
In an international system of sovereign States with vastly different interests, capabilities, governance structures, and strategic goals, the likelihood of disputes and violent conflict is, unfortunately, high. States often struggle to predict and understand the strategic choices of other States, the risks presented by their rivals, and the reliability of their partners. As a result, for centuries, States have established and used tools and institutional structures to combat these uncertainties—from avenues of communication (such as the famous “red telephone” line between the United States and the Soviet Union1), to non-aggression pacts, mutual defense pacts, or formal security alliances. Banding together against a common foe or threat, or the potential of such a threat, provides a measure of security and predictability. Indeed, “[t]he notion that nations could combine to create a collective force is ages old,”2 as States have sought agreements to combine military and security capabilities with neighbors or other allies to present a more powerful and united front to deter or repel any such threat. Such collectives or arrangements are a central tool of conflict prevention. Although much of this volume examines the law applicable to the resort to force, to the conduct of hostilities during armed conflict, or to the imposition of accountability or other measures post-conflict, the absence of conflict in and of itself is, unsurprisingly, a great measure of security. Conflict prevention—and the mechanisms for promoting and ensuring it—is therefore a critical link in the broader spectrum of international law governing conflict and security.

1 Evan Andrews, Was there Really a “Red Telephone” Hotline During the Cold War?, HISTORY.COM (Sept. 23, 2016), www.history.com/news/was-there-really-a-red-telephone-hotline-during-the-cold-war (explaining that in response to concerns that miscommunications could trigger an accidental nuclear war, the two superpowers established a direct teletype link in 1963 to ensure secure and swift exchange of trans-Atlantic messages).

2 Michael Glennon & Allison Hayward, Collective Security and the Constitution: Can the Commander in Chief Power be Delegated to the United Nations?, 82 GEO. L. J. 1573, 1576 (1994) (describing the Delian League’s formation of an international force against Persia, their shared enemy, which lasted until “Athens ascended to dominance within the League and used the force to serve Athenian military goals”).

Collective security refers to “the threat and use of institutionalized collective action to deter, prevent and correct violations of community values and prevent the escalation of ongoing conflicts.” In the simplest sense, collective security is a system for the collective use of force in response to a threat or attack against one or more States. For States, just as for individuals, “security is the condition of being protected against, or not exposed to, a danger”—and collective security is a coordinated mechanism and effort to protect against the primary danger to States, which is the use of armed force or war. In addition, collective security differs from efforts by an individual or a single State to bolster or restore its own security through unilateral action. The essence of collective security is thus the use of coordinated—that is, collective—action to ensure the preservation of security for all participants in the system.

The League of Nations was the first modern attempt at a global, or nearly global, collective security arrangement, and provided essential lessons for the formation of the United Nations 26 years later. A centerpiece of the 1919 Peace Conference after World War I, the Covenant of the League of Nations provided that “the members of the League undertake to respect and preserve against external aggression the territorial integrity and existing political independence of all members of the League.” In addition, it proclaimed that if any member resorted to war in violation of its obligation to settle disputes peacefully, “it shall ipso facto be deemed to have committed an act of war against all other members of the League.” Although the League was a positive step towards the renunciation of war and the development of collective action to prevent aggression and maintain international peace and security, the limitations of the Covenant framework prevented it from accomplishing these goals. “Member States were duty-bound to apply commercial and financial measures against an aggressor, but—insofar as military action was concerned—the League’s Council was only entitled to make (non-binding) recommendations for member States to contribute armed forces for any action to forestall the aggression. Although the Covenant condemned the resort to aggressive war, the Council thus relied on “the moral pressure of public opinion to prevent

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5 The Covenant of the League of Nations, art. 10.
6 Id. at art. 16.
conflict," which proved to be far weaker than necessary and ultimately led to the collapse of the League of Nations in the face of Italy’s invasion of Abyssinia, now Ethiopia. In effect, “as long as an international organization cannot obligate Member States to impose military sanctions against an armed attack, one cannot speak of a veritable collective security system.”

In response to the shortcomings of the League of Nations and the renewed importance of an international system to prevent, mitigate, or deescalate conflict after the horrors of World War II, the Allied Powers began planning for a more robust international organization and collective security apparatus as early as 1943. On November 1, 1943, the United States, the United Kingdom, the Soviet Union, and China signed the Moscow Declaration, a collective security arrangement providing for joint military action in the interests of the international community. Calling for the establishment of an international organization—the “United Nations”—the signatories proclaimed “[t]hat for the purposes of maintaining international peace and security pending the reestablishment of law and order and the inauguration of a system of general security, they will consult with one another and as occasion requires with other members of the United Nations with a view to joint action on behalf of the community of nations.” Over the next two years, that initial statement grew into the Dumbarton Oaks Proposal and, ultimately, the Charter of the United Nations, which was signed on June 26, 1945, and came into force on October 24, 1945. The founders of the United Nations thus designed and established the “postwar system of collective security” as the centerpiece of conflict prevention efforts after a half-century marked by two world wars and tens, if not hundreds, of millions, of deaths.

I. COLLECTIVE SECURITY: DEFINITIONS, GOALS AND OBJECTIVES

At the most basic level, collective security describes one manner in which States in the international system choose to organize themselves in pursuit of

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the common goal of preserving international peace and security. In the absence of any deliberate structure for interstate relationships, a Hobbesian state of bellum omnium contra omnes—“war of all against all”\textsuperscript{12}—would prevail, in which “might is right”\textsuperscript{13} and war is the defining feature of the international system. Unlike Hobbes’s vision of a strong central authority to counter this state of nature, however, the international system does not and will not have any such centralized authority, so potential arrangements in the international system for conflict prevention must start from and operate within the foundational organizing principle of state sovereignty. The primary approach of the international system in the post-World War II era has been a form of collective security through the organization and objectives of the United Nations.

Collective security generally refers to a system that relies on the collective use of force to forestall or respond to threats to or breaches of the peace. It rests inherently on a structure of rules and obligations and a process for reaching decisions about whether and how to use such collective force. In some way, therefore, “collective security is a voyage into the unknown in that it transcends the view that international society is essentially horizontal and consensual and can have no effective system of regulation or governance,”\textsuperscript{14} because any discussion of collective security presumes some type of coordination, regulations, framework, or order. Indeed, although the choice to construct, employ, and rely on collective security is a political one, law is central to collective security because it turns preferences into rules and assumptions into predictable and planned responses and reactions. Collective security is thus one facet of the law of conflict prevention and “law provides the template within which, and according to which, [collective security] functions.”\textsuperscript{15}

The term collective security refers to both the goal of the particular organizational structure or system of member States and the mechanism or process for pursuing and achieving that goal. In simplest terms, the goal is peace and security, namely international peace and security. Unlike more individualized State interests, international peace and security are public goods “in the sense that all entities that form the international society are their stakeholders and beneficiaries.”\textsuperscript{16} No less, international peace and security is a collective goal,

\textsuperscript{12} Thomas Hobbes, Leviathan (1651).
\textsuperscript{16} \textit{Id}. at 21.
because the objective is not merely the absence of a military threat or war for any single State, but for all States in the system. Achieving this goal demands a collective and public authority to act on behalf of the community of States because “individual states do not have the ability and the resources to secure international peace and security in a constant and indiscriminate manner for the society of states as a whole.”

Although collective security rests on the notion of enforcement action against an aggressor State when necessary to ensure the maintenance of peace and security, prevention of conflict is a central objective. As the Secretary-General of the United Nations has explained, “preventing armed conflict is a more desirable and cost-effective strategy to ensure lasting peace and security than trying to stop it or alleviate its symptoms.” The goal of conflict prevention takes several forms. The most basic is simply the absence of war, commonly referred to as negative peace. The absence of war or the use of force provides stability and predictability for all States in the international system. As a result, the primary threat collective security focuses on and is designed to address “is the threat of direct and physical interstate violence in the form of aggression, war or the use of force,” that is, a threat to “the physical safety of states.”

More recently, however, conflict prevention has been understood to encompass concerns regarding violence and instability within a State, as well as other factors that threaten international peace and security. By 2001, the United Nations Secretary-General sought to expand the notion of conflict prevention from military responses to direct threats to a “broader focus on the nature of sustainable peace and its building-blocks, such as social and economic development, good governance and democratization, the rule of law and respect for human rights [as essential components] of a culture of prevention.” Such threats or risks could also now include specific ecological or humanitarian problems or other systemic weaknesses in national or international frameworks that allow for unrest to escalate quickly into conflict. These second-level considerations thus add the notion of “positive peace” to the idea of conflict prevention and correspondingly to the goals of collective security.

Collective security is more than the ideal of common action and cooperation to achieve the goals of conflict prevention and international peace and security. It is “also a mechanism for attaining these ends.” Beyond the threat of col-

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17 Id.
18 UN Secretary General, Prevention of Armed Conflict ¶ 18, UN Doc. A/55/985-S/2001/574 (June 7, 2001).
19 TSAGOURIAS & WHITE, supra note 15, at 23–4.
20 Prevention of Armed Conflict, supra note 18, at ¶ 19.
21 TSAGOURIAS & WHITE, supra note 15, at 3.
Collective action to enforce peace and security, a collective security organization has a system of rules and procedures for identifying the existence of a threat, determining the appropriate response, and implementing that response. Such systems are collective security in action—the process by which States implement the rules and procedures actually create and reinforce the collective framework that facilitates and ensures the preservation of peace and security. In the United Nations system, for example, “[t]he active use by Member States of methods of peaceful dispute settlements […] is one of the most effective ways of preventing conflicts.” These mechanisms and processes for attaining the goal of stability and conflict prevention can be part of a peace settlement or other interstate agreement, such as the mutual guarantees in the Peace of Westphalia through which “all contracting parties would immediately enforce the peace terms collectively if a breach had taken place,” or can be part of the structure and obligations of an international or regional organization, such as the Common African Defence and Security Policy.

COLLECTIVE SECURITY IN AFRICA

The Common African Defence and Security Policy and the African Union Non-Aggression and Common Defence Pact that implements it are a useful contemporary example of collective security as both the goal and the mechanism to achieve that goal.

The Framework for the Common African Defence and Security Policy describes three central concepts:

- Security—a “newer, multi-dimensional notion of security […] embracing human rights; the right to participate fully in the process of governance; the right to equal development as well as the right to have access to resources and the basic necessities of life; the right to protection against poverty; the right to conducive education and health conditions; the right to protection against marginalization on the basis of gender; protection against natural disasters, as well as ecological and environmental degradation[; and at] the national level, […] safeguard[ing] the security of individuals, families, communities, and the state/national life, in the economic, political and social dimensions.’’

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22 Prevention of Armed Conflict, supra note 18, at ¶ 27.
• Defence—“the traditional use by a state and/or any competent public authority of the legally constituted armed forces to protect its national sovereignty and territorial integrity, as well as the less traditional, nonmilitary modes of protecting people’s political, cultural, social and economic rights, values and ways of life.”  

• Common Threats—“the security of each African country is inextricably linked to the security of other African countries and the African continent as a whole.”  

Threats include those arising from within the continent—such as interstate and intrastate “conflicts/tensions; unstable post-conflict situations; [or] grave humanitarian situations”—and those stemming from outside—such as external aggression, “international conflicts and crises with adverse effects on African regional security,” international terrorism, or cross-border crimes.

Article 4 of the African Union Non-Aggression and Common Defence Pact provides:

a) States Parties undertake to provide mutual assistance towards their common defense and security vis-à-vis any aggression or threats of aggression;

b) States Parties undertake, individually and collectively, to respond by all available means to aggression or threats of aggression against any Member State.

The Peace and Security Council of the African Union bears primary responsibility for the implementation of the collective security regime, which rests on the “[s]overeign equality and interdependence of African states, respect for colonial borders and peaceful resolution of conflict, and most importantly, the right of the African Union to intervene in any member state in the event of war crimes, genocide and crime[s] against humanity to restore peace and stability.”

Above all, various possible collective security mechanisms share common features, based primarily on “the ancient adage: unus pro omnibus, omnes

26 Solemn Declaration on a Common African Defence and Security Policy, supra note 24, at ¶ 6.
27 Id. at ¶¶ 8–9.
28 Touray, supra note 25, at 643.
pro uno— one for all, and all for one.” In essence, war or aggression against one member of the collective security system is war against all members. Collective security thus “expects policies of the individual nations to be inspired by the idea of mutual assistance and the spirit of self-sacrifice, which will not shrink even from the supreme sacrifice of war should it be required.”

II. THE UNITED NATIONS CHARTER SYSTEM OF COLLECTIVE SECURITY

In direct response to the horrors of two world wars in three decades and the inability to prevent disputes from escalating into widespread and deadly conflagrations, the international community established the United Nations in 1945 to, among other goals, “save succeeding generations from the scourge of war, which twice in [the founders’] lifetime has brought untold sorrow to mankind.” The overarching means of pursuing this goal was to design and implement a system encouraging and facilitating the prevention and resolution of disputes—thus avoiding conflict in the first place—and empowering a collective authority to respond to the use of force and aggression. As a result, the “main objective of the framers of the Charter of the United Nations was to introduce into international relations a genuine mechanism of collective security” and, in particular, to avoid repeating the weaknesses of the League of Nations in enforcing the obligations of States participating in a collective security apparatus.

Article 1 of the United Nations Charter thus sets forth collective security both as the core purpose of the United Nations and, as noted above, the central mechanism for achieving that purpose:

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 sanctions which might lead to a breach of the peace.

In this foundational statement of one of the primary purposes of the United Nations, one can see both pillars of the United Nations’ approach to collec-

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31 UN Charter, pmbl.
32 *Dinstein, supra* note 7, at 279.
33 UN Charter, art. 1(1).
Collective security and the United Nations

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tive security: prevention of conflict through peaceful settlement of disputes and response to conflict through collective use of force to repel or defeat an aggressor. The former can be considered a comprehensive framework to promote “positive peace”—to maintain lasting peace by seeking to eliminate “the underlying causes of conflict […] through long-term efforts.”34 Such efforts include the obligation to seek peaceful settlement of international disputes, to work cooperatively towards economic and social justice, to promote human rights and self-determination, and generally to promote tolerance and international cooperation. Over time, such practices help to prevent discord from becoming unrest and disputes from becoming conflicts. These structures, and the role of the United Nations and the Security Council specifically in these areas, are encapsulated in Chapter VI of the United Nations Charter. In contrast, the latter, which forms the responsive or repressive aspect of collective security, focuses on ensuring “negative peace,” or the absence of conflict, through enforcement measures called forth “simply to end the clash of arms and return to the situation that prevailed prior to the aggression.”35 Granting the Security Council a monopoly of force to address breaches of or threats to the peace is the central aspect of this component of collective security.

In effect, the obligation to settle disputes peacefully and the Security Council’s authority to mandate collective measures to restore international peace and security are the foundation of “a system of war prevention in international law.”36 As the remainder of this chapter discusses in greater detail, Chapter VI (Pacific Settlement of Disputes) and Chapter VII (Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression) are the core of the Charter’s collective security framework. However, a few key provisions earlier in the Charter lay the groundwork for this apparatus. Article 2 sets forth the main principles guiding State action and obligations in pursuit of the primary purposes declared in Article 1. In particular, Article 2(3) mandates that States “shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.”37 This provision is part of the conflict prevention suite of obligations and authorities, requiring States to take the potential consequences for international peace and security into account when settling disputes with other States. Second, and most famously, Article 2(4) prohibits the use of force in interstate relations, forbidding all States from “the threat or use of force.

35 Id. at 94.
37 UN Charter, art. 2(3).
against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.”38 Finally, Article 2(5) declares that member States “shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any State against which the United Nations is taking preventive or enforcement action.”39

Chapters IV and V of the United Nations Charter set forth the general powers and responsibilities of the General Assembly and the Security Council, preparing for the detailed framework of collective security to follow. Most important, Article 24 declares that the Security Council enjoys “primary responsibility for the maintenance of international peace and security” and that member States “agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.”40 The Security Council is thus the central actor in identifying the need for collective security measures or actions, determining what such measures should be, and mandating or authorizing such measures by States. Although the General Assembly does not have any binding authority or specific designated authority in the collective security sphere, it does have broad authority to consider and make recommendations, to States or to the Security Council, on issues relating to the maintenance of international peace and security.41 In addition, subject to the primacy of the Security Council and its exercise of authority in a given situation, the General Assembly “may recommend measures for the peaceful adjustment of any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations, including situations resulting from”42 violations of the main principles and purposes of the United Nations. For example, on March 2, 2022, the General Assembly passed a resolution “deplor[ing] in the strongest terms the aggression by the Russian Federation against Ukraine in violation of Article 2(4) of the Charter” and demanding that Russia “immediately, completely and unconditionally withdraw all of its military forces from the territory of Ukraine within its internationally recognized borders.”43

38 Id. at art. 2(4).
39 Id. at art. 2(5).
40 Id. at art. 24(1).
41 Id. at arts. 10, 11.
42 Id. at art. 14. See also Certain Expenses of the United Nations, Advisory Opinion, 1962 I.C.J. 151, 163 (Jul. 20) (the Security Council’s responsibility for the maintenance of international peace and security is “‘primary,’ not exclusive . . . The Charter makes it abundantly clear, however, that the General Assembly is also concerned with international peace and security”).
A. Chapter VI and Conflict Prevention

The Security Council is most commonly known for its exercise of binding authority in response to threats to or breaches of the peace, but the United Nations collective security infrastructure set forth in Chapter VI grants the Security Council extensive powers and responsibilities in the much earlier stages of conflict prevention as well. Although it can only issue recommendations with respect to the peaceful settlement of disputes and other pre-conflict concerns, the Security Council nonetheless has a substantial role to play.

As a starting point, Article 33 of the Charter requires that States involved in a dispute that is likely to endanger international peace and security “shall seek a solution” through any one or more peaceful dispute settlement mechanisms or options, from diplomacy to mediation to judicial settlement or other avenues. In addition, the Security Council can “call on parties to settle their disputes by such means.”44 Beyond this initial obligation for peaceful settlement of disputes, the Security Council’s authority and jurisdiction in this area rest on the gravity of the situation it seeks to address. When a situation crosses this threshold for Security Council authority, the Security Council then enjoys the power to investigate it to determine the potential danger or risk for international peace and security and can recommend “appropriate procedures or methods of adjustment.” 45 Three primary conditions form the necessary trigger for Security Council action under Articles 34–37: a dispute between States, “a situation which might lead to international friction or give rise to a dispute,” 46 or a dispute whose continuation is “likely to endanger the maintenance of international peace and security.” 47

From the framework of Chapter VI, one can therefore identify four basic tenets of the United Nations Charter’s conflict prevention scheme. First, States are obligated to seek peaceful resolution of disputes—not necessarily to resolve all disputes, but to ensure that any efforts towards such resolution are peaceful. Second, Chapter VI does not mandate a particular means or format for such dispute resolution, thus reaffirming the basic principle of international law that States enjoy freedom of choice in selecting the means for resolving their disputes peacefully. Third, the Security Council does not have the power under Chapter VI to impose a particular settlement on the parties to a dispute, as the Permanent Court of International Justice affirmed in its advisory opinion.

44 UN Charter, art. 33.
45 Id. at art. 36(1).
46 Id. at art. 34.
in the *Status of Eastern Carelia* case. Finally, the Security Council can only assume its role in investigating and potentially recommending measures or procedures if the dispute or situation at issue surpasses the necessary gravity based on the thresholds in Articles 34–37.

Although the Security Council traditionally has not gotten involved in situations before conflict breaks out, the Secretary General has recently highlighted a “push for greater engagement and flexibility in addressing emerging threats before they are placed on the Council’s formal agenda.” To that end, the Security Council more recently has employed “informal interactive dialogues” before an issue is formally placed on the agenda and receives regular briefings on both ongoing and potential or emerging conflicts. In addition, Security Council members undertake fact-finding missions to conflict areas on a much more frequent basis, with the number of such missions more than tripling in the first decade of the 2000s over previous comparable timeframes. Overall, the conflict prevention space creates a balance between the core responsibility of States to resolve disputes peacefully and the subsidiary role of the Security Council in encouraging and assisting such efforts.

**“CHAPTER VI-AND-A-HALF”: PEACEKEEPING**

The United Nations Charter, as drafted in 1945, did not envision peacekeeping, intending instead to deploy forces placed under direct United Nations authority. The limitations of the Cold War stymied that plan, but the need for a military capability to secure the peace in contested areas remained. Developed in response to this need in several conflict areas, peacekeeping is colloquially referred to as “Chapter Six-and-a-half” because neither Chapter VI nor Chapter VII contain explicit textual authority for consensual peacekeeping missions. Secretary-General Dag Hammarskjöld coined the term, situating it between the peaceful dispute resolution methods of Chapter VI and the coercive enforcement mechanisms of Chapter VII.

The Security Council authorized the first peacekeeping mission in 1948 to monitor the armistice between Israel and its Arab neighbors. Some peacekeeping missions, such as the United Nations Disengagement Observer

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48 Status of Eastern Carelia (Finland v USSR), Advisory Opinion, 1923 P.C.I.J. (ser. B) No. 5, at 27 (Jul. 23) ("It is well established in international law that no State can, without its consent, be compelled to submit its disputes with other States either to mediation or to arbitration, or to any other kind of pacific settlement").


51 *Id.*
Collective security and the United Nations

Force established to maintain the ceasefire between Israel and Syria after the 1973 Yom Kippur War, may remain in operation for decades.

Peacekeeping is staffed by voluntary contributions from member States and rests on three core principles: consent, impartiality, and the non-use of force. First, traditional peacekeeping forces are present in the territorial State with its consent and not based on any collective enforcement measures under Chapter VII. Second, respect for State sovereignty makes the neutrality of the peacekeeping force essential. Third, peacekeeping forces are not parties to the conflict and can only use force in self-defense.

In a few situations, the Security Council has authorized more robust “peace enforcement” missions under Chapter VII. For example, the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) is authorized to use all necessary means—that is, military force—to protect civilians, humanitarian personnel and human rights defenders, among other key goals. Taking it one step further, in 2013 the Security Council also created the Force Intervention Brigade (FIB), situated within MONUSCO, with a mandate to use offensive force to combat and neutralize armed groups. Acting under Chapter VII, UN Security Council Resolution 2098 “tasked the new brigade with carrying out offensive operations, either unilaterally or jointly with the Congolese armed forces, ‘in a robust, highly mobile and versatile manner’ to disrupt the activities of those groups.”52 Established “on an exceptional basis and without creating a precedent or any prejudice to the agreed principles of peacekeeping,” the FIB consisted of three infantry battalions, one artillery company, and one Special Force and Reconnaissance company, under the direct command of the MONUSCO Force Commander in Goma. In particular, Resolution 2098 authorized the FIB to carry out offensive operations “to prevent the expansion of all armed groups, neutralize these groups, and to disarm them in order to contribute to the objective of reducing the threat posed by armed groups on state authority and civilian security in eastern DRC and to make space for stabilization activities.”53 Such operations must be executed “[i]n support of the authorities of the DRC, on the basis of information collation and analysis, and taking full account of the need to protect civilians and mitigate risk, before, during and after any military operation [and] in strict compliance with international law, including international humanitarian law.”54 Several years in, the FIB’s record in accomplishing these mandated

53 S.C. Res. 2098, ¶ 12(b) (March 28, 2013).
54 Id.
objectives remained mixed at best, due to the challenges of operating in an environment with over 70 armed groups, the impact of the lack of traditional peacekeeping neutrality on other operations, and increased attacks on UN and other forces.55


B. Chapter VII and Enforcement Measures

Chapter VII of the United Nations Charter operationalizes the collective security goals and mandate of the United Nations, establishing the framework for collective action in response to violations of the laws and norms of the international system. With primary responsibility for the maintenance of international peace and security, the Security Council can issue binding decisions obligating all member States to take action—or refrain from action—in response to situations or actions that threaten or disrupt international peace and security. Most important, unlike the League of Nations, in the United Nations system, the “use of force is reserved to a central organ [and] the Security Council [is] the only organ of the United Nations competent to use force against members as well as non-members.”56 This monopoly on the use and authorization of force and the power to mandate, by binding decision, the action of all member States are the hallmarks of the enforcement of the law through collective security.

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The Security Council carries out its responsibility for the maintenance of international peace and security through two main functions. First, the Security Council has the authority and discretion to determine the existence of a threat to or breach of international peace and security, which then triggers the Council’s binding authority under Chapter VII. Second, based on that determination, the Security Council can decide upon and implement, authorize, or mandate a range of measures, both non-forceful and forceful, to bring the offending State or non-State actor back into compliance with international norms and restore the broad goal of international peace and security. These two components are thus the basic mechanism of collective security in the United Nations system.

1. Determining the existence of a threat to international peace and security

United Nations Security Council resolutions imposing binding collective security measures always include the necessary and important statement that the Security Council is “acting under Chapter VII” of the United Nations Charter, based on its determination that the situation in question presents a threat to international peace and security. As a legal matter, that determination and pronouncement provides the legal authority for the Security Council’s binding authority. The first step for any coercive collective security measures for conflict prevention, therefore, is to identify that a given situation triggers that authority. Article 39 of the United Nations Charter provides that “[t]he 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.”57

A determination under Article 39 thus “unlocks the power of the [Security Council] to take mandatory enforcement action”;58 in effect, “the door is automatically opened to enforcement measures of a non-military or military kind.”59 Furthermore, the Security Council cannot delegate this authority to individual States or to other organs within the United Nations system.

As the text of Article 39 demonstrates, the application of Chapter VII and the Security Council’s binding authority on matters of international peace and security trigger upon a determination that a situation or event constitutes either an act of aggression, a breach of the peace, or a threat to the peace. Such deter-

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57 UN Charter, art. 39.
58 Manusama, supra note 3, at 31.
minations are made according to the regular voting procedures of the Security Council—a majority of affirmative votes and no veto by one of the five permanent members. As a result, it is important to recognize that the failure to identify an act or situation as falling into one of these three categories may be due to the political and strategic interests of one or more of the so-called Perm 5 (the United States, France, the United Kingdom, Russia, and China) rather than an objective assessment of the facts on the ground. For example, Russia vetoed a March 2014 Security Council resolution on the situation in Crimea, blocking any action by the Security Council regarding its planned referendum or other aspects of the crisis, 60 and similarly vetoed the proposed Security Council resolution condemning its military invasion of Ukraine on February 25, 2022. 61 Nonetheless, the determination under Article 39 remains the key to the Security Council’s exercise of its legal authorities in the sphere of international peace and security. Each of the three categories requires that the Security Council recognize and evaluate facts to determine whether one of the specific situations identified in Article 39 has occurred or is occurring.

The most severe of the three is an act of aggression. Although aggression has a legal meaning as an international crime, 62 the Security Council is not acting as a judge or court in making such determination, and the International Court of Justice, the International Criminal Court, or other tribunals are not bound by the Security Council’s finding. Over the past seven-plus decades, the Security Council has rarely identified an act of aggression in accordance with Article 39, 63 at least partly out of concern of “permanently alienating the accused State and making a negotiated settlement impossible.” 64 A breach of the peace generally refers to the outbreak of armed confrontations without the Security Council necessarily assigning any specific blame to one side or the other. Although many situations, from invasions to frontier incidents to terrorist attacks and more, seem to easily fit within the definition of “breach of the peace,” the Security Council has historically used the label in cases of interstate conflict, such as the Falklands/Malvinas conflict in 1982, the Iran–Iraq

64 KOLB, supra note 34, at 116.
War in the 1980s, and the Iraqi invasion of Kuwait in 1990. Thus, for example, UN Security Council Resolution 660 of August 2, 1990, the same day as the invasion of Kuwait, “determine[d] that there exists a breach of international peace and security as regards the Iraqi invasion of Kuwait.”

Most Security Council determinations thus fall within the significantly more flexible and evolving concept of a threat to the peace. Given that any of the three determinations trigger the same range and extent of Security Council authority under Chapter VII, the choice of one over another does not affect the Security Council’s ability to issue binding decisions or the type of actions it can mandate. The highly discretionary and elastic notion of threat to the peace is, not surprisingly, the most commonly used. The Security Council’s discretion in this area is “considered desirable to prevent breaches of the peace prior to them breaking out” by affording the Council substantial opportunity to engage with situations that may disrupt international peace and security without strict constraints. A threat to the peace can include objective preparations for war, such as massing of troops and other indicia of military preparations, particularly when accompanied by aggressive pronouncements and propaganda. Over the past several decades, however, threat to the peace has encompassed a wide variety of acts, situations, and concerns, both across international borders and within the borders of a single State.

Although the threat must be to “international peace and security,” the Security Council has repeatedly determined that internal conflicts and other situations of violence inside a State can constitute a threat to international peace and security. In one of the first such instances, the Security Council determined that Iraqi military action against the Kurds in northern Iraq was a threat to international peace and security, finding that the regime’s repression of and violence against the Kurds “led to a massive flow of refugees towards and across international frontiers and to cross-border incursions which threaten international peace and security in the region.” The determination rested primarily on the consequences of Iraq’s actions, rather than the nature of those actions inside Iraq, but that finding and subsequent similar determinations now affirm that when internal conflict “reaches a certain level of ferocity, the crisis may be characterised [as] a threat to the peace.” Thus, UN Security Council Resolution 713 regarding the conflict in the former Yugoslavia highlighted the

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“heavy loss of human life and material damage”⁶⁹ as a situation whose continuation constituted a threat to international peace and security, an approach reflected in the Security Council’s determination regarding Rwanda three years later as well.⁷⁰ More recently, the Security Council’s practice demonstrates a continued expansion of the concept of threat to the peace as new and varied situations have presented grave concerns and the need for concerted international action.

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**THREATS TO THE PEACE PER SECURITY COUNCIL DETERMINATION**

As a demonstration of the breadth of the concept of “threat to the peace,” the Security Council has identified the following situations and concerns as threats to the peace over the past few decades:

- **International terrorism**—One day after the September 11 terrorist attacks, the U.N. Security Council “unequivocally condemned in the strongest terms the horrifying terrorist attacks […] and regarded such acts, like any act of international terrorism, as a threat to international peace and security.”⁷¹ In a series of resolutions in the intervening two decades, the Security Council has repeatedly reaffirmed this characterization of terrorist attacks as a threat to international peace and security.

- **Gross violations of human rights and international humanitarian law**—In the former Yugoslavia, Rwanda, Sudan, and other conflicts, the Security Council has identified “widespread human rights violations” and other gross violations of international law as key information in determining a threat to international peace and security.⁷² Most notably, in establishing the International Criminal Tribunal for the former Yugoslavia, the Security Council proclaimed that “widespread and flagrant violations of international humanitarian law occurring within the territory of the former Yugoslavia, and especially in the Republic of Bosnia and Herzegovina, including […] mass killings, massive, organized and systematic detention and rape of women, and the continuance

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⁷⁰ See S.C. Res. 918 (May 17, 1994) (identifying “the death of many thousands of innocent civilians, including women and children, the internal displacement of a significant percentage of the Rwandan population, and the massive exodus of refugees to neighboring countries” as a threat to international peace and security).
of the practice of ‘ethnic cleansing’, including for the acquisition and
the holding of territory,”\(^73\) constituted a threat to international peace and
security.

- **Proliferation of nuclear, chemical and biological weapons**—As early
  as 2004 and continuing as of this writing, the Security Council has
  repeatedly determined that “the proliferation of nuclear, chemical and
  biological weapons, as well as their means of delivery, constitutes
  a threat to international peace and security.”\(^74\) Notably, the Security
  Council has extended this assessment to “the potential for acquisition
  by non-state actors of chemical weapons,”\(^75\) specifically in Libya. In
  2013 the Security Council also determined, unsurprisingly, that the use
  of chemical weapons in Syria constituted a threat to international peace
  and security.\(^76\)

- **Piracy**—As the depredations of armed pirates off the coast of Somalia
  increased in the mid-2000s, the Security Council found that piracy and
  other acts of armed robbery presented a serious threat to the delivery
  of humanitarian aid in Somalia, as well as to international maritime
  commerce and navigation. Based on this connection between piracy in
  the waters near Somalia and the violence and humanitarian crisis inside
  Somalia, the Security Council determined that “the incidents of piracy
  and armed robbery against vessels in the territorial waters of Somalia
  and the high seas off the coast of Somalia”\(^77\) exacerbated the situation in
  Somalia that had already been characterized as a threat to international
  peace and security.

- **Spread of small arms and other conventional weapons**—In addition
  to concerns regarding proliferation of weapons of mass destruction,
  the Security Council has identified the spread of “unsecured arms and
  ammunition in Libya and their proliferation”\(^78\) and the “threat posed
  by all weapons, including explosive weapons and small arms and light
  weapons”\(^79\) in Yemen, as threats to international peace and security.

- **Non-compliance with UN Security Council resolutions**—When the
  Security Council has already mandated certain actions under its binding

\(^{73}\) S.C. Res. 827 (May 25, 1993).
\(^{74}\) See e.g., S.C. Res. 1540 (Apr. 28, 2004); S.C. Res. 1673 (Apr. 27, 2006); S.C.
\(^{75}\) S.C. Res. 2298 (Jul. 22, 2016).
\(^{76}\) S.C. Res. 2118 (Sept. 27, 2013).
\(^{77}\) S.C. Res. 1816 (Jun. 2, 2008).
\(^{78}\) UNITED NATIONS, REPERTOIRE OF THE PRACTICE OF THE SECURITY COUNCIL:
\(^{79}\) S.C. Res. 2140 (Feb. 26, 2014).
Chapter VII authority, it has subsequently determined, on select occasions, that the failure to comply with such obligations can constitute a threat to international peace and security. In 1992, therefore, Libya’s failure to turn over the individuals responsible for the Pan Am 103 bombing met this threshold. The Security Council noted first that “suppression of acts of international terrorism [...] is essential for the maintenance of international peace and security,” and then determined that Libya’s failure to renounce terrorism and “respond fully and effectively to the [Council’s earlier] requests in resolution 731 (1992) constitute a threat to international peace and security.”\footnote{S.C. Res. 748 (Mar. 31, 1992).} Nearly two decades later, the Security Council took a similar approach with respect to Eritrea’s failure to comply with Security Council resolutions mandating its withdrawal of forces in its border dispute with Djibouti.\footnote{S.C. Res. 1907 (Dec. 23, 2009).}

- **Disease outbreak**—In 2014, the Security Council determined that the “unprecedented extent of the Ebola outbreak in Africa constitute[d] a threat to international peace and security,” particularly given the potential for the reversal of “the peacebuilding and development gains of the most affected countries” and “civil unrest, social tensions and a deterioration of the political and security climate.”\footnote{S.C. Res. 2177 (Sept. 18, 2014).} Although the Security Council noted the outbreak of the coronavirus with concern in 2020, at the time of writing it has not yet characterized it as a threat to international peace and security.

- **Climate change**—In June 2011, the UN Secretary-General warned that “[c]limate change is real, and it is accelerating in a dangerous manner. It not only exacerbates threats to international peace and security; it is a threat to international peace and security.”\footnote{UN Secretary-General, Remarks to the Security Council on the Impacts of Climate Change on International Peace and Security (Jul. 20, 2011), www.un.org/sg/en/content/sg/speeches/2011-07-20/remarks-security-council-impact-climate-change -international-peace.} Links between “climate change’s impacts and violent conflict”\footnote{Mark Nevitt, *Is Climate Change a Threat to International Peace and Security?*, 42 Mich. J. Int’l L. 527, 534 (2021).} are increasingly evident and climate change is recognized as a threat multiplier. In December 2021, the Security Council considered a resolution defining climate change as a threat to international peace and security for the first time, but the resolution did not pass due to a Russian veto.
2. Measures to restore international peace and security

Once the Security Council makes a determination of a threat to the peace, breach of the peace, or act of aggression under Article 39, it then triggers the authority to take non-forceful and forceful measures to maintain or restore international peace and security. Such authority is the second component in the basic architecture of collective security—the use and direction of collective action to enforce the collective goal of conflict prevention and restoration of international peace and security. In 1945, the drafters of the United Nations Charter envisioned a robust collective enforcement system in which States would “make forces available to the United Nations” for joint action against an aggressor or to respond to a breach of or threat to the peace. The reality of the Cold War rendered such plans for standing United Nations forces unworkable and substantially handicapped the development of the Security Council’s practice with respect to forceful measures under Chapter VII until 1990 and the international response to Iraq’s invasion of Kuwait.

Articles 41 and 42 provide the Security Council’s primary authority to take action under Chapter VII:

• Article 41—The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. 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.

• Article 42—Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

The overwhelming majority of Security Council measures taken in response to threats to the peace are non-forceful measures under Article 41. Chapter 4 below discusses measures involving force under Article 42 in detail; this chapter will primarily address the wide range of tools the Security Council has utilized in accordance with Article 41.

When the Security Council decides to enact measures under Article 41 or Article 42, such measures are for the purpose of encouraging, indeed coercing,
the target State or group to return to compliance with international law and
end the attack or situation that threatens or breaches the peace. In addition,
the measures enacted are mandatory with respect to all member States of the
United Nations as a matter of law, in accordance with Article 48, which states
that action required to carry out the Security Council’s decisions under Chapter
VII “shall be taken by all Members of the United Nations [both] directly and
through their action in the appropriate international agencies of which they are
members.” Member States also “agree to accept and carry out the decisions
of the Security Council” under Article 25 of the Charter. Beyond the textual
obligations, basic operational logic also demands that they be mandatory—
coercive measures that are voluntary are unlikely to produce the same, if any,
effect on the impugned State or actor.

A preliminary examination of Article 41 further highlights two underlying
considerations. First, measures must be non-military in nature—the use of
military options falls within Article 42. Second, although Article 41 references
three categories of non-forceful measures—suspension of economic relations,
interruption of communications, and severance of diplomatic relations—these
categories are illustrative rather than exhaustive, as both the wording in the text
and the subsequent practice of the Security Council demonstrate. As a result,
“the Security Council has a complete discretion in selecting the measures it
thinks appropriate” under Article 41, as long as they do not involve the use
of military force, which would fall under Article 42. Affirming this broad
discretion when faced with a foundational jurisdictional challenge in its first
case, the International Criminal Tribunal for the former Yugoslavia rejected
the defendant’s argument that Article 41 did not provide authority for the
Security Council to establish an international criminal tribunal as an enforce-
ment measure under Chapter VII. Finding that “the Security Council has a very
wide margin of discretion under Article 39 to choose the appropriate course of
action and to evaluate the suitability of the measures chosen, as well as their
potential contribution to the restoration or maintenance of peace,” the tribunal
held that “it is evident that that the measures set out in Article 41 are merely
illustrative examples which obviously do not exclude other measures [and a]ll
the Article requires is that they do not involve ‘the use of force.’”

Once the Security Council decides to act under Chapter VII, based on its
Article 39 determination, it places demands on the States or non-State actors
in question to take or refrain from certain action in order to maintain or restore

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86 UN Charter, art. 48.
87 Kolb, supra note 34, at 147.
88 Prosecutor v Tadić, Case No. IT-94-1-I, Decision on Defence Motion for
Interlocutory Appeal on Jurisdiction, ¶¶ 32, 35 (Int’l Crim. Trib. for the former
international peace and security. Such demands are one part of the implementation of Article 41 (or Article 42): the Security Council identifies what is necessary to return to the status quo of international peace and security, demands specified compliance from those involved, and imposes or institutes specific measures to be carried out by all member States or the United Nations itself to compel such compliance. A common demand is, naturally, the withdrawal of troops, such as was directed at Iraq in response to its invasion of Kuwait in August 1990. The Security Council has called repeatedly for the surrender of terrorist suspects, such as in demands to Libya, the Taliban in Afghanistan, and Sudan. Other frequent demands the Security Council has imposed include: disarmament; an end to arming, training, and harboring non-State armed groups; cessation of the use of force; compliance with international humanitarian law and human rights law; and the restoration of the constitutional or democratically elected government. When the State or other actor in question fails to comply with the demands, future Security Council resolutions may then include additional demands to comply with the original obligations, and often the Security Council will institute measures under Article 41 only once its original demands have not been met.

Among the wide variety of measures the Security Council has enacted, trade and arms embargoes are among the most common, as the Security Council seeks to isolate the target State and minimize or eliminate its ability to carry out its military operations, atrocities, or repression. Stopping trade in arms and other war materiel can, ideally, “prevent[] the conflict from escalating and starv[e] the conflict of oxygen.” Examples include embargoes against Liberia, Angola, Rwanda, the former Yugoslavia, Iraq, Somalia, Afghanistan, Sierra Leone, and South Africa, among others. Measures to curtail a State’s ability to continue military campaigns have then extended to embargoes on oil, diamonds, and other commodities essential to that State’s economy and, therefore, military budget. Another similar example is the prohibition of trade in designated conflict-related minerals, such as coltan, a mineral essential to the manufacture of cell phones and used by armed groups in the Democratic Republic of the Congo to finance their military campaigns. Freezing assets, prohibiting financial transactions, restricting air travel, imposing personalized travel bans on government and military leaders, and restricting diplomatic rela-

90 Kolb, supra note 34, at 147.
tions have all also been part of the Security Council’s toolbox. The Security Council has not imposed comprehensive economic sanctions since the end of the decade-plus sanctions regime against Iraq, out of concern for the drastic humanitarian consequences such sanctions present for the civilian population.

Two areas in which the Security Council has been actively involved, using its authorities under both Chapter VI and Chapter VII, are disarmament and counterterrorism. Chapters 2 and 3 address these topics in greater detail, including the relevant role for and activities of the Security Council.

**THE ARCTIC—THE NEXT COLLECTIVE SECURITY ARENA?**

Once predominantly icebound, the Arctic is melting at a rapid rate, creating a dramatically different security environment. Is a newly navigable and accessible Arctic ripe for a collective security framework?

The Arctic has always been of great strategic significance but has remained almost entirely free of armed conflict and military adventurism. Since the mid-1990s, cooperation in the Arctic region has operated through the Arctic Council, a governance forum composed of the eight Arctic States: Canada, Finland, the United States, Sweden, Denmark, Iceland, Russia, and Norway, with participation by indigenous groups as well. The Arctic Council was created to facilitate cooperation and joint problem solving, focused on sustainable development, economic protection, and other common issues. In particular, it has facilitated agreements on environmental protection, search and rescue, and scientific cooperation. The Arctic Council is not an international organization and has no international legal personality or ability to enforce any decisions or recommendations. Notably, the Ottawa Declaration, its founding document, deliberately excludes military security affairs from the Arctic Council’s authority. Senior military officers from the Arctic States do engage in dialogue through the Arctic Security Forces Roundtable, but Russia has been excluded from these dialogues since 2014 as a consequence of its invasion and occupation of Crimea, and then exacerbated by its continued aggression against Ukraine in early 2022.

As climate change opens the Arctic to the possibility of military operations and even low-level conflict or worse, many commentators question whether cooperative governance is sufficient, or whether a collective security framework for the Arctic is necessary. “The international community remains committed to the idea of ‘Arctic exceptionalism’: namely, that the Arctic should be kept free of military conflict and insulated from geopolitical spillover spread by interstate rivalry elsewhere. As a popular refrain has
it, the High North is to be kept as an area of ‘low tension.’\footnote{Mathieu Boulègue & Duncan Depledge, \textit{It is Time to Negotiate a New Military Security Architecture for the Arctic}, \textsc{Polar Points} (April 16, 2021), www.wilsoncenter.org/blog-post/no-5-it-time-negotiate-new-military-security-architecture-arctic.} However, as Russia increases its military activity in the Arctic and geostrategic competition intensifies more broadly, the potential for miscalculation introduces new security concerns and challenges in the Arctic. Consider what a collective security framework for the Arctic would look like—would it include collective enforcement by military means, or perhaps only collective measures short of force?