P5 can also determine the effectiveness of non-forcible measures, especially the economic sanctions imposed by the UNCSS.⁶¹³ Therefore, while the proper fulfillment of the principle of unanimity may guarantee the adoption of resolutions 1177/1298, in practice the non-forcible measures of the UNCSS could still be failed by the attitude of a few particular states (e.g. the P5).

Taking the Eritrean-Ethiopian War and the annexation of Crimea by Russia in 2014 as

⁶¹¹ UNSC Res 986 (14 April 1995) UN Doc S/RES/986; David Cortright, George A. Lopez & Linda Gerber Stellingwerf, ‘Sanctions’, in Thomas G. Weiss & Sam Daws (eds), *The Oxford Handbook on the United Nations* (OUP 2008) 349 at 350-52 & 357-58.

⁶¹² Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, art 27.

⁶¹³ According to an authoritative statistical data of 2015, the P5 accounted for 48.81% of the total GDP of the world in that year, plus besides Russia (still in the top 20), all the other four states were among the top 10 countries of the total volume of foreign trade, so that if the P5 continue to trade with the states that are being sanctioned, then the negative effect of the sanction is predictable, see Statistic Times, ‘Projected GDP Ranking (2015-2020)’ (07 February 2016) <<http://statisticstimes.com/economy/projected-world-gdp-ranking.php>> accessed 12 June 2016; The CIA World Fact Book, ‘Country Comparison: Exports’ (2016) <<https://www.cia.gov/library/publications/the-world-factbook/rankorder/2078rank.html>> accessed 12 June 2016; The CIA World Fact Book, ‘Country Comparison: Imports’ (2016) <<https://www.cia.gov/library/publications/the-world-factbook/rankorder/2087rank.html>> accessed 12 June 2016.

a combined example. Comparing the nature of the corresponding guilty parties, it can be seen that when facing an ‘unordinary’ state with a special international status, the officials of the United Nations at least need to face three levels of difficulties:

Firstly, Eritrea/Ethiopia were common member states of the United Nations, but Russia was one of the P5. Thus, despite their unilateral acts in practice, the former must welcome the intervention of the United Nations. In contrast, as long as the value of the new territories could meet with the psychological bottom-line of Russia, its veto power would certainly hamstring any hope of activating United Nations authorized non-forcible sanctions.⁶¹⁴

Secondly, Ethiopia was regional powers of the most impoverished continent, and Eritrea was a new state then, but Russia was widely recognized as the qualified successor of a former superpower. Thus, as long as the value of the new territories could meet with the psychological bottom-line of Russia, its resistance against any external intervention would certainly dwarf the resistance of Ethiopia/Eritrea against an arms embargo.⁶¹⁵

Thirdly, Ethiopia/Eritrea were least developed states which had not participated in any military-political alliance, but Russia had a stable sphere of influence which covered a large part of Eastern Europe and Central Asia. In addition, it also had some strong economic allies, such as China which was also a member of the P5 and the second largest economy in the world. Thus, as long as the value of the new territories could meet with the psychological bottom-line of Russia, it certainly had the ability to ensure that half of the entire Eurasia would be reluctant to support any non-forcible sanction.⁶¹⁶

⁶¹⁴ Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, art 27; UNGA Res 68/262 (1 April 2014) UN Doc A/68/262; Somini Sengupta, ‘Russia Vetoes U.N. Resolution on Crimea’ (*The New York Times*, 15 March 2014) <http://www.nytimes.com/2014/03/16/world/europe/russia-vetoes-un-resolution-on-crimea.html?_r=1> accessed 12 June 2016.

⁶¹⁵ The GDP of Russia in 2016 was 128.3 billion US dollars, this let it become the 12th largest economy of the world, yet Iraq in the same year was only the 52nd largest economy, see The World Bank, ‘Gross Domestic Product 2016’ (2017) <<http://databank.worldbank.org/data/download/GDP.pdf>> accessed 20 August 2017.

⁶¹⁶ For a detailed assessment on the grand geopolitical strategy of modern Russia in the region of the former USSR, see e.g. Agnia Grigas, *Beyond Crimea: The New Russian Empire* (Yale University Press 2016) ch 4.

For these various reasons, Ethiopia and Eritrea were punished by the arms embargo imposed by the UNCSS, whilst Russia was merely affected by the unilateral sanctions imposed by few states of the Western Bloc.⁶¹⁷ As the result, while the relevant skirmishes continued to recur, the arms embargo at least made Ethiopia and Eritrea partially restrained their military actions. On the contrary, although it seemed that Russia was eager to improve the relationship between itself and the Western states, it never showed any intention of returning Crimea to Ukraine under a wider economic sanction. Thereby, the political mutual trust that was essential to the improvement of the above bilateral relations could not be decisively promoted.⁶¹⁸

4. Summary.

In summary, the Eritrean-Ethiopian War and the subsequent development of this case have completely exposed multiple shared weaknesses of the non-forcible measures of the UNCSS. Realistically speaking, the non-forcible measures of the UNCSS not only lack in sufficient mandatory power and efficiency, but also lack in the necessary autonomy. Therefore, the United Nations authorized diplomatic/economic sanctions cannot always suppress the resistance of the subjects of territorial disputes, nor can they offset the value of the objects of territorial disputes. Thus, these measures can hardly achieve the predetermined purposes of the UNCSS by themselves. On this account, the parties of the various international disputes in the modern international community would definitely demand the non-forcible measures to be supplemented by other more effective measures. Specifically within the framework of the UNCSS, such a requirement would naturally endow the forcible measures of the UNCSS with the necessary space of performance. According to the outline of this thesis, these are set to be the topic of the next part of this chapter.

5.2 The performance of the forcible measures of the UNCSS in territorial disputes

⁶¹⁷ Zhang Jianping & Nie Wei, 'The Influence of the US-EU Sanction against Russia upon Other Related States' (2014) 396 *Contemporary World* 37 at 38.

⁶¹⁸ Wang Genhua, 'The Difficult Improvement of the US-Russia Relationship' (2017) 1702 *World Affairs* 44 at 44-45.

settlement

5.2.1 The theoretical role and practical records of the United Nations authorized military enforcement actions in territorial disputes settlement

Within the legal system of the UN Charter, which places so much emphasis on the prohibition of the use of force, the United Nations authorized military enforcement actions are one of only two existing legal justifications for the use of force that can be cited by any sovereign state (including non-member states of the United Nations⁶¹⁹).⁶²⁰

In addition, this measure is also the only purely violent sanction that is directly controlled by the UNSC in person⁶²¹. According to the concise wording of chapter 7 of this statute, if the UNSC has confirmed that there is ‘any threat to the peace, breach of the peace, or act of aggression’ in any international dispute, and its decision-makers have enough evidence to believe that ‘measures not involving the use of armed force’ are still not enough for turning the trend of deterioration around, then it may apply ‘such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security’. In details, the specific measures of intervention include demonstration and blockade by air, sea, or land forces of member states of the United Nations, or ‘other operations’, which are described ambiguously.⁶²²

As a result of such an original design, at least realistically speaking, the authoritative institutions of the UNCSS have no other measures available to them that are stricter than United Nations authorized military action.⁶²³ Therefore, as the last resort available

⁶¹⁹ Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, art 2(6).

⁶²⁰ Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, art 51; Matthew C. Waxman, ‘Regulating Resort to Force: Form and Substance of the UN Charter Regime’ (2013) 24(1) EJIL 151 155-56.

⁶²¹ See e.g. Olivier Corten, *The Law Against War: The Prohibition on the Use of Force in Contemporary International Law* (Hart Publishing 2010) ch 6, see especially 311-29.

⁶²² Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, arts 40-42; Admola Abass, *Complete International Law: Text, Cases and Materials* (2nd edn, OUP 2014) 376-91, see especially 386; Bardo Fassbender, *The United Nations Charter as the Constitution of the International Community* (Brill 2009) 86-115; for an opposite viewpoint on the constitutional elements of the UN Charter, see Michael W. Doyle, ‘The UN Charter-A Global Constitution?’ in Jeffrey L. Dunoff & Joel P. Trachtman (eds), *Ruling the World? Constitutionalism, International Law, and Global Governance* (CUP 2009) 113 at 113-15.

⁶²³ Admola Abass, *Complete International Law: Text, Cases and Materials* (2nd edn, OUP 2014) 187

to the United Nations for the maintenance of international peace and security, there is no doubt that military enforcement actions would only be activated in the most serious international crises.⁶²⁴ In turn, although they are the primary cause of most of the international armed conflicts ever since the era of the Peace of Westphalia, territorial disputes have only twice activated this measure in the 70-years-long history of the United Nations.⁶²⁵

1. The first practical records of the United Nations authorized military enforcement actions.

Checking the early history of the UNCSS, the first use of the United Nations authorized military enforcement actions in the context of a territorial dispute took place in the Korean Peninsula in the 1950s.⁶²⁶ Soon after the end of the WWII, on the basis of the secret terms that was concluded during the Yalta Conference, the two superpowers then, namely the USA and the USSR, divided and occupied the Korean Peninsula which used to be a Japanese colony.⁶²⁷ Subsequently, these superpowers respectively supervised the establishment of the two regimes of North Korea and South Korea, with the 38th parallel serving as their line of demarcation. Thereby, the tragic separation of the once united race, nation and culture within the area of the old Kingdom of Korea had been manually created.⁶²⁸

386-91.

⁶²⁴ Adam Roberts, 'The Use of Force: A System of Selective Security', in Sebastian von Einsiedel, David M. Malone & Bruno Stagno Ugarte (eds), *The UN Security Council in the 21st Century* (Lynne Rienner 2015) 349 at 355-56.

⁶²⁵ Kalevi J. Holsti, *Peace and War: Armed Conflicts and International Order, 1648-1991* (CUP 1991) 306-11, see especially 307-10.

⁶²⁶ With regard to the general background of the Korean War, see Max Hastings, *The Korean War* (Simon & Schuster 2010) ch 1 (Western viewpoint); Wang Shuzeng, *Far East: The Korea War* (People's Literature Publishing House 2009) ch 1 (Chinese viewpoint); for a comprehensive discussion on the application of the UNCSS in the Korean War, see William Stueck, 'The United Nations, the Security Council, and the Korean War', in Vaughan Lowe, Adam Roberts, Jennifer Welsh & Dominik Zaum (eds), *The United Nations Security Council and War: the Evolution of Thought and Practice since 1945* (OUP 2008) 265 at 266-79.

⁶²⁷ From 936 A.D. to 1910 A.D., Korea was always under the control of the unified Kingdom of Goryeo/Korea, see Charles Holcombe, *A History of East Asia: From the Origins of Civilization to the Twenty-First Century* (CUP 2011) 142-48.

⁶²⁸ The Problem of the Independence of Korea, UNGA Res 112 (II) (adopted 14 November 1947) UN Doc A/RES/112 (II); The Problem of the Independence of Korea, UNGA Res 195 (III)

However, under the pressure of the ideological and strategic competition between the Eastern and the Western Blocs during the Cold War, such a careless arrangement was inherently unstable and indeed lasted for less than 5 years. After the establishment of the two antagonistic governments, the Kim Il-Sung regime and the Syngman Rhee regime immediately claimed that they would ‘recover’ all the territories of their opponent in separate announcements. Therefrom, these twin brothers started a series of cross-border armed skirmishes which were accompanied by an intense arms race, and gradually fell into the unpredictable abyss of a civil war.⁶²⁹ In the early morning of June 25th of 1950, the well-prepared North Korean People’s Army suddenly attacked and totally defeated the chaotic resistance of the unprepared and ill-trained South Korean Army. Then, while planting the responsibility of provocation on the South Koreans in retreat, the government of North Korea openly declared that it shall ‘complete the re-unification of our motherland before the 5th anniversary of the Liberation Day on August 15th’.⁶³⁰

Fortunately, although it was ruthlessly tested by an unexpected large-scale war, but the young UNSC and the UNCSS under its command were not frozen by the veto power of the P5 at this time. In protest at the fact that the Chinese seat was still being occupied by the nationalist government of China which had recently lost the Chinese Civil War, the Soviet representative was deliberately boycotting the voting procedure of the UNSC in the midyear of 1950.⁶³¹ Thanks to this special condition, this institution quickly came to a unanimous response, and adopted an incredibly tough attitude towards the North Koreans:

Firstly, on the very evening when the then Secretary-General of the United Nations

(adopted 12 December 1948) UN Doc A/RES/195 (III); Charles Holcombe, *A History of East Asia: From the Origins of Civilization to the Twenty-First Century* (CUP 2011) 295-300; Adria n Buzo, *The Making of Modern Korea* (2nd edn, Routledge 2007) ch 3.

⁶²⁹ Adrian Buzo, *The Making of Modern Korea* (2nd edn, Routledge 2007) 67-76.

⁶³⁰ Roy E. Appleman, *South to the Naktong, North to the Yalu* (Office of the Chief of Military History 1961) 21; Wang Shuzeng, *Far East: The Korean War* (People’s Literature Publishing House 2009) ch 1.

⁶³¹ David L. Bosco, *Five to Rule Them All: The UN Security Council and the Making of the Modern World* (OUP 2009) 46-54.

received the urgent report about the Korean situation that was passed on to him by the US officials, the UNSC passed the admonitory resolution 82. In this resolution, it urged the Kim Il-Sung regime to both stop the invasion which had formed ‘a breach of the peace’, and to retreat the North Korean Army back to its territories to the north of the 38th parallel. Undoubtedly, such a purely diplomatic sanctionative measure could not achieve the predetermined purposes of the UNCSS in the field of territorial disputes. As it had just acquired a significant victory, North Korea chose to turn a deaf ear to ‘oral criticism’, and its army reached the suburbs of Seoul on June 26th.⁶³²

Secondly, concerning the facts that the Kim Il-Sung regime ‘neither ceased hostilities nor withdrawn their armed forces to the 38th parallel’, the UNSC successively passed the complementary resolution 83 on June 27th. In this resolution, it recommended the member states of the United Nations to ‘furnish such assistance to the Republic of Korea as may be necessary to repel the armed attack and to restore international peace and security in the area’. Thereby, the preparatory procedure for gathering necessary resources for the ‘urgent military measures’ was preliminarily activated.⁶³³ Undoubtedly, mobilizing large-scale armed forces on an inter-continental level takes time, so that the North Koreans still could not feel the power of the United Nations authorized military enforcement actions at that moment. On June 28th, the North Korean People’s Army captured Seoul, and later on July 5th, it even started to exchange fire with the advance task force of the American army.⁶³⁴

Thirdly, facing now the facts that the army of the Kim Il-Sung regime was penetrating deeper into the territories of South Korea, on July 7th the UNSC passed the more

⁶³² UNSC Res 82 (25 June 1950) UN Doc S/RES/82; Allan R. Millett, *The Korean War, Volume 1* (University of Nebraska Press 2000) 244-49.

⁶³³ UNSC Res 83 (27 June 1950) UN Doc S/RES/83; Cablegram from the United Nations Commission on Korea to the Secretary-General transmitting a report concerning the military situation (26 June 1950) UN Doc S/1507; Max Hastings, *The Korean War* (Simon & Schuster 2010) ch 3.

⁶³⁴ Early on the same day when the UNSC passed resolution 83, the then president of the US, Truman, had already ordered the US navy & air force to enter into the battlefield of Korea, and the Battle of Osan on July 5th of 1950 was just the first battle of the ground-force of the US army, see Max Hastings, *The Korean War* (Simon & Schuster 2010) 18-22; Bevin Alexander, *Korea: The First War We Lost* (Hippocrene Books 2004) 55-62.

controversial resolution 84. In this resolution, it authorized the USA to take the responsibility of commanding ‘military forces and other assistance pursuant to the aforesaid Security Council resolutions.....designate the commander of such forces.....use the United Nations flag in the course of operations against North Korean forces’. Thereby, the pirated ‘United Nations Forces’ which not only lacked in the supervision of the affiliated organs of the United Nations,⁶³⁵ but also lacked in the command of the United Nations Military Staff Committee, was preliminarily invented.⁶³⁶ Nevertheless, no matter the ‘United Nations Forces’ were under the control of which third party, it was clear that the Kim Il-Sung regime was no longer unstoppable. At the end of July, the main units of the ‘United Nations Forces’ arrived at South Korea, and by early August, the North Korean People’s Army was stopped by its opponents at the Pusan Perimeter.⁶³⁷

Consequently, relying on the comprehensive superiority of the nearly 900,000 soldiers sent by 17 participating states together, the ‘United Nations Forces’ overwhelmed the exhausted North Korean People’s Army in less than 3 months. On such a basis, this coalition had also largely recovered the entire original area of South Korea.⁶³⁸

⁶³⁵ Resolution 84 of the UNSC excessively asked the USA to ‘provide the Security Council with reports as appropriate on the course of action taken under the unified command’, but the combat reports of the ‘United Nations Forces’ had never been submitted to any subsidiary organs of the United Nations, and the United Nations Command which was required to be dissolved by the resolution of the UNGA was still lively acting by the side of the front line between North Korea and South Korea, see UNSC Res 84 (7 July 1950) UN Doc S/RES/84; Question of Korea, UNGA Res 3390 (XXX) (adopted 18 November 1975) UN Doc A/RES/3390 (XXX); Won Gon Park, ‘The United Nations Command in Korea: Past, Present, and Future’ (2009) 21 (4) Korean Journal of Defense Analysis 485 at 485-99; Li Tiecheng & Deng Xuijie, *A Short Course on the United Nations* (Peking University Press 2015) 53.

⁶³⁶ UNSC Res 84 (7 July 1950) UN Doc S/RES/84; David L. Bosco, *Five to Rule Them All: The UN Security Council and the Making of the Modern World* (OUP 2009) 55-57; William Stueck, ‘The United Nations, the Security Council, and the Korean War’, in Vaughan Lowe, Adam Roberts, Jennifer Welsh & Dominik Zaum (eds), *The United Nations Security Council and War: the Evolution of Thought and Practice since 1945* (OUP 2008) 265 at 267-71; Li Tiecheng & Deng Xuijie, *A Short Course on the United Nations* (Peking University Press 2015) 51.

⁶³⁷ The ‘United Nations Forces’ which had already started to intervene the battle in Korea were mainly United States armed forces stationed in Japan and the South Korean Army which were defending their motherland, plus a few British Army which was stationed in Hong Kong then, which was the 27th Infantry Brigade of the United Kingdom, see Jeffrey Grey, *The Commonwealth Armies and the Korean War: An Alliance Study* (Manchester University Press 1988) 42-45 & 192-93; with regard to the details of the allied forces of 17 countries, see United States Forces Korea, ‘United Nations Command’ (12 March 2013) <<http://www.usfk.mil/About/United-Nations-Command/>> accessed 15 July 2016.

⁶³⁸ Wada Haruki, *The Korean War: An International History* (Rowman & Littlefield Publishers 1991) 191

Afterwards, although the joint entry into battle of the ‘volunteer army’ of China and the USSR turned the Korean War into a direct conflict among the P5, but the frontline (later the demarcation line) between North Korea and South Korea was gradually stabilized.⁶³⁹ With the signing of the Korean Armistice Agreement on July 27th of 1953, South Korea successfully retained most of its inherent territories, and the overall peace between the two sides along the 38th parallel was restored as well. Until the present 2010s, this situation has been persisted for more than half a century, with merely occasional skirmishes between minor special forces on one hand, and peace negotiations between the two parties that have never been completely called-off, on the other.⁶⁴⁰ In other words, judging by the two above-mentioned purposes, it can be said that the intervention of the UNCSS upon the Korean War was generally successful.

2. The second practical records of the United Nations authorized military enforcement actions.

With the escalation and deadlock of the Korean War, the representative of the USSR returned to his permanent seat, and since then the UNSC has been trapped in a state of paralysis caused by the abuse of the veto power. As a result, the second occasion on which the United Nations authorized military enforcement action took place did not occur until the 1990s.⁶⁴¹ As described above, the non-forcible sanctions failed to force the Iraqi army to retreat from the territories of Kuwait, merely serving to endow the

2013) 99-122; Max Hastings, *The Korean War* (Simon & Schuster 2010) ch 5.

⁶³⁹ The headquarter of the ‘United Nations Forces’ always could not clearly determine the title, size, purpose and commander of the Chinese army before spring of 1950, whilst the fact the Soviet air force stationed in the Far East had participated in the Korean War was only revealed in the 1990s, see UNSC Res 84 (7 July 1950) UN Doc S/RES/84; Wada Haruki, *The Korean War: An International History* (Rowman & Littlefield Publishers 2013) 123-32; James L. Stokesbury, *A Short History of the Korean War* (Harper Perennial 1990) 182; Wang Shuzeng, *Far East: The Korean War* (People’s Literature Publishing House 2009) chs 2-4; Max Hastings, *The Korean War* (Simon & Schuster 2010) chs 6-7.

⁶⁴⁰ The total area of the Korean Peninsula is slightly smaller than the area of the UK, and its total population is approximately 75 million, but North Korea and South Korea have a combined standing army of 1.7 million, plus about 11 million personnel in reserve, see The International Institute of Strategic Studies (IISS), *The Military Balance 2016* (Routledge 2016) ch 6; Wada Haruki, *The Korean War: An International History* (Rowman & Littlefield Publishers 2013) 293-99 & 301-303.

⁶⁴¹ Malcolm Shaw, *International Law* (7th edn, CUP 2014) 910; Adam Roberts & Dominik Zau m, *Selective Security: War and the United Nations Security Council since 1945* (Routledge 2008) 17-23 & 31-46.

invaders with a ‘window of opportunity’ to stabilize their newly conquered territories.⁶⁴² Fortunately, from the Operation Desert Shield to the Operation Desert Farewell, the United Nations authorized military enforcement actions rapidly liberated all the territories of Kuwait in just three months. In view of the outstanding importance of this case for research on the contemporary UNCSS and territorial disputes, the author plans to discuss it in detail in the following case study section, so it would be inappropriate to fully review it here. Nonetheless, it is still quite easy to notice that during the period of the Gulf War, the United Nations military enforcement actions had at least made two remarkable achievements-

Firstly, although to a large extent, it was the successive economic sanctions which diminished the potential ability of Iraq to effect territorial expansion, the military enforcement action still directly wrecked the spearhead of the Saddam regime built for territorial expansion. During the relatively short 42-days-long Gulf War, the Coalition annihilated 38 divisions of the Iraqi Army, and completely destroyed the defensive system deployed in Southern Iraq.⁶⁴³ Under this circumstance, even if the mainland of Iraq was untouched, it had fallen into the awkward situation of being an abnormal state without basic national defence ability, making it much more difficult for it actively to threaten Kuwait again.

Secondly, although Iraq only apologized to the government of Kuwait at the end of 2002, the so-called ‘territorial dispute’ was silently disappeared before then. During the 13-year-long period from the withdrawal of the Coalition to the collapse of the Saddam regime, the Iraqi officials merely dared to curse Bush and the United Nations, but they had lost the courage to openly claim that Kuwait was a part of its inherent territories.⁶⁴⁴

⁶⁴² For an overview of the Gulf Crisis before the forcible intervention of the Coalition Forces, see also James Cockayne & David M. Malone, ‘The Security Council and the 1991 and 2003 Wars in Iraq’, in Vaughan Lowe, Adam Roberts, Jennifer Welsh & Dominik Zauf (eds), *The United Nations Security Council and War: the Evolution of Thought and Practice since 1945* (OUP 2008) 384 at 385-88; Majid Khadduri & Edmund Ghareeb, *War in the Gulf, 1990-91: The Iraq-Kuwait Conflict and Its Implications* (OUP 2001) 122-31 & ch 9.

⁶⁴³ William Thomas Allison, *The Gulf War, 1990-91* (Palgrave 2012) chs 6-7.

⁶⁴⁴ David M. Malone & Poorvi Chitalkar, ‘Iraq’, in Sebastian von Einsiedel, David M. Malone & Bruno Stagno Ugarte (eds), *The UN Security Council in the 21st Century* (Lynne Rienner 2019) 20

Under this circumstance, while Iraq and Kuwait did not restart their peace negotiation or sign any agreement of demarcation after the initial armed conflict, the sovereignty and territorial integrity of Kuwait was still tacitly saved from further damage.

From the above Discussion, it can be seen that judging by the afore-mentioned two purposes, the performance of the UNCSS in the Gulf War was still up to standard. After all, following the unilateral use of force by the Saddam regime, this mechanism did restore the ‘international peace and security’ of the region around the Persian Gulf. Regretfully, however, as mentioned in the opening paragraphs of this section, while the Korean War and the Gulf War are two famous cases, they are also isolated ones. Despite them, although the UNSC has authorized certain third parties to use force in other international disputes, such as Somalia and Libya, but the military enforcement actions against ‘acts of aggression by a state’ have never been reactivated to the present time.⁶⁴⁵ Besides, by examining the relevant background, it also can be seen that no matter the cases of Somalia and Libya, or even the case of Former Yugoslavia, none of them are naturally land-territory disputes between member states of the United Nations.⁶⁴⁶

3. The inherent disadvantages of the United Nations authorized military enforcement actions in respect to territorial disputes.

In short, with regard to the accomplishment of the two predetermined purposes of the UNCSS in territorial disputes settlement, the effect of the United Nations authorized military enforcement actions has been comparatively significant. However, even such a rather useful measure is still not perfect, the fact that it has only been applied twice in over 70 years, is clearly not inadequate given that territorial disputes can be found

15) 551 at 555-57; David Cortright, David A. Lopez & Linda Gerber-Stellingwerf, ‘The Sancti ons Era: Themes and Trends in UN Security Council Sanctions since 1990’, in Vaughan Lowe, Adam Roberts, Jennifer Welsh & Dominik Zaum (eds), *The United Nations Security Council a nd War: the Evolution of Thought and Practice since 1945* (OUP 2008) 205 at 207-10.

⁶⁴⁵ Antonio Cassese, *International Law* (2nd edn, OUP 2005) 346-50.

⁶⁴⁶ Malcolm Shaw, *International Law* (7th edn, CUP 2014) 901 & 908-13; Adam Roberts, ‘The Use of Force: A System of Selective Security’, in Sebastian von Einsiedel, David M. Malone & Bruno Stagno Ugarte (eds), *The UN Security Council in the 21st Century* (Lynne Rienner 20 15) 349 at 355-57.

everywhere around the world. Tracking the causes of this shortage from the realistic perspective, it can be seen that in addition to the unique status of this measure as an ‘ace card’, its other features have also hindered it from making more of a contribution in territorial disputes:

Firstly, the pre-conditions of the application of the United Nations authorized military enforcement actions are too hard to meet.

Unlike other measures within the framework of the UNCSS, military enforcement actions usually involve the transnational combat deployment of thousands of troops and their equipment over a fairly lengthy period of time. Needless to say, no ordinary state can easily provide this grade of ‘Global Rapid Response Forces’.⁶⁴⁷ In addition, given that territorial disputes usually involve abundant values, complex situations and difficult compromises, the required strength of the armed forces prepared for this particular issue could be even more astonishing-

Taking the USA which is widely recognized to have the strongest army as an example. The Korean War and the Gulf War led to the inter-continental maneuver of 697000 and 302000 US armed forces respectively, and more than 10 other related states had also sent hundreds of thousands of servicemen together. In comparison, the total strength of the United Nations peacekeeping forces during the financial year 2015-16 was merely 101600 soldiers from 121 countries (including just 68 Americans).⁶⁴⁸ Undoubtedly, since the relevant operations in respect to territorial disputes had limited connection with their private interests, it was quite hard for any third party to willingly provide such

⁶⁴⁷ Until the 2010s, the only state in the modern international community which had had the ability to perform transcontinental strategic transportation was the USA, and the strategic transportation and regular combat capacity of the allies of the USA were largely depending on the logistic support of the USA at the time, whilst Russia had already lost the ability for supporting strategic military operation of the USSR for over 20 years, see The International Institute of Strategic Studies (IISS), *The Military Balance 2016* (Routledge 2016) chs 2 & 10.

⁶⁴⁸ United States Forces Korea, ‘United Nations Command’ (12 March 2013) <<http://www.usfk.mil/About/United-Nations-Command>> accessed 15 July 2016; The Nation-Master, ‘Gulf War Coalition Forces: Countries Compared’ (25 March 2011) <<http://www.nationmaster.com/country-info/stats/Military/Gulf-War-Coalition-Forces>> accessed 6 August 2016; United Nations Department of Peacekeeping Operations, ‘Contributors to United Nations Peacekeeping Operations’ (31 July 2016) <http://www.un.org/en/peacekeeping/contributors/2016/jul16_1.pdf> accessed 8 August 2016.

a huge army to the UNCSS.

Secondly, the mid-term expenses of the United Nations authorized military enforcement actions are too high to bear.

Unlike other measures within the framework of the UNCSS, military enforcement actions usually involve the transnational financial costs of thousands of troops and their equipment over a fairly lengthy period of time. As an ancient Chinese proverb says, ‘a roar of the cannon means the waste of tons of gold’, no ordinary state can comfortably share this grade of budget.⁶⁴⁹ In addition, given that territorial disputes usually involve abundant values, complex situations and difficult compromises, the required amount of the mid-term expenses prepared for this particular issue could be even more astonishing-

Taking the USA which is widely recognized to have the highest national strength as an example again. The Korean War and the Gulf War cost the US government two huge sums of 341 billion and 102 billion US dollars (2011 dollars) respectively. In comparison, the total budget of the 16 United Nations peacekeeping operations of the financial year 2015-16 was merely 8.27 billion US dollars (the USA itself accounted for 28.38% of this cost⁶⁵⁰).⁶⁵¹ Undoubtedly, since the relevant operations in respect to territorial disputes had limited connection with their private interests, it was also quite hard for any third party to willingly pay such a huge number of military expenses for

⁶⁴⁹ E.g. The US Department of Defense had estimated that the total costs of the Gulf War was about 61 billion USD (1990 International Dollars), in which Japan, Germany and many Middle East states which had abundant oil reserves shared about 52 billion USD-in other words, those states that were willing to undertake the military expenditure of the USA were mostly defeated countries of the WWII, or some Arabic countries which may have a destiny that would be as same as the fate of Kuwait, and all of them were either developed countries with a high income or oil-producing countries, see The CNN Library, ‘Gulf War Fast Facts’ (CNN, 2 August 2016) <<http://edition.cnn.com/2013/09/15/world/meast/gulf-war-fast-facts/>> accessed 8 August 2016.

⁶⁵⁰ Report of the Secretary-General, ‘Implementation of General Assembly resolutions 55/235 and 55/236’ (28 December 2015) UN Doc A/70/331/Add.1.

⁶⁵¹ Stephen Daggett, ‘Costs of Major U.S. Wars’ (CRS Report for Congress, 29 June 2010) <<https://fas.org/sgp/crs/natsec/RS22926.pdf>> accessed 8 August 2016; United Nations Department of Peacekeeping Operations, ‘United Nations Peacekeeping Operations: Fact Sheet’ (30 June 2016) <<http://www.un.org/en/peacekeeping/documents/bnote0616.pdf>> accessed 8 August 2016.

the UNCSS.

Thirdly, the subsequent hidden troubles left by the United Nations authorized military enforcement actions are too severe to accept.

Unlike other measures within the framework of the UNCSS, military enforcement actions usually involve the transnational coercive punishment executed by thousands of armed personnel and their equipment over a fairly long period of time. Needless to say, no ordinary state can sincerely submit itself to this grade of ‘Big Stick Diplomacy (as described by Roosevelt)’.⁶⁵² In addition, given that territorial disputes usually involve abundant values, complex situations and difficult compromises, the subsequent hidden troubles left by the process of handling this particular issue could be even more astonishing-

For example, it is true that the major units of the ‘United Nations Command’ have already retreated from the peninsula, and there is no more large-scale armed conflict between South Korea and North Korea. Nevertheless, both parties are still claiming all the territories of each other. Similarly, although Iraq had stopped to publicly maintain its stance on Kuwait, the two parties only resumed official state visits between them after the collapse of the Saddam regime.⁶⁵³ Of course, these hidden troubles could not negatively influence the original effect of the sanctions imposed by the UNCSS. However, since decades later after the outbreak of the original armed conflicts, these dilemmas were still existing in the relevant regions, they might eventually affect the faith of the relevant parties on the UNCSS.

⁶⁵² Although he lost dozens of elite divisions in just one single armed conflict, but in his speech for troop withdrawal of February 26th of 1991, Saddam Still insisted on the statement that the act of invasion of Iraq was a ‘fight against aggression’, and the Coalition Forces were an ‘ugly’ object which was dominated by the USA, see Saddam Hussein, ‘Speech on the “withdrawal” of the Iraqi Army from Kuwait’ (*The New York Times*, 26 February 1991) <<http://www.nytimes.com/1991/02/27/world/war-gulf-iraqi-leader-saddam-hussein-s-speech-withdrawal-his-army-kuwait.html?pagewanted=all>> accessed 10 August 2016.

⁶⁵³ Guo Xuetang, *All for One, One for All-A research on the Collective Security System* (Shanghai People’s Publishing House 2010) 161-63 & 177-78.

4. Summary.

In summary, the United Nations authorized military enforcement actions are an option for settling territorial disputes that could provoke mixed feelings among the parties tasked with enforcing them or enduring them. They are completely capable of achieving the predetermined purposes of the UNCSS, but their relatively inferior price-performance ratio has undermined the frequency and the prospect of their application. Therefore, the international community certainly need to explore new forcible measures within the framework of the UNCSS, and this has paved a way for the next research topic of this chapter-the United Nations peacekeeping operations.

5.2.2 The theoretical role and practical records of the United Nations peacekeeping operations in territorial disputes settlement

As is well-known in the relevant scholarship, the concept of United Nation peacekeeping operations does not exist in the UN Charter. Thus, they are not similar to any other measure for the settlement of international disputes that have been recorded by this Statute, and which have been discussed hitherto in this thesis.⁶⁵⁴ According to the standard definition given by ‘An Agenda for Peace’, the United Nations peacekeeping operations are indeed ‘the deployment of an United Nations presence in the field, hitherto with the consent of all the parties concerned, normally involving United Nations military and/or police personnel and frequently civilians as well. Peace-keeping is a technique that expands the possibilities for both the prevention of conflict and the making of peace’. More concisely, the former Secretary-General of the United Nations, Hammarskjold, once compared this new-born object which hovered between the two key words of ‘war and peace’ to ‘operation chapter six and a half’.⁶⁵⁵ Realistically speaking, given that their origin and features are different from the other

⁶⁵⁴ Alex J. Bellamy, Paul D. Williams & Stuart Griffin, *Understanding Peacekeeping* (2nd edn, Polity 2010) 81-88; Hitoshi Nasu, *International Law on Peacekeeping: A Study of Article 40 of the UN Charter* (Brill 2009) 67-69.

⁶⁵⁵ Report of the Secretary-General, ‘An Agenda for Peace’ (31 January 1992) UN Doc A/47/2 77-S/24111, para 20; John F. Hillen III, ‘UN Collective Security: Chapter Six and A Half’ (1994) 24 (1) *Parameters* 27 at 28.

measures of the UNCSS, the United Nations peacekeeping operations and their ‘Blue Helmets’ do enjoy many advantages from their late-development:

On one hand, this method is the only measure within the entire UNCSS that is purely based upon the existing experiences and lessons. In addition, unlike the ‘United Nations Forces’, the evolution of the ‘Blue Helmets’ in the past several decades also has not been bothered by the complicated procedure of amendment of the UN Charter.⁶⁵⁶ On the other hand, this method is the only measure within the entire UNCSS that has been able to merge violent and non-violent elements. In addition, in view of the tragic paralysis of the ‘United Nations Forces’ in the past several decades, it can be said that the ‘Blue Helmets’ have already become the de facto ‘ultimate ace’ of the UNCSS under normal circumstances.⁶⁵⁷

Therefore, the United Nations peacekeeping operations would surely be used to constrain those severe international disputes, and the international community would certainly put great expectations on their effectiveness.⁶⁵⁸ Specifically in terms of territorial disputes, by synthesizing the viewpoints of different scholars, it can be seen that the relevant cases may successively encounter with three generations of United Nations peacekeeping operations. They are the traditional peacekeeping operations of the era of the Cold War, the complex (or ‘multi-dimensional’) peacekeeping operations that were active around the 1990s and the coercive (or ‘robust’) peacekeeping operations that have been active since the beginning of the 21st century.⁶⁵⁹

⁶⁵⁶ See e.g. Lu Jianxin, Wang Tao & Zhou Hui, *A Study on International Peacekeeping* (PLA National Defence University Press 2015) 28-39 & 72-73.

⁶⁵⁷ See e.g. Lu Jianxin, Wang Tao & Zhou Hui, *A Study on International Peacekeeping* (PLA National Defence University Press 2015) 25-26.

⁶⁵⁸ Alex J. Bellamy, Paul D. Williams & Stuart Griffin, *Understanding Peacekeeping* (2nd edn, Polity 2010) 52-56.

⁶⁵⁹ Concerning the delimitation of the generations of the United Nations peacekeeping operation s, there are numerous disputed norms in the Eastern & Western academia of international law i n present days, most of the Chinese scholars support the relatively conservative viewpoint that this method has only two generations, whilst among the Western scholars, there are even extre me viewpoint that there are five generations of peacekeeping operations-for the purposes of clar ifying the individual viewpoint of this thesis and giving prominence to those key monographs/c ases, here the author will intentionally use the norm which claims that there are three generati ons of peacekeeping operations, see e.g. Kai Michael Kenkel, ‘Five Generations of Peace Oper

1. The theoretical role and practical records of the traditional United Nations peacekeeping operations.

The first United Nations peacekeeping operation deployed by this organisation was the UNTSO sent by the UNSC to the region of Palestine in 1948. However, the first United Nations peacekeeping force deployed by this organisation was the UNEF I sent by the UNSC to the Suez Canal in 1956. Together, these two famous territorial disputes defined the basic features of the traditional peacekeeping operations.⁶⁶⁰ According to the personal explanation of Hammarskjold, when accomplishing the ‘peace missions’ assigned by the UNSC or the UNGA, the traditional United Nations peacekeeping operations must also comply with three interrelated principles:⁶⁶¹

The first norm was the principle of consent, which meant that the participants of the traditional peacekeeping operations should ‘(be) deployed with the consent of the main parties of the conflicts’. In addition, they also needed to seek ‘the necessary freedom of action, both political and physical, to carry out (their) mandated tasks’. Meanwhile, they must strive to avoid ‘becoming a party to the conflict, and being drawn towards enforcement action, and away from its fundamental role of keeping the peace’.⁶⁶²

The second norm was the principle of impartiality, which meant that the participants of the traditional peacekeeping operations should ‘be impartial in their dealings with the parties to the conflict, but not neutral in the execution of their mandate’. In addition,

ations: From the “Thin Blue Line” to “Painting a Country Blue” ’ (2013) 56 (1) Rev. Bras. Polít. Int. 122 at 125-37; Li Dazhong, *UN Peacekeeping: Types and Challenges* (Xiuwei Information Tech. Press 2011) 61-72; Michael W. Doyle & Nicholas Sambanis, ‘Peacekeeping Operations’, in Thomas G. Weiss & Sam Daws (eds), *The Oxford Handbook on the United Nations* (OUP 2008) 323 at 324-34; Simon Chesterman, Ian Johnstone & David M. Malone, *Law and Practice of the United Nations: Documents and Commentary* (2nd edn, OUP 2016) 320-43.

⁶⁶⁰ Marrack Goulding, ‘The Evolution of United Nations Peacekeeping’ (1994) 69 (3) International Affairs 451 at 452-53.

⁶⁶¹ For an overall introduction of the three basic principles of the United Nations peacekeeping operations, see e.g. United Nations Department of Peacekeeping Operations & United Nations Department of Field Support, ‘United Nations Peacekeeping Operations: Principles and Guidelines’ (2008) 31-35 <http://www.un.org/en/peacekeeping/documents/capstone_eng.pdf> accessed 12 August 2016; Paul F. Diehl & Alexandru Balas, *Peace Operation* (2nd edn, Polity 2014) 6-8.

⁶⁶² United Nations Department of Peacekeeping Operations, ‘Principles of UN Peacekeeping’ <<http://www.un.org/en/peacekeeping/operations/principles.shtml>> accessed 20 August 2016.

they also needed to seek ‘not (to) condone actions by the parties that violate the undertakings of the peace process or the international norms and principles that a United Nations peacekeeping operation upholds’. Meanwhile, they must strive to avoid ‘(undermining) the peacekeeping operation’s credibility and legitimacy, that may lead to a withdrawal of consent for its presence by one or more of the parties’.⁶⁶³

The third norm was the principle of self-defence, which meant that the participants of the traditional peacekeeping operations should ‘use force at the tactical level, with the authorization of the Security Council, if acting in self-defence and defence of the mandate’. In addition, they also needed to seek ‘(to) deter forceful attempts to disrupt the political process, protect civilians under imminent threat of physical attack, and/or assist the national authorities in maintaining law and order’. Meanwhile, they must strive to avoid ‘(negative) political implications and.....unforeseen circumstances’.⁶⁶⁴

Analyzing the above information, it could be found out that the traditional peacekeeping operations were merely a type of forcible method which was discreet in words and deed. On the one hand, this measure laid extra emphasis on separating those parties which were in a stalemate, so as to reduce the risk of worsening the related international disputes and increase the probability of resolving them. On the other hand, the traditional peacekeeping operations would not directly take the responsibilities of punishing the individuals, political groups or states. Thus, they could hardly suppress the settled will of the various parties as driven by their realistic national interests. Besides, since it did not have the coerciveness similar to that of the United Nations military enforcement actions, this measure could not guarantee that it would restrain severe international disputes, including territorial disputes.⁶⁶⁵

As a result, from 1948 to 1978, only thirteen traditional peacekeeping operations were

⁶⁶³ United Nations Department of Peacekeeping Operations, ‘Principles of UN Peacekeeping’ <<http://www.un.org/en/peacekeeping/operations/principles.shtml>> accessed 20 August 2016.

⁶⁶⁴ United Nations Department of Peacekeeping Operations, ‘Principles of UN Peacekeeping’ <<http://www.un.org/en/peacekeeping/operations/principles.shtml>> accessed 20 August 2016.

⁶⁶⁵ Alan James, *Peacekeeping in International Politics* (Macmillan 1990) 1; Alex J. Bellamy, Paul D. Williams & Stuart Griffin, *Understanding Peacekeeping* (2nd edn, Polity 2010) 173-74.

initiated by the United Nations, followed by a long gap from 1979 to 1987.⁶⁶⁶ Meanwhile, although the initial two traditional peacekeeping operations did have a close connection with territorial disputes, none of them could independently ‘maintain or restore international peace and security’⁶⁶⁷-

For instance, the UNEF I was deported by the Nasser regime of Egypt, invoking the principle of consent, so that it failed to prevent the outbreak of the ‘Six-Day War’ and the consequent change of control of the Sinai Peninsula.⁶⁶⁸ Moreover, limited by the size of military observer groups or the arms of ‘security forces’, the UNTSO, the UNMOGIP and the UNSF silently viewed every Arab-Israeli War, Indo-Pakistani War and the occupation of West Papua by Indonesia. Ultimately, they did not fulfil their simple function of ‘supervising the ceasefire’, and they did not do much to prevent changes in the de facto control of Palestine, Kashmir and the island of New Guinea, respectively.⁶⁶⁹ More ironically, the only traditional peacekeeping operation which had successfully safeguarded the sovereignty and territorial integrity of a member state of the United Nations was the ONUC. However, this case was neither a ‘standard’ territorial dispute in the context of this thesis, nor a peaceful issue in which the peacekeepers had not been successively authorized to resort to force in the territories of

⁶⁶⁶ Vaughan Lowe, Adam Roberts, Jennifer Welsh & Dominik Zaum (eds), *The United Nations Security Council and War: the Evolution of Thought and Practice since 1945* (OUP 2008) app 1.

⁶⁶⁷ For a detailed assessment of these cases, see e.g. Andrew Theobald, ‘The United Nations Truce Supervision Organization (UNTSO)’, in Joachim Koops, Norrie Macqueen, Thierry Tardy & Paul D. Williams (eds), *The Oxford Handbook of United Nations Peacekeeping Operations* (OUP 2015) 121 at 123-30; Christy Shucksmith & Nigel D. White, ‘United Nations Military Observer Group in India and Pakistan (UNMOGIP)’, in Joachim Koops, Norrie Macqueen, Thierry Tardy & Paul D. Williams (eds), *The Oxford Handbook of United Nations Peacekeeping Operations* (OUP 2015) 133 at 135-40.

⁶⁶⁸ Paul D. Diehl, ‘First United Nations Emergency Force (UNEF I)’, in Joachim Koops, Norrie Macqueen, Thierry Tardy & Paul D. Williams (eds), *The Oxford Handbook of United Nations Peacekeeping Operations* (OUP 2015) 144 at 146-51.

⁶⁶⁹ Andrew Theobald, ‘The United Nations Truce Supervision Organization (UNTSO)’, in Joachim Koops, Norrie Macqueen, Thierry Tardy & Paul D. Williams (eds), *The Oxford Handbook of United Nations Peacekeeping Operations* (OUP 2015) 121 at 123-30; Christy Shucksmith & Nigel D. White, ‘United Nations Military Observer Group in India and Pakistan (UNMOGIP)’, in Joachim Koops, Norrie Macqueen, Thierry Tardy & Paul D. Williams (eds), *The Oxford Handbook of United Nations Peacekeeping Operations* (OUP 2015) 133 at 135-40; Norrie Macqueen, ‘United Nations Yemen Observation Mission (UNYOM)’, in Joachim Koops, Norrie Macqueen, Thierry Tardy & Paul D. Williams (eds), *The Oxford Handbook of United Nations Peacekeeping Operations* (OUP 2015) 171 at 173-76.

Congo.⁶⁷⁰

In short, the past history has clearly proved that the traditional peacekeeping operations cannot guarantee to achieve the predetermined purposes of the UNCSS. In fact, as described in the previous sections, even the UNMEE of the early 21st century could no longer succeed in ‘supervising the ceasefire’ after it had lost the consent of the weaker party of the relevant case. When facing the test imposed by territorial disputes, therefore, the traditional peacekeeping operations are not enough to ‘maintain or restore international peace and security’. But then, it is also the realization of this that eventually led to the development of new types of United Nations peacekeeping operations in the following decades.

2. The theoretical role and practical records of the complex United Nations peacekeeping operations.

Entering the 1990s, the end of the Cold War allowed the UNSC to temporarily regain its vigor, whilst the collapse of the Yalta System also gave plenty of opportunities for the extensive use of United Nations peacekeeping operations. Using the invaluable lessons learned from over 10 peacekeeping operations which were deployed between 1988 and 1992 for reference, the famous ‘An Agenda for Peace’ of Ghali widely reformed the substance of the United Nations peacekeeping operations:⁶⁷¹

On the one hand, concerning the drawbacks evident in the peacekeeping operations before the 1990s, especially their rigorous adherence to the role of monitor and their lack of interest in punishing guilty parties, this document proposed the idea of ‘peacemaking’. According to its original text, the peacekeepers of the new era should ‘(take) action to bring hostile parties to agreement, essentially through such peaceful

⁶⁷⁰ See UNSC Res 161 (21 February 1961) UN Doc S/RES/161; UNSC Res 169 (24 November 1961) UN Doc S/RES/169; Gary Wilson, *The United Nations and Collective Security* (Routledge 2014) 129-30.

⁶⁷¹ Norrie Macqueen, *Peacekeeping and the International System* (Routledge 2006) 150-53; Trudy Fraser, *Maintaining Peace and Security: The United Nations in a Changing World* (Palgrave 2015) 80-82.

means as those foreseen in Chapter VI of the Charter of the United Nations'.⁶⁷²

On the other hand, concerning the brand-new background situation of the 1990s, in which international confrontations were decreasing and domestic tensions were growing, this document proposed the idea of 'peacebuilding'. According to its original text, the peacekeepers of the new era should '(undertake) new tasks as varied as conducting elections, civil administration, repatriating refugees, and protecting humanitarian convoys'.⁶⁷³

Analyzing the above information, it can be found out that the newborn complex peacekeeping operations that were created by 'An Agenda for Peace' had largely re-invented the details of peacekeeping. Specifically speaking, the idea of 'peacemaking' had deepened the jurisdiction of the United Nations peacekeeping operations. In addition, it could also better fit the active, rather than passive nature of the predetermined purposes of the UNCSS, which were 'maintain or restore international peace and security'. Similarly, the idea of 'peacebuilding' had broadened the jurisdiction of the United Nations peacekeeping operations. In addition, comparing to the limited capacity of individual parties, the joint civil administration of multiple third parties definitely could raise the chance of achieving better results by gathering the wisdom and strength of the collective. Thereby, the complex peacekeeping operations were much more popular and fruitful than their predecessor-approximately 35 of them were formed in the 1990s, almost three times more than the traditional peacekeeping operations. Besides, it was noteworthy that this measure was exceptionally active in the process of the domestic 'post-conflict reconstruction' within certain states, such as Cambodia, Haiti and Namibia.⁶⁷⁴

⁶⁷² Report of the Secretary-General, 'An Agenda for Peace' (31 January 1992) UN Doc A/47/2 77-S/24111, paras 20 & 34-37; Alex J. Bellamy, Paul D. Williams & Stuart Griffin, *Understanding Peacekeeping* (2nd edn, Polity 2010) 15.

⁶⁷³ Report of the Secretary-General, 'An Agenda for Peace' (31 January 1992) UN Doc A/47/2 77-S/24111, paras 55-59; Duane Bratt, 'Assessing the success of UN peacekeeping operations' (1996) 3(4) *International Peacekeeping* 64 at 65-81.

⁶⁷⁴ Vaughan Lowe, Adam Roberts, Jennifer Welsh & Dominik Zaum (eds), *The United Nations Security Council and War: the Evolution of Thought and Practice since 1945* (OUP 2008) app

However, although the complex peacekeeping operations had helped to alleviate some of the disadvantages of traditional peacekeeping operations, it remained a measure that was not impeccable. Realistically speaking, when dealing with various serious international disputes, the diversified functions of these operations envisaged by ‘An Agenda for Peace’ were actually a ‘double-edged sword’-

Firstly, the deepening of the jurisdiction of peacekeeping operations served to limit the diplomatic autonomy of those states disputing the relevant territories. The idea of ‘peacemaking’ meant that the ‘Blue Helmets’ possessed the right to force the parties to reach agreements on settling their international disputes, risking thereby arousing resentment within these states.⁶⁷⁵ Secondly, the broadening of jurisdiction of the peacekeeping operations served to limit those same states’ autonomy of decision-making in respect to their internal affairs. The idea of ‘peacebuilding’ meant that the ‘Blue Helmets’ possessed the right to take over many of the civil administrative duties of the parties, and this again would certainly be liable to arouse resentment.⁶⁷⁶ More seriously, since territorial disputes were traditionally long lasting and involve plenty of values and core national interests, they were not especially suitable for the application of the complex peacekeeping operations. The characters of territorial disputes, along with the negative sentiment within the related states aroused by ‘peacemaking’ or ‘peacebuilding’, meant that the peacekeepers usually had to deal with particular parties which not only dared to refuse external intervention, but also were difficult to be deterred. Needless to say, such a predicament could easily further expose the shortages of the complex peacekeeping operations.

Under the comprehensive influence of the above factors, with their wide-ranging power and duties, the complex peacekeeping operations could indeed partly act on behalf of

1; Nigel White, ‘Peace Operations’, in Vicent Chetall (ed), *Post-Conflict Peacebuilding: A Lexicon* (OUP 2009) 213 at 214 & 217-20; Lu Jianxin, Wang Tao & Zhou Hui, *A Study on International Peacekeeping* (PLA National Defence University Press 2015) 34-38 & 110-19.

⁶⁷⁵ Yang Zewei, *A Study on the International Legal Issues Surrounding the Reform of the United Nations* (Wuhan University Press 2009) 398-401.

⁶⁷⁶ Yang Zewei, *A Study on the International Legal Issues Surrounding the Reform of the United Nations* (Wuhan University Press 2009) 255-56 & 396-97.

the local governments of the targeted states. On this basis, the peacekeepers had shown their ability to maintain or restore the local ‘peace and security’ of those regions in which the internal order had already collapsed as well. However, due to the direct or indirect resistance of the relevant parties, provoked by that very same power and duties of the complex peacekeepers, the long-term effectiveness of this measure was comparatively fragile. Additionally, in their actual practice, the complex peacekeeping operations had generally avoided to intervene the ‘standard’ territorial dispute between member states of the United Nations as well. For instance, as two complex peacekeeping operations that had been tasked with the duty of civil administration, the UNMIK and the MINURSO which were respectively deployed at the beginning/end of the 1990s were quite representative here:

Both the UNMIK and the MINURSO involved a dispute about the sovereign ownership of a particular piece of territories. However, the major parties of the relevant cases were not even sovereign states, so that these operations supposed to meet less resistance, as the parties do not have the necessary endurance. Correspondingly, in their actual practice, these two operations had at least successfully played the role of ‘peacekeeper’ during their period of deployment. The Former used to control most of the internal affairs of Kosovo in the initial years of its lifetime, and the latter had continuously kept the state of ceasefire within the region of Western Sahara since 1991. Regrettably, while five informal meetings were organized by the MINURSO which was responsible for communicating with Morocco/the Polisario Front, the relevant parties were still unable to reach any agreement on the future status of Western Sahara. By the mid-2010s, therefore, this operation had become the most long-lasting United Nations peacekeeping operation that was deployed after 1990, and the Polisario Front was still threatening to resort to its forces.⁶⁷⁷ Meanwhile, it seemed that the UNMIK which promised to respect the ‘sovereignty and territorial integrity’ of Yugoslavia was also settled for the unstable ‘international peace and security’, as it did not adequately

⁶⁷⁷ United Nations, ‘MINURSO Background’ (2016) <<http://www.un.org/en/peacekeeping/missions/minurso/background.shtml>> accessed 1 December 2016.

restrain the radical factions of Kosovo. As the result, the local authority of Kosovo unilaterally declared the independence of Kosovo in 2008, whilst the UNMIK actually reduced the scope of its duties in the same year.⁶⁷⁸

Similarly, from 1988 to 1999, most of the other complex peacekeeping operations which had been tasked with civil administration duties were also not in charge of handling those ‘standard’ territorial disputes in the context of this thesis. In addition, the inherent problem of this measures of leaving troubles festering behind could be seen frequently in the practice of these operations as well (e.g. the UNTAET which stopped the riot initiated by pro-Indonesia militias, but successively triggered the deployment of two supplementary peacekeeping operations).⁶⁷⁹ Moreover, the only exception was the UNASOG deployed in the Aouzou Strip between Chad and Libya. Nevertheless, this operation only used nine military observers to monitor the withdrawal of the Libyan army from the disputed territories, and it had acquired the consent of the governments of the relevant parties beforehand. Thus, the nature of the UNASOG was still biased towards the traditional peacekeeping operations.⁶⁸⁰ Besides, in the ‘Supplement to An Agenda for Peace’, Ghali further warned the world that the reformative tactics applied by the complex peacekeeping operations, through which the duties of the peacekeepers were greatly expanded, would risk a financial crisis for this measure. If so, then the autonomy of the complex peacekeeping operations would be inevitably undermined, and they had to increasingly rely on the support of the participants of the relevant operations.⁶⁸¹

In short, with the expansion of their duties and jurisdiction, the complex peacekeeping operations are more active than their predecessor, and they definitely could ‘maintain

⁶⁷⁸ United Nations, ‘UNMIK Background’ (2016) <<http://www.un.org/en/peacekeeping/missions/unmik/background.shtml>> accessed 1 December 2016.

⁶⁷⁹ John Allphin Moore Jr. & Jerry Pubantz, *The New United Nations: International Organizations in the Twenty-First Century* (Pearson 2006) 203-12.

⁶⁸⁰ H. Jurgenliemk and J.A. Koops, ‘United Nations Aouzou Strip Observer Group (UNASOG)’, in Koops J, Macqueen N, Tardy T & Williams PD (eds), *The Oxford Handbook of United Nations Peacekeeping Operations* (OUP 2015) 484 at 484-90.

⁶⁸¹ Report of the Secretary-General, ‘Supplement to An Agenda for Peace’ (3 January 1995) U N Doc A/50/60-S/1995/1, Paras 33-37 & 97.

or restore international peace and security'. Unfortunately, limited by its own inherent disadvantages, this measure did not record any noticeable achievement in the field of the 'standard' territorial disputes in the context of this thesis during the late years of the 20th century. Besides, the afore-mentioned past cases have revealed that the long-term effect of this measure is also relatively fragile. Nevertheless, if only speaking from the perspective of reaching the predetermined purposes of the UNCSS, it can be said that the performance of the complex peacekeeping operations is acceptable, and this merit should be praised.

3. The theoretical role and practical records of the coercive United Nations peacekeeping operations.

Moving into the 21st century, Annan, the then Secretary-General of the United Nations who felt that the complex peacekeeping operations were still unfit for service, initiated a new round of reform of this measure. In particular, he entrusted Brahimi, an Algerian diplomat with the mission of leading the 'Panel on United Nations Peacekeeping' to write the famous Brahimi report. Following the suggestions of this report, the latest coercive peacekeeping operations were instituted, and thus further upgraded those concepts underpinning the earlier complex peacekeeping operations:⁶⁸²

Initially, the first background condition for the drafting of the Brahimi Report was the continuous deepening of the jurisdiction of the United Nations peacekeeping operations. Accordingly, the panel of experts urged the related institutions of the United Nations to 'specify an operation's authority to use force.....it means bigger forces, better equipped and more costly but able to be a credible deterrent'. On this account, this report prompted the emergence of a series of 'robust' peacekeeping forces (e.g. the MONUSCO and the MINUSMA⁶⁸³) which were backed by either chapter 7 of the UN

⁶⁸² Norrie Macqueen, *Peacekeeping and the International System* (Routledge 2006) 240-45; John Alphin Moore Jr. & Jerry Pubantz, *The New United Nations: International Organization in the Twenty-First Century* (Pearson 2006) 212-13.

⁶⁸³ See e.g. UNSC Res 1925 (28 May 2010) UN Doc S/RES/1925; UNSC Res 2100 (25 April 2013) UN Doc S/RES/2100; Julia Gifra Durall, 'United Nations Peacekeeping under Chapter VII: Exception or Widespread Practice' (2013) 2 Revista del Instituto Español de Estudios Estra

Charter or even ‘all necessary means’.⁶⁸⁴

Next, the second background condition for the drafting of the Brahimi Report was the continuous broadening of the jurisdiction of the United Nations peacekeeping operations. Accordingly, the panel of experts urged the related institutions of the United Nations to ‘(create) integrated planning or support cell in the Secretariat that brings together those responsible for political analysis, military operations, civilian police, electoral assistance, human rights, development, humanitarian assistance, refugees and displaced persons, public information, logistics, finance and recruitment..... (and implement) structural adjustment.....in other elements of DPKO’. On this account, this report prompted the emergence of quite a few units or concepts attached to the United Nations peacekeeping operations. These include but not limited to the Department of Field Support of the United Nations, the United Nations Peacebuilding Commission and the ‘Capstone Doctrine (viz. *UN Peacekeeping Operations: Principles and Guidelines*)’.⁶⁸⁵

Then, the third background condition for the drafting of the Brahimi Report was the continuously increasing expenditure related to the United Nations peacekeeping operations. Accordingly, the panel of experts urged the related institutions of the United Nations to ‘(treat) headquarters support for peacekeeping as a core activity of the United Nations, and as such the majority of its resource requirements should be funded through the regular budget of the organization.....(and provide) additional resources

tégicos 1 at 10-13 <<https://dialnet.unirioja.es/descarga/articulo/4537260/2.pdf>> accessed 13 September 2016.

⁶⁸⁴ Report of the Panel on United Nations Peacekeeping Operations, ‘Brahimi Report to the U. N. Secretary-General’ (17 August 2000) UN Doc A/55/305-S/2000/809, paras 48-55; Christine Gray, *International Law and the Use of Force* (3rd edn, OUP 2008) 294-306; Alexander Orakhelashvili, *Collective Security* (OUP 2011) 331-35; Scott Sheeran, ‘The Use of Force in United Nations Peacekeeping Operations’, in Marc Weller, Alexia Solomou & Jake William Rylatt (eds), *The Oxford Handbook of the Use of Force in International Law* (OUP 2015) 347 at 350-5.

⁶⁸⁵ Report of the Panel on United Nations Peacekeeping Operations, ‘Brahimi Report to the U. N. Secretary-General’ (17 August 2000) UN Doc A/55/305-S/2000/809, paras 198-245; Alex J. Bellamy, Paul D. Williams & Stuart Griffin, *Understanding Peacekeeping* (2nd edn, Polity 2010) 54-55 & 137-51; Paul F. Diehl & Alexandru Balas, *Peace Operation* (2nd edn, Polity 2014) 8 1-84; Simon Chesterman, Ian Johnstone & David M. Malone, *Law and Practice of the United Nations: Documents and Commentary* (2nd edn, OUP 2016) 348-57.

for.....DPKO and related headquarters support offices for peacekeeping'. On this account, this report prompted the adjustment of the 'rates of reimbursement to troop contributing countries' of the United Nations peacekeeping forces by the UNGA.⁶⁸⁶

Analyzing the above information, it can be found out that the coercive peacekeeping operations promoted by Brahimi were basically a revised type of complex peacekeeping operations, surrounded by enhanced administrative, military and financial support. Theoretically speaking, this measure could strengthen the efficiency of the 'Blue Helmets', yet it did not totally extricate itself from the general domain of the complex peacekeeping operations. Practically speaking, the proposal of the Brahimi Report that the peacekeepers should routinely be authorized to use force⁶⁸⁷ even further risked this measure being infected by the aforesaid shortages of the military enforcement actions.⁶⁸⁸ After all, as long as the peacekeepers had been authorized to resort to force, they were bound to consume a large amount of resources, with or without a complete logistical system built by those newly-established supporting units. Besides, while the title of the relevant operations had the word 'peacekeeping', and their personnel were referred to as 'peacekeepers', the authorized use of force was still a typical character of the military enforcement actions.

Eventually, between 2000 and 2015, the UNSC successively established and operated more than 20 United Nations peacekeeping operations. Among them, only the UNMEE

⁶⁸⁶ Report of the Panel on United Nations Peacekeeping Operations, 'Brahimi Report to the U. N. Secretary-General' (17 August 2000) UN Doc A/55/305-S/2000/809, paras 170-97; Report of the Senior Advisory Group Established Pursuant to General Assembly Resolution 65/289 to Consider Rates of Reimbursement to Troop-Contributing Countries and Other Related Issues, UN GA Res 67/261 (adopted 10 May 2013) UN Doc A/RES/67/261.

⁶⁸⁷ The initial three first/second-generation United Nations peacekeeping operations which had used their armed forces to defend their achievements were the UNEF I from 1960 to 1963, the UNOSOM II in 1993 and the UNPROFOR from 1994 to 1995, but all the three operations were 'special cases handled by special measures', and they did not complete the process of establishing a steady-going mechanism, see e.g. Report of the Panel on United Nations Peacekeeping Operations, 'Brahimi Report to the U.N. Secretary-General' (17 August 2000) UN Doc A/55/305-S/2000/809, para 51; Simon Chesterman, 'The Use of Force in UN Peace Operations' (August 2004) 6 <<http://www.operationspaix.net/DATA/DOCUMENT/5808~v~The Use of Force in UN Peace Operations.pdf>> accessed 20 September 2016.

⁶⁸⁸ Christine Gray, 'The Use of Force and the International Legal Order', in Malcolm Evans (ed), *International Law* (4th edn, OUP 2014) 618 at 643; Christine Gray, *International Law and the Use of Force* (3rd edn, OUP 2008) 307-12; Lu Jianxin, Wang Tao & Zhou Hui, *A Study on International Peacekeeping* (PLA National Defence University Press 2015) 38-39.

and the UNISFA were deployed for handling the ‘standard’ territorial disputes as meant in the context of this thesis, and the rather traditional UNMEE was in fact deployed before the publication of the Brahimi Report. From the details of these operations, however, it still could be seen that in accordance with the above arguments, the effect and the expenses of the peacekeeping operations of the new era were rapidly growing together⁶⁸⁹—

For instance, as a complex peacekeeping operation which had nothing to do with territorial disputes, the UNOSOM II, which mobilized a peak of 28000 troops from 34 countries, just spent 1.6 billion US dollars in two years.⁶⁹⁰ In contrast, the UNISFA which was deployed for the territorial dispute in the region of Abyei already had more than 4200 personnel at the start, yet due to the expansion of its coercive missions, this operation soon assembled another 1100 servicemen. Meanwhile, the initial authorized strength of the UNISFA was merely one-sixth of the strength of the UNOSOM II, but its average annual budget was as high as approximately 200 million US dollars. Fortunately, since the arrival of the UNISFA, the ‘international peace and security’ of the Abyei region, which used to be the battlefield of Sudan and South Sudan, had been kept for nearly 10 years without a fruitful peace negotiation. Besides, although the armies of Sudan and South Sudan had a combined strength of over 200,000 soldiers, the two parties had never really provoked the United Nations peacekeepers who possessed the authorized right to use force.⁶⁹¹

In short, the coercive peacekeeping operations are generally an improved version of the complex peacekeeping operations, and at the suggestion of the Brahimi Report, their

⁶⁸⁹ The Editors, ‘Introduction’, in Joachim Koops, Norrie Macqueen, Thierry Tardy & Paul D. Williams (eds), *The Oxford Handbook of United Nations Peacekeeping Operations* (OUP 2015) 1 at 4, see also pt2s4; Vaughan Lowe, Adam Roberts, Jennifer Welsh & Dominik Zaum (eds), *The United Nations Security Council and War: the Evolution of Thought and Practice since 1945* (OUP 2008) app 1.

⁶⁹⁰ United Nations Department of Peacekeeping Operations, ‘Somalia-UNOSOM II: Facts and Figures’ (2003) <<http://www.un.org/en/peacekeeping/missions/past/unosom2facts.html>> accessed 20 September 2016.

⁶⁹¹ UNSC Res 1990 (27 June 2011) UN Doc S/RES/1990; UNSC Res 2104 (29 May 2013) UN Doc S/RES/2104; Bram J. Jansen, ‘Humanitarianism as Buffer: Displacement, Aid and the Politics of Belonging in Abyei, Sudan/South Sudan’ (2018) 117 (468) *African Affairs* 370 at 37 1-91.

‘Blue Helmets’ have been widely authorized to use force. However, such reform might result in the significant rise of extra costs that are usually seen in military enforcement actions, so that the application of this measure could easily trigger the apprehension of the relevant parties. Even so, since this measure has successfully defended the ‘peace and security’ of some African states, its ability to achieve the set purposes of the UNCSS should not be denied.

4. Summary.

In Summary, the United Nations peacekeeping operations are both a lineal substitute for the ‘United Nations Forces’, and the only measure of the entire UNCSS that can be said to have been completely created by junior practitioners. Realistically speaking, however, they are still not the best choice for settling territorial disputes in the field of ‘collective security’. Firstly, limited by the ‘three principles of peacekeeping’, the traditional peacekeeping operations cannot guarantee the ‘maintenance or restoration of international peace and security’. Secondly, the complex peacekeeping operations have not yet engaged with those ‘standard’ territorial disputes, and they can easily leave hidden troubles behind, but they are better at the original mission of ‘peacekeeping’. Thirdly, the latest coercive peacekeeping operations have revealed their ability to maintain peace and security, but the relevant practice has shown that they could also be infected by the problems of the military enforcement actions. Anyway, with the expansion of their jurisdiction, duties and mandatory power, the working efficiency of the three generations of peacekeeping operations in terms of ‘maintaining or restoring international peace and security’ is gradually increasing, albeit their opponents are not necessarily be territorial disputes.

5.2.3 The shared weaknesses of the forcible measures of the UNCSS in territorial disputes settlement: a case study of the United Nations authorized forcible sanctions against Iraq

From the previous sections, it can be noted that the United Nations authorized military

enforcement actions and the United Nations peacekeeping operations are two forcible, but also imperfect measures of the UNCSS. In particular, their advantages and disadvantages are equally conspicuous, their price-performance ratio is questionable, and the performance of them in territorial disputes has been undermined by these problems. However, as stated earlier, since the measures of same category might be mutually complementary, it is the shared weaknesses of all the forcible measures that are most likely to hinder the successful use of this approach in territorial disputes.⁶⁹² Besides, concerning the balance between the width and the depth of this thesis, the last two sub-sections have focused on broadly enumerating the records of applying the forcible measures of the UNCSS in territorial disputes from the perspective of ‘collective security’. Hence, at the end of the second half, the present sub-section should focus on specifically examining the progress of applying the forcible measures of the UNCSS in territorial disputes from the perspective of ‘territorial disputes’.

Therefore, in the last part that concerns the present issue, the author will arrange a detailed case study on one relevant case, so as to more thoroughly reveal the shared weaknesses of the forcible measures of the UNCSS. In terms of selecting the suitable incident, as a recent forcible operation of the UNCSS which has been described as having the most ideal pre-conditions and case details, the situation in Iraq since 1990 is undoubtedly a perfect choice.⁶⁹³

1. Historical background.

Reviewing the history of the Middle East before the 1910s, it could be seen that both Kuwait and Iraq were initially territories of the Ottoman Empire. In particular, the former was subordinate to the Basra Vilayet centered on the region of Southern Iraq for several times, and this past event was the foremost source of the future territorial claim of the latter.⁶⁹⁴ After the end of WWI, the UK and France, as the victors, and with assent

⁶⁹² Antonio Cassese, *International Law* (2nd edn, OUP 2005) 339 & 343-46.

⁶⁹³ Eugene V. Rostow, ‘Until What? Enforcement Action or Collective Self-Defence?’ (1991) 85 (3) AJIL 506 at 507-14.

⁶⁹⁴ John Andrews, *The World in Conflict: Understanding the World’s Troublespots* (Economist 213

of the League of Nations, took control of large parts of the now collapsed Ottoman Empire, including certain regions that would later become Kuwait and Iraq. Unfortunately, owing the devastating influence of the WWII and the anti-colonial movements triggered in the aftermath of this war, such a post-WWI settlement in the area around the Persian Gulf merely lasted for less than 30 years.⁶⁹⁵ From the late 1940s, the old colonial empires were forced to gradually abandon their *de facto* dominion in Mesopotamia, and it was the result of this decolonization that created the territorial dispute between the new states of Iraq and Kuwait:⁶⁹⁶

In 1958, a group of Ba'athists who promoted a form of pan-Arabian nationalism, overthrew the pro-Western Hashemite Kingdom of Iraq via a bloody coup d'état, thereby founding the Republic of Iraq.⁶⁹⁷ In 1961, Kuwait also announced its independence after a 60-years-long administration by the UK, and was immediately met with a threat of invasion from the Iraqi government.⁶⁹⁸ Consequently, as the former suzerainty of Kuwait, the UK had to dispatch its troops again to 'protect' the House of Al-Sabah. Nevertheless, the territorial ambition of Iraq only temporarily subsided after the Arab League had firmly accepted Kuwait, and further organized the Arab League Security Force which took over the responsibility of the British armed forces.⁶⁹⁹

The good moment did not last long enough. In June of 1979, Saddam Hussein deposed the then President of Iraq, Al-Bakr, in a new coup d'état, and the foreign policy of the Ba'ath Party began to turn once again to around to invasion and territorial expansion. Initially, the target of the new dictator was Iran, which was apparently in a fragile state

Books 2016) 40-47; David H. Finnie, *Shifting Lines in the Sand: Kuwait's Elusive Frontier with Iraq* (Harvard University Press 1992) 7-11.

⁶⁹⁵ Ian Rutledge, *Enemy on the Euphrates: the Battle for Iraq, 1914-1921* (Saqi Books 2015) 3 84-94; for a detailed review on the gradual process of independence of both Iraq and Kuwait after the collapse of the Ottoman Empire, see James Barr, *A Line in the Sand: Britain, France and the Struggle that shaped the Middle East* (Simon & Schuster 2012) pt 2.

⁶⁹⁶ D. K. Fieldhouse, *Western Imperialism in the Middle East 1914-1958* (OUP 2008) 107-116.

⁶⁹⁷ Geoff L. Simons, *Iraq: From Sumer to Post-Saddam* (3rd edn, Palgrave Macmillan 2003) 25 1-59.

⁶⁹⁸ Sampson Jerry, *History of Persian Gulf States, Kuwait, Bahrain, Oman, Qatar, United Arab Emirat: Government, Politics, Economy, Defense, Resources, People* (Sonit Education Academy 2016) 87.

⁶⁹⁹ David Malone, *The International Struggle Over Iraq: Politics in the UN Security Council 1 1980-2005* (OUP 2007) 56.

after its domestic Islamic Revolution in the same year.⁷⁰⁰ However, although the sudden attack of the Iraqi army did gain a certain amount of success, the quick victory that was expected by Saddam did not materialize. Thanks to its remaining national strength, Iran was able to force the contest into a desperate stalemate which ultimately lasted for about eight years.⁷⁰¹ In August of 1988, the two exhausted sides finally signed an armistice agreement, but the Iraqi economy had already been disastrously depleted by the war at that point, and the Saddam regime also owed other Arab states a huge sum of debts.⁷⁰²

For the purpose of extricating himself from such a dilemma, therefore, Saddam and his advisors started to ask the OPEC to reduce the production of oil, so as to increase its price and thus gain extra revenue to pay Iraq's debt. Meanwhile, these unwise decision-makers also switched their attention back to Kuwait, the small and less populated neighbor of Iraq, but one with abundant petroleum reserves.⁷⁰³ Before dawn of August 2nd of 1990, thousands of elite soldiers of the Iraqi Republican Guard crossed into the land territories of Kuwait. After only a few hours of poorly organized resistance from the Kuwaiti army, Kuwait was totally occupied by Iraq, and the Kuwaiti Emir, Jaber III and his legal government, fled into exile to Saudi Arabia.⁷⁰⁴

2. The performance of the UNCSS.

As aforementioned, facing the invasion of Kuwait by Iraq, the United Nations and the international community of the early 1990s actually responded toughly, especially after

⁷⁰⁰ Williamson Murray & Kevin M. Woods, *The Iran-Iraq War: A Military and Strategic History* (CUP 2014) 15-37.

⁷⁰¹ Williamson Murray & Kevin M. Woods, *The Iran-Iraq War: A Military and Strategic History* (CUP 2014) chs 4-9.

⁷⁰² Pierre Razoux & Nicholas Elliott, *The Iran-Iraq War* (Harvard University Press 2015) 562 & 573-74.

⁷⁰³ In addition, Kuwait was preparing to increase the production of oil at the moment, so that to force Iraq to make compromise on the issue of territorial dispute between these two states, see Geoff L. Simons, *Iraq: From Sumer to Post-Saddam* (3rd edn, Palgrave Macmillan 2003) 3 39-41.

⁷⁰⁴ Geoff L. Simons, *Iraq: From Sumer to Post-Saddam* (3rd edn, Palgrave Macmillan 2003) 35 1-53.

they had got over the initial surprise and astonishment.⁷⁰⁵ Tracking the origin of such a reaction, it could be seen that this situation was largely caused by the combination of the background of the current case and the content of the forcible measures of the UNCSS-

Firstly, as a universal international organization born in 1945, the primary aim of the United Nations was to prevent or suppress the recurrence of the illegal territorial expansion conducted by those former fascist states via invading other states. Coincidentally, the military adventure of the Saddam regime had entered the natural scope of jurisdiction of this target.⁷⁰⁶ Secondly, as an international security mechanism which was largely based on the emphasis of the principle of unanimity, the primary bane of the UNCSS was the deliberate obstruction of one or more members of the P5. Coincidentally, during the last days of the Cold War, the former USSR was in an advanced state of decay and China was focusing on its own ‘Reform and Open-Up’ policy. Thereby, both of them were unwilling to veto the collective stance of the Western Bloc, as at least one of them had been wont to do.⁷⁰⁷ Thirdly, as a series of forcible measures that had some side-effects, the primary challenge for the forcible measures of the UNCSS was that the expected gains of activating them must surpass or offset the expected losses of activating them. Coincidentally, both Iraq and Kuwait were widely recognized as fertile territories with high strategic value and rich energy reserves.⁷⁰⁸

⁷⁰⁵ UNSC Res 660 (2 August 1990) UN Doc S/RES/660; David L. Bosco, *Five to Rule Them All: The UN Security Council and the Making of the Modern World* (OUP 2009) 155-56.

⁷⁰⁶ See e.g. Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, preamble & art 107; Edward C. Luck, ‘A Council for All Reasons: The Creation of the Security Council and Its Relevance Today’, in Vaughan Lowe, Adam Roberts, Jennifer Welsh & Dominik Zau m (eds), *The United Nations Security Council and War: the Evolution of Thought and Practice since 1945* (OUP 2008) 61 at 64-70; Stephen C. Schlesinger, *Act of Creation-The Founding of the United Nations: A Story of Super Powers, Secret Agents, Wartime Allies and Enemies, and Their Quest for a Peaceful World* (Basic Books 2004) 79-80; Paul Kennedy, *The Parliament of Man: The Past, Present and Future of the United Nations* (Penguin 2007) 64-65.

⁷⁰⁷ Burns H. Weston, ‘Security Council Resolution 678 and the Persian Gulf Decision Making: Precarious Legitimacy’ (1991) 85 (3) AJIL 516 at 523-25.

⁷⁰⁸ Tim Marshall, *Prisoners of Geography: Ten Maps That Tell You Everything You Need to Know About Global Politics* (Elliott & Thompson 2016) ch 6; Robert D. Kaplan, *The Revenge of Geography: What the Map Tells Us About Coming Conflicts and the Battle Against Fate* (Rand om House 2012) 259; The OPEC, ‘World proven crude oil reserves by country’ (2013) <<http://www.opec.org/library/Annual%20Statistical%20Bulletin/interactive/current/FileZ/XL/T31.HTM>> acce ssed 1 May 2016.

With the help of the above-listed positive factors, and relying on the temporarily revived UNSC, the forcible measures of the UNCSS eventually started to operate as it was originally intended for the first time since the Korean War:

At the beginning, on the same day that it received the message of the outbreak of the Iraq-Kuwait armed conflict, the UNSC passed the resolution 660 with an unusual activeness which was rarely seen during the period of the Cold War.⁷⁰⁹ According to the original text which was chiefly drafted by the USA and UK ambassadors to the United Nations, this resolution confirmed that the attack on Kuwait by Iraq had formed ‘a breach of international peace and security’. Additionally, it also condemned the armed invasion implemented by the Saddam regime, and requested the Iraqi army to retreat back to their homeland without extra conditions.⁷¹⁰ Unsurprisingly, in the midst of their apparent rapid and total victory, and doubtless inured by the years of impotence demonstrated by the UNCSS, the Ba’athists ignored this warning from the international community. After weighing the deterrent force of ‘oral criticism’ and the value of the prize of Kuwait, the Iraqi leadership confidently continued to establish their new ruling order in Kuwait, and the Iraqi troops stationed there showed no sign of re-deployment as well.⁷¹¹

Given that the diplomatic measures had encountered with deliberate resistance, the UNSC passed the more serious resolution 661 with regard to the Iraq-Kuwait situation on August 6th of 1990.⁷¹² According to the text of this resolution, all the member states/non-member states of the United Nations had to immediately stop building up any commercial connection with Iraq or Kuwait. Meanwhile, they were also prohibited from transferring any financial funds, military equipment or economic resources to

⁷⁰⁹ David L. Bosco, *Five to Rule Them All: The UN Security Council and the Making of the Modern World* (OUP 2009) 155.

⁷¹⁰ UNSC Res 660 (2 August 1990) UN Doc S/RES/660; Simon Chesterman, Ian Johnstone & David M. Malone, *Law and Practice of the United Nations: Documents and Commentary* (2nd edn, OUP 2016) 35.

⁷¹¹ Michael S. Casey, *The History of Kuwait* (Greenwood 2007) 94.

⁷¹² Simon Chesterman, Ian Johnstone & David M. Malone, *Law and Practice of the United Nations: Documents and Commentary* (2nd edn, OUP 2016) 35-37.

these two states. In other words, the short-sightedness of the leadership of Iraq had initiated the first comprehensive economic sanction that was authorized by the United Nations since the establishment of this organization in 1945.⁷¹³ Surprisingly, even before the international community could put every aspect of these economic sanctions in place, Saddam had already announced that Kuwait would become the 19th province of Iraq on the 8th of August.⁷¹⁴

Feeling the humiliation of the conceited acts of Iraq, the UNSC hurriedly passed the supplementary resolution 662 on the very next day. According to the text of this resolution, the UNSC ordered ‘all states, international organizations and specialized agencies’ not to recognize the so-called ‘comprehensive and eternal merger’ of Iraq and Kuwait.⁷¹⁵ Nonetheless, for the next three months, despite wave after wave of heavy diplomatic and economic pressure, there was still no evidence to indicate that Iraq had felt repentance and sorrow. More ironically, the Saddam regime even did not cut off its secret economic trade or public diplomatic co-operation with some of its allies, such as Yemen.⁷¹⁶

Afterwards, seeing that the various non-forcible measures were not effecting any change, the UNSC was forced to consider the activation of forcible measures. On November 29th of 1990, this institution passed resolution 678, in which it required Iraq to ‘comply fully with resolution 660 and all subsequent relevant resolutions……on or before 15 January 1991’, this was equivalent to sending an ultimatum to Iraq. On this

⁷¹³ UNSC Res 661 (6 August 1990) UN Doc S/RES/661; Vaughan Lowe, Adam Roberts, Jennifer Welsh & Dominik Zaum (eds), *The United Nations Security Council and War: the Evolution of Thought and Practice since 1945* (OUP 2008) app 4.

⁷¹⁴ George K. Walker, ‘The Crisis Over Kuwait, August 1990-February 1991’ (1991) 1 Duke Journal of Comparative & International Law 25 at 32-34; Michael S. Casey, *The History of Kuwait* (Greenwood 2007) 91-94.

⁷¹⁵ UNSC Res 662 (9 August 1990) UN Doc S/RES/662; Li Tiecheng & Deng Xuijie, *A Short Course on the United Nations* (Peking University Press 2015) 69.

⁷¹⁶ See e.g. UNSC Res 665 (25 August 1990) UN Doc S/RES/665; UNSC Res 670 (25 September 1990) UN Doc S/RES/670; UNSC Res 674 (29 October 1990) UN Doc S/RES/674; Alexander Thompson, *Channels of Power: The UN Security Council and U.S. Statecraft in Iraq* (Cornell University Press 2015) 50; Kenneth Manusama, *The United Nations Security Council in the Post-Cold War Era: Applying the Principle of Legality* (Martinus Nijhoff 2006) 206-208 & 247-51; Li Tiecheng & Deng Xuijie, *A Short Course on the United Nations* (Peking University Press 2015) 68-69.

basis, the UNSC also further authorized all member states of the United Nations ‘to use all necessary means to uphold and implement resolution 660 and all subsequent relevant resolutions and to restore international peace and security in the area’, this was equivalent to sending the signal of resorting to forces to the world.⁷¹⁷

Recalling the unusual working efficiency of the UNSC as shown above, the then Secretary-General, De Cuellar, once commented with mixed feelings that the P5 had never before ‘reacted with such unanimity to an invasion, occupation and purported annexation’.⁷¹⁸ Moreover, under the supervision of the then Secretary of State of the USA, Baker, a pro-Kuwait coalition comprising of 34 states was quickly formed. By early December of 1990, these states had already deployed nearly 1 million ‘Coalition Forces’ (including around 700,000 US troops) along the Saudi Arabia-Kuwait border, ready to undertake any military enforcement action. Breathtakingly, however, during the subsequent ‘buffer period’ of 48 days, the leadership of Iraq were still defending their own stance through referring to the issue of Palestine. Besides, it also sent over 600,000 soldiers to the territories of Kuwait, so that it was quite obvious that Iraq had prepared to make a last-ditch fight.⁷¹⁹

Then, on January 17th of 1991 or two days after the ultimatum had expired, the ‘Coalition Forces’ initiated Operation Desert Storm which aimed at expelling the invaders from Kuwait, thus starting the Gulf War. Nonetheless, even though this was yet another United Nations authorized military enforcement action, but in comparison with the Korean War of the 1950s, the Gulf War still had a few distinctive features:

First, the two cases had different forms. According to resolution 84 of the UNSC, the

⁷¹⁷ UNSC Res 678 (29 November 1990) UN Doc S/RES/678; Geoff L. Simons, *Iraq: From Sumer to Post-Saddam* (3rd edn, Palgrave Macmillan 2003) 357-58.

⁷¹⁸ Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, art 24; Robert F. G orman, *Great Debates at the United Nations : An Encyclopedia of Fifty Key Issues, 1945-2000* (ABC-CLIO 2001) 323.

⁷¹⁹ See e.g. UNSC Res 678 (29 November 1990) UN Doc S/RES/678; Simon Chesterman, Ian Johnstone & David M. Malone, *Law and Practice of the United Nations: Documents and Com*mentary (2nd edn, OUP 2016) 38; Knut Royce, ‘Iraq Offers Deal to Quit Kuwait: U.S. Rejects It, But Stays “Interested” ’ (*Newsday*, 3 January 1991) 5.

‘United Nations Forces’ of the Korean War had the right to use the title and banners of the United Nations. In addition, the UNSC also suggested the ‘United Nations Forces’ to put itself under the control of a joint ‘United Nations Command’ in written form.⁷²⁰ In contrast, according to resolution 678, the ‘Coalition Forces’ of the Gulf War was not required to use the title and banners of the United Nations, and it was under the name of the ‘member states co-operating with the Government of Kuwait’. In addition, the UNSC did not suggest the ‘Coalition Forces’ to establish a joint headquarter-though a general of the US Army, Schwarzkopf, actually held the post of the commander in chief of the allied forces.⁷²¹

Second, the two cases had different participants. In terms of the ‘enforcer’ of the two cases, the ‘United Nations Forces’ of the Korean War was formed by troops from 17 states, and the USA alone provided over 300,000 soldiers. However, South Korea itself also assembled around 600,000 combatants, and it progressively took over multiple defensive positions of the ‘United Nations Forces’ during the later stage of this war. In contrast, the number of states involved in the ‘Coalition Forces’ of the Gulf War was two times more than that of the ‘United Nations Forces’, and the number of US Troops was at least doubled as well. However, Kuwait itself was a conquered nation at the moment, so that it could not offer any necessary assistance to the coalition.⁷²² In terms of the law-breakers of the two cases, the Kim regime had the direct support of two permanent members of the UNSC, namely China and the USSR, during the Korean War. Besides, After the North Korean army had been defeated by the ‘United Nations Forces’, the Chinese army even assumed most of the combat missions. In contrast, the Saddam regime was isolated by the world during the Gulf War, and its sole anchor was the Iraqi

⁷²⁰ UNSC Res 84 (7 July 1950) UN Doc S/RES/84.

⁷²¹ UNSC Res 678 (29 November 1990) UN Doc S/RES/678; William Thomas Allison, *The Gulf War, 1990-91* (Palgrave 2012) ch 5.

⁷²² Max Hastings, *The Korean War* (Simon & Schuster 2010) 521-25; Allan R. Millett, *The Korean War: Volume 1* (University of Nebraska Press 2000) 692; The Nation-Master, ‘Gulf War Coalition Forces: Countries Compared’ (25 March 2011) <<http://www.nationmaster.com/country-info/stats/Military/Gulf-War-Coalition-Forces>> accessed 6 August 2016.

Army.⁷²³

Third, the two cases had different leaders. According to resolution 84 of the UNSC, the USA was responsible for appointing the command in chief of the ‘United Nations Forces’ of the Korean War, and the ‘United Nations Command’ was dominated by the USA as well. Additionally, this resolution suggested all the member states to pass on their corresponding armed forces and resources to the ‘United Nations Command’ for redistribution in written form.⁷²⁴ In contrast, according to resolution 678, the ‘Coalition Forces’ of the Gulf War was only permitted to ‘use all necessary means’, whilst the status of Schwarzkopf was created by the dominant position of the Army of the United States. In addition, this resolution merely urged the international community to ‘provide appropriate support for the actions’ in written form. In fact, the joint logistical service of the ‘Coalition Forces’ was created by the foresight of Baker manifested in earlier negotiations.⁷²⁵

Fortunately, despite the above differences, it can be said that the level of strikes of both of these two military operations against the invaders were quite remarkable. More importantly, unlike the Kim regime, the Saddam regime could not expect any permanent member of the UNSC to come to its aid. Started from January 17th of 1991, the ‘Coalition Forces’ destroyed 42 divisions of the Iraqi Army in 38 days, and accordingly liberated all the inherent territories of Kuwait. On February 26th, Saddam announced that Iraq was willing to accept a series of related resolutions of the UNSC, and he would like to withdraw all the Iraqi armed forces from Kuwait. On February 28th, the then president of the USA, Bush, declared that the ‘Coalition Forces’ had accomplished its pre-set tasks, thus marked the victorious end of the Gulf War.⁷²⁶

⁷²³ Max Hastings, *The Korean War* (Simon & Schuster 2010) chs 7 & 14; William Thomas Allison, *The Gulf War, 1990-91* (Palgrave 2012) ch 7.

⁷²⁴ UNSC Res 83 (27 June 1950) UN Doc S/RES/83; UNSC Res 84 (7 July 1950) UN Doc S/RES/84.

⁷²⁵ William Thomas Allison, *The Gulf War, 1990-91* (Palgrave 2012) 63-70.

⁷²⁶ William Thomas Allison, *The Gulf War, 1990-91* (Palgrave 2012) chs 6-7, see especially 13 8-44.

Finally, with the mission of ‘liberating Kuwait’ having been rapidly accomplished,⁷²⁷ the UNSC passed resolution 687 setting out the post-conflict arrangement of the Iraq-Kuwait situation on April 3rd of 1991.⁷²⁸ According to the text of this resolution, the Saddam regime must continue to endure the comprehensive economic sanctions, so as to completely eliminate the possible revival of the territorial ambition of Iraq.⁷²⁹ Other than that, resolution 687 also created a demilitarized zone which aimed at separating the invader and the victim, plus it established a supporting United Nations peacekeeping operation—the UNIKOM, in this region.⁷³⁰ Interestingly, as a peacekeeping operation which was deployed before the publication of ‘An Agenda to Peace’, the mandate of the UNIKOM was already quite different from that of the traditional peacekeeping operations:

First, the mission of the UNIKOM was rather complex. According to resolution 687, the core mission of the UNIKOM was ‘to deter violations of the boundary.....to observe any hostile or potentially hostile action.....and to report.....serious violations of the zone or potential threats to peace’.⁷³¹ For this purpose, the peacekeepers of early stage of the UNIKOM did not have side arms, and there was no fundamental distinction between the role of them and that of those traditional peacekeepers. Besides, the responsibility to maintain the security of the demilitarized zone was given to the governments of Iraq and/or Kuwait, and their policemen could even carry small arms.⁷³²

Nevertheless, with the gradual stabilization of the situation of the Persian Gulf, the Saddam regime indeed no longer cast its eyes on Kuwait, but it did make multiple

⁷²⁷ Gordon Martel, *Twentieth-Century War and Conflict: A Concise Encyclopedia* (Wiley-Blackwell 2014) 85-87.

⁷²⁸ Simon Chesterman, Ian Johnstone & David M. Malone, *Law and Practice of the United Nations: Documents and Commentary* (2nd edn, OUP 2016) 39-40.

⁷²⁹ UNSC Res 687 (3 April 1991) UN Doc S/RES/687; Li Tiecheng & Deng Xuijie, *A Short Course on the United Nations* (Peking University Press 2015) 72.

⁷³⁰ UNSC Res 687 (3 April 1991) UN Doc S/RES/687; Jan Bury, ‘United Nations Iraq-Kuwait Observation Mission (UNIKOM)’, in Joachim Koops, Norrie Macqueen, Thierry Tardy & Paul D. Williams (eds), *The Oxford Handbook of United Nations Peacekeeping Operations* (OUP 2015) 314 at 314-24.

⁷³¹ UNSC Res 687 (3 April 1991) UN Doc S/RES/687.

⁷³² United Nations Peacekeeping, ‘Iraq/Kuwait-UNIKOM-Background’ <<https://peacekeeping.un.org/mission/past/unikom/background.html>> accessed 1 September 2018.

attempts to take back the Iraqi properties which were left in Kuwait.⁷³³ In order to resolve this new problem, the UNSC adopted the supplementary resolution 806 on February 5th of 1993. Based on its text, the UNIKOM was authorized to correct the irregular behavior of Iraq, and it was also allowed to participate in the affairs concerning the disposal of the Iraqi civilians, equipment and facilities that were left in the territories of Kuwait.⁷³⁴ For this purpose, the peacekeepers in the later stages of the UNIKOM were augmented and reorganized into mechanized troops, and they were also given the task of patrolling the coastal waters. Thereby, the substance of the UNIKOM had gone beyond that of traditional peacekeeping operations which merely sought to ‘separate the related parties’.⁷³⁵

Second, the size of the UNIKOM was rather enormous. Since the list of tasks mentioned by resolution 687 was comparatively simple, the initial UNIKOM force consisted of merely 300 military observers. In addition, those peacekeepers who were in charge of security works of this operation were also spared from other peacekeeping operations.⁷³⁶ However, with the adoption of resolution 806 and the expansion of the duties and jurisdiction of the UNIKOM, it was clear that there were insufficient personnel on the ground and, as a result, UNIKOM was expanded to 3645 personnel. Moreover, even in the second half of 2003, when this operation was about to be closed, the UNIKOM still had more than 1000 military personnel.⁷³⁷ In fact, despite the ONUC which was authorized to use force, the relatively unsuccessful UNEFs and the UNIFIL which lasted for several decades, the total strength of UNIKOM was higher than all ten other traditional peacekeeping operations.⁷³⁸

⁷³³ United Nations Peacekeeping, ‘Iraq/Kuwait-UNIKOM-Background’ <<https://peacekeeping.un.org/mission/past/unikom/background.html>> accessed 1 September 2018.

⁷³⁴ UNSC Res 806 (5 February 1993) UN Doc S/RES/806.

⁷³⁵ Its major forces were formed by several mechanized infantry battalions of Bangladesh, see United Nations Peacekeeping, ‘Iraq/Kuwait-UNIKOM-Background’ <<https://peacekeeping.un.org/mission/past/unikom/background.html>> accessed 1 September 2018.

⁷³⁶ United Nations Peacekeeping, ‘Iraq/Kuwait-UNIKOM-Background’ <<https://peacekeeping.un.org/mission/past/unikom/background.html>> accessed 1 September 2018.

⁷³⁷ United Nations Peacekeeping, ‘Iraq/Kuwait-UNIKOM-Facts and Figures’ <<https://peacekeeping.un.org/mission/past/unikom/facts.html>> accessed 6 September 2018.

⁷³⁸ Vaughan Lowe, Adam Roberts, Jennifer Welsh & Dominik Zaum (eds), *The United Nations Security Council and War: the Evolution of Thought and Practice since 1945* (OUP 2008) app

Third, the end of the UNIKOM was rather unique. From the arrival of the peacekeepers in May 1991 until the adoption of resolution 806 by the UNSC, Iraq was mainly focusing on taking back its properties. Meanwhile, only a few Iraqi forces were symbolically sent to the areas adjacent to the border when the work of demarcation was being executed. Afterwards, from the adoption of resolution 806 to the spring of 2003, the situation in the demilitarized zone remained generally calm, as was confirmed by the officials of the United Nations. The governments of Iraq and Kuwait maintained a positively cooperative relationship with the UNIKOM, and most of the corresponding controversies were related to the independent United Nations WMD inspection groups.⁷³⁹

Unfortunately, this relatively harmonious relationship came to an abrupt end at the beginning of 2003. Paradoxically, the state which took the lead in interrupting the work of the UNIKOM was the USA, which used to support the deployment of this operation. In March 2003, the government of George Bush Jr. initiated the invasion of Iraq on the pretext of human rights and WMDs issues, but without the authorization of the UNSC. Three days before the outbreak of the Iraq War, the UNIKOM which had anticipated the danger was forced to withdraw from the demilitarized zone, leaving only a liaison office behind in Kuwait City.⁷⁴⁰ After the collapse of the Saddam regime, the then Secretary-General, Annan, acknowledged in his report to the UNSC that the UNIKOM was no longer relevant, as he pointed out that this operation had lost its target of sanction. In the next few months, UNIKOM was obliged to transfer its materials and properties to Iraq and Kuwait, since it had no better things to do. On October 6th, the mandate of the UNIKOM reached its expiry date, thus a peacekeeping operation which was intended to defend the territories of Kuwait was eventually driven out of its task area

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⁷³⁹ United Nations Peacekeeping, 'Iraq/Kuwait-UNIKOM-Background' <<https://peacekeeping.un.org/mission/past/unikom/background.html>> accessed 1 September 2018.

⁷⁴⁰ United Nations Peacekeeping, 'Iraq/Kuwait-UNIKOM-Background' <<https://peacekeeping.un.org/mission/past/unikom/background.html>> accessed 1 September 2018.

by the liberators of Kuwait.⁷⁴¹

In short, the nature of the UNIKOM generally coincided with the trend of evolution of the United Nations peacekeeping operations in the present case, yet the details of this operation were a mixture of achievements and failures. Consequently, as mentioned above, the contribution and the fortune of this operation did not match each other. On the one hand, although those parties directly involved did not strongly resist its intervention, the UNIKOM was still brought to an end by its former partner, and it also only witnessed yet another unilateral use of force conducted by a superpower like a bystander. On the other hand, under the surveillance of the UNIKOM, although the Saddam regime refused to keep a low profile in words, the ‘international peace and security’ of the regions around Kuwait were still successfully maintained for a decade.⁷⁴² Undoubtedly, this kind of contrast could be regarded as a rather biased full stop to the application of the forcible measures of the UNCSS in the settlement of territorial disputes.

3. Assessment and Analysis.

Taking a panoramic view of the journey of the forcible measures of the UNCSS in the Iraq-Kuwait territorial dispute, the ability of this set of measures to ‘maintain or restore international peace and security’ should be praised. However, although these measures were relatively effective, the Gulf War was only the second United Nations authorized military enforcement action, and the end of the corresponding peacekeeping operation was also rather hasty. In other words, while the forcible measures of the UNCSS can definitely achieve the predetermined purposes of this mechanism, there is still room for improvement that should be duly noted. Regarding the origins of such performance

⁷⁴¹ UNSC Res 1490 (3 July 2003) UN Doc S/RES/1490; Report of the Secretary-General, ‘Activities of the United Nations Iraq-Kuwait Observation Mission’ (17 June 2003) UN Doc S/2003/656; United Nations Peacekeeping, ‘Iraq/Kuwait-UNIKOM-Background’ <<https://peacekeeping.un.org/mission/past/unikom/background.html>> accessed 1 September 2018.

⁷⁴² With regard to a comprehensive review and assessment of the UNIKOM, see Jan Bury, ‘United Nations Iraq-Kuwait Observation Mission (UNIKOM)’, in Joachim Koops, Norrie MacQueen, Thierry Tardy & Paul D. Williams (eds), *The Oxford Handbook of United Nations Peacekeeping Operations* (OUP 2015) 314 at 314-24.

from the realistic perspective, despite the individual shortages of the various forcible measures, there are several following weaknesses shared by the military enforcement actions and the peacekeeping operations that might also be blamed:

Firstly, the legal basis of the forcible measures of the UNCSS is comparatively ambiguous.

Analyzing the details of the present case, it can be seen that this shortcoming is caused by the political competition between those third parties to territorial disputes, namely powerful participants of the relevant operations of the UNCSS. On the one hand, the relative paralysis of the UNSC during the Cold War period and the renewed confrontation between the Eastern and Western Blocs since the late-1990s left the ‘United Nations Forces’ as a mere theory on paper.⁷⁴³ On the other hand, the absence of related regulations in the UN Charter and the trivialness of the related legal documents like ‘An Agenda for Peace’, also left the peacekeeping operations as a ‘substitute’ without sufficient endorsement.⁷⁴⁴ Therefore, when dealing with other international disputes in which the parties can rather easily make compromise, the forcible measures of the UNCSS could still be called a flexible invention that has provided a new path. However, when dealing with territorial disputes in which the parties find it more difficult to compromise, these measures might inevitably be obstructed by those states whose private interests have been involved in these cases. Taking the reaction of the UNSC towards the Gulf War as an example, during the process of forcibly sanctioning Iraq, the legal basis of the forcible measures of the UNCSS at least had to face the following unavoidable difficulties:

In the first place, as two key inventions of the UN Charter, the standing ‘United Nations Forces’ and their commanding headquarters, namely the Military Staff Committee, had

⁷⁴³ See e.g. Christian Henderson, ‘The Centrality of the United Nations Security Council in the Legal Regime Governing the Use of Force’, in Nigel D. White & Christian Henderson (eds), *Research Handbook on International Conflict and Security Law: Jus ad Bellum, Jus in Bello and Just post Bellum* (Edward Elgar Publishing 2015) 120 at 130-35 & 142-67.

⁷⁴⁴ Liu Dan, *The Predicament and Prospect of the United Nations Peacekeeping Operations* (Current Affairs Press 2015) 24-27 & 46.

already been paralyzed for nearly 50 years. Thereby, even though the UNSC decided to apply the military enforcement actions to liberate Kuwait, it still had to abandon the idealized design of its founders, together its power to supervise the relevant operation. In this way, the UNSC had to entrust those member states of the United Nations who were willing to send their troops to join the corresponding actions by giving them the right to organize and command the relevant armed forces by themselves.⁷⁴⁵

In the second Place, there was no sign of the United Nations peacekeeping operations in the UN Charter, and the UNDPKO was lately established in 1992. In addition, the structure, duties and tasks of the complex peacekeeping operations that emerged in the 1990s were still being slowly explored. Thereby, many peacekeeping operations, including the UNIMIK, belonged to the category of new-born ‘supplementary measures’ which were deployed at first, and then amended their substance later. This contrast had not only been a gap of research for the international legal academia, but had been a matter of debate within the international community.⁷⁴⁶

In the third place, despite the above two points on the vague part of the legal basis of the UNCSS, there were still some clear provisions of the UN Charter which concerned the ‘maintenance of international peace and security’. Among them, the most famous stipulation was obviously the veto power. Thereby, no matter the declining USSR, or the Western superpowers who was about to win the Cold War, both sides could always transfer their dissatisfaction with those forcible sanctions into a vote which would freeze the UNSC.⁷⁴⁷

Under the safeguard of such a legal basis, it was quite easy for the P5 to mutually oppose the stance of each other when facing the present case, and the participants of the relevant

⁷⁴⁵ Adam Roberts & Dominik Zaum, *Selective Security: War and the United Nations Security Council since 1945* (Routledge 2008) 47-52; Antonio Cassese, *International Law* (2nd edn, OUP 2005) 348-49.

⁷⁴⁶ Alex J. Bellamy, Paul D. Williams & Stuart Griffin, *Understanding Peacekeeping* (2nd edn, Polity 2010) 52-56 & 98.

⁷⁴⁷ Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, art 27; Simon Chesterman, Ian Johnstone & David M. Malone, *Law and Practice of the United Nations: Documents and Commentary* (2nd edn, OUP 2016) 650-52.

coercive operations were almost bound to overly come from the same political Bloc. Consequently, as the ultimate ace of the UNCSS, the military enforcement actions or the complex peacekeeping operations which involved the use of force could surely become too difficult to be activated or organized. Moreover, the fate of these measures might usually be determined by the support of a particular Bloc, and this was certainly less stable than the expected coordinated will of the entire world. Hence, in front of the actual events before and after the Gulf War, De Cuellar would naturally give out a sigh with subjective emotion when it seemed that everything was going well. Meanwhile, it was also not a surprise that after almost 12 years of successful operation, the UNIKOM was suddenly closed by the unilateral activities of some of its past partners.

Secondly, the operating environment of the forcible measures of the UNCSS is comparatively tough.

Analyzing the details of the present case, it can be seen that the appearance of this shortcoming is indirectly caused by the natural characters of the objects of territorial disputes, namely disputed territories. On the one hand, the inherent value of territories in various respects, such as strategy, ethnics and culture, has reinforced the will and self-assurance of the parties involved to protect what they lay claim to (see above).⁷⁴⁸ On the other hand, the ordinary nature of territories in various respects, such as their location, size and physical topography, has made it challenging for third parties to rein the territories that they have touched upon as well.⁷⁴⁹ Therefore, when dealing with certain other international disputes in which the resistance is ignorable or relatively light, the forcible measures of the UNCSS could still be considered effective. However, when dealing with territorial disputes in which resistance is more likely and more persistent, they might inevitably be caught in straitened circumstances by their own resources,

⁷⁴⁸ Antonio Cassese, *International Law* (2nd edn, OUP 2005) 71-72.

⁷⁴⁹ Ever since the era of the Ancient Greece-Rome, the act of maintaining a military existence in a remote land for a long period of time has been considered by the best commanders as a dangerous undertaking, see e.g. Sun Tzu, *The Art of War* (John Minford tr, Penguin 2008) chs 2-3, 10 & 13; Richard Ned Lebow, *Why Nations Fight: Past and Future Motives for War* (CU P 2010) 153-70.

power or efficiency. Taking the background conditions of the ‘Coalition Forces’ and the UNIKOM as an example, during the process of forcibly sanctioning Iraq, the operating environment of the UNCSS at least had to face the following unavoidable difficulties:

In the first place, Kuwait was a rich state located in the Oil producing areas around the Persian Gulf, and its territories were adjacent to the narrow coastline of Iraq. By occupying all the territories of Kuwait, Iraq could at least gain three major benefits. Firstly, the coastline of Iraq would be expanded from 58 kilometers to 457 kilometers, and the Iraqi Navy would acquire a large deep-water port and the necessary buffer area for defence.⁷⁵⁰ Secondly, the oil reserves of Iraq would be almost doubled, and it would become one of the top three members of OPEC in terms of total oil reserves.⁷⁵¹ Thirdly, Iraq used to owe 13-15 billion US dollars of debt to Kuwait before the Gulf Crisis, yet that figure would immediately return to zero after the invasion, and the cash flow of Iraq would be additionally supplemented by the assets of Kuwait.⁷⁵²

In the second place, before the Gulf War, Iraq had not only controlled most of the plain areas of Mesopotamia, but also served as the ‘crossroad’ of the entire region of the Middle East. Relying on these inborn advantages of its inherent territories, Iraq was a state which had the overall national strength of a typical regional power at the end of 1990. Firstly, Iraq was the fifth largest state in the Middle East, with a population of 17.5 million, and with a total labor forces higher than the total population of many developed states of today.⁷⁵³ Secondly, the strategic position of Iraq meant that both superpowers were keen to forge solid relationship or alliances with it, so that with their economic aid, the GNI of Iraq was still more than 10,000 US dollars even after the Iran-

⁷⁵⁰ The CIA World Fact Book, ‘Coastal Line’ (2017) <<https://www.cia.gov/library/publications/the-world-factbook/fields/2060.html>> accessed 20 August 2017.

⁷⁵¹ The CIA World Fact Book, ‘Crude Oil-Proved Reserves’ (2017) <<https://www.cia.gov/library/publications/the-world-factbook/rankorder/2244rank.html>> accessed 20 August 2017.

⁷⁵² In 1990, the GNI of Kuwait was more than 17,000 US dollars, nearly 1.7 times more than the GNI of Iraq, see The World Bank, ‘Data-Kuwait’ (2017) <<http://data.worldbank.org/country/kuwait?view=chart>> accessed 20 August 2017.

⁷⁵³ The World Bank, ‘Data-Iraq’ (2017) <<http://data.worldbank.org/country/iraq?view=chart>> accessed 20 August 2017.

Iraq War.⁷⁵⁴ Thirdly, thanks to the rich legacy of its zenith, even after the Gulf War, the regular army of Iraq still had 41 divisions, which was enough to crush nearly all its neighbours, except Iran, Turkey and Saudi Arabia.⁷⁵⁵

In the third place, despite the above two points respectively related to the two direct parties of this case, the general conditions of the disputed territories were also not very suitable for the application of the UNCSS. On the one hand, as part of the heartland of the Middle East, Iraq and Kuwait were quite distant from the armed forces of the potential third parties (e.g. the ‘Coalition Forces’ were largely formed by the armed forces of the member states of the NATO, yet both the Supreme Headquarter and the Supply Centre for the NATO were located in Belgium⁷⁵⁶). On the other hand, both Southern Iraq and Kuwait used to be part of the Basra Vilayet of the Ottoman Empire, and the latter was a piece of territories which had been by claimed by Iraq ever since the era of the Cold War. The historical value of Kuwait to Iraq and the Iraqi nationalism derived from it had determined that sooner or later the Saddam regime, which was not good at managing its internal affairs, would pick up the territorial claim of the previous regime.

Under the limitation of such an operating environment, the United Nations and the relevant member states would certainly be cautious about activating certain measures of the UNCSS that were relatively more forcible in territorial disputes. In the meantime, the ‘Coalition Forces’ and the UNIKOM that had already been deployed could also barely improve their own cost effectiveness. As a result, since the use of force was already meant to consume a lot of manpower, at the peaks of the ‘Coalition Forces’ and the UNIKOM, they used to deploy nearly 1 million personnel and more than 3600

⁷⁵⁴ The World Bank, ‘Data-Iraq’ (2017) <<http://data.worldbank.org/country/iraq?view=chart>> accessed 20 August 2017.

⁷⁵⁵ The International Institute of Strategic Studies (IISS), *The Military Balance 1992* (Routledge 1992) 102-26.

⁷⁵⁶ The headquarters of the NATO and the Logistics, Armament and Resources Division (under the name of the Military Committee) is located in Brussels, and the Supreme Headquarters Allied Power Europe is located in Mons, see NATO, ‘NATO Organization-Military Structure’ (2017) <<http://www.nato.int/cps/en/natohq/structure.htm#MS>> accessed 20 August 2017.

personnel respectively (see above). More seriously, other than manpower, the forcible measures of the UNCSS were also astonishingly expensive in terms of financial power. According to the statistics that were declassified after the Gulf War, from the start of the Gulf crisis to the end of the Gulf War, the ‘Coalition Forces’ spent approximately 70 billion USD in less than half a year. Similarly, although the size of the ‘Coalition Forces’ was 260 times more than that of the UNIKOM, but the latter still spent nearly 600 million USD, meaning that its cost per unit was even higher than that of the ‘Coalition Forces’.⁷⁵⁷

Thirdly, the background of the decision-making process of the forcible measures of the UNCSS are comparatively imbalanced.

Analyzing the details of the present case, it can be seen that the appearance of this shortcoming is directly caused by the different national strength of the subjects of territorial disputes, namely the member states of the United Nations. On the one hand, overviewing all the ‘major members’ of the international community, only a small amount of them have the necessary military preparedness, financial resources and knowhow to send their troops to overseas territories.⁷⁵⁸ On the other hand, recalling the negative influence of ‘power politics’ (see 6.1 below) upon modern international relations, it is also unrealistic to expect those capable states to willingly lend their troops without asking for compensation or rewards.⁷⁵⁹ Therefore, when dealing with other international disputes in which the costs are relatively low, the forcible measures of the UNCSS could still be called a fair choice with a neutral stance. However, when dealing with territorial disputes in which the costs are relatively high, they might inevitably be

⁷⁵⁷ Tencent News, ‘Intolerable Numbers: How much money have been spent during the Gulf War and Afterwards’ (16 May 2016) <<https://new.qq.com/cmsn/20160516/20160516010739>> accessed 1 September 2018; United Nations Peacekeeping, ‘Iraq/Kuwait-UNIKOM-Facts and Figures’ <<https://peacekeeping.un.org/mission/past/unikom/facts.html>> accessed 6 September 2018.

⁷⁵⁸ Through calculating the military history of development of the world from 1945 to 1989, it can be found that only the USA and the USSR might afford to send large-scale armed forces around the planet, and simultaneously fight a regional war in some places far away from their mainland, whilst the USSR had already ceased to exist in 1991, see Robert E. Harkavy, *Bases Abroad: The Global Foreign Military Presence* (OUP 1989) chs 2-4.

⁷⁵⁹ Liu Dan, *The Predicament and Prospect of the United Nations Peacekeeping Operations* (Current Affairs Press 2015) 49-58.

reduced to an involuntary tool dictated by the private desire of those global powers. Taking the suppliers of the ‘Coalition Forces’ and the UNIKOM as an example, during the process of forcibly sanctioning Iraq, the background of the decision-making process of the UNCSS at least had to face the following unavoidable difficulties:

Firstly, the historical experience had proved that the expenses of the military enforcement actions were primarily shared by those states who either voluntarily provided their armed forces or voluntarily provided financial support. In contrast, the expenses of the peacekeeping operations were gathered from regular budget of the United Nations that was proportionally shared by member states of the United Nations on the basis of their economic size. Nevertheless, no matter in the former case or in the latter case, the Western Bloc which contained most of the developed states would always account for more than half of these expenses.⁷⁶⁰

Secondly, the historical experience had also proved that the military/civilian personnel of the peacekeeping operations could largely come from developing states, such as the Bengal soldiers of the UNIKOM. Nevertheless, in terms of the armed forces that were involved in the military enforcement actions, at least one superpower which possessed the rare ability of intercontinental expedition and strategic logistics must form the backbone of these troops. This was evidenced by the American army in both the Korean War and the Gulf War. Besides, as a peacekeeping operation which was deployed immediately after the end of the Gulf War, it was doubtless that the participants of the UNIKOM and those of the ‘Coalition Forces’ were largely the same batch of states. This was evidenced by both the Western superpowers and their Bengal colleagues.⁷⁶¹

Thirdly, as mentioned above, territorial disputes were inherently not a kind of

⁷⁶⁰ UNGA Res 55/235 (23 December 2000) UN Doc A/RES/55/235; The Institute for Economics and Peace, ‘Economic Consequences of War on the U.S. Economy’ (2012) 10 & 15-17 <<http://thereformedbroker.com/wp-content/uploads/2012/02/Economic-Consequences-of-War.pdf>> accessed 20 August 2017.

⁷⁶¹ D. W. Bowett, *United Nations Forces: A Legal Study* (Frederick A. Praeger 1964) pt 2, see especially chs 9, 11 & 14; United Nations Peacekeeping, ‘Iraq/Kuwait-UNIKOM-Facts and Figures’ <<https://peacekeeping.un.org/mission/past/unikom/facts.html>> accessed 6 September 2018.

international dispute in which the intervening troops would be welcomed, or where the process of intervention would be simple to manage and cost-effective. Furthermore, ever since 1990 until the collapse of the Saddam regime in 2003, the Western Bloc led by the USA had tracked this case for more than ten years. Therefore, no matter acting within the framework of the UNCSS or not, the Western Bloc had no reason to let the arrangement of the United Nations become an obstacle that would undermine its interests.⁷⁶²

Under the influence of such a background, the Western superpowers which afforded most of the financial expenses/armed forces would surely seek to dominate the decision-making process of the ‘Coalition Forces’ and the UNIKOM. Meanwhile, with the help of their veto power, the implementation of the private desire of these superpowers in practice could not really be regulated inside the system of the United Nations as well. As the result, the announcement which declared the end of the Gulf War was actually made by Bush, the then president of the USA, not the Secretary-General of the United Nations.⁷⁶³ Even worse, after the son of Bush had decided to attack Iraq in March of 2003, the Secretary-General of the United Nations went so far as to suggest the UNIKOM to retreat from the demilitarized zone.⁷⁶⁴ Undoubtedly, facing the inherent advantages of their opponents in terms of ‘hard power’ and the above embarrassing situation, China and Russia would boycott the activation of the forcible measures of the UNCSS whenever it was possible. But say, if the Chinese or Russian opposition was adequately effective, then there was no need for the Western superpowers to indirectly make their rivals successful by wasting their resources. Therefore, it was not a surprise that the military enforcement actions were not used for such a long time, and it was also not a surprise that the peacekeeping operations could be suspended by the unilateral action of a few members of the P5.

⁷⁶² For the entire process of the International intervention, see John Keegan, *The Iraq War* (Hutchinson 2004) chs 3-4.

⁷⁶³ William Thomas Allison, *The Gulf War, 1990-91* (Palgrave 2012) 139-40.

⁷⁶⁴ Report of the Secretary-General, ‘The United Nations Iraq-Kuwait Observation Mission’ (31 March 2003) UN Doc S/2003/393.

4. Summary.

In summary, the Gulf Crisis/War of the early 1990s has shown the effectiveness of the forcible measures of the UNCSS in handling territorial disputes. In addition, this case has also manifestly exposed multiple shared weaknesses of the United Nations authorized military enforcement actions and the United Nations peacekeeping operations. Realistically speaking, the forcible measures of the UNCSS definitely could achieve the predetermined purposes of ‘maintaining or restoring international peace and security’ of their parent mechanism. However, the inherent shortages of these measures, as listed above, could also hinder the perfect application of them in territorial disputes. Since the forcible measures are already the last weapon of the UNCSS, therefore, a reform plan for extricating the United Nations authorized military enforcement actions and peacekeeping operations from the present dilemma is certainly needed. According to the outline of this thesis, this is going to be the topic of the next chapter.

Chapter 6-The reform plan of the thesis

Summarizing the substance of the previous chapter, it can be seen that the author does not stick to the examination of the legal shortages, theoretical flaws or ideological shortcomings of the UNCSS. In contrast, following the practice of the realists of the international relations academia, the author put more attention on exploring the practical power, costs and effect of the sanctionative measures of the UNCSS. However, although this thesis has partly deviated from the traditional paradigm of legal studies, but via the above analysis, it is still clear that the current UNCSS is not the perfect choice for ‘maintaining or restoring international peace and security’-

On the one hand, the capacity of the non-forcible measures of the UNCSS is relatively poor, and they cannot guarantee to achieve the predetermined purposes of their parent mechanism. On the other hand, the capacity of the forcible measures of the UNCSS is relatively good, but they have a variety of negative side-effects which could disturb the performance of themselves. As the ‘ultimate weapon’ of the entire system of the United Nations, such a status quo of the UNCSS is obviously not quite acceptable.

Therefore, to finish the main chapters, and to enhance the originality and completeness of this thesis, it is necessary to provide an appropriate reform plan for the application of the UNCSS in territorial disputes. Besides, in view of the potential practical demands, a case study will be delineated for the purpose of testing and verifying the future application of the newly-proposed reform plan below. In terms of selecting the representative incident, being one of the famous, recent and ‘standard’ territorial disputes which has involved the P5, the annexation of Crimea by Russia in 2014 is undoubtedly a perfectly suitable choice.

6.1 The thoughts on the reform of the UNCSS

Logically speaking, reform plans should be directed at the existing problems of their targets, and the reform plan regarding the UNCSS is of course not an exception. The

UNCSS, however, is a complex set of international security mechanism, and while the four types of measures available within its framework share some common disadvantages, each of them also has its own unique drawbacks. In addition, it must be recognized that both the non-forcible and the forcible measures of the UNCSS are in some circumstances capable of achieving the purpose of ‘maintaining or restoring international peace and security’. Thus, the upcoming reform should inherit the relevant positive features. Given the above, if the author attempts to construct a reform plan directly on the basis of the arguments of the preceding chapters, then it is highly likely that he will get a less ideal proposal that is quite trivial and partial.

On this account, before touching upon the topic of this chapter, the author needs to collate the advantages and disadvantages of the UNCSS, which have been exposed during the process of applying this mechanism in territorial disputes. Based on the theories of the selected school of thought, the present section should illustrate the common characters shared by the above research findings and their origins, so as to provide a concise and accurate basis for the following reform plan. Bearing this requirement in mind and taking the realistic doctrines into account, the author believes that there are three general rules governing the application of the UNCSS in territorial disputes, as listed below:⁷⁶⁵

In the first place, with regard to the purposes of ‘maintaining or restoring international peace and security’, the effectiveness of a particular measure increases in line with its mandatory power. Reviewing the records of the application of the UNCSS in territorial disputes, it can be seen that this is the clearest rule. Initially, as a particular type of non-forcible measure which rigidly adhere to ‘oral criticism’, the United Nations authorized diplomatic sanctions are merely a preparatory/remedial measure that cannot independently defend ‘international peace and security’. As the result, this route can even be deliberately ignored by the authoritative institutions of the UNCSS. Next, the

⁷⁶⁵ Hans J. Morgenthau (author), Kenneth W. Thompson & David Clinton (revised), *Politics among Nations: The Struggle for Peace and Power* (7th edn, McGraw-Hill 2005) 4-16.

United Nations authorized economic sanctions have started to give up any unnecessary illusion about the self-control of the relevant parties. Nevertheless, the Ethiopia-Eritrea dispute and other related cases have indicated that this measure also cannot guarantee the improvement of peace and security in the context of territorial disputes. Then, with the gradual ‘militarization’ of the United Nations peacekeeping operations, the past experience of this measure in the region of Abyei is clearly better than its experience in the Sinai Peninsula. Lastly, as a measure that focuses entirely on the use of force, the United Nations authorized military enforcement actions have only been activated twice so far, but each time they did bring long-term peace to the disputed territories.

In the second place, with regard to the purposes of ‘maintaining or restoring international peace and security’, the costs of a particular measure increase in line with its effectiveness. Reviewing the records of the application of the UNCSS in territorial disputes, it can be seen that this is the most awkward rule. Initially, as a particular type of measure with the form of a written statement or resolution, the United Nations authorized diplomatic sanctions cannot in itself lead to negative financial issues. In addition, the pure act of political isolation also cannot directly undermine the original national strength of the relevant parties, including third parties. Next, as a non-forcible measure which is inevitably ‘harmful’ to third parties, the United Nations authorized economic sanctions are virtually bound to hurt the relevant innocent states and people. Accordingly, the popularity of this measure has even been reduced. Then, as a forcible measure whose scope is constantly being expanded, the United Nations peacekeeping operations are consuming or taking over more and more various sources or national duties respectively. Lastly, since they are the ‘ultimate weapon’ of the UNCSS, the United Nations authorized military enforcement actions could lead to the intercontinental deployment of hundreds of thousands of troops of the third parties. Correspondingly, these operations have entailed huge budgets that are hundreds of times more than the regular budget of a single peacekeeping operation.

In the third place, with regard to the purposes of ‘maintaining or restoring international

peace and security', the relevance of the superpowers (especially the P5) increases in line with the costs of the related measure. Reviewing the records of the application of the UNCSS in territorial disputes, it can be seen that this is the most fatal rule. Initially, from South Africa to Crimea, the United Nations authorized diplomatic sanctions only need to fear the veto power of the P5 during their voting procedure, and the UNGA could occasionally become the decision-making institution of this measure. Next, from South Africa to Crimea, the application of the United Nations authorized economic sanctions always needs the cooperative will of the member states of the United Nations, and they also have to rely on the consent of the P5. Then, only the traditional peacekeeping operations used to be supervised by the UNGA, whilst the mandate of the complex and coercive peacekeeping operations is exclusively authorized by the UNSC. Meanwhile, although the peacekeepers could come from a wide range of states, they are funded through the regular budget of the United Nations shared by the member states on the basis of the size of their economy.⁷⁶⁶ Lastly, the United Nations authorized military enforcement actions are not only threatened by the veto power, but also restricted by the fact that their supreme-commanders and most of their military/financial resources are monopolized by the P5. More ironically, even the birth of the 'United Nations Forces' has to thank the accidental absence of one of the members of the P5.

In short, the application of the UNCSS in territorial disputes is a rather struggling issue, as the status quo of this mechanism has not found an equilibrium between efficiency, costs, fairness and effectiveness. Tracking its origin from the perspective of realism, it can be seen that this predicament is the specific result of the two key words that have been explicitly mentioned above, namely 'power' and 'interests', being reflected in the anarchic and international community:

Firstly, according to Morgenthau, a confrontation between the actors of international relations is indeed a struggle for power by competing with their present national power

⁷⁶⁶ United Nations Peacekeeping, 'How We Are Funded' (2018) <<https://peacekeeping.un.org/en/how-we-are-funded>> accessed 1 October 2018.

in hand. Once the international morality and international law of peacetime have lost their effectiveness, only sufficient national power can guarantee the secure position of the relevant parties.⁷⁶⁷ Meanwhile, the elements which form the national power can be divided into two categories. On the one hand, there are the intangible national character, national morale and the quality of diplomacy/government. On the other hand, there are the tangible geography, natural resources, industrial capacity, military preparedness and population.⁷⁶⁸

Secondly, again according to Morgenthau, the effect of the struggle for power is the redefinition of the relevant national interests, power is the precise route for gaining or losing interests, and the best defender of existing interests. Therefore, the substance of interests is ‘consistent with (national) power’, and the changes in power are bound to bring about the rise and fall of interests.⁷⁶⁹ Meanwhile, the substance of national interests can also be divided into two categories, including the security interests that relate to the survival of states, and all other interests (e.g. economic interests) which serve national security.⁷⁷⁰

Thirdly, on the basis of the doctrine of ‘classical realism’, Waltz has further pointed out that the international community is still being trapped in a state of anarchy. Thus, the United Nations is not the ‘world government’ which could discretionally command all the member states without any pre-condition.⁷⁷¹ Meanwhile, states are also rational

⁷⁶⁷ Hans J. Morgenthau (author), Kenneth W. Thompson & David Clinton (revised), *Politics among Nations: The Struggle for Peace and Power* (7th edn, McGraw-Hill 2005) 29-30 & pts 4-6.

⁷⁶⁸ Hans J. Morgenthau (author), Kenneth W. Thompson & David Clinton (revised), *Politics among Nations: The Struggle for Peace and Power* (7th edn, McGraw-Hill 2005) 122-40; Han Zhaoying & Yuan Weihua, ‘Hans Morgenthau: The Master of Realism’ (18 December 2012) <<http://theory.people.com.cn/n/2012/1218/c40531-19932460.html>> accessed 1 October 2018.

⁷⁶⁹ According to Morgenthau, the excess of power will obstruct the development of states, and the excess of interests will damage the security of states, see Hans J. Morgenthau, *In Defense of National Interests: A Critical Examination of American Foreign Policy* (Alfred A. Knopf 1951) 116; Peter Sutch & Juanita Elias, *International Relations: The Basics* (Routledge 2007) 48-49.

⁷⁷⁰ Hans J. Morgenthau, *Politics in the Twenties Century: The Decline of Democratic Politics* (University of Chicago Press 1962) 58-59 & 90-91; Xu Ruqi, ‘A Study on Hans Morgenthau’s Concept of National Interests’ (2015) 17 (3) International Forum 50 at 52.

⁷⁷¹ The authorization of the UNSC can only ‘allow’ the member states of the United Nations to use their armed forces, but not ‘order’ them to use their armed forces, see Kenneth Waltz, *Theory of International Politics* (McGraw-Hill 1979) 102-16; Hans J. Morgenthau (author), Kenneth W. Thompson & David Clinton (revised), *Politics among Nations: The Struggle for Peace*

actors who act on the basis of weighing their own national power and interests. Thereby, in order to keep their security, which is the most important national interest, the relevant states are allowed to abandon their remaining minor interests.⁷⁷²

To sum up, international confrontations are indeed competition between various types of national power of states. In addition, the exercise or ‘alienation’ of national power by the relevant parties will not only restrain the power and interests of their targets, but also consume the power and interests of their own side. Furthermore, not all members of the current international community are willing or able to dedicate their national interests to others. Following these progressive principles, the spread of the above general rules is certainly both explainable and inevitable, as set out further below-

On the one hand, as the main actor of international relations and the main subject of international law, states surely have the necessary national power that are more complete, persistent, or even solid than that of the other actors.⁷⁷³ In addition, as one of the four pre-conditions for qualifying a state, and the area which bears the weight of abundant values (see 3.1.2), the loss and gain of territories could surely affect the security and survival of states as well.

On the other hand, an international security mechanism itself is nothing more than a collection of ‘principles, rules, norms and decision-making procedures’ which is responsible for executing international law. Thus, when it is being applied in practice, the UNCSS still has to temporarily borrow a designated part of the national power of the member states of the United Nations (e.g. the non-forcible measures involve the quality of diplomacy, and the forcible-measures involve military preparedness⁷⁷⁴).⁷⁷⁵ In

and Power (7th edn, McGraw-Hill 2005) ch 28.

⁷⁷² Kenneth Waltz, *Theory of International Politics* (McGraw-Hill 1979) 62-63 & ch 7; Zhang Qing, ‘Morgenthau’s Theory on International Political Power and Interest’ (2006) 14 (4) Pacific Journal 76 at 83.

⁷⁷³ Liao Shunyo, ‘Realism’, in Chang Yia-chung (ed), *International Relations* (4th edn, Yang-Chi h Book 2016) 35 at 42-47.

⁷⁷⁴ Liao Shunyo, ‘Realism’, in Chang Yia-chung (ed), *International Relations* (4th edn, Yang-Chi h Book 2016) 35 at 42-47.

⁷⁷⁵ Stephen D. Krasner, ‘Structural Causes and Regime Consequences: Regimes as Intervening Variables’ (1982) 36 (2) International Organization 185 at 186; Hans J. Morgenthau (author), K

addition, the current P5 jointly account for a quarter of the total population/land masses of the world, one third of the total volume of trade/consumption of natural resources/number of military personnel of the world, and roughly half of the total annual GDP/governmental budget/industrial output/military expenditure of the world. Literally speaking, their national power is far greater than that of the other 188 common member states of the United Nations.⁷⁷⁶

Therefore, the conflict between territorial disputes and the UNCSS is indeed a confrontation between asymmetric types of national power. In view of the tremendous significance of territories in terms of national security, the relevant parties are usually generous with exercising their national power in handling this issue, and giving up their corresponding minor interests. Next, since the permanent national power of the relevant parties is naturally superior in almost all the other aspects, the temporary national power borrowed by the UNCSS clearly has no better choice but to come up with adequate coerciveness (or ‘mandatory power’). In details, such a mandatory power should at least let its partner measures touch upon the other interests that are also difficult to be abandoned by the relevant parties, and offset or surpass the attractiveness of the values of disputed territories. Then, with the increase of the coerciveness and quantity of the national power that has been taken away by the UNCSS, the tangible national power lent by the third parties will proportionally increase. Simultaneously, the supporting non-security interests sacrificed by these states will proportionally increase together with the national power on loan as well. Lastly, once the national power requisitioned by the UNCSS has exceeded the related threshold, the entire mechanism could easily fall into the predicament in which only the P5 can continue to afford the corresponding

enneth W. Thompson & David Clinton (revised), *Politics among Nations: The Struggle for Peace and Power* (7th edn, McGraw-Hill 2005) 304.

⁷⁷⁶ The International Institute of Strategic Studies (IISS), *The Military Balance 2018* (Routledge 2018) chs 2-6; WTO, ‘World Trade Statistical Review 2018’ (31 May 2018) 124 <https://www.wto.org/english/res_e/statis_e/wts2018_e/wts2018_e.pdf> accessed 1 October 2018; The CIA, ‘GDP (PPP)’ (The World Fact Book 2018) <<https://www.cia.gov/library/publications/the-world-factbook/rankorder/2001rank.html>> accessed 1 October 2018; The CIA, ‘Budget’ (The World Fact Book 2018) <<https://www.cia.gov/library/publications/the-world-factbook/fields/2056.html>> accessed 1 October 2018; The CIA, ‘Industrial Output’ (The World Fact Book 2018) <<https://www.cia.gov/library/publications/the-world-factbook/rankorder/2174rank.html>> accessed 1 October 2018.

heavy costs. In fact, Mearsheimer used to state that the national power of the superpowers is the real origin of the veto power, and the national power itself is the secondary veto power which further enables the P5 to willfully manipulate international affairs.⁷⁷⁷

In summary, the afore-listed general rules governing the application of the UNCSS in territorial disputes are not a series of argument without theoretical explanations. They should be regarded as the outcome of the contradiction between the demands of the UNCSS for national power and the original owners of national power, driven by the security interests of states. Bearing this inference in mind, and taking these three rules into account, the author believes that the thoughts on the reform of the UNCSS should also contain three corresponding points as follows:

Firstly, the application of definite measures of the UNCSS with higher mandatory power should be increased, this thought answers the first general rule above. From the previous analysis, it can be known that under the influence of the nature of international confrontations, those measures of the UNCSS with higher mandatory power are more effective in handling territorial disputes. On this account, since the rate of success of the UNCSS is associated with the coerciveness of the power borrowed by this mechanism, the relevant reform plan ought to comply with this trend. Otherwise, if the United Nations choose to blindly obey the principle of ‘peacefully settling international disputes’, then the UNCSS will inevitably become a less effective mechanism that is not expected by the international community.

Secondly, the costs of definite measures of the UNCSS with higher mandatory power should be reduced, this thought answers the second general rule above. From the previous analysis, it can be known that under the influence of the interaction between national power and interests, those measures of the UNCSS with higher effectiveness are more costly in handling territorial disputes. On this account, since the price-

⁷⁷⁷ John Mearsheimer, *The Tragedy of Great Power Politics* (W.W. Norton 2014) chs 9-10, see especially 363.

performance ratio of the UNCSS is associated with the consumption of the national power (and the supporting interests) of the third parties, the relevant reform plan ought to break this link. Otherwise, if the United Nations choose to blindly demand the national power/interests of its member states, then the UNCSS will inevitably become a less efficient mechanism that is not welcomed by the international community.

Thirdly, the independency of definite measures of the UNCSS with higher mandatory power should be improved, this thought answers the third general rule above. From the previous analysis, it can be known that under the influence of the anarchic and rational international community, those measures of the UNCSS with higher expenses are relying more on the superpowers in handling territorial disputes. On this account, since the impartiality of the UNCSS is associated with the support of the will of the P5, the relevant reform plan ought to eliminate this hidden trouble. Otherwise, if the United Nations choose to blindly allow the superpowers, especially the P5 to interfere its decision-making process and activities at will, then the UNCSS will inevitably become a less impartial mechanism that is not trusted by the international community.

6.2 The suggestions on the reform of the UNCSS

According to the above section which is built on the arguments of the last chapter, there are not only some disadvantages that are waiting to be reformed, but also some general rules that can guide the reform of the system. Nevertheless, although both the practical demands and the theoretical roadmap for reforming this mechanism are quite clear, but from the previous literature review, it still can be seen that scholars have not really focused on addressing this issue. Likewise, if one examines the past reforms made to the United Nations in the past 70 years, it is evident that virtually no special attention has been paid to the narrow field of the application of the UNCSS in territorial disputes-

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⁷⁷⁸ For an overview of the evolution of the UNCSS from the perspective of the United Nations Law, see e.g. Peter G. Danchin & Horst Fischer (eds), *United Nations Reform and the New Collective Security* (CUP 2010), especially introduction & pt 1.

In the first place, due to the gigantic system of the United Nations and the depressive history of the UNCSS, the majority of the reforms to the United Nations have never particularly touched upon the UNCSS.⁷⁷⁹ For instance, although the expansion of the UNSC used to affect the operation of the UNCSS, the main objective of this reform was actually to re-balance the ‘regional representation’ of the member states.⁷⁸⁰ In the second place, due to the changing nature of international disputes and the shifting interests of the superpowers, the majority of the reforms to the United Nations also have never particularly touched upon territorial disputes.⁷⁸¹ For instance, although the emergence of the United Nations peacekeeping operations used to be prompted by territorial disputes, the main objective of this mechanism was to merely act as a substitute for the ‘United Nations Forces’.⁷⁸²

Therefore, as afore-mentioned at the beginning of this chapter, the author needs to provide an independent reform plan for the application of the UNCSS in territorial disputes. Recalling the predetermined purposes of ‘maintaining or restoring international peace and security’ of the UNCSS, and based on the three afore-mentioned thoughts, the author recommends the United Nations to adopt a few regulatory methods as follows:

1. Extensively authorizing the use of forcible measures.

As the name shows, this suggestion addresses the first afore-mentioned thought on the reform of the UNCSS. On the one hand, by reviewing the two sets of measures of the UNCSS, it can be seen that the level of coerciveness of a particular measure is

⁷⁷⁹ Spencer Zifcak, *United Nations Reform: Heading North or South?* (Routledge 2009) chs 2, 5 & 6, see especially 90-104.

⁷⁸⁰ E.g. Theoretically speaking, the increase of the number of the member states from the regions of Asia, Africa and Latin America has reduced the ability of the Western global powers to dominate the voting procedure and result of the UNSC, see e.g. Peter Nadin, *UN Security Council Reform* (Routledge 2016) 72-94; Zhu Dawei, ‘The Origin, Process and Inspiration of the first expansion of the UNSC’ (2009) 11 (1) *Journal of Wuhan University of Science and Technology* (Social Science Edition) 90 at 90-92.

⁷⁸¹ See e.g. Peter G. Danchin & Horst Fischer (eds), *United Nations Reform and the New Collective Security* (CUP 2010) pts 2-3.

⁷⁸² Norrie Macqueen, *Peacekeeping and the International System* (Routledge 2006) 63-75.

determined by whether it has resorted to the use of force or not. On the other hand, from the United Nations authorized diplomatic sanctions to the military enforcement actions, it also can be seen that only the forcible measures of the UNCSS have gained relatively positive experiences in practice relates to territorial disputes. For these reasons, under the condition of seizing the right of amending their decisions, the United Nations could widely authorize those ‘collective security’ operations which prepare to intercept territorial disputes to activate forcible measures. Thus, the effectiveness of the intervention of the UNCSS may be further ensured. For example, by means of the discretion of the UNSC, the proper increase of the frequency of specifying the phrase of ‘calls upon (member states) to take all necessary measures’ in the relevant resolutions might be an acceptable idea.⁷⁸³

Besides, with regard to the practical implementation of this suggestion, a preparatory step that must be emphasized is the determination of the definition of the ‘standard’ territorial disputes. As afore-mentioned, the international legal academia still has not reached a consensus on the definition of territorial disputes, so that even this thesis has to discuss the ‘working definition’ of territorial disputes in its introduction. Concerning the value and interests involved in territories, however, it is clear that the current situation actually has left a dangerous vacuum regarding the interpretation of the concept of territorial disputes. Thereby, the forcible measures could be abused by definite parties in this field, via deliberately misreading the relevant norms. On this account, under the condition of seizing the right of explaining their decisions, the United Nations could entrust its authoritative legal institutions with the task of accurately defining territorial disputes. Thus, the UNCSS may avoid becoming a tool for realizing the private will of definite superpowers. For example, by means of the discretion of the UNSC, the adoption of a definite statute which is similar to resolution 3314 of the

⁷⁸³ It should be clarified that having the principle of the prohibition on the use of force and the possible deliberate misinterpretation of several global powers in mind, the United Nations authorized military enforcement actions must exist in the relevant resolutions as the final measure, not the measure which enjoys priority, and the target, duration and operation of them must be strictly limited by the UNSC, see e.g. Antonio Cassese, *International Law* (2nd edn, OUP 2005) 348-49.

UNGA (the definition of ‘invasion’ was determined here) might be an acceptable idea.⁷⁸⁴

2. Preventively reserving emergency funds.

As the name shows, this suggestion addresses the second afore-mentioned thought on the reform of the UNCSS. On the one hand, as a particular type of international security mechanism which relies on national power and interests, the simplest way for the UNCSS to exclude the interference of third parties is to accumulate its own power and interests. In this way, the UNCSS may avoid begging those superpowers for help, or apportion its expenses among weaker states, as the relevant operations are now backed by first-hand resources. On the other hand, analyzing the various powers and interests that have been involved in the use of the forcible measures of the UNCSS, it is clear that the only three recurrent key words are human resources, material resources and financial resources. Besides, according to classical military doctrines, a substantial financial budget is also the basis for recruiting human resources and material resources.⁷⁸⁵ For these reasons, under the condition of seizing the right to distribute the relevant currency, the United Nations could reserve some emergency funds for supplying the engagement between the UNCSS and territorial disputes. Thus, the costs of handling territorial disputes may be compensated. For example, by means of the co-ordination of the UNSC, the periodical raise/reserve of a sum of special funds of the United Nations which imitates the annual budget of the peacekeeping operations might be an acceptable idea.

3. Appropriately arranging remedial measures.

As the name shows, this suggestion also addresses the second afore-mentioned thought on the reform of the UNCSS. On the one hand, as a particular type of international security mechanism which relies on national power and interests, even the non-forcible

⁷⁸⁴ Definition of Aggression, UNGA Res 3314 (adopted 14 December 1974) UN Doc A/RES/3314 (XXIX).

⁷⁸⁵ Sun Tzu, *The Art of War* (John Minford tr, Penguin 2008) ch 2.

measures of the UNCSS could inevitably hurt the innocent third parties (e.g. economic sanctions). On the other hand, owing to the inherent characters of the forcible measures, it is even more difficult to avoid the side-effects of the peacekeeping operations/military enforcement actions regarding the third parties (e.g. casualties). Besides, revising those multilateral international conventions of the past over 70 years, it also can be seen that the application of the UNCSS in territorial disputes has not been regulated by any particular remedial scheme (even the Draft Articles on the Responsibility of International Organizations relates to the general remedial measures is a very recent product of 2011⁷⁸⁶). For these reasons, under the condition of seizing the right to weighing the corresponding remedies, the United Nations could arrange certain remedial measures for compensating the engagement between the UNCSS and territorial disputes. Thus, the hidden troubles left by the settlement of territorial disputes may be offset. For example, by means of the guidance of the UNSC (or the ILC), the compilation of a United Nations working handbook which lists the accessible remedial measures might be an acceptable idea.

4. Specifically establishing supervisory department.

As the name shows, this suggestion addresses the third afore-mentioned thought on the reform of the UNCSS. On the one hand, while the peacekeeping operations have their own UNDPKO, the supreme commanders of the military enforcement actions are monopolized by the P5, this is certainly harmful to the impartial settlement of territorial disputes. On the other hand, the history of the Military Staff Committee has proved that a sole ‘Military Commanding Post’ attached to the United Nations can easily be paralyzed by the great power politics. Besides, the authoritative institutions of the UNCSS, such as the UNSC, are all quite busy in managing various security issues, so that they certainly cannot continuously keep their attention on a single matter.⁷⁸⁷ For

⁷⁸⁶ ILC, ‘Draft Articles on the Responsibility of International Organizations’ (adopted 3 June 2011) UN Doc A/66/100, arts 30-31 & 34-37.

⁷⁸⁷ Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, art 24; Dai Yi, *A Research on the Issue of Reform of the UNCSS* (Chinese Social Science Press 2014) 40-45.

these reasons, under the condition of seizing the right to lead the new department, the United Nations could set up a unique department for supervising the engagement between the UNCSS and territorial disputes. Thus, while the veto power is still there, the negative procedural influence of the superpowers may be reduced anyway. For example, by means of the organization of the UNSC, the creation of a subsidiary organ of the United Nations which imitates either the UNDPKO or the PBC might be an acceptable idea.⁷⁸⁸

5. Tentatively assembling guarding forces.

As the name shows, this suggestion also addresses the third afore-mentioned thought on the reform of the UNCSS. On the one hand, while the peacekeepers may come from every corner of the world, most of the military enforcers are sent by the P5, this is certainly harmful to the impartial settlement of territorial disputes as well. On the other hand, the history of the ‘United Nations Forces’ has proved that the nature of an independent ‘Global Standby Forces’ can easily be altered by the great power politics. For these reasons, under the condition of seizing the right to control the related troops, the United Nations could attempt to assemble a guarding force for reinforcing the engagement between the UNCSS and territorial disputes. Thus, while there is no match for the overall national strength, especially military strength of the superpowers, the negative influence of them upon the related cases may be reduced. For example, the recruitment of a United Nations ‘Guarding Forces’ which imitates the Pontifical Swiss Guard might be an acceptable idea.

Besides, with regard to the practical implementation of this suggestion, a preparatory step that must be emphasized is the determination of the details of the guarding forces. As it is well-known to all the relevant practitioners, once the United Nations has acquired a regular armed forces under its name, it has taken an important step towards

⁷⁸⁸ Regarding the general structure and operational history of the DPKO or PBC, see e.g. Hylik e Dijkstra, *International Organizations and Military Affairs* (Routledge 2017) 63-82; Rob Jenkins, *Peacebuilding: From Concept to Commission* (Routledge 2011) 46-52 & 76-117.

the establishment of a ‘world government’.⁷⁸⁹ However, in view of the fact that the current international community cannot even tolerate the revival of the ‘United Nations Forces’, such a tentative step will clearly heighten the vigilance of the relevant states, including the P5. On this account, other than the conservative name of ‘guarding forces/guards’, there are another four supplementary advises in relation to this suggestion:

Firstly, concerning the reaction of the international community, the size of the guarding forces should neither be too large, nor too small. In details, the author believes that the proper figure is 1-2 brigades, or approximately 10,000 military personnel. Secondly, concerning the impartiality of the forcible measures of the UNCSS, the members of the guarding forces should not be recruited from any superpower which has complex international relationship with other states. In details, the author believes that the United Nations could seek help from neutral states and volunteers, following the example of the Pontifical Swiss Guard. Meanwhile, the garrisons of the guarding forces may be located in certain neutral cities which have liaison offices or institutions of the United Nations, such as Geneva. Thirdly, concerning the nature of the guarding forces, the deployment of them should not be discussed by the UNSC/UNGA. In details, the author believes that this army should be sent directly by the Secretary-General of the United Nations, at the official invitation of the legal governments of the relevant states. Fourthly, concerning the degree of difficulty of handling territorial disputes and other similar missions, the guarding forces should possess a number of heavy weaponries. In details, the author believes that the related costs could come from the aforesaid special funds, and the suppliers of these weapons could be some neutral states which have a highly-developed military industry, such as Sweden. Besides, these heavy weaponries do not have to be heavy bombers or main battle tanks, but they should be something (e.g. armored vehicles or utility helicopters) that cannot be destroyed by small arms or

⁷⁸⁹ Hans J. Morgenthau (author), Kenneth W. Thompson & David Clinton (revised), *Politics among Nations: The Struggle for Peace and Power* (7th edn, McGraw-Hill 2005) chs 27-28.

light artilleries.

In short, the author suggests that the United Nations should plan the applicable reform in regard to the settlement of territorial disputes from five directions that mutually supplement each other. The overall idea is to pave the way for the use of those measures of the UNCSS that have more mandatory power, and to consolidate the foundations for the same batch of measures, so as to achieve the eventual balance of efficiency, costs and fairness. Besides, it should of course be acknowledged that the reform plan offered by this section has not touched upon the most controversial issue—the veto power. However, since the power of veto can only be abolished through an amendment of the UN Charter, which itself requires the unanimity of the P5, it is certain that this must be discounted as a realistic proposition for the moment.⁷⁹⁰ In other words, there is still definite space for the further improvement of the suggestions listed by this section, but this has gone beyond the range of capacity of the international legal academia.

6.3 The potential effect of the reform of the UNCSS: a case study of the application of the UNCSS in the Crimea Crisis

As mentioned in the last sections, the proposed reform plan of the author needs to be tested and verified in practice, and in this regard the Crimea Crisis of 2014 is a suitable recent case. Therefore, the author will now turn to research this internal confrontation between two Slavdoms. On the basis of this last major section, this thesis will attempt to explain the practicability of the relevant reform of the UNCSS, and the positive influence of such reform upon future territorial disputes.

1. Historical background.

Crimea is a peninsula on the northern coast of the Black Sea, between the mainland of Ukraine and Russia, where ethnic Russians account for two thirds of its population.⁷⁹¹

⁷⁹⁰ Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, art 108.

⁷⁹¹ The Government of Republic of Crimea, ‘About the Republic of Crimea’ (2017) <<https://rk.gov.ru/ru/structure/931>> accessed 1 November 2018.

Before the 18th century, Crimea was the territory of the Tartars under the rule of the Ottoman Empire, but the Russian Empire took control of this region in 1783, and the Slavs successively began to immigrate into Crimea in large numbers.⁷⁹² As Crimea could oversee the entire area around the Black Sea, the Russian Empire and the successive USSR chose to set up the headquarters of their Black Sea Fleet in the most important port of this peninsula-Sevastopol. Additionally, the Russians also established multiple military bases around the peninsula of Crimea.⁷⁹³ As the result, with numerous troops stationed over there, Crimea became one of the famous battlefields in the modern history of the world. From the early Russo-Turkish War, through to the Crimean War and the WWII, Crimea had always been a main site of the various armed conflicts which involved Russia/the USSR. Besides, it is also noteworthy that as an event which created the international system of the era of the Cold War, the Yalta conference was also held in Crimea.⁷⁹⁴

In 1954, for the purpose of celebrating the 300's birthday of the union between Ukraine and Russia, the ownership of Crimea was transferred from Russia to Ukraine under the order of the then paramount leader of the USSR, Khrushchev. Since both Russia and Ukraine were subordinate republics within the USSR, this change was treated as a minor adjustment of two domestic administrative divisions then, and it did not lead to any noticeable protest or objection.⁷⁹⁵ Unfortunately, such an enjoyable interaction between Russia and Ukraine did not last long-enough. At the end of 1991, the USSR disintegrated into 15 new states, and Crimea became an autonomous republic of the independent Ukraine under the mediation of Russia. However, according to the relevant agreement between these two parties, the Black Sea Fleet of Russia would continue to use the port of Sevastopol, thus creating one of the hidden troubles for the upcoming Crimea Crisis.⁷⁹⁶

⁷⁹² Neil Kent, *Crimea: A History* (C. Hurst & Co. 2016) chs 2-3.

⁷⁹³ Neil Kent, *Crimea: A History* (C. Hurst & Co. 2016) chs 4-5.

⁷⁹⁴ Neil Kent, *Crimea: A History* (C. Hurst & Co. 2016) chs 6-9.

⁷⁹⁵ Neil Kent, *Crimea: A History* (C. Hurst & Co. 2016) 141.

⁷⁹⁶ Neil Kent, *Crimea: A History* (C. Hurst & Co. 2016) 147.

Entering the year of 2014, the fragile political balance of Crimea was eventually damaged by the influence of international politics. Due to the decades-long economic hardship since the collapse of the USSR, the non-Russian citizens of Ukraine overwhelmingly wished to join the EU. Nonetheless, the draft agreement signed between Ukraine and the EU was rejected by its then pro-Russian president, Yanukovych.⁷⁹⁷ Affected by this political decision, a large-scale pro-EU protest broke out within Ukraine, which quickly led to the resignation of Yanukovych and the rise to power of the pro-Western factions.⁷⁹⁸ Facing the sudden change of the domestic situation of Ukraine, as it did not want to lose its old brother-in-arms, Russia immediately decided to intervene in the internal affairs of Ukraine. In terms of the starting point of this hegemonic operation, owing to its strategic value, historical origin and ethnic conditions, there was no doubt that Crimea would become the primary target in the eyes of Russia.⁷⁹⁹

In late February of 2014, on the pretext of supporting Yanukovych, the local authority of Crimea held a special meeting, and according started the preparations for breaking away from Ukraine. On March 1st, the Gosduma, or Parliament of Russia authorized president Putin to use armed forces inside the territories of Ukraine without the permission of the United Nations, so as to support the pro-Russian rebels over there.⁸⁰⁰ Soon afterwards, the Black Sea Fleet and the Russian army entered into Crimea and rapidly occupied the entire peninsula, whilst the local Ukrainian troops were either disarmed or forced to surrender to the Russians. On March 16th, the local authority of Crimea unilaterally held a referendum to determine the ownership of this region—nevertheless, since there were Russia armed forces all over the place, the result of this referendum had already been decided.⁸⁰¹ On March 18th, the Autonomous Republic of Crimea and the City of Sevastopol officially applied to become new federal subjects of

⁷⁹⁷ Serhii Plokhy, *The Gates of Europe: A History of Ukraine* (Basic Books 2015) 333-40.

⁷⁹⁸ Serhii Plokhy, *The Gates of Europe: A History of Ukraine* (Basic Books 2015) 337-44.

⁷⁹⁹ Steven Rosefielde, *The Kremlin Strikes Back: Russia and the West After Crimea's Annexation* (CUP 2017) ch 2.

⁸⁰⁰ Steven Rosefielde, *The Kremlin Strikes Back: Russia and the West After Crimea's Annexation* (CUP 2017) i-xi.

⁸⁰¹ Neil Kent, *Crimea: A History* (C. Hurst & Co. 2016) 157.

Russia, and Putin approved the relevant legal documents within three days. On April 11th, Russia announced the amendment of its constitution whereby the entire region of Crimea had acquired the status of a federal subject of Russia, and thus the legal procedure for annexing Crimea was completed.⁸⁰² On June 7th, the elected president of Ukraine, Poroshenko, vowed to regain the lost territory of Crimea sooner or later, but until mid-2018, the entire peninsula had remained firmly controlled by Russia.⁸⁰³

2. The absence of the UNCSS and the analysis of the problems.

Facing this sudden test of a territorial dispute actively initiated by one of the P5, the responses of the members of the international community were certainly not the same, yet there was no lack of efficiency and clearness. On the one hand, in late March, the major states of the former Western Bloc successively stated their collective viewpoint, claiming that they would support the overthrow of the Yanukovych regime, but would refuse to recognize the legality of the referendum held in Crimea.⁸⁰⁴ On the other hand, as a member of the former Eastern Bloc who stuck to traditional legal principles, China announced that it would respect the sovereignty and territorial integrity of Ukraine, but it did not openly oppose the annexation of Crimea.⁸⁰⁵ However, while most of the other major actors of the international community were busy expressing their political stance, the reaction of the United Nations was rather slow. More seriously, the measures adopted by it in respect to the present case exerted no meaningful influence on the development of the situation:

On March 1st of 2014, after Putin had been authorized by his parliament to use armed forces, the UNSC eventually held its first urgent meeting on the situation of Crimea.

⁸⁰² Neil Kent, *Crimea: A History* (C. Hurst & Co. 2016) 158.

⁸⁰³ The Guardian, ‘Ukraine President Vows Not To Give Up Crimea’ (7 June 2014) <<https://www.theguardian.com/world/2014/jun/07/ukraine-president-poroshenko-crimea-putin>> accessed 1 November 2018.

⁸⁰⁴ Bloomberg Visual Data, ‘Putin’s Stance on Ukraine Supported by Minority of Nations’ (14 March 2014) <<https://www.bloomberg.com/graphics/infographics/countries-react-to-russian-intervention-in-crimea.html>> accessed 1 November 2018.

⁸⁰⁵ Bloomberg Visual Data, ‘Putin’s Stance on Ukraine Supported by Minority of Nations’ (14 March 2014) <<https://www.bloomberg.com/graphics/infographics/countries-react-to-russian-intervention-in-crimea.html>> accessed 1 November 2018.

The only outcome of this meeting, however, was a declaration of the then Secretary-General of the United Nations, Ban Ki-Moon, expressing his concern about the issue Ukraine. Other than that, Ban just called on the international community to respect the sovereignty and territorial integrity of Ukraine. On March 15th of 2014, several Western states submitted a draft resolution on the upcoming referendum, in which they asked the UNSC to confirm that this referendum was invalid. Unsurprisingly, this draft resolution was vetoed by Russia, with China choosing to abstain from the voting procedure. On March 27th when Crimea had already been annexed by Russia for a week, the above draft resolution was submitted to the UNGA without any amendment. In this forum where each vote was equal, this resolution was eventually adopted. However, since the resolution of the UNGA was not legally binding on any member state of the United Nations, this served only to display the general attitude of most of the third parties to the direct parties *per se*.⁸⁰⁶

Thereafter, the United Nations institutions fell into a state of inertia in terms of the dispute over the sovereign ownership of Crimea. Due to the unique and asymmetric status of the P5, the entire system of the United Nations (including the UNCSS) remained silent for more than three and a half years. During this period, as they already had a good knowledge of the procedural obstacles of this organization, the Western states chose to ignore the authorization of the United Nations again, and unilaterally imposed a series of economic sanctions upon Russia.⁸⁰⁷ Nevertheless, although these states hoped that their sanctions could force Russia to make compromise, but in fact, Russia separately initiated a new armed conflict in the Donbass region of East Ukraine from April of 2014 onwards. Half a year after the Putin regime had started to intervene in the War in Donbass under the pressure of economic decline, the Minsk Protocol signed in September resulted in Ukraine losing effective control over two of its border regions in the East.⁸⁰⁸ Then, recently on December 19th of 2017, the UNGA finally

⁸⁰⁶ Territorial Integrity of Ukraine, UNGA Res 68/262 (adopted 27 March 2014) UN Doc A/R ES/68/262.

⁸⁰⁷ Richard Connolly, *Russia's Response to Sanctions: How Western Economic Statecraft is Reshaping Political Economy in Russia* (CUP 2018) ch 3.

⁸⁰⁸ Nikolay Mitrokhin, 'Infiltration, Instruction, Invasion: Russia's War in the Donbass' (2015) 1

passed a non-binding resolution in which it confirmed that the annexation of Crimea by Russia was an illegal act of occupation.⁸⁰⁹ Unfortunately, by this time, the attention of the international community had been transferred to Syria, and the transitional administrative institutions of Crimea had even been merged with the Southern Federal District of Russia.⁸¹⁰

Overviewing the role played by the United Nations in the Crimea Crisis, it can be said that this organization was almost a bystander to the dispute. Despite the clear forcible annexation of the territories of a member state of the United Nations, the intervention of the UNCSS could be regarded as little better than nothing. Needless to say, such a practical record definitely should be re-examined by the relevant researchers, and it needs to be corrected by the relevant reform plan as well. Fortunately, with regard to the origin of the above dilemma, it is not difficult to find out that the failure of the UNCSS in this case is in accordance with the aforementioned general rules:

Firstly, the activation of the measures with higher mandatory power must rely on the will of superpowers. According to the conclusion of the previous sections, during the process of activating such measures, the influence of the national power of the superpowers is everywhere. On the one hand, the deployment of a peacekeeping operation needs the authorization of the UNCSS, and the budget for this measure is also controlled by those economic superpowers (including the P5, see above). On the other hand, the organization of a military enforcement action also needs the authorization of the UNCSS, and its human resources, material resources, financial resources and even commanders are all controlled/sent by the P5. Under this circumstance, the United Nations authorized forcible sanction against Russia is obviously unrealistic-

Initially, given that until early 2014, Russia (as the successor to the USSR) had exercised

⁽¹⁾ Journal of Soviet and Post-Soviet Politics and Society 219 at 247.

⁸⁰⁹ Situation of Human Rights in the Autonomous Republic of Crimea and the City of Sevastopol, Ukraine, UNGA Res 72/190 (adopted 19 December 2017) UN Doc A/RES/72/190.

⁸¹⁰ Stanislav Krasilnikov, 'Putin Integrates Crimea into Russia's Southern Federal District' (*The TASS*, 28 July 2016) <<http://tass.com/politics/891243>> accessed 1 November 2018.

its veto more than any other member of the P5, it was unsurprising that it should do so again when such a use was undoubtedly in its own national interest.⁸¹¹ Next, Russia and the member states of the CIS accounted for roughly 5% of the annual budget of the peacekeeping operations, and as its potential, although in this case ambiguous, ally, China accounted for 10% of this budget. Summing up the general facts about the existing peacekeeping operations, it could be found that the resistance of the former Eastern Bloc might make 2 or 3 peacekeeping operations in other regions being beset by financial troubles.⁸¹² Finally, Russia was the largest country in the world, and also the one with the largest nuclear arsenal, plus its regular forces were among the most powerful armies in the world as well.⁸¹³ To those Western superpowers, punishing Russia through military force was not a feasible option, and indeed their reluctant attitude in this field had already been exposed in South Ossetia.

Secondly, those measures with less mandatory power are not effective in this circumstance. According to the conclusion of the previous sections, during the process of applying sanctions with less coercive power, the influence of the national interests of superpowers is also everywhere, just like their national power. On the one hand, it is true that the United Nations authorized diplomatic sanctions do not have to rely on the UNSC, but oral criticism and political isolation cannot directly undermine the inherent national strength of the parties. On the other hand, while the United Nations authorized economic sanctions certainly can undermine the inherent national strength of the parties, their success depends on the cooperation and sacrifice made by the relevant member states. Under this circumstance, the United Nations authorized non-forcible sanction against Russia is obviously insufficient—

⁸¹¹ Vaughan Lowe, Adam Roberts, Jennifer Welsh & Dominik Zaum (eds), *The United Nations Security Council and War: the Evolution of Thought and Practice since 1945* (OUP 2008) app 5.

⁸¹² This figure is calculated on the basis of the 15 existing United Nations peacekeeping operations of October, 2015, see also Report of the Secretary-General, ‘Implementation of General Assembly resolutions 55/235 and 55/236’ (28 December 2015) UN Doc A/70/331/Add.1.

⁸¹³ The International Institute of Strategic Studies (IISS), *The Military Balance 2018* (Routledge 2018) chs 5 & 10.

Initially, again due to the veto power of Russia, the diplomatic sanctions proposed during the Crimea Crisis had to be processed by the UNGA, whilst the corresponding economic sanctions could not be enacted at all through the United Nations. Next, according to the arguments listed in previous sections, Crimea can be seen to possess significant military, historical, geographic and ethnic value (see 3.1.2), and thus to be particularly closely linked to the security interests of Russia. Given the abundant value of Crimea, and its own security interests, even if Russia did care about its international reputation, it would be exceptionally unlikely to abandon a strategically important place simply to preserve that reputation. Finally, it was true that the unilateral economic sanctions started by the Western Bloc had reduced the annual GDP of Russia. Nonetheless, owing to the nature of this type of punishment, over half of the members of the international community were not obligated to suspend their regular trade relations with Russia. More ironically, Russia was a long-term provider of the oil and gas resources consumed by Western European states, so it was even not suitable for the Western Bloc to overly cut off their economic ties with Russia.⁸¹⁴

In short, thanks to its status as one of the P5 and the power/interests attached to such a status, Russia could rather easily eliminate or ignore the substantial intervention of the UNCSS. Besides, it is noteworthy that owing to the absence of the UNCSS, and especially any of its more coercive measures, most of the member states of the United Nations did not pay any heavy price for the issue of Crimea. However, concerning the national power of Russia and the escalation of the situation after the start of the economic sanction, it is predictable that the cost of applying such coercive measures in respect to this case would be quite heavy.

3. The reform of the UNCSS and the possible intervention.

Reviewing the entire process of the settlement of the Crimea Crisis and the above analysis, it can be seen that the current UNCSS basically cannot deal with the territorial

⁸¹⁴ Per Högslund, *Red Gas: Russia and the Origins of European Energy Dependence* (Palgrave Macmillan 2013) ch 11.

issues involving the P5. As discussed in the previous sections, however, there are opportunities to make changes, and the author has prepared a series of suggestions in this regard. Therefore, the final part of this case study will attempt to apply the proposed reform plan to the settlement of the Crimea Crisis, and this will allow the author to infer the practical effect of his plan. In consideration of the fact that the above five suggestions have not directly asked for the abolishment of the veto power of the P5, this section will take the use or non-use of the veto power by Russia as the standard for division. Therefrom, the author will assess the intervention of the newly reformed UNCSS by dividing its practice into two separate situations:

The first situation is the case that Russia has chosen not to use its veto power. As discussed before, given the abundant value of Crimea and the attraction of its own national security interests, it is extremely unlikely for Russia to ignore its veto power in this case. Nevertheless, if Russia does allow the UNCSS to play its role freely (this situation can also provide reference to other common cases in which the direct parties do not have the veto power), then the challenge for this mechanism is to deter Russia's desire to annex Crimea. By examining the reformed UNCSS which has adopted all the above suggestions, the author believes that it is definitely possible to accomplish this mission—

During the starting phase of the application of the UNCSS, since both Russia and Ukraine are member states of the United Nations, and Crimea is a piece of land territories, this case will surely be regarded as a 'standard' territorial dispute. On this basis, according to the first suggestion of this chapter, it is highly possible that the UNSC will add the provision of authorizing the member states of the United Nations to use 'all necessary measures' to the relevant resolutions. Thereby, the way for the international community to forcibly intervene in the Crimea Crisis would be paved by the authoritative institution of the UNCSS.

During the intermediate phase of the application of the UNCSS, since the UNSC has implied the use of force, those third parties who dislike the acts of Russia certainly can

organize a coercive peacekeeping force or a ‘United Nations Forces’. In addition, according the past experience, it can take some time to deploy the peacekeeping forces/‘United Nations Forces’, and in this context the newly reformed supporting mechanism of the UNCSS could properly fill the gap. On the one hand, under the invitation of the government of Ukraine, the Secretary-General of the United Nations could personally order the instant deployment of the guarding forces of the United Nations in Crimea. On the other hand, the supervisory department and reserved funds can guarantee the normal operation of the guarding forces of the United Nations in a short period of time. Additionally, after the ‘United Nations Forces’ have arrived at Crimea, the supervisory department which has got acquainted with local situation may immediately take over the command of these troops (the command of the peacekeeping forces could be given to other corresponding institutions). Besides, at the beginning of 2014, there was only one Russian marine brigade in Crimea, this was certainly no match for the guarding forces of the United Nations, as the latter had more personnel in the name of justice.⁸¹⁵

During the finishing phase of the application of the UNCSS, since Russia is one of the P5 and a military giant, it is unrealistic to expect that the peacekeeping forces/ ‘United Nations Forces’ can merely pay a limited price in practice. Fortunately, the existence of the remedial measures may more or less improve the enthusiasm of the participants of the relevant coercive operations, albeit these measures cannot completely cover the costs of the third parties. In addition, since the guarding forces of the United Nations have reinforced the armed forces of the third parties, they have accordingly shared a few corresponding costs which used to be afforded by those third parties as well. Besides, being an imitation of the UNPKO, the supervisory department certainly can undertake more civil administrative duties than any military headquarters, and this is

⁸¹⁵ Since Russia has chosen not to use its veto power in its case, it can be assumed that Russia does not want to escalate the situation. Thereby, it is predictable that the Putin regime will send more troops to reinforce the single marine brigade of the Black Sea Fleet, otherwise he could directly veto the relevant resolution, see The International Institute of Strategic Studies (IISS), *The Military Balance 2014* (Routledge 2014) 185.

indeed quite helpful to the post-conflict ‘peacebuilding’ of Crimea.

The second situation is the case that Russia has chosen to use its veto power. As discussed before, given the abundant value of Crimea and the attraction of its own national security interests, the logical choice for Russia is to use its veto power. Under such a circumstance, the challenge for this mechanism is to defend the political status quo of Crimea without overly provoking Russia. By examining the reformed UNCSS which has adopted all the above suggestions, the author believes that it is definitely possible to accomplish this mission—

During the initial phase of the application of the UNCSS, since Russia has vetoed the deployment of peacekeeping forces or the revived ‘United Nations Forces’, the first and third suggestions of this chapter will lose their practical significance. Nevertheless, under the invitation of the government of Ukraine, the Secretary-General of the United Nations can still instantly send the guarding forces of the United Nations to Crimea, as this matter is at his personal discretion. No matter what kind of tactics will be applied by the international community thereafter, the armed forces stationed in Crimea under the name of the United Nations could always buy some time/acquire a better situation for Ukraine. Meanwhile, even if the amount of the emergency funds may limit the length of the deployment of the guarding forces of the United Nations, it is still better than the complete absence of the UNCSS in a ‘standard’ territorial dispute.

During the intermediate phase of the application of the UNCSS, if Russia has not blocked the local traffic system, then the guarding forces of the United Nations could be sent to the Kerch Strait. Thereby, the potential road of the coming main forces of Russia will be closed. Otherwise, if Russia has blocked the local traffic system, then the guarding forces of the United Nations could be deployed in the Perekop Isthmus and the remaining Ukrainian settlements. Thereby, the tragedy of the total expulsion of the influence of Ukraine from Crimea might be avoided. In view of the narrow terrain of these two places, a few thousand personnel under the name of the United Nations should be more than enough. Furthermore, concerning the fact that Russia only dared to use

the ‘little green men’ against its weak neighbor in real history, it is predictable that the intervention of the guarding forces of the United Nations can hardly be publicly opposed by Russia.⁸¹⁶

During the finishing phase of the application of the UNCSS, since Russia has been trapped in Crimea, it is highly possible that there will be no uprising in the region of Donbass then. In addition, thanks to the grace period and buffer zone obtained by the guarding forces of the United Nations, the relevant parties should not need to worry about the ‘fait accompli’ created by Russia in the subsequent negotiations. Finally, as there are three parties stationed in Crimea, namely Russia, Ukraine and the United Nations, the author believes that the final result of this dispute may be similar to the mode of Cyprus.⁸¹⁷ If so, then the guarding forces of the United Nations definitely can protect the ‘Buffer Zone’ for a short period of time under the command of the supervisory department, until the UNPKO and the peacekeeping forces have arrived at Crimea.

4. Summary.

In summary, according to the scope of research given by the author, the Crimea crisis in 2014 is a ‘standard’ territorial dispute that is rarely seen in the 21st century. Unfortunately, due to the numerous disadvantages and general rules summarized by previous sections and chapters, the UNCSS has failed to exert its potential influence on this case. If the reform plan proposed in this chapter can be adopted, however, it is quite clear that there is an enormous space for the improvement of the performance of the UNCSS. Meanwhile, it also can be said that the suggestions listed by the previous section could fit the corresponding situation. Therefore, the author is optimistic about

⁸¹⁶ Otherwise, a large-scale armed conflict between the United Nations and one of the P5 will certainly signal the end of the current international system and all the credits of the United Nations, and this worst situation is certainly beyond the scope of the present thesis-we need generals, rather than lawyers at that moment. See Lucy Ash, ‘How Russia Outfoxes Its Enemies’ (BBC, 29 January 2015) <<https://www.bbc.co.uk/news/magazine-31020283>> accessed 1 November 2018.

⁸¹⁷ With regard to the issue of Cyprus which also has three direct parties, see Alex J. Bellamy, Paul D. Williams & Stuart Griffin, *Understanding Peacekeeping* (2nd edn, Polity 2010) 183-86.

his thoughts and personal proposal on the reform of the UNCSS, and also about the future application of the UNCSS in territorial disputes.

Chapter 7-Conclusion

Writing-up to the present stage, this thesis has finally reached the moment of ultimately summarizing its context. As outlined in the introduction, the author will use two subsections to concisely summarize the above five main chapters. These are his existing research findings on the basis of the research questions, and eventually the general summary.

7.1 The research findings of the thesis

Recalling the introduction, the author has set several research questions for the entire thesis, which surround the core theme of ‘the application of the UNCSS in territorial disputes’. Based on these above-mentioned questions, the findings of the thesis can be summarized as follows:

Firstly, why the settlement of territorial disputes should be resorted to the UNCSS?

Territorial disputes are one of the important international disputes that are both commonly seen and highly likely to trigger international armed conflicts since the signing of the Peace of Westphalia in 1648. The dangerous nature of them can easily result in the intervention of various international security mechanisms and peaceful measures. More importantly, although territorial disputes are widely distributed in the land territories of the member states of the United Nations, but their objects are both exceptionally valuable and crucial for a political entity to be qualified as a state. Thus, the related parties can hardly make any substantial compromise in respect to disputed territories. Besides, the subjects of territorial disputes usually just refer to sovereign states, especially the member states of the United Nations in the context of this thesis. The significance/value of territories to states and the inherent overall strength/coordinated will/endurance of states have increased the difficulty and uncertainty of the settlement of territorial disputes.

In contrast to the complex characters of territorial disputes, as the primary solution to modern international disputes which are recommended by the international community, the various peaceful measures actually cannot guarantee their effectiveness, nor can they always ensure ‘international peace and security’. Specifically speaking, despite the different individual problems of these peaceful measures, the activation, operation and success of them are all relying on the will of the relevant parties, so that they cannot surely control the extreme desire or behaviour of definite states. Undoubtedly, this is an enormous misfortune in the process of settling territorial disputes. Given this unpleasant situation, as the only non-temporary measure through which states can legally, actively and collectively resort to armed forces, the UNCSS would naturally be regarded as a realistic choice for suppressing any unjustifiable private desire of the relevant parties.

Secondly, what are the general rules governing the application of the UNCSS in territorial disputes settlement?

The routine operation of the UNCSS, when dealing with territorial disputes, is primarily through the UNSC, invoking the provisions of chapters 6 and 7 of the UN Charter. Between them, chapter 6 is the starting point, whilst chapter 7 is the core statute, but the emergence of new measures has made it impossible for these two chapters to completely reflect the operating mechanism of the UNCSS. Additionally, as the supplementary regulatory authorities, the UNGA, the ICJ and the United Nations Secretariat can also provide necessary assistance with due diligence, or even take over the overall management of this mechanism. However, from their theoretical roles and practical records, it can be seen that these three institutions could not completely replace the UNSC. Lastly, when acting as an assistant or substitute, the detailed purpose of the UNCSS in territorial disputes is to sanction any party which has refused the peaceful approach by violating international peace and security, so as to create a favourable environment for the subsequent processes. In other words, the UNCSS itself is not in charge of the eventual settlement of territorial disputes in the legal sense.

In terms of the surrounding issues of the UNCSS, in the process of directing the settlement of territorial disputes, the UNCSS may also intersect with three other supplementary manners. These are the peaceful measures for settling international disputes, the right of self-defence of states and the collective security functions of the regional organisations. Firstly, the intersection between the peaceful measures for settling international disputes and the UNCSS in territorial disputes is shown as the quasi-judicial power of the UNSC and the right of the parallel application of various peaceful measures. Meanwhile, the United Nations territorial administration system also has the potentiality to be involved in this field. Secondly, the right of self-defence of states is initially an independent route in the process of settling territorial disputes, and then it would be suspended or absorbed by the UNCSS after the activation of the latter. Thirdly, the collective security functions of the regional organisations might either assist or undermine the effect of the UNCSS in the process of settling territorial disputes. In short, the application of the UNCSS in territorial disputes is not an isolated issue, but these surrounding mechanisms have placed them in a relatively subordinate supporting role in regard to the main topic of this thesis.

Thirdly, how is the specific performance of the application of the UNCSS in territorial dispute settlement?

The history of international relations since 1945 confirms that both the forcible measures and the non-forcible measures of the UNCSS have frequently engaged with territorial disputes. Nevertheless, the detailed effect and limitations of these two sets of measures are usually not the same. Firstly, the United Nations authorized diplomatic sanctions are basically supplementary measures in the process of settling territorial disputes, they cannot independently ‘maintain or restore international peace and security’. Secondly, the United Nations authorized economic sanctions can easily hurt the innocent third parties, and this character has negatively influenced the frequency of the application of this measure. Meanwhile, economic sanctions normally cannot achieve the pre-determined purpose of the UNCSS by themselves as well. Thirdly, the

United Nations authorized military enforcement actions are the ones which can exert the most positive practical effect on territorial disputes. However, due to its strict pre-conditions, high costs and remaining hidden troubles, this measure has not been broadly applied in the field of territorial disputes. Fourthly, the substance of the United Nations peacekeeping operations is constantly changing, so that the accomplishments of this measure in the process of settling territorial disputes have changed a lot as well. Even so, with the increase of their mandatory power from traditional peacekeeping to coercive peacekeeping, the ability of achieving the predetermined purposes of the UNCSS of these operations is becoming better and better.

Besides, it should be noted that as different measures of the UNCSS may partly compensate each other's shortages, it is the shared weaknesses of all the forcible/non-forcible measures which could severely affect the performance of the UNCSS in territorial disputes. From the Ethiopia-Eritrea case, it can be seen that the non-forcible measures have rather moderate intensity of punishment and slow speed in terms of taking effect, plus the execution of them is overly relying on the co-operation of the member states of the United Nations. From the Iraq-Kuwait case, it can be seen that the forcible measures have a comparatively ambiguous legal basis and a tough operating environment, plus the background of their decision-making process is relatively imbalanced. Hence, the four sets of sanctionative measures of the UNCSS have had some successful experiences, but there is still some room for their further improvement.

Fourthly, what can be improved for the future application of the UNCSS in territorial disputes settlement?

Concerning the fact that the UNCSS is still not perfect, it should be acknowledged that its future is depending on the design and implementation of the related reform plan. Fortunately, speaking from the perspective of realism, the problems of this mechanism are explainable, and the relevant researchers could accordingly find out the corresponding thoughts for reform. In fact, to such a security mechanism within the modern international legal system, the influence of power and interests upon the rational

and anarchic international community is still everywhere. On this basis, the author has proposed five applicable suggestions for the reform of the UNCSS vis-à-vis territorial disputes. Afterwards, with the help of the Crimea case, the author has proved that even without touching upon the veto power, his reform plan also can provide crucial assistance to the improvement of the performance of the UNCSS in territorial disputes. In total, it can be said that the prospect of the application of the UNCSS in territorial disputes settlement is worthy to be highly expected by the international community.

7.2 General summary

In general summary, on the basis of the perspective of realism, this thesis has thoroughly and critically assessed the international legal topic of the application of the UNCSS in territorial disputes. Firstly, from the discussion of the initial two chapters, it can be learnt that territorial disputes and the UNCSS are mutually important to each other. Meanwhile, as the corresponding background, there is a lack of relevant legal studies on the present research topic. Secondly, from the discussion of the middle two chapters, it can be learnt that both territorial disputes and the UNCSS have their specific nature and characters. As the result, it also can be recognized that although the general environment of the international community is pursuing peace and security, but the engagement between territorial dispute and the UNCSS is still inevitable. Thirdly, from the discussion of the final two chapters, it can be learnt that due to their diversified advantages and shortages, the various measures of the UNCSS can exert different effect on territorial disputes. Nevertheless, there are well-directed ways for the reform of the UNCSS in this field, and thereupon an applicable reform scheme can be drafted.

Finally, as the author has mentioned in advance in the introduction, he does not extravagantly expect that this thesis is flawless in examining every aspect of its research topic. However, he sincerely hopes that his work could ‘creatively and profoundly reflect the unique features of the application of the UNCSS in territorial disputes’, so as to effectively fill a noticeable gap in the research projects of the international legal academia. Reviewing his academic work of over 90,000 words, the author hopes that

this purpose has been realized, and he also wishes that this thesis can offer valuable reference to the relevant practice and research in the future.

Reference

Note:

1. Since the thesis have cited hundreds of books and articles in more than 800 footnotes, and the overly use of 'ibid', 'see n (x)' or other Latin 'gadgets' may lead to further confusion about the order of footnotes, the author has decided here to keep the full citation all the way through the footnote brackets above.

'Note that it is also acceptable to give the full citation every time a source is cited, and some publishers and law schools may prefer this to the use of short forms'-*Oxford University Standard for the Citation of Legal Authorities* (Hart Publishing 2012) 5.

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