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Peace, Security, and Human Rights

The Federation of the World

On June 25, 1945, a hulking C-54 military transport plane descended through foggy skies to touch down at Hamilton Airforce Base north of San Francisco. Waiting on the tarmac were US Secretary of State Edward Stettinius, California Governor Earl Warren, and the heads of forty-nine foreign delegations from around the world.[1] As a military guard saluted and a brass band played, US President Harry Truman emerged from the plane wearing a grey double-breasted suit, a blue bowtie, and an exultant smile. Although war with Japan raged on in the Pacific, Truman's spirits were high, and for good reason. He had come to witness the birth of a new world order – one intended to end war for generations to come.

Nine weeks earlier, diplomats and heads of state had gathered in San Francisco at the invitation of Truman's predecessor, Franklin Roosevelt, with an ambitious goal: to lay the foundation for a peaceful postwar order.[2] Almost overnight, the City by the Bay cast aside years of wartime austerity, exchanging food rationing and blackouts for decadent parties awash with light and music, where foreign diplomats rubbed shoulders with Hollywood stars. Reporters from around the world descended in record numbers, including the young Navy hero and future US president, John Kennedy. While the press flocked to the conference's plenary sessions at the stately San Francisco Opera House, the most consequential proceedings took place across town in Secretary Stettinius's penthouse

[1] Stephen C. Schlesinger, *Act of Creation: The Founding of the United Nations* (Boulder: Westview Press, 2003), p. 252.

[2] Roosevelt envisioned the birth of this new international organization as the crowning achievement of his presidency. Just thirteen days before the San Francisco Conference was to begin, however, Roosevelt suddenly collapsed and died while working on his speech for the Conference. David L. Bosco, *Five to Rule Them All: The UN Security Council and the Making of the Modern World* (Oxford: Oxford University Press, 2009), p. 32.

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suite at the Fairmont Hotel on Nob Hill.[3] Representatives of the "Big Five" – China, France, the Soviet Union, the United Kingdom, and the United States – met daily to hammer out the final details of a plan, announced two years earlier in Moscow, for "a general international organization, based on the principle of sovereign equality of all peace-loving states, and open to membership by all such states, large and small, for the maintenance of international peace and security."[4]

Truman championed the conference's agenda. From his youth, Truman had carried in his wallet a folded copy of several stanzas from a favorite poem by Lord Tennyson that envisioned international cooperation fostering a more peaceful world:

> *For I dipt into the future, far as human eye could see,*
> *Saw the Vision of the world, and all the wonder that would be;*
>
> *Saw the heavens fill with commerce, argosies of magic sails,*
> *Pilots of the purple twilight dropping down with costly bales;*
>
> *Heard the heavens fill with shouting, and there rain'd a ghastly dew*
> *From the nations' airy navies grappling in the central blue;*
>
> *Far along the world-wide whisper of the south-wind rushing warm,*
> *With the standards of the peoples plunging thro' the thunder-storm;*
>
> *Till the war-drum throbb'd no longer, and the battle-flags were furl'd*
> *In the Parliament of man, the Federation of the world.*
>
> *There the common sense of most shall hold a fretful realm in awe,*
> *And the kindly earth shall slumber, lapt in universal law.*[5]

In the months preceding the San Francisco Conference, Truman had urged his compatriots to embrace this vision of a "Federation of the world" as the formula for enduring peace and security.[6] "The policy we hope and believe will emerge from the San Francisco Conference and others to follow will embody cooperation among nations to keep down aggressors," he explained to an audience in his home state of Missouri.

[3] Edward Epstein, 'When Nations United: The Historic Gathering of Delegates from 50 Countries to Sign the U.N. Charter Half a Century Ago Was One of San Francisco's Finest Hours', San Francisco Gate, 23 April 2019.

[4] Joint Four-Nation Declaration Moscow Conference, US-UK-USSR-China, 30 October 1943, para. 4.

[5] Schlesinger, 'Act of Creation', pp. 7, 9 (quoting Alfred, Lloyd Tennyson, *Lockesley Hall* (1842)).

[6] Tennyson, of course, channeled Immanuel Kant's proposal for a federation of states in *Perpetual Peace: A Philosophical Essay* (1795).

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"The only rational alternative to existing anarchy lies in some reasonable form of international organization among so-called sovereign states."[7]

Thus, it was with great excitement that Truman arrived in San Francisco to join the final sessions of the conference. After greeting the assembled dignitaries, Truman led a motorcade of nearly a hundred limousines flanked by motorcycle police across the Golden Gate Bridge, where 500,000 residents – the largest crowd in the city's history – gathered to cheer on the procession.[8] Later that evening, thousands packed into the Opera House to see the fifty national delegations rise from their seats to adopt the Charter of the United Nations unanimously.[9]

The following day, as delegates reassembled for the Charter's signing ceremony, the conference's secretary-general, Alger Hiss, praised the participants for changing the course of history. He reminded them that the Charter affirms the proposition that "we all have to recognize – no matter how great our strength – that we must deny ourselves the license to do always as we please . . . This is the price which each nation will have to pay for world peace."[10] Truman then rose to underscore the importance of international cooperation to ensure the venture's ultimate success. He declared: "We have tested the principle of cooperation in this war, and we have found it works."[11]

Eighty years later, the Charter's ambitious framework for international cooperation remains formally intact, but its promise only partly fulfilled.[12]

[7] Schlesinger, *Act of Creation*, p. 7.
[8] Ibid. p. 253.
[9] Ibid. p. 254.
[10] Ibid. p. 256 (citing *New York Times*, 27 June 1945).
[11] Ibid.
[12] Although this chapter for brevity's sake focuses on the UN Charter and other international agreements with universal or near-universal membership, we recognize that mandatory cooperation also features prominently in and arguably operates more effectively through regional regimes. See, e.g., Organization of American States' American Treaty on Pacific Settlement, 30 April 1948, OAS Treaty Series No. 17 & 61 (establishing mandatory procedures for pacific dispute settlement); Inter-American Treaty of Reciprocal Assistance arts. 2 & 3(1), TIAS No. 1838, 21 UNTS 77 (committing states-parties "to submit every controversy which may arise between them to methods of peaceful settlement," as well as to "assist in meeting [an] attack [against another member state] in the exercise of . . . collective self defense"); Revised Treaty of the Economic Community of West African States (ECOWAS) art. 4, 24 July 1993, 2373 UNTS 233 (affirming the principles of "inter-State co-operation," "promotion and strengthening of good neighborliness," and "peaceful settlement of disputes"); ibid. arts. 56, 58 (requiring international cooperation for regional security). A more comprehensive survey of mandatory cooperation for collective security and human rights would require further attention to regional international law.

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Mandatory cooperation under the Charter entails essentially the same legal requirements as in other domains where it arises: states must consult, evaluate risks, share relevant information, and pursue peaceful dispute resolution with one another. When threats to peace and security emerge, states must cooperate through the United Nations to keep "a fretful realm in awe." In addition, states must work together to address the root causes of human immiseration which undermine international peace and security, including atrocity crimes and global poverty. If the United Nations has struggled to deliver international peace and security and universal respect for human rights, the fault lies in large measure with states that have defaulted on their obligations of mandatory cooperation.

Uniting for International Peace and Security

Just as international cooperation at the San Francisco Conference gave birth to the United Nations, the Charter relies on international cooperation "to save succeeding generations from the scourge of war" and to "reaffirm faith in fundamental human rights, in the dignity and worth of the human person," and "in the equal rights of men and women and of nations large and small."[13] In the Charter's preamble, UN member states express their determination "to practice tolerance and to live together in peace with one another as good neighbours."[14] Article 2(4) obligates them to "refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."[15] When international disputes arise, states must strive "in good faith" to resolve their differences "by peaceful means in such a manner that international peace and security, and justice, are not endangered."[16] These requirements of mandatory cooperation safeguard the sovereign equality of individual UN member states[17] while also

[13] UN Charter, 24 October 1945, 1 UNTS XVI, pmbl.

[14] Ibid.

[15] Ibid. art. 2(4). This article reaffirmed states' earlier pledge in the Kellogg-Briand Pact to "condemn recourse to war for the solution of international controversies, and renounce it, as an instrument of national policy in their relations with one another." General Treaty for Renunciation of War as an Instrument of National Policy, 27 August 1928, 46 Stat. 2343, art. 1.

[16] UN Charter, art. 2(2)–(3).

[17] See Leland M. Goodrich and Edvard Hambro, *Charter of the United Nations: Commentary and Documents* (Boston: World Peace Foundation, 1946), p. 48 (explaining

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attending to the international community's collective interest in preserving a peaceful world order.[18]

Recognizing that states might be tempted to violate these obligations, the Charter establishes the United Nations as a secondary guarantor of international peace and security. The preamble conveys the international community's aspiration "to unite our strength" to preserve the peace, thereby ensuring "that armed force shall not be used, save in the common interest."[19] To this end, Article 1 specifies four general purposes of the United Nations:

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. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;
3. To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and
4. To be a centre for harmonizing the actions of nations in the attainment of these common ends.[20]

The Charter tasks the Security Council with coordinating the United Nations' efforts to preserve international peace and security.[21] Some of

that the Charter is "an instrument of cooperation between the Members of the United Nations Organization who, according to the first principle of Article 2, retain their 'sovereign equality'").

[18] See Heike Krieger, 'Rights and Obligations of Third Parties in Armed Conflicts', in Eyal Benvenisti and Georg Nolte (eds.), *Community Interests Across International Law* (Oxford: Oxford University Press, 2018), pp. 448, 452 (observing that "the protection of states and their sovereignty from military attacks is seen as part of the community interest to protect international peace and security, the realization of which is entrusted to the Security Council").

[19] Ibid. pmbl.

[20] UN Charter, art. 1.

[21] Ibid. art. 24. A familiar critique of the Charter is that it violates the principle of sovereign equality by conferring veto power on the Security Council's five permanent members (P5) – China, France, Russia, the United Kingdom, and the United States. We discuss in Chapter 12 the P5's veto and its challenge to the legitimacy of international legal order.

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the Security Council's powers relate to encouraging states to settle their disputes through peaceful cooperation. For example, the Security Council may call upon states to embrace negotiation, mediation, conciliation, arbitration, adjudication, or other peaceful means of dispute resolution.[22] If these efforts fail, states must refer their disputes to the Security Council so that it can "recommend such terms of settlement as it considers appropriate."[23] The Security Council may also take action on its own initiative to investigate "any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security."[24]

Chapter VII of the Charter empowers the Security Council to compel recalcitrant states to take whatever steps it deems necessary to maintain international peace and security. When the Security Council identifies a threat to the peace, a breach of the peace, or an act of aggression, it may not only "make recommendations" to states but also "decide what measures shall be taken . . . to maintain or restore international peace and security."[25] This may include provisional measures "to prevent an aggravation of the situation" or coercive "measures not involving the use of force" (e.g., economic sanctions, travel bans).[26] The Security Council may even authorize using military force to preserve or restore international peace and security (e.g., naval blockades, air strikes, peacekeeping, and peacebuilding missions).[27]

Significantly, the Charter obligates *all* states to cooperate with the Security Council's efforts to prevent and suppress threats to international peace and security – not just those directly responsible for the threats. Under Article 25, "Members of the United Nations agree to accept and carry out the decisions of the Security Council."[28] States also pledge in Article 2(5) "to give the United Nations every assistance in any action it takes" to maintain international peace and security, as well as to "refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action."[29] States that violate these

[22] UN Charter, art. 33(2).
[23] Ibid. art. 37.
[24] Ibid. art. 34.
[25] Ibid. art. 39.
[26] Ibid. arts. 40–41.
[27] Ibid. art. 42.
[28] Ibid. art. 25.
[29] Ibid. art. 2(5); see also ibid. art. 43 ("All Members of the United Nations . . . undertake to make available to the Security Council, on its call and in accordance with special

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obligations expose themselves to international censure, as well as sanctions and other coercive measures, as directed by the Security Council.[30] Thus, when the Security Council finds a threat to the peace or a breach of the peace, all states are obligated under the Charter to follow its lead.[31]

In its landmark 1970 Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations (Friendly Relations Declaration), the UN General Assembly affirmed that states bear due diligence obligations to promote the Charter's general purposes. In particular, the Friendly Relations Declaration states that "[a]ll states shall comply in good faith with their obligations under the generally recognized principles and rules of international law with respect to the maintenance of international peace and security, and shall endeavor to make the United Nations security system based on the Charter more effective."[32] Hence, states must settle their disputes peacefully "on the basis of the sovereign equality of States and in accordance with the principle of free choice of means" and cooperate with other states and the United Nations to maintain international peace and security.[33]

Some international lawyers might object that the Charter's cooperative framework for collective security is undermined by Article 51, which permits states to defend themselves from attack without awaiting

agreement or agreements, armed forces, assistance, facilities, including rights of passage, necessary for the purpose of maintaining international peace and security."); art. 49 (requiring states to "join in affording mutual assistance in carrying out the measures decided upon by the Security Council").

[30] Ibid. arts. 39–42.

[31] The UN General Assembly has also declared that if, due to "lack of unanimity of the permanent members," the Security Council "fails to exercise its primary responsibility for the maintenance of international peace and security ... the General Assembly shall consider the matter immediately with a view to making appropriate recommendations to Members for collective measures, including in the case of a breach of the peace or act of aggression the use of armed force when necessary, to maintain or restore international peace and security." Uniting for Peace, 3 Nov. 1950, GA Res. 377A(V); see also Michael P. Scharf, 'Power Shift: The Return of the Uniting for Peace Resolution' (2023) 55 *Case W. J. Int'l L.* 1, 7–10 (observing that the General Assembly has used the Uniting for Peace mechanism about a dozen times between 1951 and 2022). Unlike Security Council resolutions, General Assembly declarations under the Uniting for Peace framework are not formally binding on member states.

[32] Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations, 24 October 1970, GA Res. 2625(XXV) [hereinafter Friendly Relations Declaration].

[33] Ibid.

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Security Council authorization.[34] In principle, however, a state's "inherent right" of self-defense under Article 51 is compatible with the Charter's commitment to mandatory cooperation through the United Nations.[35] Article 51 authorizes self-defense only when an actual or imminent attack has already ruptured international peace and security and only until the Security Council intercedes.[36] The Charter stipulates that an act of "self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council" to prescribe a multilateral response.[37] Self-defense under Article 51 is also subject to customary requirements of necessity and proportionality, which require states to consider the impact of their defensive measures on foreign interests.[38] Therefore, even when states act in self-defense, international law channels their response through multilateral norms and processes to prevent states from using force "save in the common interest" to liberate humanity "from the scourge of war."[39]

An Early Victory

Less than two months after the San Francisco Conference, the United Nations received an early stress test in Indonesia. On the morning of August 7, 1945 – two days after the surrender of Japan's occupying forces – Indonesian nationalist republicans assembled at the home of their leader, Sukarno, in Djakarta. Sukarno read from a slip of paper: "We the Indonesian people proclaim the independence of Indonesia." He then stood at attention while a simple red-and-white flag rose into the sky, asserting the birth of a new state – one that demanded independence not only from Japan but also from its British "liberators" and the Dutch

[34] See ibid. art. 51 ("Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.").

[35] Ibid.

[36] Ibid. Although the Charter does not expressly address imminent attacks, conventional wisdom holds that Article 51 permits self-defense in response to imminent attacks. See, e.g., Christine Gray, *International Law and the Use of Force*, 3rd ed. (Oxford: Oxford University Press, 2008), p. 161; Yoram Dinstein, *War, Aggression and Self-Defence*, 3rd ed. (Cambridge: Cambridge University Press, 2001), p. 168.

[37] UN Charter, art. 51.

[38] See William C. Banks and Evan J. Criddle, 'Customary Constraints on the Use of Force: Article 51 with an American Accent' (2016) 29 LJIL 67, 74–76.

[39] UN Charter, pmbl.

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colonialists who had governed before the war.[40] Before long, hostilities broke out between Indonesia's independence movement and British occupying forces. Meanwhile, the Netherlands readied plans for its own military action to retake the Indonesian archipelago.[41]

Such were the circumstances in Indonesia in January 1946, when the Security Council gathered for its first session at Church House, its temporary London headquarters near Westminster Abbey. On the agenda were several pressing topics, including a proposal from Ukraine to address the escalating violence in Indonesia. Ukraine accused Japan and the United Kingdom of threatening international peace and security by occupying Indonesia illegally and conducting military operations against Indonesian civilians. The British vigorously disputed these charges, insisting that they had no intention of remaining in Indonesia and were simply trying to restore order and protect their troops from attack pending an orderly withdrawal.[42] Although the United Kingdom formally recognized Dutch sovereignty over Indonesia, British leaders attempted to prevent the Dutch from landing in Java and Sumatra and sought to broker a peaceful settlement between the Netherlands and Indonesian republicans.[43]

Ukraine's proposal for Security Council action on Indonesia came up short of the necessary votes. However, when negotiations between the Netherlands and the Indonesian independence movement collapsed, prompting the Dutch to attempt to reestablish colonial rule by force, the Security Council revisited the matter at the request of Australia and India.[44] The Netherlands, which then occupied a non-permanent seat on the Security Council, argued that the United Nations lacked jurisdiction to intercede because Indonesia fell within the Netherlands' sovereign jurisdiction, making the issue a matter of exclusively domestic concern.[45] No other Security Council member accepted this argument. Instead, on August 1, 1947, the Security Council, for the first time in its history, adopted a resolution demanding a ceasefire and calling on the

[40] Evan Luard, *A History of the United Nations Volume 1: The Years of Western Domination, 1945-1955* (Oxford: Oxford University Press, 1982), pp. 132–133; Alistair M. Taylor, *Indonesian Independence and the United Nations* (Westport: Greenwood Press, 1960), pp. 3, 8–9.

[41] Taylor, 'Indonesian Independence and the United Nations', pp. 8–12.

[42] The Indonesian Question, UN Security Council, 7 February 1946, S/PV.12, pp. 174–182.

[43] Luard, 'A History of the United Nations', pp. 132–133.

[44] Ibid. p. 135; Taylor, 'Indonesian Independence and the United Nations', pp. 47–49.

[45] See Luard, 'A History of the United Nations', p. 136.

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parties to settle their dispute by arbitration or other peaceful means.[46] Within days, both sides complied with the Security Council's directive.[47] The *New York Times* reported "that the United Nations had probably won its first major victory and through this victory had given the new international organization a sorely needed boost in prestige."[48]

The next several years in Indonesia witnessed recurring cycles of negotiation, violent clashes, and UN-brokered ceasefires. The Security Council demanded that the Netherlands and Indonesian republicans cooperate with an international mission established to investigate and mediate their dispute.[49] After the Security Council set a timetable for Indonesian independence, the Netherlands eventually agreed to withdraw its military and formally transferred sovereignty to the Indonesian state on December 27, 1949.[50] International cooperation through the Security Council thus ended violent conflict and Dutch colonial rule, paving the way for international recognition of the sovereign Republic of Indonesia. On September 28, 1950, Indonesia became the sixtieth member of the United Nations.[51]

Collective Enforcement in Fits and Starts

The Security Council's engagement with Indonesia offered proof of concept that mandatory cooperation through the United Nations could perform a constructive role in maintaining international peace and security. The Security Council used various tools to achieve a peaceful settlement in Indonesia, including consultation, investigation, mediation, and legally binding resolutions. Encouraged by the preliminary results, the Security Council over the next several years applied these and other tools (albeit with mixed results) in various conflict zones, including the Balkans, Greece, Kashmir, and Palestine.[52] Among the Security Council's early efforts at crisis management, however, it was the

[46] UN Security Council Resolution 27 (The Indonesian Question), 1 August 1947, S/RES/27; Luard, 'A History of the United Nations', p. 136.
[47] Taylor, 'Indonesian Independence and the United Nations', p. 51.
[48] Ibid. (quoting George Barrett, 'U.N. Circles Happy over Java Action,' NY Times, 4 August 1947).
[49] Luard, 'A History of the United Nations', pp. 139, 142–145.
[50] Taylor, 'Indonesian Independence and the United Nations', p. 264.
[51] Ibid. p. 265.
[52] Luard, 'A History of the United Nations', pp. 121–123; Ramesh Thakur, *The United Nations, Peace and Security* (Cambridge: Cambridge University Press, 2006), p. 35.

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Korean War that most seriously tested the Charter's framework for mandatory cooperation.

When North Korea invaded South Korea on June 25, 1950, it committed the kind of unprovoked aggression that the Charter's drafters had in mind when they outlawed the "use of force against the territorial integrity or political independence of any state."[53] The United States requested a meeting of the Security Council and circulated a draft resolution condemning the North Korean attack. The draft demanded North Korea's immediate and total withdrawal and called upon "all Member States to render every assistance to the United Nations in the execution of this resolution and refrain from giving assistance to the North Korean authorities."[54] With the People's Republic of China not represented at the Security Council (the seat designated for China was occupied by Taipei rather than Beijing) and the Soviet Union boycotting the United Nations, the United States' draft sailed through the Security Council to become Resolution 82.[55] Two days later, the Security Council recommended that UN member states "furnish such assistance to the Republic of Korea as may be necessary to repel the armed attack and to restore international peace and security in the area."[56] For the first time in its history, the Security Council had invited states to defend a state under attack.[57] By mid-September 1950, fourteen states had contributed ground forces to South Korea's defense, and dozens of others had furnished material assistance.[58]

Whatever hopes the United States and its allies may have placed in the Security Council to rally international cooperation against North Korean aggression, the limits of this strategy soon became apparent. In Resolution 82 and subsequent resolutions, the Security Council stopped short of mandating bystander state cooperation under Articles 40–42 of the Charter. Once the Soviet Union resumed participating in Security Council meetings, its veto power prevented the Security Council from further addressing the Korean War. As a result, the Security Council lost

[53] UN Charter, art. 2(4).
[54] UN Security Council Resolution 82 [Complaint of Aggression upon the Republic of Korea], 25 June 1950, S/RES/82; Luard, 'A History of the United Nations', p. 240.
[55] Wilson Centre, 'The Lost Battle: The Soviet Union and the United Nations under Stalin, 1945–1953', Wilson Center, 13 March 2006; Bosco, *Five to Rule them All*, p. 55.
[56] UN Security Council Resolution 83 (Complaint of Aggression upon the Republic of Korea), 27 June 1950, S/RES/83.
[57] Ibid. p. 241.
[58] Luard, 'A History of the United Nations', pp. 241–243.

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meaningful supervisory control over South Korea's collective defense.[59] Just five years removed from the halcyon days of the San Francisco Conference, several of the "Big Five" states that had brought the UN Charter into the world already found themselves on opposite sides of a bloody conflict.

The incipient Cold War tensions that fueled the Korean War significantly impacted the Security Council as an institution. For the next four decades, the Security Council rarely mustered the votes necessary to respond to threats to international peace and security. However, the Security Council often invited states to cooperate in peaceful dispute resolution, and it occasionally deployed peacekeeping missions to conflict zones.[60] For example, in the United Nations' first formal peacekeeping mission (UNEF I), international peacekeepers helped to defuse the 1956 Suez Crisis by supervising the orderly withdrawal of British, French, and Israeli armed forces from Egypt.[61] A decade later, the Security Council, for the first time, imposed mandatory economic sanctions against Southern Rhodesia (present-day Zimbabwe) to compel its white-dominated apartheid government to relinquish power.[62] These measures demonstrated the United Nations' potential to galvanize international cooperation for international peace and security. More often than not, however, hardened rivalries among the Security Council's P5 hamstrung the Security Council's ability to prevent and suppress violent conflicts worldwide. Perhaps the Security Council's primary contribution during this era, therefore, was simply to foster dialogue, reducing the risks of misunderstanding and direct military confrontation among the world's great powers.[63]

[59] Bosco, *Five to Rule Them All*, pp. 60–63.

[60] The United Nations conducted fourteen peacekeeping missions between 1945 and 1987. Alex J. Bellamy, Paul Williams and Stuart Griffin, *Understanding Peacekeeping* (Cambridge: Polity Press, 2004), p. 72.

[61] 'Middle East–UNEF I', United Nations, https://peacekeeping.un.org/en/mission/past/unef1mandate.html. This first peacekeeping mission was deployed by the Secretary-General at the invitation of the UN General Assembly pursuant to "Uniting for Peace" procedures, not by the Security Council. UN GA Res.–First Emergency Special Session, 7 November 1956, A/RES/1001(ES-1).

[62] UN Security Council Resolution 232 (Southern Rhodesia), 16 December 1966, S/RES/232.

[63] Ibid. p. 74 (discussing insights from Adam Roberts and Benedict Kingsbury, 'Introduction: The UN's Roles in International Society', in Adam Roberts and Benedict Kingsbury (eds.), *United Nations, Divided World*, 2nd ed. (Oxford: Oxford University Press, 2000), pp. 1, 41).

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As relations among the P5 began to thaw in the late 1980s, the Security Council became more assertive in countering threats to international peace and security. When Iraq invaded Kuwait in August 1990, the Security Council held an emergency meeting and quickly passed a resolution ordering Iraq to withdraw "immediately and unconditionally."[64] Hard on the heels of this resolution came additional directives, urged by the United States and the United Kingdom but supported by most other states, declaring the annexation of Kuwait null and void, imposing a comprehensive sanctions regime on Iraq, and establishing a special committee to monitor compliance.[65] By the end of November, the Security Council invoked its authority under Chapter VII of the Charter and gave Iraq until January 15, 1991, to withdraw from Kuwait. The Security Council authorized other states to use "all necessary means" – including military action – to expel Iraq once the deadline for voluntary withdrawal passed.[66] Backed by the Security Council, a coalition of thirty-six nations proceeded to drive the Iraqi army from Kuwait through several weeks of aerial bombardment and an intense but brief 100-hour ground campaign.[67]

In 2003, the United States led a second military campaign against Iraq with significantly less international support. In the lead up to the war, the United States sent Secretary of State Colin Powell to the United Nations to make the case for military action to topple the regime of Saddam Hussein. Powell testified based on faulty evidence that "the facts and Iraq's behavior show that Saddam Hussein and his regime are concealing their efforts to produce more weapons of mass destruction."[68] With a majority of the Security Council including Russia and France opposed to military action in Iraq, the United States, United Kingdom, and Spain abandoned last-ditch efforts to win UN backing, with British

[64] UN Security Council Resolution 660 (Iraq-Kuwait), 2 August 1990, S/RES/660.

[65] UN Security Council Resolution 662 (Iraq-Kuwait), 9 August 1990, S/RES/662; UN Security Council Resolution 661 (Iraq-Kuwait), 6 August 1991, S/RES/661.

[66] UN Security Council Resolution 678, 29 November 1990, S/RES/678 (adopted by a vote of 12–2, with China abstaining).

[67] Roger Normand and Chris de Jochnick, 'The Legitimation of Violence: A Critical Appraisal of the Gulf War' (1994) 35 HILJ 387, 389–390.

[68] Colin L. Powell, 'Remarks to the United Nations Security Council', US Dep't of State Archive, 5 February 2003. In the months following the invasion, no stockpiles of weapons of mass destruction were found, and the evidence on which Powell's testimony relied was revealed to be "seriously flawed." Parliament, House of Commons, 'Review of Intelligence on Weapons of Mass Destruction' (London: The Stationary Office, 2004), p. 101, para. 409.

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Ambassador Jeremy Greenstock advising that the trio "reserve their right to take their own steps to secure the disarmament of Iraq."[69] While the Security Council did not authorize military action against Iraq in 2003, it also proved incapable of thwarting two Great Powers from using military force to impose regime change and a lengthy occupation on Iraq. The Iraq War is a potent reminder that the effectiveness of the UN system depends on the willingness of its more powerful members to abide by its Charter and international law generally.

Cooperating to Respect, Protect, and Fulfill Human Rights

Since the 1990s, the Security Council has devoted increasing attention to preventing and suppressing human rights crises around the world. The groundwork for this effort was laid during the San Francisco Conference. Recall that a core purpose of the United Nations, as set forth in Article 1 of the Charter, is to "achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion."[70] The drafters of the Charter believed that these "conditions of stability and well-being" within states were an essential prerequisite for "peaceful and friendly relations among nations based on the principle of equal rights and self-determination of peoples."[71] States are primarily responsible under the Charter for ensuring that their people enjoy the full protection of international human rights within their respective jurisdictions. Under Articles 55 and 56, however, they also "pledge themselves to take joint ... action in co-operation with the [United Nations]"[72] to guarantee "universal respect for, and observance of, human rights and fundamental freedoms for all."[73] Thus, just as states must cooperate with the Security Council's efforts to maintain international peace and security, the Charter also requires states to cooperate

[69] 'US, Britain and Spain Abandon Resolution', Associated Press, 17 March 2003.
[70] UN Charter, art. 1(3).
[71] Goodrich and Hambro, 'Charter of the United Nations', p. 39; see also Schlesinger, 'Act of Creation', p. 48 (observing that ECOSOC was designed to address "the causes of war, such as poverty and famine").
[72] UN Charter, art. 56.
[73] Ibid. art. 55; see also Friendly Relations Declaration ("Every state has a duty to promote through joint and separate action universal respect for and observance of human rights and fundamental freedoms in accordance with the Charter.").

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with one another and the United Nations to protect and fulfill human rights worldwide.

Early in the United Nations' history, states worked through the General Assembly and the UN Economic and Social Council (ECOSOC) to specify international human rights norms in landmark agreements, such as the Universal Declaration of Human Rights,[74] the International Covenant on Civil and Political Rights,[75] and the International Covenant on Economic, Social and Cultural Rights (ICESCR).[76] Over the past several decades, however, the United Nations' focus generally has shifted from norm-specification and legal codification to securing compliance with established human rights obligations. Protecting human rights has become a core purpose of UN peacekeeping.[77] The Security Council has exercised its Chapter VII authority with increasing regularity to mandate collective enforcement measures (e.g., economic sanctions, travel restrictions, military action) and to prevent and suppress serious breaches of international human rights norms (e.g., crimes against humanity and war crimes).[78] Along the way, the international community has accepted that all states must cooperate when the Security Council decides that international cooperation is necessary to advance universal respect for international human rights.[79]

[74] Universal Declaration of Human Rights, 10 December 1948, UN GA Res. 217 A (III), UN Doc. A/810.

[75] International Covenant on Civil and Political Rights, 16 December 1966, 999 UNTS 171.

[76] International Covenant on Economic, Social and Cultural Rights, 16 December 1966, 993 UNTS 3 [hereinafter ICESCR]; see also ibid. art. 60 (assigning responsibility to the General Assembly and ECOSOC to discharge this norm-specification function).

[77] See, e.g., Gérard Prunier, *The Rwanda Crisis: History of a Genocide* (New York: Columbia University Press, 1995), p. 234 (explaining how UN peacekeepers failed to prevent the Rwandan genocide that claimed a million lives).

[78] See, e.g., UN Security Council Resolution 2085, 20 December 2012, S/RES/2085, para. 9 (authorizing "the deployment of an African-led International Support Mission in Mali" to support local authorities' efforts to protect civilians); UN Security Council Resolution 1970, 26 February 2011, S/RES/1970 (imposing sanctions in response to crimes against humanity in Libya).

[79] See, e.g., 2005 UN Secretary-General, Implementing the Responsibility to Protect, 12 January 2009, UN Doc. A/63/677, para. 10 (embracing this principle); 2005 World Summit Outcome, 24 Oct. 2005, A/RES/60/1, para. 139 ("The international community, through the United Nations," bears "responsibility . . . to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity."). With respect to the right to self-determination, the international community has declared that "[e]very State has the duty . . . to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of the principle." Friendly Relations Declaration; see also Legal Consequences Arising from

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One of the ways states have pledged to promote respect for international human rights is by cooperating with one another and with international tribunals to facilitate the prosecution of those who commit international crimes. During the 1990s, the UN Security Council established ad hoc criminal tribunals to investigate and prosecute mass atrocities in Rwanda and the former Yugoslavia.[80] In both settings, the Security Council issued binding regulations requiring states to cooperate with the tribunals, including by complying with requests for assistance with pretrial investigation and prosecution.[81] States later incorporated duties of cooperation into the Rome Statute of the International Criminal Court (ICC).[82] The Rome Statute requires states-parties to "cooperate fully with the Court in its investigation and prosecution of crimes within the jurisdiction of the Court,"[83] including by gathering evidence, securing witnesses for trial, and arresting and surrendering suspects upon the Court's request.[84] Mandatory cooperation also features prominently in the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.[85] States-parties must not only prevent, criminalize, and prosecute domestic acts of torture[86] but also grant reasonable extradition requests and "afford one another the greatest measure of assistance in connection with criminal proceedings brought" to enforce the Convention, including by providing "all evidence at their disposal necessary for the proceedings."[87] Similar duties of international cooperation appear in the International Convention for

the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem, 2024 ICJ (19 July), para. 275 (explaining that "while it is for the General Assembly and the Security Council to pronounce on the modalities required to ensure . . . the full realization of the right . . . to self-determination, all States must co-operate with the United Nations to put those modalities into effect").

[80] UN Security Council Resolution 827, 25 May 1993, S/RES/827, para. 2 (establishing the International Criminal Tribunal for the Former Yugoslavia); UN Security Council Resolution 955, 8 November 1994, S/RES/955, para. 1 (establishing the International Criminal Tribunal for Rwanda).

[81] UN Security Council Resolution 827, 25 May 1993, S/RES/827, para. 4; UN Security Council 955, 8 November 1994, S/RES/955, para. 2.

[82] Rome Statute of the International Criminal Court, 17 July 1998, 2187 UNTS 90, arts. 86, 89, 93 [hereinafter Rome Statute].

[83] Ibid. art. 86.

[84] Ibid. arts. 89, 93.

[85] Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, S. Treaty Doc. No. 100-20 (1988), 1465 UNTS 85.

[86] Ibid. arts. 2, 4, 7.

[87] Ibid. arts. 8, 9(1); see also art. 20 (outlining procedures for state cooperation with fact-finding investigations of the Committee Against Torture).

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the Protection of All Persons from Enforced Disappearance[88] and the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention).[89]

The Bosnian Genocide Case

On July 11, 1995, at the height of the violence unleashed by Yugoslavia's dissolution, Bosnian Serbs under the command of General Radko Mladić captured the weakly fortified town of Srebrenica on the eastern fringe of present-day Bosnia and Herzegovina. Stationed at Srebrenica was a small contingent of Dutch peacekeepers operating under UN mandate but without authorization to use force for the town's defense. Two years earlier, the Security Council had adopted a resolution designating "Srebrenica and its surroundings as a safe area which should be free from any armed attack or any other hostile act."[90] As Mladić entered town, however, he looked directly into a journalist's video camera and declared, "We give this town to the Serb nation as a gift. The time has come to take revenge on the Muslims."[91] Over the next five days, Mladić's troops systematically rounded up and executed over 7,000 unarmed Muslim men of all ages.[92]

Even before the massacre at Srebrenica, Bosnia and Herzegovina had instituted proceedings in the ICJ, claiming that Serbia was legally responsible for atrocities committed on Bosnian soil by Bosnian Serb separatists.[93] These proceedings gained even greater urgency after the much-publicized Srebrenica massacre. Bosnia and Herzegovina argued that Serbia violated the Genocide Convention by failing to prevent acts of genocide by Bosnian Serbs and declining to arrest and surrender General Mladić for prosecution in the International Criminal Tribunal for the

[88] UN General Assembly, International Convention for the Protection of All Persons from Enforced Disappearance, 20 December 2006, GA Res. 61/177, Annex, UN Doc. A/RES/61/177, arts. 11, 13–15.

[89] Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948, in force 12 January 1951, 78 UNTS 277, arts. 1, VI–VII [hereinafter Genocide Convention].

[90] UN Security Council Resolution 819, 16 April 1993, S/RES/819, para. 1.

[91] 'Ratko Mladic trial told of Srebrenica chaos', BBC, 17 May 2012.

[92] Prosecutor v. Kristić, IT-98-33-T, Judgment, para. 12, August 2001.

[93] Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Serbia & Montenegro), 2007 ICJ Rep. 43, 49, para. 1 (26 February) [hereinafter Bosnian Genocide Case]. When Bosnia and Herzegovina first instituted the proceedings, Serbia was part of the Federal Republic of Yugoslavia. Ibid.

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Former Yugoslavia (ICTY).[94] These legal claims raised important questions about the scope of mandatory cooperation as applied to mass atrocities. Did Serbia indeed have an affirmative obligation to prevent the Srebrenica genocide and punish those responsible? Should it make a difference that the genocidal acts were committed by foreign nationals (Bosnian Serbs) outside Serbian territory?

In its landmark judgment of February 26, 2007, the ICJ agreed that Serbia violated the Genocide Convention by failing to cooperate fully with international efforts to prevent the massacre at Srebrenica and punish Mladić.[95] Although the Court found insufficient evidence to attribute the Srebrenica genocide to Serbia,[96] it underscored Serbia's affirmative obligation to prevent and punish genocide:

> [T]he obligation of States parties is . . . to employ all means reasonably available to them, so as to prevent genocide so far as possible. A State does not incur responsibility simply because the desired result is not achieved; responsibility is however incurred if the State manifestly failed to take all measures to prevent genocide which were within its power, and which might have contributed to preventing the genocide. In this area the notion of "due diligence," which calls for an assessment *in concreto*, is of critical importance.[97]

The ICJ acknowledged that a state's legal responsibility to prevent others from committing genocide varies depending upon its "capacity to influence effectively the action of persons likely to commit or already committing, genocide," as well as "its particular legal position vis-à-vis the situations and persons facing the danger, or the reality, of genocide." However, the fact that a state might not be able to prevent genocide through its efforts alone would not suffice to excuse a failure to act. Instead, the proper inquiry was whether "the combined efforts of several States, each complying with its obligation to prevent, might have achieved the result – averting the commission of genocide – which the efforts of only one State were insufficient to produce."[98] Put simply, when a state cannot prevent genocide unilaterally, it must pursue international cooperation.[99] In the case of Srebrenica, the ICJ concluded that Serbia

[94] Ibid. p. 65, para. 65.
[95] Ibid. p. 228, para. 449.
[96] Ibid. pp. 214–215, paras. 413–415.
[97] Ibid. p. 221, para. 430.
[98] Ibid. p. 221, paras. 413–415, 219, 424.
[99] The Court concluded that the Genocide Convention's requirements to prevent and punish genocide are not territorially constrained, but instead "apply to a State wherever

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violated its obligations under the Genocide Convention by failing to devote "the best efforts within [its] power to try and prevent the tragic events then taking shape."[100]

This was not Serbia's only violation of international law. The ICJ also concluded that Serbia "failed in its duty to co-operate with the ICTY."[101] According to the Court, states-parties to the Genocide Convention must "arrest persons accused of genocide who are in their territory – even if the crime of which they are accused was committed outside it – and, failing prosecution of them in the parties' own courts," they must "hand them over for trial by the competent international tribunal."[102] The Court found "plentiful, and mutually corroborative, information suggesting that General Mladić, indicted by the ICTY for genocide," had been living freely in Serbian territory with the knowledge of Serbia's intelligence service but without Serbia taking reasonable steps to make an arrest.[103] This failure to cooperate fully with the ICTY violated Serbia's duties "as a member of the United Nations" and "under Article VI of the Genocide Convention."[104]

Cooperating to Prevent and Punish Other Atrocity Crimes

The *Bosnian Genocide Case* confirms that states bear due diligence obligations to prevent and suppress genocide and that they must cooperate with one another and with international organizations to make those efforts effective. The judgment does not directly address whether states must unite to prevent and suppress other international crimes. Still, there are strong signals elsewhere in the ICJ's jurisprudence that all such

it may be acting or may be able to act in ways appropriate to meeting the obligations in question." Bosnian Genocide Case, p. 120, para. 183; see also Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Yugoslavia), Preliminary Objections, Judgment, 1996 ICJ Rep. 595, 616, para. 31 (11 July) [hereinafter Bosnian Genocide Preliminary Objections]. Thus, unlike most due diligence obligations under international law, such as the requirements to prevent transboundary pollution and attacks by non-state actors (see Chapters 6 and 7), the obligation to prevent genocide is not limited to threats arising within a state's own territory. See Marko Milanovic, 'State Responsibility for Genocide: A Follow-Up' (2007) 18 EJIL 669, 685 (emphasizing the exceptional nature of this extraterritorial obligation to prevent genocide).

[100] Bosnian Genocide Case, pp. 225–226, paras. 438–439.

[101] Ibid. p. 229, para. 449.

[102] Ibid. p. 227, para. 443.

[103] Ibid. p. 229, para. 448.

[104] Ibid. p. 229, para. 449.

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crimes trigger mandatory cooperation. For example, in the *Reservations to the Genocide Convention Case* (*Reservations Case*), the Court explained that mandatory cooperation is a "consequence" of the Genocide Convention's "conception" of genocide as an international crime which "shocks the conscience of mankind and results in great losses to humanity, and which is contrary to moral law and to the spirit and aims of the United Nations."[105] Based on this logic, it would seem to follow that states must cooperate to prevent, suppress, and punish other mass atrocities, as well. Genocide is not the only universally recognized international crime that shocks the conscience, generates great losses to humanity, and violates the spirit and aims of the United Nations; the crime of aggression, crimes against humanity, and at least some war crimes clearly satisfy these criteria.[106] The ICJ's reasoning in the *Reservations Case* suggests, therefore, that those other international crimes also trigger an obligation to cooperate in good faith "to liberate mankind from such an odious scourge."[107]

Consistent with the *Reservations Case*, customary international law may be in the process of establishing positive duties of cooperation for grave breaches of international human rights and international criminal law. In its influential 2001 Articles on State Responsibility for Internationally Wrongful Acts (the Articles), the UN International Law Commission (ILC) concluded that under international law, states must "cooperate to bring to an end through lawful means any serious breach" "of an obligation arising under a peremptory norm of general international law."[108] The ILC's commentary accompanying the Articles acknowledges that reasonable minds might question whether

[105] Reservations to the Genocide Convention, 1951 ICJ Rep. 15, 23 (28 May) [hereinafter Reservations Case]. Another "consequence" of this conception, the Court suggested, is that the prohibition against aggression is a peremptory norm "recognized by civilized nations" that binds states "even without any conventional obligation." Ibid.; see also Case Concerning Armed Activities on the Territory of the Congo (DRC v. Rwanda), 2006 ICJ Rep. 6, 31, para. 64 (3 February) (reaffirming these principles from the Reservations Case); Bosnian Genocide Preliminary Objections, p. 616, para. 31 (same).

[106] Rome Statute, arts. 5–8 (codifying these international crimes).

[107] Reservations Case, p. 23 (quoting UN Charter pmbl.).

[108] International Law Commission, 'Articles on Responsibility of States for Internationally Wrongful Acts', in *Report of the International Law Commission on the Work of Its Fifty-Third Session*, UNGAOR, 56th Sess., Supp. No. 10, UN Doc. A/56/10, p. 113, arts. 40–41 (2001); see also ibid. art. 41, cmt. 2 ("Cooperation could be organized in the framework of a competent international organization, in particular the United Nations. However, paragraph 1 also envisages the possibility of non-institutionalized cooperation.").

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"[customary] international law at present prescribes a positive duty of cooperation," and it concedes that the Articles' articulation of this duty "may reflect the progressive development of international law."[109] Nonetheless, the ILC's commentary observes that "in fact such cooperation, especially in the framework of international organizations, is carried out already in response to the gravest breaches of international law."[110]

Since the ILC finalized the Articles, the idea that states must cooperate to prevent mass atrocities has received some additional support from the UN General Assembly. In the 2005 World Summit Outcome, 191 states unanimously endorsed the "Responsibility to Protect" (R2P) doctrine, affirming that states are responsible for protecting their people from genocide, war crimes, ethnic cleansing, and crimes against humanity, and that "[t]he international community, through the United Nations, also has the responsibility to use appropriate . . . means" – including "collective action . . . through the Security Council" – to protect vulnerable populations from these threats.[111] A year after the 2005 World Summit Outcome, the General Assembly clarified further that "[i]n cases of gross violations of international human rights law and serious violations of international humanitarian law constituting crimes under international law, . . . States should, in accordance with international law, cooperate with one another and assist international judicial organs competent in the investigation and prosecution of these violations."[112] At a minimum, these General Assembly resolutions express a shared political commitment to cooperate to prevent and punish international crimes.

Whether states accept the idea that they have a legal obligation to cooperate to prevent and suppress atrocity crimes is less clear. In practice, bystander states rarely treat international cooperation as a legal requirement absent a binding Security Council resolution. The international community's flagrant failures to prevent genocide and crimes against humanity in Cambodia, Rwanda, Bosnia, Darfur, Syria, Myanmar, and

[109] Ibid. art. 41, cmt. 3.
[110] Ibid.
[111] 2005 World Summit Outcome, 24 October 2005, A/RES/60/1, paras. 138–139.
[112] UN General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 21 March 2006, A/RES/60/147, p. 5, para. 4.

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elsewhere are well documented.[113] As these crises have unfolded, many states have turned a blind eye to imminent catastrophe. Security Council members have opposed or slow-rolled proposals to protect vulnerable populations. Reflecting on these tragedies in a 2016 Report titled *Mobilizing Collective Action: The Next Decade of the Responsibility to Protect*, UN Secretary-General Ban Ki-Moon lamented that "although Member States have repeatedly emphasized their support for the prevention of atrocity crimes, this has not been sufficiently translated into concrete support for preventive strategies – even when there have been credible assessments of imminent threats to populations."[114] Experience thus reveals a wide gap between international institutions' strong affirmations of mandatory cooperation to prevent and punish atrocity crimes, on the one hand, and tepid state practice, on the other hand.

The genocide in Sudan's Darfur region (2003–2005) illustrates this challenge. In October 2003 – at least three months before international news media began reporting ethnic cleansing by Janjaweed militia in Darfur, and a full eleven months before Western governments officially labeled the attacks "genocide" – the US State Department was aware that escalating ethnic violence in the region could soon cause death rates to spike into the hundreds of thousands. The European Commission also tracked developments in Darfur closely and anticipated imminent calamity. Nonetheless, early warnings about the approaching genocide were "swept under the carpet" based on "a conscious decision to address Darfur silently using quiet diplomacy and not bring it to the UN Security Council."[115] Had the European Commission and the United States recognized that the looming crisis triggered mandatory cooperation – including a firm due diligence obligation to notify the entire international community of the approaching calamity and seek timely action from the Security Council – this might have helped to avert or contain the atrocities that followed. Attending to the requirements of mandatory cooperation might have helped to persuade Security Council

[113] See, e.g., Samantha Power, *A Problem from Hell: America and the Age of Genocide* (New York: Basic Books, 2002); David Lanz, *The Responsibility to Protect in Darfur: From Forgotten Conflict to Global Cause and Back* (London: Routledge, 2020); UN Human Rights Committee, Report of the Independent International Fact-finding Mission on Myanmar, 12 September 2018, A/HCR/39/64.

[114] Report of the Secretary General, Mobilizing Collective Action: The Next Decade of the Responsibility to Protect, 22 July 2016, A/70/999–S/2016/620, p. 8, para. 28.

[115] Fred Grünfeld and Wessel N. Vermeulen, *Failure to Prevent Gross Human Rights Violations in Darfur: Warnings to and Responses by International Decision Makers (2003-2005)* (Brill, 2014), pp. 70–75, 78, 82, 150.

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members, as "trustees of the international community," to act more decisively to condemn, prevent, and suppress mass murder in Darfur.[116]

Or perhaps not. Even when requirements of mandatory cooperation are well recognized and uncontroversial, states are not always eager to comply with their obligations. For example, in March 2009, the ICC issued a warrant for the arrest of Sudanese President Omar al-Bashir for his role in the Darfur genocide.[117] Under the Rome Statute and the Genocide Convention, all states-parties are obligated to cooperate in bringing al-Bashir to justice. Nonetheless, in the years that followed, over twenty countries welcomed visits from al-Bashir without executing his arrest, including China, Egypt, Ethiopia, Indonesia, Iran, Kenya, Russia, Saudi Arabia, the United Arab Emirates, and South Africa.[118] Although Sudan has pledged to deliver al-Bashir to the ICC for trial,[119] thus far it has not followed through on this commitment. The ICC has referred instances of state noncooperation to the Security Council, but its requests have been brushed aside. These failures of cooperation suggest that some states lack the political will to prioritize punishing atrocity crimes.

Cooperating for Economic, Social, and Cultural Rights

Economic, social, and cultural rights also trigger mandatory cooperation under international human rights law. The ICESCR enshrines a wide variety of rights, such as the right to work and the right to "an adequate standard of living . . . , including adequate food, clothing and housing, and to the continuous improvement of living conditions."[120] Article 2(1)

[116] Anne Peters, 'The Security Council's Responsibility to Protect' (2011) 8 *Int'l Org. L. Rev.* 15, 25; see also Evan J. Criddle and Evan Fox-Decent, *Fiduciaries of Humanity: How International Constitutes Authority* (New York: Oxford University Press, 2018), pp. 283–352 (explaining how international organizations like the Security Council serve as fiduciaries of humanity); Jennifer Trahan, *Existing Legal Limits of the Security Veto Power in the Face of Mass Atrocities* (Cambridge: Cambridge University Press, 2020) (arguing that the P5 lack authority to use their veto power to prevent collective action against atrocity crimes).

[117] Prosecutor v. Omar Hassan Ahmad Al Bashir, Warrant of Arrest for Omar Hassan Ahmad Al Bashir, ICC-02/05-01/09-1, 4 March 2009.

[118] See The Office of the Prosecutor, 'Twenty-First Report of the Prosecutor of the International Criminal Court to the UN Security Council Pursuant to UNSCR 1593 (2005)', International Criminal Court, 29 June 2015; '75 Trips to 22 Countries in 7 Years: An Indicted War Criminal's Travels', NUBA Reports, 7 March 2016.

[119] 'Omar al-Bashir: Sudan Agrees Ex-President Must Face ICC', BBC, 11 February 2020.

[120] ICESCR, arts. 6(1), 11(1).

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declares that these rights are subject to mandatory cooperation: "Each State Party to the present Covenant undertakes to take steps, individually *and through international assistance and co-operation*, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures."[121] In addressing the right to an adequate standard of living, the Convention provides that international assistance and cooperation could improve methods of food production, conservation, and dissemination; disseminate agricultural techniques and best practices; and "ensure an equitable distribution of world supplies in relation to need."[122] States-parties "agree that international action for the achievement of the rights recognized in the ... Covenant includes such methods as the conclusion of conventions, the adoption of recommendations, the furnishing of technical assistance and the holding of regional meetings and technical meetings for the purpose of consultation and study organized in conjunction with the Governments concerned."[123]

Some states have characterized these features of the ICESCR as mere political commitments, not legal obligations.[124] However, the Committee on Economic, Social and Cultural Rights has affirmed that the Covenant's requirements for international cooperation are legally binding. In its *General Comment No. 3*, the Committee has stated

> that in accordance with Articles 55 and 56 of the Charter of the United Nations, with well-established principles of international law, and with the provisions of the Covenant itself, international cooperation for development and thus for the realization of economic, social and cultural rights is an obligation of all States. It is particularly incumbent upon those States which are in a position to assist others in this regard.[125]

[121] Ibid. art. 2(1) (emphasis added); see also ibid. art. 11(1) (obligating states-parties to "take appropriate steps to ensure the realization of th[e] right [to an adequate standard of living], recognizing to this effect the essential importance of international co-operation based on free consent").

[122] Ibid. art. 11(2).

[123] Ibid. art. 23.

[124] See, e.g., Report of the Open-ended Working Group to consider options regarding the elaboration of an optional protocol to the International Covenant on Economic, Social and Cultural Rights on its third session, 14 March 2006, UN Doc. E/CN.4/2006/47, para. 82 (memorializing Canada's position "that international cooperation and assistance was a moral obligation, not a legal one").

[125] General Comment No. 3: The nature of States parties' obligations, 14 December 1990, UN Doc. E/1991/23, para. 14.

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This is so, the Committee observes, because "in the absence of an active programme of international assistance and cooperation on the part of all those States that are in a position to undertake one, the full realization of economic, social and cultural rights will remain an unfulfilled aspiration in many countries."[126] In other words, mandatory cooperation is essential to achieve the ICESCR's object and purpose.

The Committee on the Rights of the Child has reached the same conclusion for economic, social, and cultural rights enshrined in the UN Convention on the Rights of the Child (UNCRC).[127] Article 4 of the UNCRC requires states-parties to "undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation."[128] "When States ratify the Convention," the Committee explains, "they take upon themselves obligations not only to implement it within their jurisdiction but also to contribute, through international cooperation, to global implementation."[129]

In 2011, a group of forty eminent international law experts from around the world gathered in the Netherlands to "clarify [the] extraterritorial obligations of States on the basis of standing international law."[130] The resulting Maastricht Principles on the Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights (Maastricht Principles) confirms that states must cooperate in good faith to protect and fulfill economic, social, and cultural rights for those both inside and outside their territories.[131] Consistent with general principles of mandatory cooperation, the Maastricht Principles indicate that states' cooperative obligations

[126] Ibid.

[127] Convention on the Rights of the Child, 20 November 1989, in force 2 September 1990, 1577 UNTS 3.

[128] Ibid. art. 4.

[129] General Comment No. 5: General Measures of Implementation of the Convention on the Rights of the Child, 27 November 2003, UN Doc. CRC/GC/2003/5, p. 3, para. 7; see also ibid. p. 14, para. 60 (explaining that "implementation of the Convention is a cooperative exercise for the States of the world" consistent with states' obligations under arts. 55 and 56 of the UN Charter).

[130] Maastricht Principles on the Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, 28 September 2011, p. 3, www.fidh.org/IMG/pdf/maastricht-eto-principles-uk_web.pdf.

[131] Ibid. arts. 23, 27–28, 30, 33, 35.

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must be ascertained based on equitable principles, accounting for factors such as states' respective "economic, technical and technological capacities, available resources, and influence in international decision-making processes."[132] Mandatory cooperation thus gives states common but differentiated responsibilities to protect and fulfill economic, social, and cultural rights.

Mandatory Cooperation in the Real World

In the closing days of the San Francisco Conference, when negotiations over the draft Charter teetered on the brink of collapse, Truman dispatched an envoy to Moscow with instructions to "make it clear to Uncle Joe Stalin that I knew what I wanted – and that I intended to get [from the United Nations] – peace for the world for at least 90 years."[133]

If perpetual peace is the standard by which the United Nations must be judged, then surely it will be found wanting. Mandatory cooperation has not saved succeeding generations from the scourge of war. Less than two months after the San Francisco Conference, Truman shocked the world by authorizing the use of nuclear weapons against Hiroshima and Nagasaki. Since World War II and the Korean War, the world has endured hundreds of devastating conflicts, including the Algerian War, the Vietnam War, the Iran-Iraq War, the Bosnian War, the Iraq War, recurring armed struggles in Afghanistan and Congo, and civil wars in Burundi, El Salvador, Guatemala, Libya, Nigeria, Sri Lanka, Somalia, Sudan, Syria, and Yemen, to name just a few. Nor has international cooperation solved the puzzle of mass atrocities. As this volume goes to print, diplomats continue to wring their hands in futility as North Korea systematically murders, rapes, and tortures detainees in prison camps;[134] Israel continues to restrict the delivery of humanitarian aid to starving Palestinians in defiance of provisional measures indicated by the ICJ;[135] and Russia refuses to comply with an ICC warrant to arrest

[132] Ibid. art. 31.
[133] Schlesinger, 'Act of Creation', p. 252.
[134] Ewelina U. Ochab, 'Crimes Against Humanity Continue Unabated in North Korea: Will Kim Jong-Un Face Justice?', Forbes, 16 July 2022.
[135] See Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Provisional Measures, 2024 ICJ Rep. 3, 29, 31, paras. 80, 86 (26 January) (directing Israel to "take immediate and effective measures to enable the provision of urgently needed basic services and humanitarian assistance to address the adverse conditions of life faced by Palestinians in the Gaza Strip"); Integrated

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Putin for war crimes.[136] Sadly, states sometimes conspire with one another to defeat international efforts to suppress aggression and human rights abuse – including through their abuse of the P5 veto power.[137] As long as states decline to condemn wars of territorial conquest, such as Russia's invasion of Ukraine,[138] it is plain that we are nowhere near the future Tennyson foresaw in which "the war-drum throbb'd no longer" and "the kindly earth shall slumber, lapt in universal law."[139]

Still, as hard as it may be to achieve, cooperation is necessary if the international community hopes to secure sovereign equality, maintain international peace and security, and safeguard humanity from oppression. This is why the Charter enshrines mandatory cooperation as a cornerstone principle – arguably *the* cornerstone principle – of our international legal order.

And there is some basis for cautious (if limited) optimism. For all their shortcomings, UN peacekeeping missions have made valuable contributions to curtailing armed conflicts, reducing civilian casualties, and strengthening peace agreements, thereby saving countless lives.[140] Dozens of the worst human rights abusers have been prosecuted successfully for atrocity crimes, including Mladić, who, with Serbia's assistance, was finally tried and sentenced to life in prison for genocide by the ICTY in 2017.[141] Mandatory cooperation has also advanced economic, social, and cultural rights worldwide. Since 1990, international cooperation of the kind envisioned in the ICESCR has lifted more than 1.1 billion people

Food Security Phase Classification Famine Review Committee: Gaza Strip, August 2025: Conclusions and Recommendations (22 August 2025), www.ipcinfo.org/fileadmin/user_upload/ipcinfo/docs/IPC_Famine_Review_Committee_Report_Gaza_Aug2025.pdf (finding famine conditions in Gaza due, in part, to "severe restrictions" imposed by Israel on humanitarian access).

[136] Francesca Ebel, Robyn Dixon, and Lauren Tierney, 'Putin, Charged with War Crimes, Must Limit Travel to Avoid Arrest', Washington Post, 24 March 2023.

[137] E.g., 'UN: Russia and China's Abusive Use of Veto "Shameful"', Amnesty Int'l, 28 February 2017 (discussing collaboration between China and Russia to suppress Security Council action to address atrocities in Syria).

[138] See above Chapter 1.

[139] Alfred, Lloyd Tennyson, *Lockesley Hall* (1842).

[140] 'Does UN Peacekeeping Work? Here's What the Data Says', UN News, 10 December 2022.

[141] See Griff Witte, 'Ratko Mladic, the "Butcher of Bosnia", Guilty of Genocide in Last Balkan War Crimes Trial', NY Times, 22 November 2017; Colum Lynch, 'Serbia Arrests Ratko Mladic on War Crimes Charges', Washington Post, 26 May 2011.

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out of extreme poverty.[142] Over fifty million lives have been saved through international cooperation to combat HIV, tuberculosis, and malaria in low- and middle-income countries.[143] If there is a path toward a more decent and peaceful world, it runs through mandatory cooperation.

[142] See UN General Assembly, Implementation of the Third United Nations Decade for the Eradication of Poverty (2018–2027), 18 October 2018, A/C.2/73/L.9. para. 7.
[143] See 'Results Report 2022', The Global Fund, September 2022.

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