

Reforming the UN Security Council

A NEW REPORT FROM TOGETHER FIRST

TOGETHER FIRST

A GLOBAL SYSTEM THAT WORKS FOR ALL



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Join us

We call on our leaders to be better and our governments to do better. Time is running out, but with your help we will be one step closer to the global public movement we need to identify and secure meaningful solutions to the problems plaguing our world – from climate change to cyberwarfare to genocide.

We firmly believe that only a transformation in global governance can save us. But this cannot happen without a groundswell of support from the public, organisations, businesses and leaders at all levels. Over the next year Together First will strengthen its coalition of activists from all backgrounds and campaign for tangible progress as part of the UN's 75th anniversary activities.

Join Together First now and get involved.

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Together First facilitates a high profile UN75 Dialogue with the Secretary General’s Special Adviser on UN75, Fabrizio Hochschild.
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About Together First

Together First is a rapidly growing network of global citizens, civil society organisations, practitioners, parliamentarians, business leaders and activists from all regions of the world committed to fair, open and inclusive solutions to improve global governance.

We are driven by the urgent need to address global catastrophic risks and to expand the boundaries of political possibility.

Throughout 2020 Together First is leading a global campaign to:



Identify workable ways to address global risks through broad-based global consultations



Produce a “to-do” list for the international community by prioritising the leading ideas



Mobilise our diverse network to make these solutions a reality

We are most grateful for the support of the Global Challenges Foundation.

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About this report

The Together First campaign is committed to advancing the best ideas for improving global governance.

To this end, we have run an extensive online consultation, to which individuals and organizations could submit their ideas for global governance reform. The outputs are presented in the Together First campaign hub – a searchable database of ideas where users can endorse, support, and help make these campaigns a reality.

Explore the hub at <https://together1st.org/proposals>

Currently, we are in the process of canvassing member states and key stakeholders to assess the most feasible and viable of these ideas to present a “to-do” list to world leaders ahead the UN’s 75th anniversary in September.

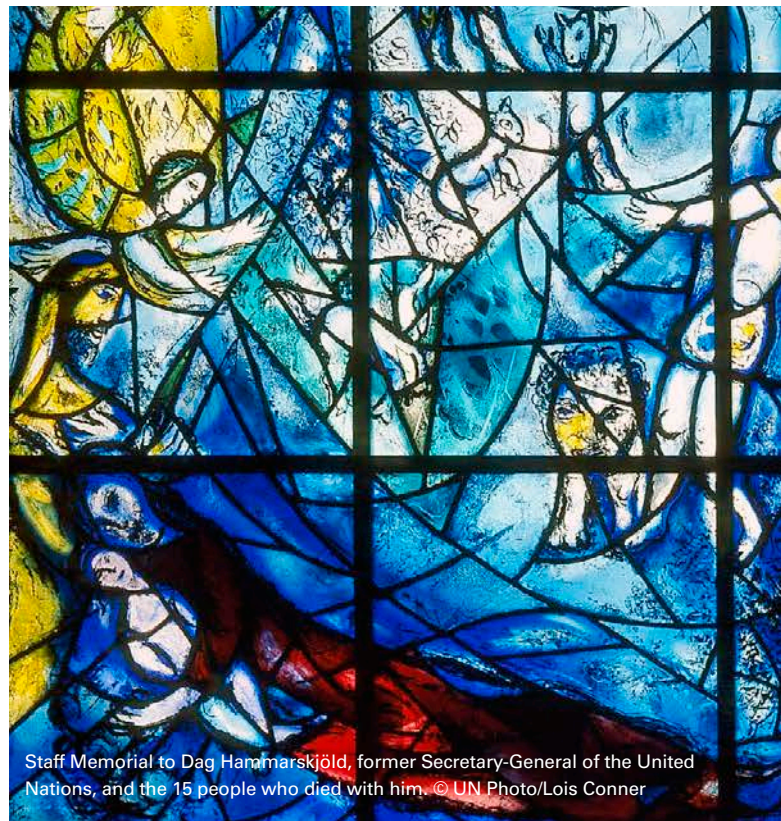
In addition, we are commissioning a series of reports looking deeper into specific issues arising from the erosion of multilateralism in our global system. For the first of these expert reports, we have commissioned Mona Ali Khalil to address the reform of the UN Security Council.

Mona served in the UN and the IAEA for 22 years - including as a Senior Legal Officer in the UN Office of the Legal Counsel (UNOLC). In this role, between 2010-2015, she was the head of the legal teams supporting UN peacekeeping operations and the UN Security Council’s sanctions regimes. She undertook several special assignments including as Legal Adviser to the Joint UN-OPCW Mission for the Elimination of the Chemical Weapons Programme in the Syrian Arab Republic. She is an Affiliate of the Harvard Law School Programme on International Law and Armed Conflict.

In the report, Mona Ali Khalil makes a number of recommendations for upholding the responsibility of the UN Security Council and improving its working methods. All these reforms could be achieved in the short term, without the need for the difficult and potentially impossible process of amending the UN Charter. Yet if they were fully implemented, they would significantly strengthen the Security Council’s ability to take prompt and effective action to fulfill its “primary responsibility for the maintenance of international peace and security”.

Together First would like to highlight three recommendations in particular:

- **For UN member states:** make better use of “Uniting for Peace” in situations where the Security Council is prevented from fulfilling its primary responsibility to take prompt and effective action to maintain international peace and security. All states should recommend concrete measures under the mechanism and elected members of the Security Council should leverage the right to invoke “Uniting for Peace” in the event of a veto or the threat of a veto.
- **For the UN Secretary-General:** make greater use of his “Article 99 powers” to bring matters to the attention of the Security Council which in his opinion may threaten international peace and security, including early warnings by the High Commissioner for Human Rights, and to make concrete recommendations on measures to achieve prompt and effective action and to ensure accountability for violations of international humanitarian and human rights law.
- **For members of the Security Council:** move away from the “single penholder” system whereby a small number of, predominantly permanent, members of the UN Security Council draft most Security Council resolutions and move towards more collaborative working methods where elected members have a more equal and active role in the drafting and consultation process.



Staff Memorial to Dag Hammarskjöld, former Secretary-General of the United Nations, and the 15 people who died with him. © UN Photo/Lois Conner



Recommendations on Reform of the UN Security Council on the Occasion of the 75th Anniversary of the Founding of the United Nations

by Mona Ali Khalil

In his remarks to the UN Security Council in the Open Debate on “Upholding the United Nations Charter to Maintain International Peace and Security” held in New York on 9 January 2020, the UN Secretary-General welcomed a discussion on the UN’s founding document as “we begin the year of the 75th anniversary of the United Nations” and directed the following “special message” to the UN Security Council.

“The privilege of membership carries vital responsibilities to uphold the Charter’s tenets and values, particularly in preventing and addressing conflict... At this time when global fault-lines risk exploding, we must return to fundamental principles; we must return to the framework that has kept us together; we must come home to the UN Charter. Strengthening our commitment to that resilient, adaptable and visionary document – and thus to the very notion of international cooperation itself – remains the most effective way to collectively face the global challenges of this grave moment, and the decade before us. The Charter compels us to do everything in our power to save people from the scourge of war and injustice.”¹

Change theory demands that we state our goals at the outset and then work backwards to identify the necessary steps and conditions to achieve those goals. The ultimate goal – saving people from the scourge of war and injustice – can be stated in terms of the roles and responsibilities of the three main principal organs of the United Nations:

- A Security Council which fulfils its primary responsibility to take prompt and effective action against any and all threats to the maintenance of international peace and security;
- Where the Security Council fails to fulfill its primary responsibility, a General Assembly that exercises its residual authority to ensure a more efficient and effective UN response to threats to international peace and security in general and mass atrocity crimes in particular; and
- A Secretary-General willing to proactively bring matters and concrete recommendations for action to the attention of the Security Council.

To achieve those ends and to ensure greater adherence to and compliance with the principles and purposes of the Organization as set out in the UN Charter, the various actors in the UN political order should be encouraged to take the measures identified in this report.

¹ <https://www.un.org/press/en/2020/sgsm19934.doc.htm>

The Erosion of the UN Charter and the Rule of International Law

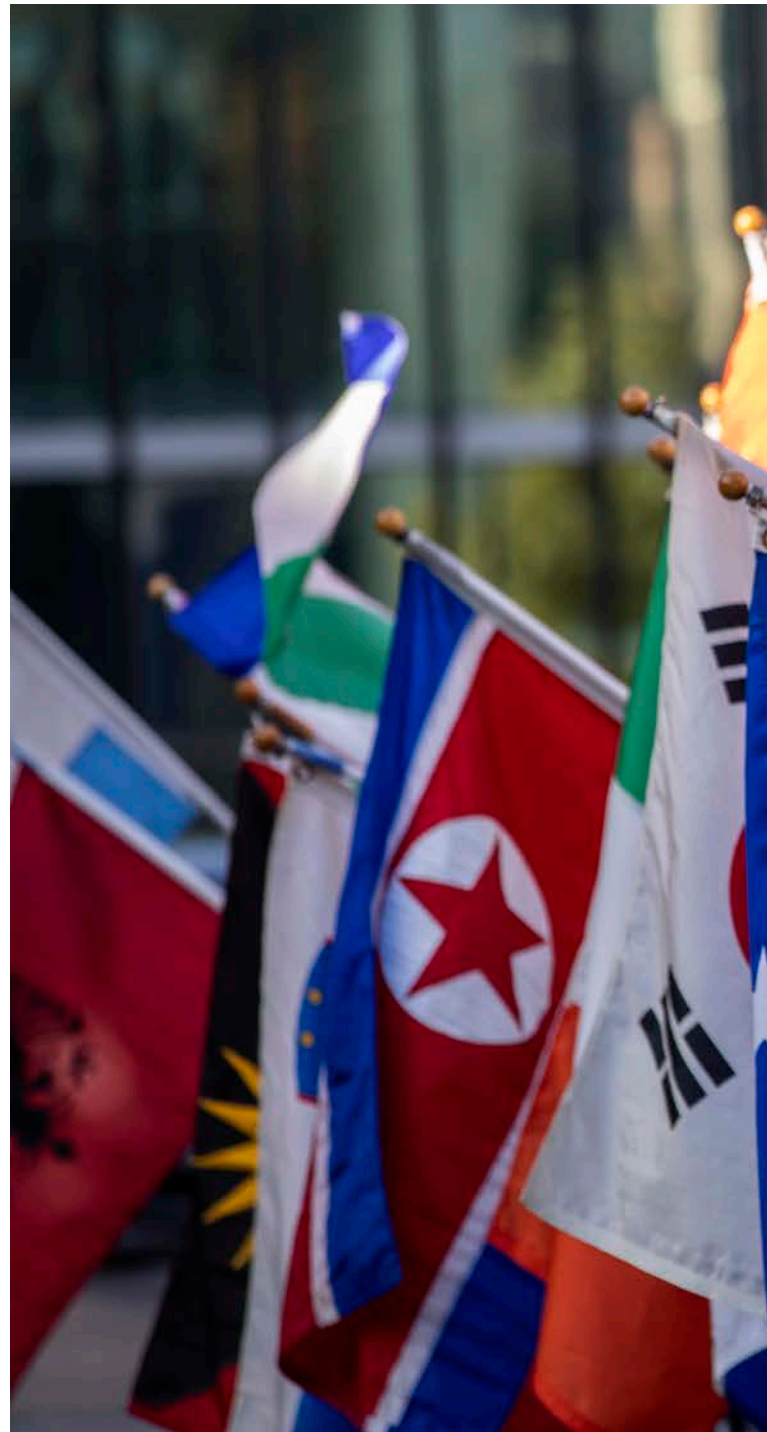
While the UN, and the Security Council in particular, have thus far successfully averted a third World War between States, the Security Council's record of failure in resolving intra-State conflicts from the Democratic Republic of the Congo to the Syrian Arab Republic and the prolonged occupations in Kashmir, Palestine and Western Sahara have undermined the Security Council's credibility as the ultimate peacemaker and peace enforcer in the multilateral system.

While the authors of the UN Charter focused on inter-State conflicts, especially those involving weapons of mass destruction, as the primary threat to international peace and security, Article 2(7) of the UN Charter confirms that the founding fathers did foresee the possibility of enforcement measures under Chapter VII to intervene in "matters which are essentially within the domestic jurisdiction of any State."² They did not necessarily foresee a day, however, where such intra-State conflicts would dominate the agenda of the Security Council.

The failures to resolve long-standing conflicts, to end enduring occupations and to stop genocide, war crimes and crimes against humanity are compounded by the recent violations of the UN Charter by the permanent members themselves – the intended guardians of the UN Charter. The aggression by the US and the UK in Iraq in 2003, the aggression by the Russian Federation in Ukraine in 2014 and the use or threat of use of the veto to shield those responsible for genocide, war crimes and crimes against humanity have revealed that those entrusted with the preservation of international peace and security have been responsible for the most consequential threats thereto.

The UN's 75th Anniversary offers a welcome opportunity to restore the credibility of the United Nations and the primacy of the UN Charter and to resurrect the Security Council's sense of responsibility and its permanent members belief in the utility of multilateral action based on universally accepted and respected principles.

To save the peoples of the world from the scourge of war and injustice, this report recommends the following concrete measures to ensure that the United Nations, primarily through the Security Council but if necessary through the General Assembly, takes "prompt and effective action" for the maintenance of international peace and security.



² Article 2(7) states that "[n]othing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state...; but this principle shall not prejudice the application of enforcement measures under Chapter VII"

“The failures to resolve long-standing conflicts, to end enduring occupations and to stop genocide, war crimes and crimes against humanity are compounded by the recent violations of the UN Charter by the permanent members themselves”



For the Permanent Members:

1. Respect and ensure respect for all Articles of the Charter

Article 4 of the UN Charter conditions membership in the United Nations on acceptance of the obligations contained in it as well as the willingness and ability to carry out these obligations.³ Article 25 further obliges all Member States “to accept and carry out the decisions of the Security Council in accordance with the present Charter.” To live up to the promise and vision of the UN Charter, every Member State must respect its principles and recommit to its objects and purposes. In order to reverse the accelerating decline into the law of the jungle – where the principles of power trump the power of principles, every principal organ must also recommit to fulfilling its intended role and responsibilities as defined in the UN Charter.

While all States are required to fulfill their obligations under the UN Charter, the permanent members – to the extent that they are continuously, in fact permanently, entrusted with the primary responsibility for the maintenance of international peace and security – have a heightened obligation to respect and to ensure respect for those obligations.

When the Israeli army invaded Egypt on 29 October 1956, with French and British participation, the former Secretary-General Dag Hammarskjöld “shocked by these violations of Charter obligations and treaty commitments” delivered the following statement to the Security Council on 31 October 1956.⁴

“The principles of the Charter are, by far, greater than the Organization in which they are embodied, and the aims which they are to safeguard are holier than the policies of any single nation or people. As a servant of the Organization, the Secretary-General has the duty to maintain his usefulness by avoiding public stands on conflicts between Member Nations unless and until such an action might help to resolve the conflict. However, the discretion and impartiality required of the Secretary-General may not degenerate into a policy of expedience. He must also be a servant of the principles of the Charter, and its aims must ultimately determine what for him is right and wrong. For that he must stand. A Secretary-General cannot serve on any other assumption than that... all Member nations honour their pledge to observe all Articles of the Charter” [emphasis added].⁵

³ Article 4 states that “[m]embership in the United Nations is open to all other peace-loving states which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations.”

⁴ See <https://www.un.org/depts/dhl/dag/time1956.html>

⁵ Security Council Official Records, Eleventh Year, 751st Meeting, October 31, 1956.

The then Secretary-General reminded all Member States, including the permanent members, that they are obliged to respect all Articles of the UN Charter. These include, inter alia:

- a) Article 2(3) obliging all Member States to “settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered”;
- b) Article 2(4) obliging all Member States to “refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state”;
- c) Article 27(3) providing that in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting;
- d) Article 94 obliging each Member State “to comply with the decisions of the International Court of Justice in any case to which it is a party”.



Security Council members, wearing the jerseys of their national teams, gathered in the Chamber to mark the opening of the 2018 FIFA World Cup. © UN Photo/Mark Garten

When a permanent member fails to respect the UN Charter, it not only undermines its own credibility to enforce the UN Charter, it undermines the entire Security Council's ability to do so.

2. Voluntarily refrain from casting a veto against any resolution enjoying at least nine affirmative votes involving credible allegations of mass atrocity crimes

In accordance with common Article 1 of the Geneva Conventions, all States have an obligation to respect and to ensure respect for the erga omnes provisions of the Geneva Conventions.

Article 24(1) requires the Security Council "to ensure prompt and effective action by the United Nations" to fulfill its "primary responsibility for the maintenance of international peace and security". Using a veto – especially when genocide, crimes against humanity and war crimes are being committed – violates the permanent member's own obligations under customary international law to stop grave violations of the Geneva Conventions, prevents the Security Council from fulfilling its own Charter responsibilities to take prompt and effective action, and betrays the

responsibility to protect civilian populations from genocide, crimes against humanity and war crimes.

In 2013, France launched an initiative to voluntarily suspend the use of the veto in case of mass atrocities, genocide, crimes against humanity and war crimes on a large scale. On the occasion of the 70th session of the UN General Assembly, France and Mexico jointly presented a political declaration open for signature by all Member States in which they:

- a) consider that the Security Council should not be prevented by the use of veto from taking action in situations involving the commission of mass atrocities;
- b) underscore that the veto is not a privilege, but an international responsibility;
- c) propose a collective and voluntary agreement among the permanent members of the Security Council to refrain from using the veto in cases of mass atrocities.⁶

As of November 2019, 104 Member States have supported the France-Mexico initiative.⁷

In furtherance of the ACT Code of Conduct Regarding Security Council Action Against Genocide, Crimes Against Humanity or War Crimes signed by more than half of the UN membership, all Security Council members have a positive obligation to "support timely and decisive Security Council action in such situations" and a negative obligation to refrain from "voting against credible draft [Security Council] resolutions that are aimed at preventing or ending genocide, crimes against humanity and war crimes".⁸

While no member of the Security Council should vote against any credible draft resolution aimed at preventing or ending genocide, crimes against humanity and war crimes, when a permanent member votes against such a draft resolution, it prevents the Security Council from fulfilling its primary responsibility to maintain international peace and security and it prevents the international community from fulfilling its responsibility to protect civilians from such mass atrocity crimes.



⁶ https://onu.delegfrance.org/IMG/pdf/2015_08_07_veto_political_declaration_en.pdf

⁷ <https://onu.delegfrance.org/The-UN-Reform>

⁸ A/70/621-S/2015/978 Letter dated 14 December 2015 from the Permanent Representative of Liechtenstein to the United Nations addressed to the Secretary-General and the Annex thereto.

For the Elected Members of the Security Council:

1. Leverage the right to invoke “Uniting for Peace” in the event of a veto or the threat of a veto where the Security Council is prevented from fulfilling its primary responsibility to take prompt and effective action to maintain international peace and security

Further to General Assembly resolution 377 (V), and pursuant to rule 8(b) of the Rules of Procedure of the General Assembly, “[e]mergency special sessions pursuant to General Assembly resolution 377 A (V) shall be convened within twenty-four hours of the receipt by the Secretary-General of a request for such a session from the Security Council, on the vote of any nine members thereof...” [emphasis added]. A credible suggestion of invoking “Uniting for Peace” may deter the use or threat of use of the veto by one or more permanent members and could ensure more meaningful engagement in fulfillment of the Security Council’s primary responsibility for international peace and security.

2. Fully exercise the powers and prerogatives of membership for the full two-year term

The early election of Security Council members offers ample opportunity to obtain necessary training and prepare to “hit the ground running” upon assuming a seat on the Council. The outgoing elected members should work closely with the incoming elected members to assist them in assuming and fulfilling their roles and responsibilities. The incoming members should avail themselves of the many training opportunities offered by UN and non-UN sources including NGOs and independent experts.

3. Insist on a more democratic penholder system and assume greater responsibility to ensure meaningful engagement in resolving conflicts and ending impunity for mass atrocity crimes

Despite strong rhetorical support in favor of “democratizing” the penholder system, and with a few notable exceptions, a 2018 study by the Security Council Report concluded that the penholder function has largely remained in the hands of the P3 – namely,

the US, UK and France.⁹ The study recalled that, in June 2018, the Russian Federation circulated a draft note on changing the penholder system “with the stated aim of enhancing Council effectiveness” and proposing that “all Council members should serve as penholders or co-penholder”.¹⁰ In their letter of 13 November 2018, the elected and incoming members of the Council “stressed their conviction that a more equal distribution of work among all members would positively affect the overall effectiveness of the Council”.¹¹

In addition to decentralizing or democratizing the penholder system, it is also necessary to proactively move away from the single penholder system towards more collaborative working methods. Rather than one member assuming responsibility and control, two or more penholders can share the burden of steering the drafting and consultation process while all Council members assume a more active role.

4. Regularly convene Arria-formula meetings to hear from representatives of non-State actors

Article 32 of the UN Charter stipulates that “[a]ny Member of the United Nations which is not a member of the Security Council or any state which is not a Member of the United Nations, if it is a party to a dispute under consideration by the Security Council, shall be invited to participate, without vote, in the discussion relating to the dispute. The Security Council shall lay down such conditions as it deems just for the participation of a state which is not a Member of the United Nations”.

The latter article reflects not only the need to ensure fundamental fairness but also recognizes that hearing from both or in some cases all parties to a conflict enhances the prospects of success in resolving that conflict. As such, the principle should also apply to the non-State parties to an intra-State conflict provided that any non-State actor so invited is a legitimate representative of a party to the conflict and is committed to seeking a political resolution to the conflict.

“Rather than one member assuming responsibility and control, two or more penholders can share the burden of steering the drafting and consultation process while all Council members assume a more active role.”

⁹ Security Council Report 2018, No. 3 The Penholder System, 21 December 2018.

¹⁰ Ibid.

¹¹ Ibid.

For all UN Member States:

In its resolution 377(V) of 3 November 1950 (also known as the “Uniting for Peace” resolution), the General Assembly “resolve[d] that if the Security Council, because of lack of unanimity of the permanent members, 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 case of a breach of the or act of aggression the use of armed force when necessary, to maintain or restore international peace and security.”¹²

UN General Assembly resolution 377 (V) was adopted by the UN General Assembly during the Korean Crisis. The first emergency special session was convened in 1956 in response to the deadlock in the UN Security Council over the Suez Crisis and led to the establishment of the UN Emergency Force (or UNEF) – the first UN peacekeeping mission. Between 1956 and 1997, 10 emergency special sessions were convened. Since 1997, however, no new emergency special sessions have been convened.

By according the Security Council primary as opposed to exclusive responsibility, the drafters of the UN Charter entrusted a measure of residual authority to the General Assembly. As explicitly stated in the preamble to General Assembly resolution 377(V), the failure of the Security Council to discharge its primary responsibility “does not relieve Member States of their obligations or the United Nations of its responsibility” nor does it “deprive the General Assembly of its rights or relieve it of its responsibilities under the Charter to maintain international peace and security.”¹³

1. Recommend concrete measures under “Uniting for Peace” in situations where the Security Council is prevented from fulfilling its primary responsibility to take prompt and effective action to maintain international peace and security

As explicitly stipulated in its resolution 377 (V), the General Assembly is empowered to make “appropriate recommendations to Members for collective measures, including in 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.”¹⁴ While not without controversy, General Assembly resolution 377 (V) has therefore unequivocally provided

a firm legal basis for enforcement measures including most controversially the possible use of armed force.

In part C of its resolution 377 (V), the General Assembly recommended that each UN Member State “maintain within its national armed forces elements so trained, organized and equipped that they could promptly be made available, in accordance with its constitutional processes for service as a United Nations unit or units, upon recommendation by the Security Council or the General Assembly, without prejudice to the use of such elements in the exercise of the right of individual or collective self-defense recognized in Article 51 of the Charter.” It is clear from the foregoing that resolution 377 (V) anticipates that military elements mentioned above could be mobilized for purposes beyond the inherent right of individual or collective self-defense on the recommendation of the General Assembly.

After its adoption of resolution 377(V), the subsequent practice of the General Assembly also affirms the robustness of its prerogatives in respect of the maintenance of international peace and security under the “Uniting for Peace” resolution. By way of example, in its first emergency special session, the General Assembly called upon the United Kingdom and France to immediately withdraw from Egypt and established a UN command for an international force to secure and supervise the cessation of hostilities. In its second and sixth emergency special sessions, the General Assembly called upon the USSR to withdraw from Hungary and from Afghanistan respectively. In its third, seventh and ninth emergency special sessions, the General Assembly called for complete and unconditional withdrawals of Israeli troops from Jordan, Lebanon and the Occupied Palestinian Territory respectively. In its fourth emergency special session, the General Assembly imposed arms embargoes in respect of the situation in the Congo. In its eighth emergency special session, the General Assembly called upon Member States to provide military assistance to the front-line States and called upon them to provide military assistance to SWAPO “to enable it to intensify its struggle for the liberation of Namibia.” In its tenth emergency special session, the General Assembly requested an advisory opinion from the International Court of Justice. As such, the latter could and should, if the General Assembly so decides, provide a legal basis for collective enforcement

¹² GA resolution 377(V) of 3 November 1950.

¹³ Ibid.

¹⁴ Ibid.

measures (including recommendations for cease-fires, military assistance, and/or arms embargoes and other sanctions), when and where it deems necessary.

2. Uphold the “Responsibility to Protect” in situations involving genocide, war crimes, ethnic cleansing and crimes against humanity (GA Resolution 60/1)

If the obligation to ensure respect for the Geneva Conventions under Common Article 1 is to have any meaning, then “UN Member States, as High Contracting Parties to the Geneva Conventions, must not let the veto or threat thereof devolve into the only rule of international law enshrined and respected by the international community. The obligation to ensure respect for the sanctity of civilian life under customary

international law – especially to prevent or stop mass atrocity crimes such as genocide, war crimes, ethnic cleansing and crimes against humanity whenever and wherever they are ongoing-- should be as important a legal principle and as binding a rule of law if not more so.”¹⁵

The “Responsibility to Protect” civilians from genocide, war crimes, ethnic cleansing and crimes against humanity was accepted by the international community in the 2005 World Summit Outcome as set out in General Assembly resolution 60/1 of 16 September 2005.¹⁶ If the doctrine of the Responsibility to Protect is to have any meaning, then genocide, war crimes, ethnic cleansing and crimes against humanity must be deemed a “breach of the peace” within the meaning of resolution 377(V).

3. Seek more equitable regional representation in the existing ten non-permanent seats

The long-desired expansion of the composition of the Security Council – whether permanent or non-permanent membership – requires amendment of the UN Charter. Even if this long-awaited amendment were to be adopted by the General Assembly tomorrow, however, it would remain hostage to the will of the five permanent members, whose ratification would be required before any amendment could enter into force.¹⁷

The current composition is based on a 1963 Assembly resolution, wherein the Western European and Other States Group (WEOG), with 1/7 of the world’s population, holds five of the 15 seats, including three of the five permanent seats; Africa and Asia, which together make up



Children take part in a global chalk art project about peace at UN Headquarters for World Peace Day. © UN Photo/Laura Jarriel

¹⁵ Mona Ali Khalil, https://together1st.org/blog/a_way_around_the_veto_a_path_to_action

¹⁶ Paragraph 139 of General Assembly resolution 60/1 states: “The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law.”

¹⁷ Article 108 of the UN Charter provides that “[a]mendments to the present Charter shall come into force for all Members of the United Nations when they have been adopted by a vote of two thirds of the members of the General Assembly and ratified in accordance with their respective constitutional processes by two thirds of the Members of the United Nations, including all the permanent members of the Security Council”.

5/7 of the world's population, hold six seats, including one permanent seat; and Eastern Europe and Latin America and the Caribbean hold four seats, including one permanent seat.

Thus, pending agreement on and ratification of an amendment to the Charter expanding the membership of the Security Council, the General Assembly can merely adopt a new resolution updating the 1963 resolution and redistributing the ten non-permanent members seats in a manner more representative of and responsive to the new global order. At a minimum, one of the two non-permanent WEOG seats could be easily reallocated to Africa and/or Asia.

4. Consider a Member State's contribution to peace, security, justice and the rule of law in the election of the ten non-permanent members of the Security Council

As noted by the former Executive Director of Security Council Report in his 2018 farewell message, the method of conducting elections based on slates of candidates endorsed by the regional groups "is far from guaranteeing that the ten elected members will be among those from their regions who can make the most effective contribution to the work of the Council... In neither contested or uncontested elections is it clear that what weighs most with member states is the criterion set out in the Charter"¹⁸

Article 23 of the UN Charter provides that "the General Assembly shall elect ten other Members of the United Nations to be non-permanent members of the Security Council, due regard being specially paid, in the first instance to the contribution of Members of the United Nations to the maintenance of international peace and security and to the other purposes of the Organization, and also to equitable geographical distribution" [emphasis added].

The General Assembly is therefore obliged to consider the contribution that each candidate has made or is making to peace, security, justice and the rule of law. For too long, the Assembly has seemingly delegated this authority to the regional groups, whose endorsed slates are automatically elected without the consideration required by Article 23 of the UN Charter. While regional endorsements can be considered, allowing regional slates to be the sole deciding factor in the election arguably amounts to an abdication of the Assembly's rights and duties under the UN Charter.

On the positive side, the Assembly could invite the candidates to elaborate on their contribution to peacemaking (including hosting or convening peace processes); peacekeeping or peace enforcement

(through military or police contributions or through financial, logistical or training support); transitional justice (by hosting or funding international criminal courts or other ad hoc mechanisms); and other initiatives to uphold the UN Charter, human rights and the rule of international law. On the negative side, the Assembly should consider any reports by UN Commissions of Inquiry; any enforcement measures by the Security Council, any non-compliance with binding International Court of Justice judgments; as well as any situations referred to or investigated by the International Criminal Court.

Lastly, after electing them, the General Assembly and its Member States should continue to support and empower the ten non-permanent members to ensure that the Security Council, as a whole, fulfills its primary responsibility to maintain international peace and security promptly and effectively.

5. Promote the protection and empowerment of women and their full, equal and meaningful participation in peace processes, peacekeeping operations and other conflict-resolution mechanisms

In its resolution 2493 (2019), the Security Council expressed deep concern about "persisting barriers to the full implementation of resolution 1325 (2000) and the frequent under-representation of women in many formal processes and bodies related to the maintenance of international peace and security"; reaffirmed "the primary role of Member States" in the implementation of all Security Council resolutions on Women, Peace and Security; and urged Member States "to commit to implementing the Women, Peace and Security agenda and its priorities by ensuring and promoting the full, equal and meaningful participation of women in all stages of peace processes" including "increasing the number of civilian and uniformed women in peacekeeping..."¹⁹

On the occasion of the upcoming 20th anniversary of Security Council resolution 1325 (2000), it is time to recommit to the equal representation and empowerment of women as well as to the mitigation of the impact of armed conflict on women and girls including the prevention and punishment of the use of rape and other forms of sexual and gender-based violence as weapons of war. Member States should put in place effective institutional arrangements at the national, regional and international levels, to guarantee the protection of the human rights of women and girls and the inclusion of women's rights leaders and organizations in all stages of conflict resolution.

¹⁸ Ian Martin, https://www.securitycouncilreport.org/monthly-forecast/2018-04/in_hindsight_whats_wrong_with_the_security_council.php

¹⁹ Security Council resolution 2493 (2019) of 29 October 2019.

For the Secretary-General:

1. Exercise the authority granted in Article 99 of the UN Charter

The founders foresaw situations where the Security Council may wish to evade its responsibility and thereby endowed the Secretary-General, in Article 99, with the self-determining authority to bring to the Security Council's attention matters involving its primary responsibility and requiring its prompt and effective action. Article 99 of the UN Charter therefore provides that "[t]he Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security."²⁰

Of the prerogatives of the Secretary-General under Article 99, Dag Hammarskjöld said that "Article 99 not only confers upon the Secretary-General a right to bring matters to the attention of the Security Council but that this right carries with it, by necessary implication, a broad discretion to conduct inquiries and to engage in diplomatic activity in regard to matters which may threaten the maintenance of international peace and security".

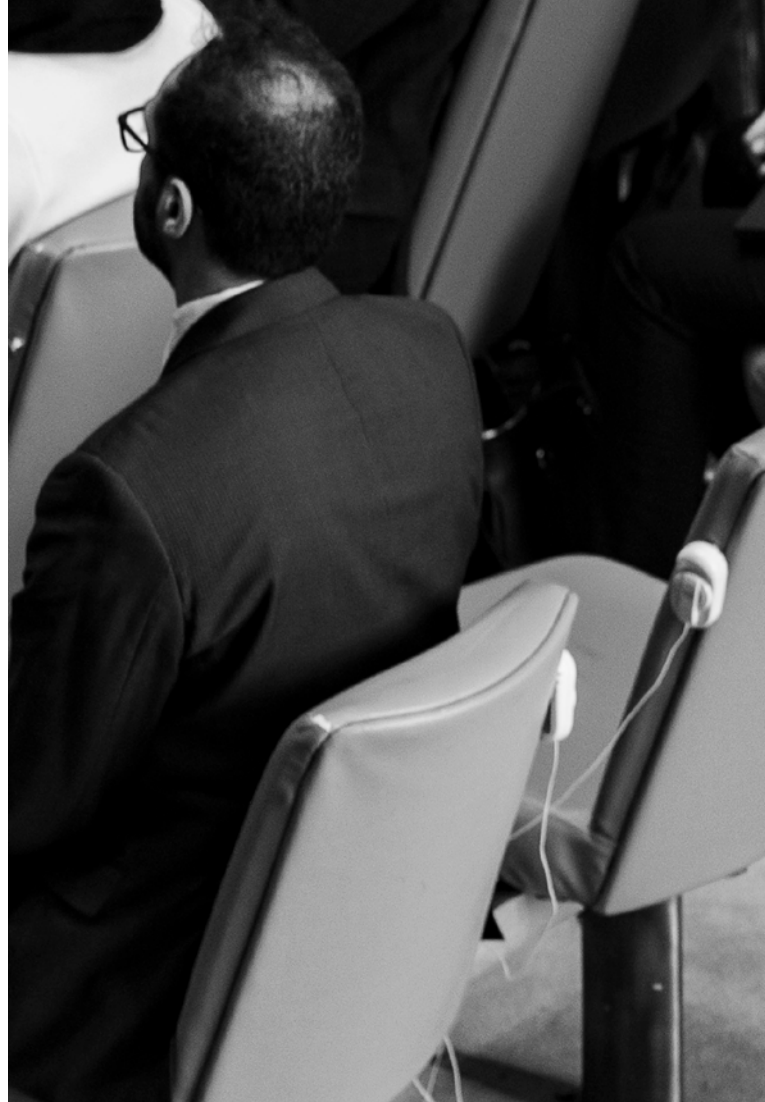
The Secretary-General should robustly and explicitly exercise his self-determined authority to remind the Security Council of matters deserving its attention and make concrete recommendations on measures to achieve "prompt and effective action" to maintain international peace and security and to ensure accountability for violations of international humanitarian and human rights law.

In this connection, the Secretary-General should also ensure that early warnings about serious violations of international human rights law and mass atrocity crimes from the High Commissioner for Human Rights (HCHR) are brought to the Security Council's attention and, to the extent possible, invite the HCHR to address the Council directly on situations involving such violations and crimes.²¹ The former High Commissioner Ms. Navi Pillay opined that "[h]uman rights violations are often a root cause of conflict and human rights are always an indispensable element in achieving peace and reconciliation". She highlighted the "need for increased attention to human rights issues in actual or impending crises, and for effective channels of communication with special procedures to be established in relation to early warning."²²

²⁰ Wilder Foote, *Servant of Peace: A Selection of the Speeches and Statements of Dag Hammarskjöld*. Harper & Row Publishers, New York, 1962, p.334.

²¹ Rule 22 of the Provisional Rules of Procedure of the Security Council provides that "[t]he Secretary-General, or his deputy acting on his behalf, may make either oral or written statements to the Security Council concerning any question under consideration by it". The phrase "or his deputy acting on his behalf" has been understood to mean "or his designated representative acting on his behalf" and pre-dates the appointment of the Deputy Secretary-General in 1998.

²² <https://www.ohchr.org/EN/NewsEvents/Pages/KeyRoleEarlyWarning.aspx>



2. Restore the independence of the Secretariat as a separate principal organ of the United Nations (as explicitly envisioned in Chapter XV of the UN Charter)

The founding fathers foresaw the challenges of maintaining a strong and independent Secretariat. In Article 100 of the UN Charter, they sought to preserve and protect the exclusively international character of the UN Secretariat. They did so by explicitly including provisions prohibiting Secretariat officials from seeking or receiving instructions from any government or other authority external to the Organization in the performance of their functions. They also prohibited Member States from seeking to influence those same officials in the discharge of their functions.

The UN Secretariat must live up to the UN Charter's vision of a strong, principled, impartial and independent Secretariat – one that practices the UN values it preaches and stands up for itself and for "we the peoples" in whose name the UN Charter was adopted. It must uphold the rule of law within the Organization as well as throughout the world.

“The founding fathers foresaw the challenges of maintaining a strong and independent Secretariat. In Article 100 of the UN Charter, they sought to preserve and protect the exclusively international character of the UN Secretariat.”



CONCLUSION

To save us from the scourge of war and the mass slaughter of innocent civilians, the founding fathers of the UN Charter sought to ensure that the Council can act promptly and effectively on behalf of the international community to prevent conflict and, where necessary, to maintain or restore international peace and security. In so doing, they “wrote about the Security Council’s responsibility, not its power; they wrote about its primary responsibility, not its exclusive prerogative; and they wrote about its obligation to act in accordance with the purposes and principles of the UN in discharging its duties. In doing so, they adopted a Charter that balances the principles of power with the power of principles.”

The Security Council is expected to serve as the ultimate enforcer and indispensable actor. Its failure and success determine the fate of humanity in the face of current and emerging threats to international peace and security including existential threats such as climate change and nuclear weapons. The world needs a credible and respected Security Council willing and able to act promptly and effectively to resolve conflicts – not merely to manage them, and to prevent and punish – not merely to condemn, violations of international humanitarian and human rights law.



Permanent Representative of the United States (Nikki Haley), vetoes a Security Council draft resolution related to Jerusalem in 2017. © UN Photo/Eskinder Debebe



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COVER IMAGE A view of the East River during the Security Council meeting on the situation concerning Western Sahara. © UN Photo/Loey Felipe

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