When a situation is brought before the Security Council, it must decide first whether the issue falls within its area of competence, i.e. international peace and security. Before it can exercise certain powers, the Charter requires that the Council assume jurisdiction over a situation by determining it to be of sufficient gravity to warrant the exercise of those powers. This chapter seeks to ascertain, as an aspect of the principle of legality, the role of the principles and rules of international and Charter law in the process of determining Security Council jurisdiction and the existence of a danger, threat or breach of the peace, or act of aggression. Thus, it first poses the question what limits to the Council’s authority in taking cognizance of certain situations may be discerned from general international law and Charter law, including the extent of the domestic jurisdiction clause of Article 2(7). Secondly, however, the core of this chapter is devoted to the relevance and effects of these limits in the practice of the Security Council since 1990 when establishing its jurisdiction over situations affecting international peace and security.

2.1 Preliminaries: Council jurisdiction versus domestic jurisdiction

The Security Council is held to determine at different stages that a situation is of a sufficiently serious nature before it is authorised to exercise its powers relating to those situations. The existence of such ‘triggers’ in the Charter Articles implies that certain situations may not trigger, justify or necessitate Council involvement and/or subsequent (enforcement) measures. Thus, these triggers or jurisdictional thresholds may contain, first, limits inherent in the relevant provisions, in accordance with the doctrine of *ultra vires*, and, secondly, be limited by the UN Charter and general international law as ‘higher norms’. The principle of domestic jurisdiction, which emanates from both Article 2(7) and general international law, contains a general division of competence between UN member states and UN
organs. At a bare minimum, the UN organs in general are required by that provision to respect the domestic jurisdiction of states, with an important exception for the application of enforcement measures under Chapter VII. These two parameters for Council jurisdiction as well as pré-1990 Security Council practice will be dealt with in this preliminary section.

2.1.1 Criteria for Security Council jurisdiction

A subtle, yet significant, distinction must be made between, first, considerations surrounding the (political) decision to determine whether it is opportune for the Council to do make a jurisdictional determination, and, secondly, the merits of the determination itself, i.e. whether the situation does objectively constitute a threat to peace. With regard to the first issue, the prevailing view among authors is that the Security Council has full political discretion in deciding to make any such determination. Neither is it under any legal obligation to make any determination in the case of a certain set of circumstances. The second issue pertains to the substantial merits of a determination and is the focus of this section.

The Security Council may, in principle, exercise its powers only when it has determined a situation to be of a certain nature. Thus, first of all, it is allowed to investigate only disputes or situations causing international friction.\(^1\) Secondly, before it may exercise its powers under Chapter VI regarding the peaceful settlement of disputes, the Council is required to determine the existence of a danger to the peace.\(^2\) Likewise, for the Security Council to be authorised to employ its far-reaching enforcement powers under Chapter VII of the Charter, it must characterise the situation under review as either a threat to peace, breach of the peace, or act of aggression.\(^3\) Thus, formally, five criteria or categories of situations exist for Council jurisdiction, which may correspond to the exercise of specific powers.

(i) *Disputes and situations might lead to international friction or give rise to a dispute*

The power of investigation stands independently of the other powers granted to the Council in Chapter VI, in which it is to be found. It has, therefore, its own inherent criteria for determining whether the Council may validly do so its powers under Chapter VI. Before it can direct its powers towards resolving a danger to the peace, the Council may officially investigate whether such a situation exists. To justify such investigatory action, Article 34 states that there must be a dispute or a situation “which might lead to international friction or give rise to a dispute”.

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1. Article 34 UN Charter.
2. Articles 33(2), 36 and 37 UN Charter.
3. Article 39 UN Charter.