



**Decision-Making and Collective Choice against Terrorism in the UNSC**

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**Abstract**

Decisions as outputs of international organizations are highly influenced by different motivations. Presence of veto powers, heterogeneity of preferences and the rules governing decisions lead to study the decision-making in the United Nations Security Council. But the main puzzle of the current paper is to discover the motivations influencing on decision-making in the UNSC. According to our research, precedent and organizational doctrines guide the veto holders' decisions. The costs of unilateral decisions push the members of UNSC to act based on collective bargaining and decisions which not only modify the opportunity structures but also help them to meet their rather different preferences. One of the most notable cases that these double doctrines are heavily visible in the UNSC activity is the area of the terrorism. In this case, the UNSC as an international political organization providing collective response to the international security threats by resorting to agreed language and political coalition.

**Key words:** International Organizations, Decision-Making, UNSC, Collective Action, Terrorism.

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## **Introduction**

Is decision-making within the United Nations Security Council (UNSC) significantly influenced by informal precedent and organizational doctrine, even though it is dominated by the great powers and its members are not bound to follow previous decisions? Conventional wisdom holds that the collective choice of member states within the UNSC is rather inconsistent and hardly limited by institutional constraints, except for the few formal provisions of the UN Charter regarding membership and voting rights, (Boulden 2006; Hehir 2013). Decision-making is believed to be primarily driven by the varying case-specific interests of the great powers (Malone 1997, 2006; Bosco 2009). Moreover, the Council was deliberately designed as a political body for selectively providing collective responses to international security threats, not as a quasi-judicial body bound by legal rules of consistency and impartiality (Luck 2006: 16-27; Roberts and Zaum 2008). However, member states frequently refer in their own decisions (e.g. resolutions) to previous ones, and resort to ‘agreed language’ when negotiating new decisions. And foreign policy makers are well aware of the power of precedent in Council decision-making. The British Prime Minister Thatcher warned against establishing a potential precedent by asking the UNSC to authorize the use of military force against Iraq during the 1990 Gulf crisis (Thatcher 1993: 821). Commenting on a referral to the International Criminal Court, former US ambassador Bolton (2007: 349) deplored that the EU had a precedent they could and would use against the US later, while the General Counsel of the US Mission to the United Nations acknowledged that the Security Council “was ready to respond to the terrorist acts of September 11 because it had already decided that terrorism constitutes an appropriate subject for its consideration and action” (Rostow, 2002: 486).

The new wave of theoretically based studies of the UNSC has not yet addressed this puzzle (Martin and Simmons 2013). One set of studies has examined how the Council can reach agreement, despite the veto power of its five permanent members and their frequently widely differing preferences (O’Neill 1996). Some have drawn attention to the role of outside options among the great powers (Voeten 2001; Johns 2007), while others have examined the role of implicit or explicit threats and promises as a means to construct package deals and increase incentives for affirmative voting (Kuziemko and Werker 2006; Eldar, 2008; Vreeland and Dreher, 2014). Another set of studies has examined the particular usefulness of the Council for the great powers that are its privileged permanent members (Voeten 2005, 2008). Some have highlighted the Council’s role in gathering and disseminating information on military action (Chapman and Reiter 2004; Thompson 2006a, b, 2009), while others have emphasized that states use the symbolic legitimacy of Council decisions in their

contestation of international norms (Hurd 2007; Contessi 2010). Prantl (2005) has shown how informal groups can complement and facilitate incremental change within the UNSC as a formally static institution. All these studies focus on explanatory factors located outside the Council; none of them has addressed the role of precedents and organizational doctrines. Precedent and organizational doctrine evolving from precedents represent a puzzling causal relationship: A current decision is constrained by one or more previous ones, not because the latter proved especially effective, wise or legitimate, but simply because they exist (Pelc 2013). Studies of judicial decision making show that international courts, much like national ones (Shapiro, 1968: 39-43; Bartels, 2009), are constrained by precedents and legal doctrines, although they are not legally compelled to follow previous decisions. The International Court of Justice (Shahabuddeen 2007), the European Court of Justice (Stone Sweet 2000: 153-193) are believed to rely on previous cases to improve the efficiency of decision-making or to convince lower (domestic) courts of their legitimacy (Lupu and Voeten 2012). Legal doctrines, commonly understood as sets of norms for judicial decision making that follow from some basic principle reflected in previous decisions (Tiller and Cross 2006: 517), are likely to create positive feedback by generating an increasing stream of stabilizing decisions (Hathaway 2001). State behaviour intended to establish precedent (Pelc 2013) or to influence the forum in which precedential effects are likely to occur (Busch 2007) reflect the belief that precedent matters. Surprisingly, insights from this debate have not been transferred to the analysis of UNSC decision-making, although underlying causal mechanisms may be relevant beyond the legal domain (Stone Sweet 2002: 122-124). In this article, we explore how and under which conditions precedent and organizational doctrine emerge as opportunity structures that affect actors' choices within the UNSC. We place our analysis within the neoliberal institutionalist framework to answer the puzzle of why even the world's most powerful states might accept the informal constraints of precedent and organizational doctrine, although they are not formally committed to do so. We start from the assumption that UNSC member states act rationally and are generally well aware of their preferences in a given situation. Precedent and organizational doctrine are conceptualized as opportunity structures that exert influence on member states' decision making behaviour in coordination situations by providing focal points that allow adopting collective decisions despite diverging preferences (Snidal 1985, Sugden 1995). Repeated reference to the same precedent create an increasingly stable doctrine that helps predict whether future proposals will be accepted, while similar, but not identical, decision situations are expected to trigger incremental change. As a result, an organizational doctrine exerts influence on UNSC decisions in addition to the constellation of power and interests among the actors involved; it constitutes a separate causal factor that is necessary to explain organizational decisions.

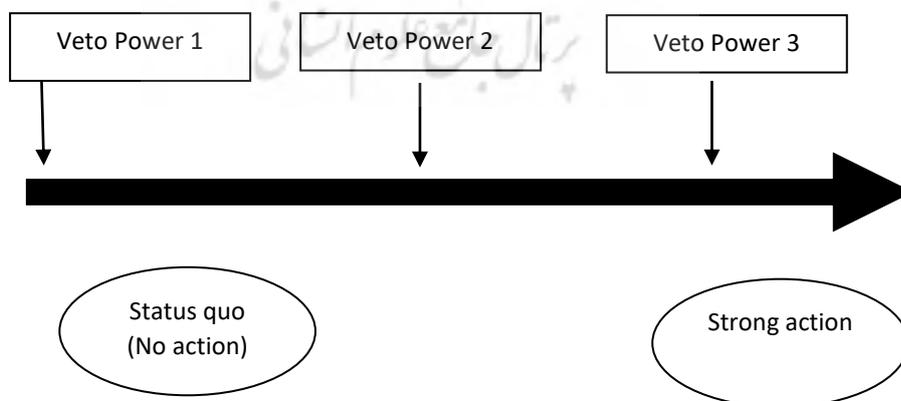
### Theoretical Perspectives on the Role of Precedent and Doctrine in UNSC Decision-making

According to our assumption, Council members are not formally committed to follow their previous decisions, act rationally and pursue their individual interests, and do not purposefully establish precedents in order to collectively constrain their future decision-making behaviour, although individual actors might seek to establish a precedent with such a goal in mind.

#### I. COORDINATION PROBLEMS AND THE DEMAND FOR FOCAL POINTS

The UNSC confronts its member states with coordination problems. As any international organization, it is based upon an incomplete contract (Abbott and Snidal, 1998: 6-9). Its main function is the adoption of collectively binding decisions on the appraisal of behavior that actually or potentially threatens international peace and security, as well as on sanctions as collectively organized reactions to such threats (Luck 2006). A decision depends primarily on agreement among the five veto powers, namely the US, Russia, China, the UK and France, while the voting power of the non-permanent members is almost negligible (O'Neill 1996, Mahbubani 2004; Voeten 2005). A decision requires only nine affirmative votes of its fifteen members as well as the absence of negative votes by the five permanent members. Concerning a given international crisis or threat to international peace and security, some permanent members, often the three Western powers, typically propose strong measures (e.g. military action or tangible sanctions), while others prefer moderate action (e.g. symbolic sanctions) and yet others advocate no action at all. Hence, the members face a highly asymmetric coordination problem. A simple bargaining or veto player approach would suggest that the veto power with preferences closest to the status quo determines the solution, frequently resulting in no decision at all. The general situation is depicted in figure 1 (see Voeten 2008: 51).

**Figure 1: Typical UNSC Decision Situation**



Students of the UNSC put forward two mutually complementary explanations to account for the fact that the UNSC has frequently not been blocked and that its activity has clearly expanded in frequency and scope since the end of the Cold War (Wallenstein and Johansson 2004; Matheson 2006).

First, a powerful state advocating strong action, like the United States in the post-Cold War era, can employ its material resources in several ways to change the decision situation in its favor, but this strategy does not necessarily solve the coordination problem. A great power may threaten to act without Council authorization, either unilaterally or in a coalition of the willing, and thus exploit its outside option (Voeten 2001). Or it may directly bribe or threaten Council members to support its proposal, or at least not to veto it. There is some evidence that members get easier access to international aid (Kuziemko and Werker 2006; Vreeland and Dreher 2014) and the United States is reported to have offered in some cases incentives to, or put pressure on, Council members, including China (Eldar 2008: 17-18). However, the prelude to the US-led 2003 Iraq war indicates that both outside options as well as threats and promises can be insufficient to sway UNSC members and carry significant political costs (Krisch 2008: 147-49; Thompson 2009: 198-203). There is also evidence that agreement has often been reached despite the fact that it runs counter to the interests of particular Permanent Members even in the absence of immediate compensation (Krisch 2008: 141). If these measures create a case-specific willingness to compromise, they are likely to modify the preferential positions of Council members in the direction of more decisive action (thus narrowing the distance of powers 1 and 3 in figure 1), but they do not necessarily dissolve the coordination problem altogether.

Second, the great powers are likely to have some general interest in the UNSC that pushes them toward reaching compromise, but does not solve the coordination problem either. There is evidence that the P5 are frequently interested in reaching some decision over inaction to protect the institution's reputation (Johnstone 2010: 238; also Lipson 2007). This interest derives from the P5's privileges (e.g. their veto power) and from the Council's focalness and legitimacy for dealing with certain types of problems (Hurd 2007: 173-93; Krisch 2008: 142-47; Bosco 2009: 251). If permanent stalemate rendered the organization inoperable, active members, such as the three Western powers, could not employ the Council to gather relevant information (Thompson 2006a) or to legitimize their action intended to preserve or restore international peace and security any more (Voeten 2005; Hurd 2007). Members that are sceptical of Western activism, such as Russia and China, could not employ the Council to control (Thompson 2006b) and delimit Western action (Voeten 2008; Contessi 2010). According to the institutional design literature, the general interest in the operability of an IO is typically particularly strong if members draw tangible advantages from that IO, and/or

lack feasible alternatives (Koremenos et al. 2001: 780-83). It depends immediately on whether the member states can collectively agree on organizational decisions that it does not like. Accordingly, a member state interested in avoiding institutional inoperability has to accept at least some case-specific decisions. This constellation reflects the typical patterns of committee governance that are well-known from domestic political systems (Sartori 1987: 227-32). The general interest in reaching some decisions despite frequently fundamentally diverging case-specific interests creates demand for focal points. If they prefer agreement over non-agreement, the actors operate in a coordination situation of the battle of the sexes type. Such situations have multiple equilibriums, i.e. the participants might agree on different solutions (Snidal 1985: 931-36), and create demand for focal points because member states must know where to compromise in light of diverging preferences (Schelling 1960, Garrett and Weingast 1993). A focal point denotes one among at least two Nash equilibriums that stands out from the others - is salient - in virtue of some property which all the players can recognize. A rational actor chooses the strategy corresponding with the focal point in the expectation that the others will do the same (Sugden and Zamarrón 2006: 611-12). Hence, a focal point can be accepted by rational actors, because it does not violate their structural interests and helps achieve cooperation in coordination situations. It is not easy to identify a focal point that is recognizable (and thus acceptable) to all relevant actors. It has to be taken from beyond the specific decision situation, precisely because the structural situation does not provide sufficient orientation (Sugden 1995). While the demand for focal points in mixed motives situations has long been recognized by International Relations scholars, no adequate theory of focal points has been developed so far (Snidal 2013: 103). Analysts have emphasized that norms and institutions can provide focal points (for international law, see Sandholtz 2008: 106-07; Huth et al. 2013: 93-96), but have rarely explored why some solutions are accepted as focal, while others are not (Martin and Simmons, 2013: 333). Accordingly, Schelling (1960) allows the search for clues to range over analogy, precedent, aesthetics, geometry, casuistic reasoning, whimsy and the "logic" of joint optimality.

#### **A. Precedent as a Focal Point in UNSC Decision-making**

Precedents provide particularly well-suited focal points for decision-making in repeated situations within the highly institutionalized setting of IOs. Regardless of its content, a precedent is suitable for the very reason that it has been agreed upon previously by the same (or a very similar) group of actors within the same organizational setting (Gerhardt 2005). Past experience, precedent (Snidal 1985: 936), or tradition (Schelling 1960: 106-7, 260) are widely believed to have a stabilizing effect in coordination situations, if

only because it will usually be difficult to identify equally acceptable solutions. Evidently, a previous decision is not neutral to power and interests (Garrett and Weingast 1993: 173-185; Yee 1997: 1025-1027). To the contrary, it reflects the existing constellation of power and interests at the time of its adoption. This bias supports its compellingness because it reflects a solution that has proven to be collectively acceptable by the actors involved in light of the prevailing constellation. A suitable precedent modifies the rationale of Council members, no matter why it has been adopted, because it provides a point of reference around which collective expectations about the nature of a collectively acceptable decision in a given type of situation can converge. Those advocating a solution that is compatible with the precedent can point to previous agreement and blame deviant behaviour as arbitrary. While powerful member states could still block a proposal that is in line with widely accepted precedence, this step creates considerable costs. It is likely to produce stalemate, thus reducing the operability of the IO, and it will be considered by other member states as purely parochial and non-cooperative, thus undermining an actor's reputation as a reliable member of the IO (Keohane 1984: 101-6; Sartori 2002). Disadvantaged actors might seek to contest the applicability of the precedent, arguing that situations are different (see Johnstone 2003,476), or struggle to reduce undesired consequences of its application, e.g. by seeking to postpone the decision or to introduce ambiguous language (Byers 2004).

**Figure 2: The Power of Precedent**

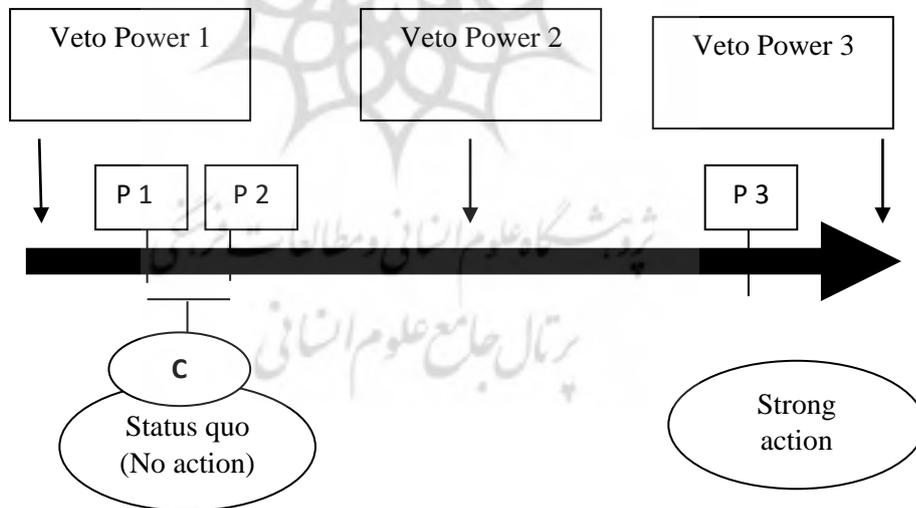


Figure 2 helps analyse this incentive. The fact that a previous situation has been decided according to precedent p<sub>1</sub> produces the general expectation of Council members that decision problems of this sort can be settled in this way, simply because this solution had been acceptable in a similar context

before. The precedent is likely to create a zone of indifference for veto power 3 in which its case-specific costs of compromising are balanced by the benefit of avoiding the costs of non-cooperative behavior. Violating general expectations reflected in the precedent would signal that UNSC membership is used for parochial interests. It might result in political isolation and would create incentives for other actors (e.g. veto power 1) to act outside the organizational framework, thus diminishing the benefits from membership and veto rights. However, the zone of indifference ends at point  $p_1$ . Veto power 3 would hardly be inclined to move any further to the left without case-specific benefits. Likewise, veto powers 1 and 2 can expect that veto power 3 agrees to a solution reflecting the precedent  $p_1$ , because a similar solution had been acceptable previously. However, any solution to the left of precedent  $p_1$  is burdened with the additional costs of changing an established practice. Accordingly, they might be inclined to refrain from submitting particularly stringent proposals, because they are unlikely to be agreed upon and increase the risk of total stalemate. Hence, the precedent matters both for the proponents and the opponents of action. Notably, this effect does not depend on the distance of the precedent from solutions preferred by pivotal actors (veto powers 1 and 3 in figure 1). Actors are likely to agree on a solution at point  $p_3$ , if this point were to reflect the precedent. Veto power 1 will be encouraged to propose strong action, while veto power 3 will take into account the costs of so far withdrawing from previously reached consent.

Proposition 1: Collective agreement tends to reflect existing precedents. We expect that the Council members will easily agree on condemning an action as threat to international peace and security, if it has a practice of condemning such acts, while it will not do so, if it has a practice of not condemning such acts.

### **B. From Precedent to Stable, but Incrementally Changing Organizational Doctrine**

Repeated decisions according to a precedent stabilize related expectations regarding collective action in a given type of situation. They reflect the continuing absence of effective contestation (David 1994, 216) and increase the costs of blocking the application of an accepted solution to an additional case. Actors advocating to ignore a repeatedly accepted solution jeopardize the prospect of agreement and will incur ever higher reputation costs simply because their claim violates more firmly established expectations of other members (Shapiro 1968: ch. 1;). Moreover, an established decision practice is likely to attract additional cases, because it creates a higher degree of predictability. Member states seeking to initiate a new decision can now more readily anticipate the possible outcome of their projects. They are enabled to

rationally select those initiatives that have a chance of succeeding, while refraining from projects that will fail. This selection bias is likely to create an increasing stream of initiatives that are expected to result in approval according to established practice. This effect lowers the threshold for successful initiatives, because it allows less powerful actors to refer to established practice. As a result, even extremely sceptical members, which consistently struggle against expansion of a given sort of action, will be confronted with ever new collective decision problems that arise only because of the existence of the relevant practice. Such positive feedback effects are typical for path dependent processes (Pierson, 2004: 17-53; for applications to legal doctrines, see Hathaway, 2001; Stone Sweet, 2002).

Proposition 2: Repeated reliance on a given precedent tends to reduce the threshold for the submission of similar cases. We expect that a firmly established practice allows even weaker countries to initiate action or that action can be initiated in less salient cases. Precedent and established decision practice facilitate incremental change in at least two ways. Generally, path-dependent processes are not completely resistant to change but allow for slow and gradual development, in contrast to sharp turns (Mahoney 2000). An established practice can be specified, elaborated, extended, or delimited regarding scope and content without entirely abandoning the established path. Such incremental change may lead to significantly changed practice over time (Pierson, 2004: 82-87; Capoccia and Kelemen, 2007: 351).

First, incremental change is likely to be triggered by the fact that decision situations are hardly ever fully identical (Shapiro, 1968: 73-91, Fon, Parisi, and Depoorter, 2005; Gerhardt, 2005). Slightly different cases force decision-makers to choose whether to consider them as sufficiently similar with previous ones, thus allowing application of an established focal point, or whether differences justify the endeavour to identify an alternative focal point. Slight expansion of existing practice (suggesting agreement on point  $p_2$  in figure 2, if  $p_1$  is not applicable) would increase the costs of veto power 3 and render agreement somewhat more difficult. However, it may well be acceptable, because its rejection would put all actors alike back into the original situation characterized by widely diverging preferences and the risk of stalemate.

Second, advocates of more stringent action (e.g. veto player 1) may deliberately submit proposals beyond established practice and thus endeavor to supplement this practice with an additional component. We would expect that opponents (veto power 3) will accept this change only, if the additional costs are low, or if there are case-specific reasons for moving from  $p_1$  to  $p_2$ . However, an established decision practice is likely to move the reference point for calculating costs and benefits to point  $p_1$ , because the actor has already (implicitly) accepted agreement at this point. Political pressure, outside options or case-specific deals need to be employed only to bridge the remaining distance (c). Hence, established practice affects the fate of the ambitious proposal, while the

probability of its adoption depends on the amount of costly innovation. As a consequence, rational actors may feel encouraged to submit initiatives which are largely, but not fully, compatible with an existing decision practice in order to gradually expand this practice (Pelc 2013).

Proposition 3: Interested actors may exploit an existing practice even if they intend to change or modify it. We expect that far-reaching decisions are facilitated, if innovation is minimized by associating proposals to existing organizational practice.

Based upon established decision practice, an evolving organizational doctrine conveys, as an informal convention (Schelling 1960: 64, 260; Keohane 1984: 89), collective normative expectations of the IO members. By suggesting a particular solution to a given problem, it helps reduce transaction costs and facilitates collective decision making (David 1994). Even though member states are not formally committed to it, a doctrine creates, like any other social norm, an incentive for member states to assess their preferences in relation to the existing organizational practice (McAdams and Nadler 2008). Eventually, the application of a well established organizational doctrine may even become routine, if its appropriateness for certain types of situation is taken for granted and not questioned in every single situation any more. In this case, even fully rational actors may (appear to) switch to an organizational logic of appropriateness (March and Olsen 2004), as is expected for organizational decision-making under bounded rationality (March and Olsen 1989: 21-38).

### **C. Scope Conditions and Observable Implications**

The power of organizational doctrines is related to three important scope conditions. First, we can expect a doctrine to emerge and influence subsequent decisions only if decision-makers are faced with similar decision situations over time. Since it is rooted in the deliberate linkage of otherwise unrelated, but like situations, it is not applicable to unique situations or totally new problems that are difficult to relate to previous ones. Second, a doctrine is likely to matter only if actors operate in a coordination situation and have diverging preferences. If they favour the solution suggested by an existing doctrine anyway, the latter cannot have any impact on the outcome. If actors have a paramount interest in pursuing their case-specific preferences irrespective of what other actors do (i.e. if they act according to a dominant case-specific strategy), precedent and doctrine do not matter either, because there is no room for the influence of generally accepted focal points. Finally, an organizational doctrine is likely to matter primarily within a well-established structural and organizational context. It will be significantly less compelling or even totally irrelevant for differently

composed groups of actors and for decision processes of other international organizations (see Stiles 2006).

A powerful doctrine is expected to lead to a number of observable implications. First, a decision that is in line with an established doctrine indicates impact of that doctrine, if it is difficult to explain by the prevailing constellation of interests among the actors involved. In contrast, decisions that are difficult to accommodate with an established doctrine indicate the weakness of that doctrine. Second, attempts by individual actors to deliberately relate their proposals or negotiation positions to an established doctrine suggest that actors consider this step to facilitate agreement on their preferred solution. Third, acceptance of a decision doctrine even by actors that seek to avoid its implications in a given decision situation indicates the strength of the doctrine. Fourth, explicit collective reference to a previous decision indicates the strength of existing practice, because it reflects the awareness of decision-makers of some relevant relationship of the current case with previous ones. Fifth, routinization of decision-making in cases related to a doctrine is taken as an indicator for its stability and strength, because reflects the absence of contestation. Sixth, initiatives processed according to an existing doctrine that are submitted by weak countries are taken as evidence for its stability and strength. Seventh, behaviour of states seeking to associate a proposal with an existing precedent or doctrine, even though it is not (yet) fully covered by existing practice, is taken as affirmative evidence of the doctrine's strength. Eighth, incremental (gradual) change especially in the form of its expansion or of the delimitation of its boundaries is taken as a confirmation of the doctrine, while sudden or profound changes indicate its weakness or end of applicability.

## **II. THE POWER OF THE UNSC DOCTRINE ON**

To probe the usefulness of our theory, we examine empirically the relevance of the doctrine on terrorism for UNSC decision-making. To assess the impact of an alleged doctrine we investigate the observable implications spelled out above in a number of cases related to the doctrine. For two highly salient terrorist decisions of the past three decades, namely the 1992 terrorism-related sanctions against Libya and the imposition of general counterterrorism obligations on all states after the terrorist attacks of September 11, 2001 (9/11) against the United States, we examine whether UNSC members accepted an existing precedent or doctrine as a focal point, even if they disfavoured the related consequences. As the most important rival theoretical expectation, we evaluate whether UNSC action is readily explained by the exogenous structure of power and interests of member states. This basic realist hypothesis includes the expectation that states with competing interests in a particular situation might be driven toward compromise by threats (Eldar 2008: 17-18) and/or direct or indirect bribes or vote trading (Kuziemko and Werker 2006, Vreeland and Dreher 2014), or

by outside options (Voeten 2001) of powerful states, in particular the US. We triangulate evidence from secondary sources and public documents with information from news reports, archival documents, memoirs, and personal interviews.

#### **A. Establishing a Precedent and Doctrine on Terrorism**

Until 1985, the UNSC had treated terrorism as a matter of national law enforcement that fell outside its mandate (Dorsch, 2014: 9-13). At the end of the Second World War, states were preoccupied with interstate conflict and the UN Charter included no reference to terrorism (Luck, 2006: 93-94). In the late 1960s, when Palestinian groups increasingly committed transnational aerial hijackings, several initiatives of affected Western states were defeated, except for resolution 286 of 1970 and a 1972 presidential statement (S/10705) that simply called on states to cooperate against such attacks. During the Cold War, terrorism constituted a highly contested issue because the Eastern European and nonaligned states supported national liberation movements, such as the Palestinian Liberation Organization (PLO) (Crenshaw, 1989: 9-14; Romaniuk, 2010: 36-48). Accordingly, the Council had a standing practice of not responding to acts of terrorism. As a corollary, the Council has repeatedly condemned military counter-terrorism operations across borders (Luck, 2006: 95-96), e.g. resolution 573 of 1985 that condemned the Israeli air strike on the PLO headquarters in Tunis. 25-30; Romaniuk, 2010: 36-48). Accordingly, the Council had a standing practice of not responding to acts of terrorism. As a corollary, the Council had repeatedly condemned military counter-terrorism across.

In response to the 1985 hijacking of the Italian cruise ship Achille Lauro (1985) off the Egyptian coast by Palestinian gunmen, the UNSC, somewhat surprisingly at that point, explicitly condemned terrorism for the first time ever (Dorsch, 2014: 13). In a presidential statement (S/17554), which does not carry formal weight but is used to send political signals (Talmon, 2003: 458), it condemned “this unjustifiable and criminal hijacking as well as other acts of terrorism, including hostage-taking” and “terrorism in all its forms, wherever and by whomever committed.” Adoption of the decision may be attributed to particular circumstances. Italy, Austria, and Greece had submitted the issue to send a signal to the PLO without expecting a decision (Cassese, 1989: 26-27, 30-31, 83-83) and withdrew the issue when the ship was released (S/17556). However, the United States proposed a low-key decision to allow the Soviet Union to vent its anger over a hostage taking of Soviet diplomats by Islamists in Beirut (Luck, 2006: 97; Romaniuk, 2010: 44-46). This coincidental statement became a precedent that turned 1985 into a watershed year for multilateral

counterterrorism even before Soviet policy on terrorism had actually changed (Crenshaw, 1989: 30-35; Cohen, 1994: 193-97).

The Achille Lauro statement facilitated adoption of other decisions against terrorism, although the issue remained contested among its members when it concerned particular conflicts. After follow-up resolution 579 of 1985 had considered hostage taking as a manifestation of “international terrorism” affecting the friendly relations among states, no state questioned that acting against terrorism could fall under the UNSC’s mandate, even if this logic complicated attempts to condemn military counterterrorism operations (see debates on Resolution 580 of 1985, S/PV.2639 and two vetoed drafts against Israeli counterterrorism in 1986, S/PV.2642 and S/PV.2655). In fact, the UNSC adopted an increasing number of decisions against terrorism, like presidential statements on various terrorist acts in 1985 (S/17702), 1986 (S/18641), 1987 (S/18641), 1988 (SC/5057), and 1989 (S/20988) as well as resolutions 618 of 1988, 635 and 638 of 1989 on hostage-taking or the marking of plastic explosives (Dorsch 2014: 12-14). In 1988, South Korea and Japan accused North Korea of the 1987 bombing of a South Korean airliner. While sceptics argued that the initiative had to be better substantiated, a non-aligned country thanked (sic!) South Korea for not requesting further UNSC action (S/PV.2791 and S/PV.2792). In effect, a new doctrine against terrorism had emerged after the Achille Lauro precedent had been established. By the end of the 1980s, an established practice reflected wide-spread acceptance that terrorism fell within the Council mandate, because it could threaten international peace and security. This principle justified UNSC condemnations and calls for multilateral cooperation in cases where many civilians from several countries or special persons connected to UNSC-endorsed peace processes were killed or targeted.

### **B. Response to Libya (1992): Limited Extension of the Existing Doctrine on Terrorism Allows a Landmark Decision**

In 1992, the UNSC imposed selected mandatory sanctions on Libya, after the Libyan government had failed to surrender Libyan suspects of terrorism. Resolution 748 included an air embargo, an arms embargo, and restrictions on diplomatic personnel abroad; it was praised as a landmark development marking the beginning of more forceful UNSC action against terrorism (Dashti-Gibson and Conroy, 2000; Jonge Oudraat, 2004: 191). In 1988 and 1989, US Pan Am flight 103 and French UTA flight 772 had exploded in mid-air over Lockerbie, Scotland, and over Niger killing 270 and 171 people respectively. When their respective investigations implicated Libyan involvement, the three Western permanent members (P 3) started public criminal proceedings and demanded Libyan cooperation. Eventually, they jointly requested multilateral sanctions that would be binding on all states, promised to be more effective than unilateral action, and could generally deter other state sponsors of terrorism (McNamara, 2007: 100-02; Schwartz, 2007: 555-57).

The P3 actively associated their initiative on Libya carefully to the well-established practice against terrorism (Hannay, 2008: 84-85)<sup>i</sup>, emphasizing the doctrine's relevance. First, their draft resolution conceived of the Libyan involvement in the airliner attacks as act of international terrorism. It referred to previous UNSC decisions on terrorism as well as a previous presidential statement condemning the bombing of Pan Am 103; and it suggested expressing the Council's determination to "eliminate international terrorism". Second, the P3 abandoned the alternative strategy of relating their initiative to other previous incidents of UNSC sanctioning. This link appeared to be unhelpful because previous UNSC sanctions decisions (Rhodesia, South Africa, Iraq) had been quite rare, contested and always tailored towards the specific case (Hurd 2005: 505-9; Luck 2006: 58-61). Hence, a doctrine on sanctions did not exist. Third, the Western powers moved the conflict toward a multilateral terrorism-related situation in order to thwart the Libyan attempt to coin the matter as a set of parallel bilateral disputes over extradition (Boutros-Ghali, 1999: 185-90) that would fall outside the tasks of the Council. Their parallel requests for Council action (S/23306, S/23307, and S/23308 of 1991) were prepared by a tripartite declaration, in which they had asked Libya to cooperate with the two parallel juridical proceedings to prove its renunciation of terrorism (S/23309 of 1991)

Resolution 731 was difficult to reject by sceptics (Aust 2000: 280; McNamara 2007: 103), because it reflected the existing doctrine on terrorism almost totally. By urging "the Libyan Government immediately to provide a full and effective response" to the P3's requests, "so as to contribute to the elimination of international terrorism", the draft singled out a particular state and introduced a minor extension of the existing doctrine<sup>ii</sup>. However, no member state could convincingly argue any more that matters of international terrorism were beyond the mandate of the UNSC. In light of evidence suggesting the involvement of Libyan nationals in the bombings and the fact that Libya had publicly boasted with terrorism in the past (Rose 1998: 137-38; see also explanation of vote by Morocco, S/PV.3033 of 1992), the decision situation forced the member states to choose between applying the established doctrine with a slight extension or to contest it altogether. As expected, sceptics did not deny that the Council doctrine on terrorism was applicable to this case, but struggled to mitigate its consequences<sup>iii</sup>. The non-aligned group delayed the vote and secured some minor changes, like an operative paragraph that requested the Secretary-General to seek cooperation from Libya. Eventually, the draft was unanimously adopted.

Adoption of Resolution 731 created a new salient focal point that turned the first ever imposition of terrorism-related sanctions into another small logical step of extending the existing doctrine. The fact that Resolution 748 was eventually adopted by only ten votes in favour with five abstentions

(Cape Verde, China, India, Morocco and Zimbabwe) reflects considerable resistance against sanctions. However, Resolution 731 had linked firm requests of precisely defined Libyan action to the general doctrine on terrorism and changed the options available to the skeptical UNSC members. Sceptics could not deny that the UNSC was in charge and could escalate its actions in the case of Libyan non-compliance, while the P3 could progressively emphasize that rejecting limited sanctions would put the UNSC's credibility into question (Hurd, 2005: 506-09; McNamara, 2007: 103). Institutional constraints are reflected in the behaviour of the members. Despite considerable scepticism, not a single member doubted that sanctions could be imposed. Facing Libya's failure to comply with Resolution 731, sceptics argued that the sanctions would not be necessary or helpful yet (S/PV.3063 1992). Venezuela and Ecuador, having voted in favour, emphasized that the non-aligned members had secured a final deadline until April 15 to avoid this step. India, having abstained, emphasized to have "some differences with the cosponsors about the methods and means suggested at this stage but not with their motivation". In addition, case-specific circumstances lowered the costs of tacit agreement especially for China, the only abstaining member that failed to argue for a delay until the International Court of Justice (ICJ) had decided Libya's submission of two extradition cases against the United Kingdom and the United States. The looming Court decision had produced the risk that political decisions of the UNSC could henceforth be challenged before the ICJ (Hurd 2005: 510-12; Schwartz 2007: 558-62). As the US representative explained, it motivated especially China not to delay the vote any further<sup>iv</sup>.

Adoption of Resolution 748 is difficult to explain in the absence of the established doctrine on terrorism. First, imposing sanctions was heavily contested at that time (Allain 2004; Hurd 2005). In contrast to the Soviet Union (subsequently Russia) that was now regularly plagued by ethnic terrorism and whose relationship with Libya had become strained (Lutterbeck 2009: 512-13; Beliaev and Marks 1991: 44), most non-aligned states openly rejected action. Sanctions would impose economic costs on Libya's Arab neighbours and seemed to be in line with US attempts to undermine the principle of non-intervention into the domestic affairs of states (Bosco 2009: 155-66). China, struggling to become an observer of the Non-Aligned-Movement (NAM), was seen as a major obstacle to sanctions.<sup>5</sup> Likewise, major OECD countries, including Germany, Italy, and Japan, were reluctant to push for effective sanctions, especially an oil embargo because of economic costs. Second, the Western countries had limited outside options to induce sceptics to accept unwanted Council measures. The initiators had turned to the Council precisely because they considered military options too risky and the impact of further unilateral sanctions as too limited (Rose 1998: 139; Mcnamara 2007: 84-98, 102;

Schwartz 2007: 555-57). Indeed, Arab states were less concerned about what they considered unlikely unilateral military action than about a UNSC decision that could lead to multilaterally authorized war (Boutros-Ghali 1999: 24-25, 184-85). Third, no evidence has surfaced for more than twenty years now that the United States moved beyond the usual diplomatic lobbying and directly or indirectly threatened or bribed members to overcome prevailing resistance. Rumours that the United States had threatened to end China's most-favoured-nations status over Libya were based on the 1990/91 Gulf crisis analogy (Bennis, 1996: 51, 163-64). They lack credibility within the larger context of US policy vis-à-vis China as the Bush administration had already regularly vetoed sanctions legislation adopted by Congress (Ross, 1998:12-15)<sup>v</sup>. Archival documents indicate that Washington did not have to engage in coercive bargaining to gain sufficient support by reluctant countries because its institutional strategy worked<sup>vi</sup>.

By the end of the 1990s, a well-established doctrine reflected general acceptance that the UNSC might, based upon Chapter VII, impose mandatory sanctions on countries that harboured or supported international terrorism (Dashti-Gibson and Conroy 2000: 121-30; Jonge Oudraat 2004: 155-57). Follow-up decisions to the Libyan precedent confirmed the expanded doctrine. In 1993, the UNSC adopted another decision against Libya, imposing limited oil trade sanctions (Hurd 2005: 515-22). In 1999, it unanimously adopted Resolution 1267, imposing terrorism-related UNSC sanctions against the Taliban as a non-state actor. Less powerful states also secured support for their terrorism-related proposals even though these initiatives were not uniformly welcomed by all member states. In 1996, Ethiopia succeeded in imposing terrorism-related sanctions against Sudan, although China and Russia abstained (Resolution 1054). In 1999, the Council unanimously adopted Resolution 1269 initiated by Russia that generally called for cooperation against international terrorism (Romaniuk 2010: 55). Moreover, most member states accepted, at least implicitly, limited US actions of 1993 and 1998 in self-defence against terrorist threats from Iraq, Sudan, and Afghanistan (Taliban), countries which the Council had by then identified as sponsors of international terrorism (Jonge Oudraat 2004: 159-60; Luck 2004: 92-93). Turkey (S/22925 of 1991; S/1995/272, S/1995/605) and Iran (S/23785 and S/23786 of 1992) had previously used similar arguments, although they were not exchanged in public UNSC meetings, when they used military operations inside Iraq to fight terrorists. Even a 'non case' illustrates the power of the doctrine. In April 1992, the United States had to accept a public exchange at the Council over a Cuban sanctions proposal targeted at an alleged US shielding of terror suspects of an airliner bombing and felt compelled to publicly argue that this case was not comparable with the Libyan case (S/PV.3080 of 1992).

In short, evidence confirms the power of the doctrine, while other explanations fail to account for the adoption of Resolution 748. The initiators actively sought to exploit its power and brought the decision fully in line with the existing doctrine, while expanding its content only as moderately as possible. As a consequence, sceptical NAM countries, including China, did not deny that the doctrine was generally applicable to the Libyan case, although this significantly weakened their position and enhanced the probability of undesired consequences.

### **C. Response to 9/11 (2001): Quasi-legislative Measures as Incremental Change of the Existing Doctrine on Terrorism**

Upon the terrorist attacks of 11 September 2001 (9/11), the UNSC adopted a number of remarkably far-reaching measures. The al-Qaida-related 9/11 attacks, killing about 3000 persons, were difficult to target, because they reflected transnational terrorism and were executed by individuals of several nationalities having previously lived in different countries. In Resolution 1368, the Council recognized the right of self-defence within the context of a terrorist attack. In Resolution 1373, it imposed on all states general and binding obligations to combat terrorism, including obligations to suppress the financing of terrorism. From the perspective of international law and relations, these measures constitute a quite revolutionary step. They do not only remarkably encroach upon state sovereignty. Because of their general nature, they turn the Council into a virtual world legislator (Talmon 2005; Romaniuk, 2010: 64-66). Two early decisions relating the 9/11 attacks to the existing doctrine on terrorism were difficult to reject, as they largely reflected established practice. If international terrorism had repeatedly been recognized and condemned as a threat to international peace and security, how could the attacks of 9/11 not fall into this category? Immediately after the attacks, the French presidency issued a consensually agreed presidential press statement (Bosco 2009: 217) that was in line with previous Council decisions, called for redoubling multilateral counterterrorism efforts and expressed readiness to take further steps (SC/7141 of 2001). The next day, the United States tabled the draft of Resolution 1368 that envisaged recognition of its right of self-defence within the context of a terrorist attack (Bosco 2009: 217-18). While this provision would slightly broaden the scope of the doctrine and triggered first concerns that it could be abused by the United States, it was difficult to reject in light of the well-established doctrine on terrorism and past behaviour of limited self-defence against terrorism (Franck, 2001; Romaniuk 2010: 66-67)<sup>vii</sup>. It was virtually uncontested that terror-related threats to international peace and security might warrant mandatory Council sanctions based upon Chapter VII of the UN Charter, and this Chapter recognizes the general right of self-defence (art 51). In light of the

scale of the 9/11 attacks, recognition of the link between major terrorist attacks and the right of self-defence was thus difficult to deny. Against this backdrop, resolution 1368 was unanimously adopted.

Likewise, US drafters struggled to put Resolution 1373 as closely as possible in line with existing doctrine and general international law in order to reduce the scope of innovation. First, they carefully related the text to previous Council decisions, referring to resolutions 1269 and 1368 and other relevant decisions. The text reconfirms that the 9/11 attacks, "like any act of international terrorism", constitute a threat to international peace and security. The General Counsel of the US Mission to the United Nations (2001-2005), held that the Security Council "was ready to respond to the terrorist acts of September 11 because it had already decided that terrorism constitutes an appropriate subject for its consideration and action" (Rostow 2002: 486). Second, the substantive obligations targeting the fight of international terrorism were largely borrowed from relevant international conventions and protocols relating to terrorism, especially the International Convention for the Suppression of the Financing of Terrorism of 1999 (Romaniuk 2010: 67-69). Although it was intended to oblige all UN member states to implement general counterterrorism measures, including obligations to suppress the financing of terrorism, the resolution appeared as a logical and rather minor extension of existing practice. After brief consultations, resolution 1373 was adopted unanimously.

Adoption of Resolution 1373 may be attributed to the highly structured organizational setting. The established doctrine largely deprived sceptics of their room for manoeuvre short of rejecting existing decision practice. The presidential press statement and Resolution 1368 further prepared the ground, because decisive action against international terrorism could be seen as an immediate next step in the Council's existing practice. Having repeatedly condemned all forms of terrorism and called on states to take all necessary measures to combat terrorism, the Council maintained its overall stance that counterterrorism remained a matter of national law enforcement, while it now established an international responsibility to tell states which measures were required (Messmer and Yordan 2011: 844). The French UNSC president summarized this logic as follows on 21 September 2001 (SC/7152):

In the past the Security Council has already taken action in general terms - for example we adopted resolution 1269 - or action focused against this or that State - we adopted two resolutions on Afghanistan [...]. Is there room for action beyond resolution 1368? [...] I will simply recall paragraph 5 of resolution 1368, which says that 'the Council expresses its readiness to take all necessary steps to respond to the terrorist attacks of 11 September 2001 and to combat all forms of terrorism, in accordance with its

responsibilities under the Charter of the United Nations.’ That is exactly what we are determined to do”.

Other explanations of the adoption of Resolution 1373 are less comprehensive or implausible in the absence of the UNSC’s previous practice on terrorism (Luck 2004: 101-2; Stiles, 2006: 51-52; Romaniuk 2010: 33, 44). First, member states did not at all have uniform interests in undermining state sovereignty to fight terrorism and questioned the content and form of Resolution 1373 (Romaniuk 2010: 64-66; Rosand, Millar, and Ipe 2007). Differences also emerged within the General Assembly’s first general debate on terrorism after 9/11 and precluded adoption of a new resolution by the Assembly (Stiles 2006, 48-50, A/56/PV.7 through 22 of 2001). Second, it has been suggested that the emotional shock upon the unprecedented attacks explains the UNSC’s united response even in light of diverging interests on terrorism (Bosco 2009: 217-18; Romaniuk 2010: 64). While this argument might seem true for the adoption of the initial statement only hours after 9/11 (which, however, basically reflected standing decision practice), and, with respect to secondary players, possibly also for Resolution 1368, it is hardly plausible that key players had not regained their ability to act rationally when Resolution 1373 was adopted seventeen day after the 9/11 attacks<sup>viii</sup>. Third, US outside options could have played a major role (Bosco 2009: 217-18; Romaniuk 2010: 64). Indeed, key UNSC member states, including China, Russia, France, other European states, as well as Muslim and leading non-aligned states, were concerned about a possibly emerging unilateral US policy on Afghanistan, the main base of al-Qaida (S/PV.4385 of 2001). Yet, it is unlikely that US outside options would have brought about agreement in the absence of a well-established doctrine on terrorism that narrowed the scope of innovation considerably. As illustrated by their action in the subsequent Iraq crisis, sceptical member states are not inclined to accept almost any compromise in order to prevent unilateral US action. Fourth, there is no evidence whatsoever that the United States moved beyond the usual diplomatic lobbying and directly or indirectly pressed or bribed members to overcome prevailing resistance. The absence of evidence suggests that it did not have to employ its power resources.

In short, evidence confirms the power of the doctrine, while the constellation of power and interests alone does not readily explain adoption of Resolutions 1368 and 1373. The US as the initiator explicitly associated its project with the existing doctrine, thus once again actively exploiting the latter’s power. Both resolutions clearly follow, and slightly expand, the doctrine. As a consequence, sceptics, including Russia and China, throughout accepted the general applicability of the doctrine, although this weakened their position and enhanced the probability of undesired consequences.

#### **D. Further Development of the Doctrine on Terrorism**

Since 2001, the UNSC has applied its doctrine on terrorism to an ever increasing number of situations, eventually the doctrine became so broad and well-established that the Council switched largely to routinized decision-making. First, Resolution 1373 became the model, with some changes, for Resolution 1540 (2004) on the non-proliferation of weapons of mass destruction in the context of transnational terrorism (Rosand, Millar, and Ipe, 2007: 5-6). Second, resolution 1456 (2003) incrementally broadened the scope of the doctrine by recognizing “terrorism” (rather than “international terrorism”) as a threat to international peace and security. Reluctant Western Council members found themselves even compelled to condemn terrorist attacks in Syria, although this was a symbolic victory for the Assad regime (SC/10513, SC/10585, SC/10643, and SC/10784 of 2012). In fact, the UNSC now condemns individual terrorist attacks regardless of whether they really have implications for international peace and security<sup>ix</sup>. These decisions have increasingly become more informal. First, they employed the form of presidential statements, more recently even the form of presidential press statements, thus providing a low-profile, but symbolic support for affected states (Rosand, Millar, and Ipe, 2007: 7). However, the Council doctrine on terrorism has also been limited in at least two dimensions. First, following US unilateral activities and starting with Resolution 1377 (2001), the right to self-defence was not reaffirmed any more (Ruys, 2010: 419-510). Second, starting with Resolution 1456 (2003) counterterrorism has been increasingly related to the respect for human rights according to international law (Foot, 2007; Michaelsen, 2010). This may mark the starting point for possibly increasing limitations of the UNSC’s affirmative doctrine on terrorism.

#### **Conclusion**

Precedent and organizational doctrine matter for decision-making even within the high profile UNSC, because they provide organizationally constructed focal points that help overcome undesirable stalemate and are costly to ignore even by the most powerful states. Suitable precedents and organizational doctrines provide a linkage of two or more otherwise unrelated decision situations over time and produce points of reference around which actors’ expectations regarding collectively acceptable solutions can converge. They modify the opportunity structures within which all actors, including the world’s most powerful states, have to act when operating within the international organization. Their power is rooted in their ability to help overcome stalemate in coordination situations in which actors prefer collective agreement to no agreement, but have divergent preferences as to the most-favoured solution. Accordingly, their

influence will diminish, if actors collectively prefer a single option, or if they lack mixed motives and follow a dominant strategy. We do not claim that precedent and organizational doctrine undermine the relevance of power and interest of member states (as well as, possibly, other relevant actors). On the contrary, they are expected to gain influence as focal points because, and only to the degree that, they suggest selecting a particular solution out of at least two available options within a given structure of power and interests. UNSC activity in the area of terrorism is highly influenced by precedent and organizational doctrine. First, collective agreement actually tends to reflect existing precedents and evolving doctrine (proposition 1). Prior to the Achille Lauro incident, it was highly unlikely that the Council would engage in activities to combat international terrorism, while after that precedent, it did so frequently. While it was originally heavily disputed that acts of international terrorism fell into the Council's mandate, by the end of the 1980s no member state denied that the Council had the right to act on such acts any more. Prior to the Libya case of 1992, it was highly contentious whether mandatory action under Chapter VII of the UN Charter (i.e. imposing sanctions) could be applied in cases of international terrorism, while this possibility was soon thereafter generally accepted and not denied by any more even by states that did not like a particular action. Second, a firmly established organizational doctrine reduces the threshold for the submission of similar cases (proposition 2). After it had been firmly established that mandatory action could be adopted by the Council, smaller countries like Ethiopia succeeded in reaching agreement on collective action in areas of their interest. After 9/11, the doctrine on terrorism even led to patterns of routinized response to almost any serious act of terrorism, whether domestic or international.

Third, interested actors exploit an existing practice even if they intend to change or modify it (proposition 3). Far-reaching decisions are indeed facilitated, if innovation is minimized by associating proposals to existing organizational practice. To promote a major expansion of the established UNSC doctrine on terrorism in 1992, the US as the world's most powerful state endeavored expressly to keep its proposal as closely in line with the existing doctrine and to minimize innovation, thus transforming a landmark decision into a moderate incremental change of an established practice. It is highly unlikely that power alone would have overcome the widespread skepticism of mandatory action against Libya, and there is no evidence that the US actually used its power resources to achieve adoption of Resolution 748. Likewise, existing decision practice on terrorism narrowed the gap to be bridged for adoption of Resolution 1373 considerably. The threat of US outside option, namely the threat of unilateral (unauthorized) military action had to push the point of agreement only a little bit further. In short, it would be highly difficult to predict UNSC action on terrorism without taking into

account the constraining role of organizational doctrine at a given point in time. Can we generalize these findings to other areas of UNSC activity or even to other international organizations? The theoretical causal mechanism that relates a current decision situation to otherwise unrelated previous ones can generally be transferred to other situations of repeated decision-making in organizational settings. If precedent and doctrine matter even in the high politics context of the UNSC, although definitely not in all areas of its activity alike, they can be expected to matter even more in international organizations dealing with a stream of similar or like decision situations in areas of low politics. World Bank approval of development projects, listing of species in the Convention on International Trade in Endangered Species (CITES) or appraisal of domestic measures in World Trade Organization committees can be expected to rely on precedent and organizational doctrine as a particular form of organizational opportunity structure. However, organizational decision practice is highly contingent. We would not expect that all organizational doctrines are as expansive as the UNSC doctrine on terrorism. Moreover, the scope conditions should not be ignored. If pivotal actors have sufficient interest in rejecting a given proposal, even though it is in line with an existing doctrine, and if they are prepared to bear the costs of such strategy, the doctrine is likely to be undermined, as might be the case for UNSC activities in the area of intervention into intrastate conflicts.

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