Within the Security Council’s gradual development of an ever broader understanding of its powers under Chapter VII of the UN Charter since the end of the Cold War, the passage of truly legislative resolutions is a relatively new development. This contribution first gives a short overview of the development of the Security Council towards a world legislature, followed by a discussion of the legality of such legislative action by the Council, as well as the legal consequences and possibilities for review. Finally, the article situates the Security Council’s assertion of legislative powers in the context of a general discussion on the development of the international system.

I. DEVELOPMENT OF THE SECURITY COUNCIL TOWARDS A WORLD LEGISLATURE

Since the inception of the United Nations, and especially since the end of the Cold War, the Security Council gradually has developed an ever broader understanding of its powers under Chapter VII of the UN Charter. First, the Council has increased its executive powers, especially by broadening the interpretation of the term “threat to the peace” in Article 39. While this term originally was thought to refer only to the threat of large-scale use of transboundary armed force, the
Council increasingly has considered internal conflicts, including large-scale human rights abuses and coups d’état, to constitute a threat to the peace.¹

Second, the Council in several instances has decided upon the (il-)legality of certain acts and the legal consequences arising therefrom, thus exercising what may be deemed a quasi-judicial function.² One area where the Council (through a committee) most noticeably – and most problematically – functions as a quasi-judicial body is in the context of so-called smart sanctions directed against individuals.³

Finally, and most importantly in this context, the Security Council in the last few years has implemented several measures of a legislative nature.⁴ This process began when the Council started considering, without reference to any particular situation or conflict, certain problems of concern to the international community. Among the topics discussed in such “thematic resolutions” were the protection of civilians in international conflicts and the spread of HIV/AIDS, but also certain methods employed by terrorist groups. However, in this context, the Council had not yet invoked its Chapter VII powers to lay down obligations for states.⁵

This changed with Resolution 1373 (2001). Reacting to the terrorist attacks of September 11, the Council determined “that such acts, like any act of international terrorism, constitute a threat to international peace and security”, thus referring to terrorist acts also in the abstract. The Council then imposed on all states duties to “prevent and suppress the financing of terrorist acts”, inter alia, by criminalizing conduct aimed at financing or supporting terrorist acts. These duties were not dependent on the continuance of the threat posed by the Al Qaida network or otherwise linked to a concrete situation. In other words, the Council laid down norms of general and abstract applicability.

³ See note 9 and accompanying text, infra.
⁴ For a more detailed view, see Denis, supra note 2, Chapter 3.
⁵ On “thematic resolutions” in general, see Denis, supra note 2, paras. 118–30; on the earlier anti-terrorist resolutions, see ibid., paras. 171–81.