Imagine ...

The critical infrastructure of State A, including its power grid, water supply, and transportation systems, was targeted by a sophisticated cyber attack arguably launched by State B, which caused widespread chaos and disruption, leading to social unrest and economic instability. State A threatens to retaliate with military force, which may escalate into a full-blown war and pose a grave threat to international peace and security.

Questions: What the SC has to do?

General Observations

- Compared to most other issues related to ICT security, including those discussed in the other three panels of this conference, the issue of role and powers of the SC has received much less attention;

- Compared to the General Assembly, the role of the SC, which has been entrusted with "primary responsibility" to maintain international peace and security, has been much less noticed;

- Compared with the role and powers of the SC in other fields, where it often has to face the criticism of exceeding its authority, the SC has done much less in ICT security.

Outline

1. The role and powers of the Security Council in the general context and in cyberspace

2. Multilateral discussions on the role and powers of the Security Council in the context of international ICT security

3. Overview of State practice and *opinio juris*

4. Conclusion

1. Role and powers of the SC generally and in cyberspace

- **Question 1**: What are are intended purposed of having the United Nations?
- **Answer 1**: There are several purposes, but above all, it was intended to fulfill the task of safeguarding peace and security on behalf and in the interest of all nations around the world.
  - Article 1 UN Charter: "The Purposes of the United Nations are: 1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace; ….

2. Role and powers of the SC generally and in cyberspace

- The "revolutionary" system inaugurated in 1945:
  - States should endeavor to settle disputes peacefully and never use force with the only exception of self-defense
  - The United Nations would act as a world policing and enforcement agency.
- **Question 2**: what's the role of the SC in that system?
- **Answer 2**: The 'primary responsibility' of the SC for the maintenance of international security
  - Article 24 of the UN Charter: "In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.

3. Role and powers of the SC generally and in cyberspace

Powers of the Security Council

- peaceful settlement of disputes
- adoption of enforcement measures
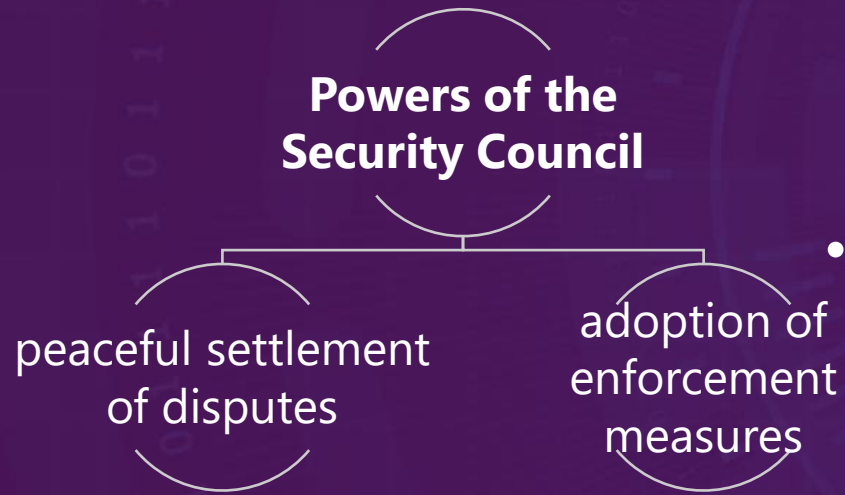
- Article 34:
  - The Security Council may **investigate** any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to **determine** <u>whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security.</u>

- Article 39:
  - The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

4. Role and powers of the SC generally and in cyberspace

- **Question 3**: What's the performance of the SC in the ICT domain?

- **Answer 3**: Modest at best. The SC has hardly yet taken any formal action in response to cyber attacks, but rather focused on discussing the issue of cybersecurity.
  - No formal investigation under Article 34;
  - No formal determination under Article 39
  - Sharp contrast with its performance generally....

1. Role and powers of the SC generally and in cyberspace

- **Question 4:** can a cyber incident constitutes a threat to the peace, breach of the peace, or act of aggression at all?

- **Answer 4:** This determination would be a complex and evolving issue, But it could be safe to conclude that major cyber attacks, in particular those targeting critical infrastructure and causing major physical damage and/or loss of life may well qualify as a threat to the peace.
  - Confirmation by UN GGE reports

2. Multilateral discussions on the role and powers of the Security Council in the context of international ICT security

- **Arria-formula Meetings**
  - since 2020
  - A forum for informal discussions among Security Council members, non-members and experts on issues related to international peace and security

- **SC's High-level Open Debate**
  - 29 June 2021
  - Promote better understanding among States of the risks and implications of malicious cyber activities.
  - Divisions between members over the Council's role in addressing cyber threats as well as the applicability of international law in cyberspace

2. Multilateral discussions on the role and powers of the Security Council in the context of international ICT security
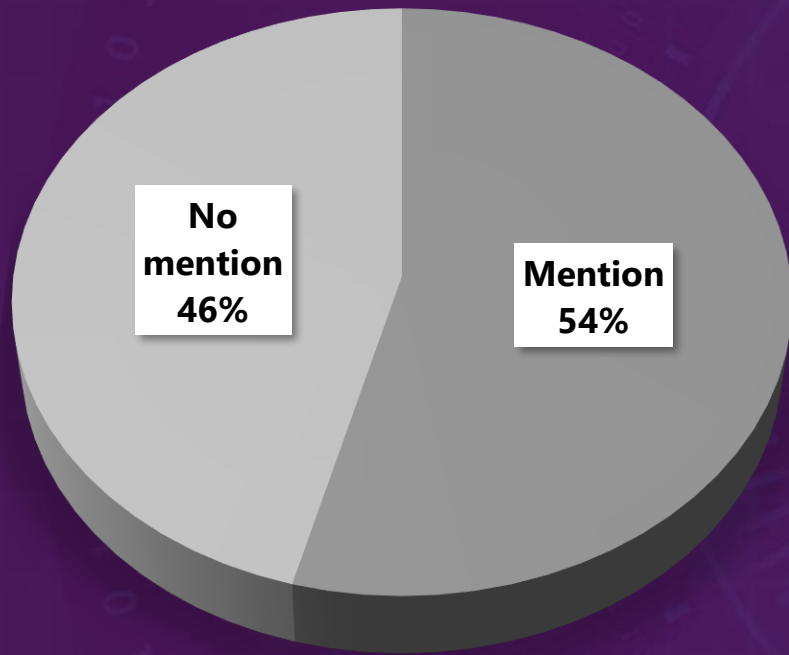
- ## GGE and OEWG's reports
  - ### A/76/135
    - 70. [...] following principles of the Charter and other international law: [...] the settlement of international disputes by peaceful means in such a manner that international peace and security and justice are not endangered ...
    - 71. (a) [...] The Group also notes the importance of other Charter provisions relevant to the resolution of disputes by peaceful means.
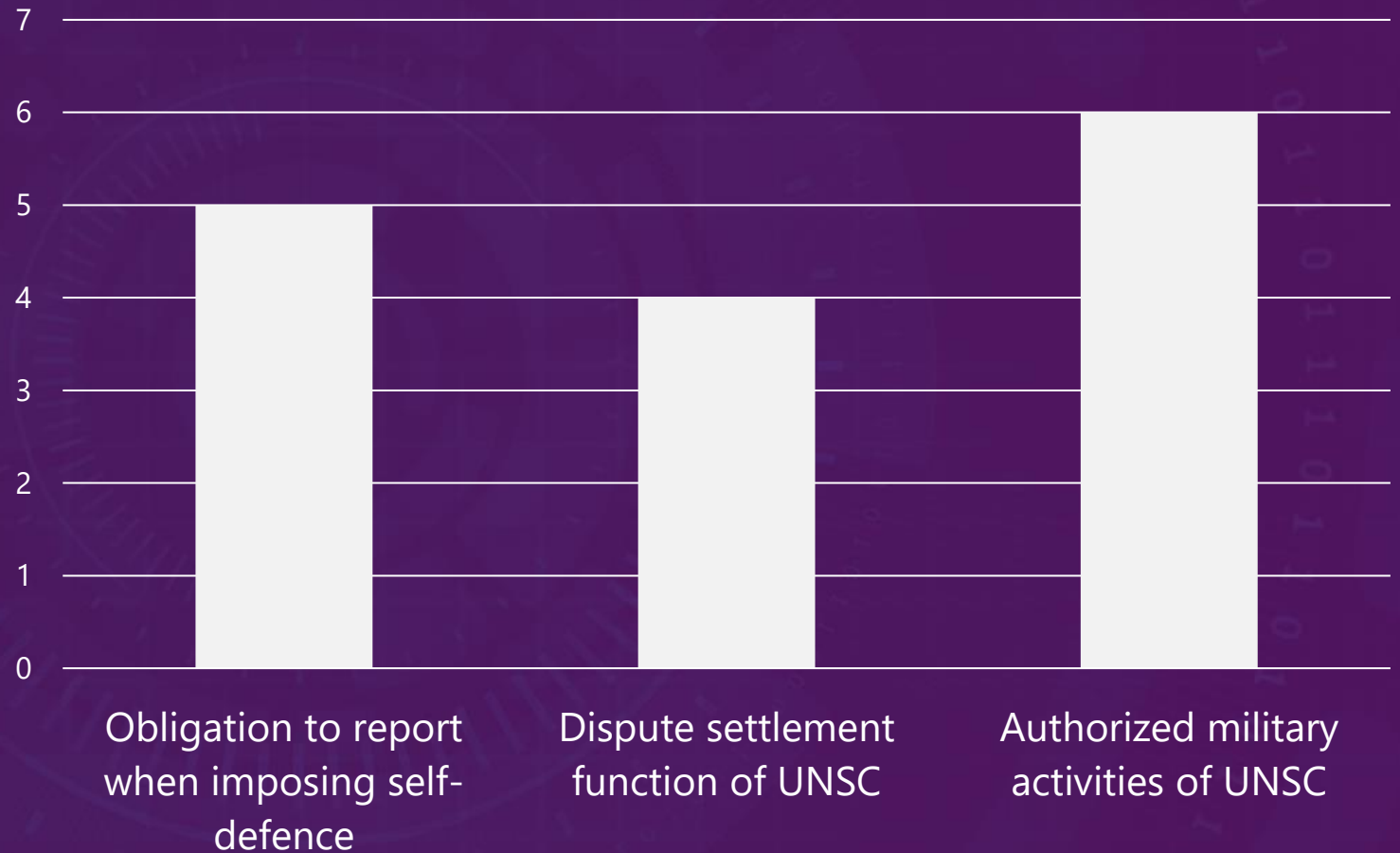 - ### A/AC.290/2021/CRP.2
    - 35. States also reaffirmed that States shall seek the settlement of disputes by peaceful means such as negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, and resort to regional agencies or arrangements, or other peaceful means of their own choice.

3. Overview of State practice and opinio juris

No mention 46%

Mention 54%

- Mention
- No mention

7
6
5
4
3
2
1
0

Obligation to report when imposing self-defence

Dispute settlement function of UNSC

Authorized military activities of UNSC

4. Conclusion

- The SC has an important role to play in maintaining international peace and security in the digital age.

- The SC has not fully explored its potential in the ICT domain, and the increasing 'decollectivization' and polarization among States could be worrying.

- It's in the interest of all countries to prioritize the multilateral approach represented by the UN, in particular the Security Council