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IS CLIMATE CHANGE A THREAT TO INTERNATIONAL PEACE AND SECURITY?

*Mark Nevitt**

I. INTRODUCTION

*We must make no mistake. The facts are clear. Climate change is real, and it is accelerating in a dangerous manner. It not only exacerbates threats to international peace and security; it is a threat to international peace and security.*¹

The climate-security century is here. Both the United Nations Intergovernmental Panel on Climate Change (“IPCC”) and the U.S. Fourth National Climate Assessment (“NCA”) recently sounded the alarm on climate change’s “super-wicked” and destabilizing security impacts.² Scientists and

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1. U.N. Secretary-General, Remarks to the Security Council on the Impacts of Climate Change on International Peace and Security (Jul. 20, 2011), <https://www.un.org/sg/en/content/sg/speeches/2011-07-20/remarks-security-council-impact-climate-change-international-peace>.

2. INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE [IPCC], GLOBAL WARMING OF 1.5 CELSIUS, SUMMARY FOR POLICY MAKERS 11 (2d ed. Jan. 2019), https://www.ipcc.ch/site/assets/uploads/sites/2/2019/05/SR15_SPM_version_stand_alone_HR.pdf. [hereinafter IPCC 1.5 REPORT]; U.S. GLOB. CHANGE RSCH. PROGRAM, IMPACTS, RISKS, & ADAPTATION IN THE UNITED STATES: FOURTH NATIONAL CLIMATE ASSESSMENT 26, 813 (2d ed. 2020), nca2018.globalchange.gov [hereinafter NCA 2018]. And the scientific estimates keep getting worse. In July 2020, scientists from the Center of Excellence for Climate Extremes projected that climate change will cause average temperatures to rise 4.1 to 8.1 degrees if trends hold, a massive and catastrophic change to the physical environment. See also S. C. Sherwood, M. J. Webb, J. D. Annan, K. C. Armour, P. M. Forster, J. C. Hargreaves, G. Hegerl, S. A. Klein, K. D. Marvel, E. J. Rohling, M. Watanabe, T. Andrews, P. Braconnot, C. S. Bretherton, G. L. Foster, Z. Hausfather, A. S. von der Heydt, R. Knutti, T. Mauritsen, J. R. Norris, C. Proistosescu, M. Rugenstein, G. A. Schmidt, K. B. Tokarska & M. D. Zelinka, *An Assessment of Earth’s Climate Sensitivity Using Multiple Lines of Evidence*, REV. GEOPHYSICS, (Jul. 22, 2020), <https://agupubs.onlinelibrary.wiley.com/doi/abs/10.1029/2019RG000678>; For a discussion of climate change’s “super wicked” problems, see Richard Lazarus, *Super Wicked*

security professionals alike reaffirm what we are witnessing with our own eyes: The earth is warming at a rapid rate; climate change affects international peace and security in complex ways; and the window for international climate action is slamming shut.

Yet how did we respond to these climate alarm bells? We did little, largely shrugging a collective global shoulder in response to the loss of life and bleak scientific reports. U.S. climate leadership slithered away from the world stage, announcing its withdrawal from the Paris Climate Accord.³ Brazil's leadership refused to enforce environmental forest regulations, resulting in devastation to the Amazon rain forest—the vital and purifying “lungs of the planet.” The Trump Administration continued massive environmental regulatory rollbacks, even dismissing its leading climate scientists.⁴ Despite a temporary coronavirus-driven carbon crash, the Global Greenhouse Gas (“GHG”) levels are the highest in recorded human history.⁵ The Arctic ice caps melted at an extraordinary rate. Australia and California burned.

Today, there is an ever-widening gap between our understanding of climate change's threats and the international community's willingness to respond to these threats. The IPCC estimates, for example, that the world has a shrinking window—approximately one decade—to take massive substantive action to reduce GHG emissions or else face the wrath of an angry, sick planet.⁶ Failure to close the emissions gap will result in enormous, climate-driven disruption.⁷

Problems and Climate Change: Restraining the Present to Liberate the Future, 94 CORNELL L. REV. 1153, 1159 (2009).

3. U.N. Framework Convention on Climate Change, *Adoption of the Paris Agreement*, U.N. Doc. FCC/CP/2015/L.9/Rev.1 (Dec. 12, 2015) [hereinafter *Paris Agreement*]; see also Jean Galbraith, *Two Faces of Foreign Affairs Federalism and What they Mean for Climate Change Mitigation*, 112 AM. J. INT'L L. UNBOUND 274 (2018) (highlighting federalism challenges within the U.S. system to address climate change).

4. President Bolsonaro was elected as Brazil's President in 2018. He campaigned to massively roll-back environmental and climate regulations to include deforestation. See, e.g., Franklin Foer, *The Amazon Fires are More Dangerous than WMDs*, ATLANTIC (Aug. 24, 2019), <https://www.theatlantic.com/ideas/archive/2019/08/amazon-fires-show-limits-sovereignty/596779/>.

5. See, e.g., Ishaan Tharoor, *World's Climate Catastrophe Intensifies as Focus Remains on Virus Pandemic*, WASH. POST (Jun. 30, 2020), <https://www.washingtonpost.com/world/2020/06/29/worlds-climate-catastrophe-worsens-amid-pandemic/>; Brady Dennis & Chris Mooney, *Global Greenhouse Gas Emissions Will Hit Another Record This Year, Experts Project*, WASH. POST (Dec. 3, 2019), <https://www.washingtonpost.com/climate-environment/2019/12/03/global-greenhouse-gas-emissions-will-hit-yet-another-record-high-this-year-experts-project/>.

6. See IPCC 1.5 REPORT, *supra* note 2, at 18 (highlighting an emissions gap where there must be dramatic reductions in Global Greenhouse Gas (“GHG”) emissions prior to 2030 to maintain temperatures below 1.5 degrees Celsius).

7. For an overview of climate change's destructive impacts on civilization, see Kurt M. Campbell & Christine Parthemore, *National Security and Climate Change in Perspective*, in CLIMATE CATAclySM: THE FOREIGN POLICY & NATIONAL SECURITY IMPLICATIONS OF

Beyond the global *emissions* gap, there is an ever-widening global *governance* gap. As climate change destabilizes the physical environment, it also destabilizes existing institutions, forcing us to look at their role in combatting the climate crisis. Indeed, we must heed earlier calls to action that all “relevant organs” within the United Nations intensify their efforts to face the climate challenge.⁸ Failure to take substantive international action now will result in further physical destabilization and the potential loss of four nations.⁹ After all, climate change is legally and politically agnostic: It will continue to destabilize and destroy our physical environment irrespective of our international governance response.

The Security Council (“Council”) is assuredly one such “relevant organ.” After all, the Council possesses relatively expeditious and broadly delegated authorities to take immediate climate action today. Indeed, the Council is empowered with powerful legal tools in service of its mission to uphold “the maintenance of international peace and security.”¹⁰ In executing this role, the Council acts on behalf of all 193 Member nations—who agree

CLIMATE CHANGE 1 (Kurt Campbell ed., 2008); *see also* Abrahm Lustgarten, *Refugees Flee from the Earth*, N.Y. TIMES MAG., July 26, 2020, at 11, 18–19 (highlighting that 150 million people will be displaced by rising sea levels by 2050).

8. G.A. Res 63/281, at 2 (June 11, 2009) [hereinafter *Climate Security 2009*] (noting in 2009 the U.N. General Assembly called “on all relevant organs of the United Nations, as appropriate and *within their respective mandates*, to identify their efforts in considering and addressing climate change, including its possible security implications.”).

9. It is estimated that four atoll small island developing states (“SIDS”)—Maldives, Tuvalu, Kiribati, and the Republic of the Marshall Islands—may be uninhabitable by mid-century, threatening their very sovereignty. *See* Curt D. Storlazzi, Stephen B. Gingerich, Ap van Dongeren, Olivia M. Cheriton, Peter W. Swarzenski, Ellen Quataert, Clifford I. Voss, Donald W. Field, Hariharasubramanian Annamalai, Greg A. Piniak & Robert McCall, *Most Atolls Will be Uninhabitable by the Mid-21st Century Because of Sea Level Rise Exacerbating Wave Driven Flooding*, 4 SCI. ADVANCES 1, 4–5 (2018), <http://advances.sciencemag.org/content/4/4/eaap9741>. Kiribati recently purchased land in Fiji as part of a potential climate relocation plan. Sara Reardon, *Pacific Island to Buy Piece of Fiji as a Climate Plan*, NEW SCIENTIST (Mar. 13, 2012), <https://www.newscientist.com/article/dn21581-pacific-island-to-buy-piece-of-fiji-as-climate-plan/>. This also raises core human rights issues that are beyond the scope of this paper. *See generally* John H. Knox, *Linking Human Rights and Climate Change at the United Nations*, 33 HARV. ENV’T L. REV. 477, 486 (2009).

10. U.N. Charter art. 24, ¶ 1 (“In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.”). For an outstanding overview of many of the potential tools available to the U.N. Security Council in addressing climate change, *see* SHIRLEY V. SCOTT & CHARLOTTE KU, CLIMATE CHANGE AND THE UN SECURITY COUNCIL (Edward Elgar ed., 2018) [hereinafter *CLIMATE SECURITY*]; Pierre Thielbörger, *Climate Change and International Peace and Security: Time for a Green Security Council?*, in FROM COLD WAR TO CYBER WAR 67 (H.J. Heintze & P. Thielbörger eds., 2016); *see also* Craig Martin, *Atmospheric Intervention*, 44 COLUM. ENV’T L. REV. 331 (2020).

to be bound by the Council's actions.¹¹ The Council's authority and expertise in international security matters can serve a gap-filling, complementary role that works in concert with ongoing climate efforts at the United Nations Framework Convention on Climate Change ("UNFCCC"), Economic and Social Council ("ECOSOC"), and the General Assembly.¹² As Professor Richard Lazarus has explained, climate change is unlike any other problem facing humanity—it is truly a "super-wicked" problem that cuts across many disciplines.¹³ To meet this super-wicked problem, innovative legal governance solutions are required.

Of course, any Council climate action must overcome current political paralysis and criticism that climate change is outside the Council mandate. But the stakes for Council climate inaction are also high.¹⁴ Failure to comprehensively address climate change presents its own unique costs, particularly as climate change threatens the territorial integrity and very sovereignty of several small island nations. The U.N. Charter has sought to uphold the principle of sovereign equality of all its Members for the past seventy-five years. In doing so, it has played a critical, stabilizing role in shaping the post-World War II international order. But climate change is the ultimate physical and institutional destabilizer, swallowing nations' territorial integrity whole, forcing us to look at the international governance landscape with fresh eyes. Indeed, the Council's indifference to nation extinction is fraught with its own legitimacy and credibility costs—can the Council afford to stand by as climate change swallows nations whole?

To be sure, any Council climate action faces political headwinds. In part, this can be traced to the Council's institutional design: Any member of the Permanent Five ("P5") possesses veto power over any proposed Council action.¹⁵ Meanwhile, P5 membership (the United States, Russia, the United

11. U.N. Charter art. 24, ¶ 1 (stating that "Members confer on the Security Council primary responsibility for the maintenance of international peace and security and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf"); see also U.N. Charter art. 1, ¶ 1 (stating that the purpose of the United Nations is "to maintain international peace and security and . . . to take effective collective measures for the prevention and removal of threats to the peace . . .").

12. As I discuss below, I do not argue (nor do I envision) that the Council should turn to its Article 42 military authorities to combat climate change's impacts at this time or within the foreseeable future. U.N. Charter art. 42.

13. Lazarus, *supra* note 2, at 1159–60.

14. See Dan Bodansky, *The Legitimacy of International Governance: A Coming Challenge for International Environmental Law?*, 93 AM. J. INT'L L. 596, 605 (1999); David Caron, *The Legitimacy of the Collective Authority of the Security Council*, 87 AM. J. INT'L L. 552, 566, 572 (1993). "Climatizing" the Council exposes the Council to criticism that it is overstepping its historic mandate.

15. U.N. Charter art. 27, ¶¶ 2–3. And independent of climate action, there is a rich scholarly literature critiquing the Council as hierarchical, anti-democratic, static, and reactive. For a critique of the Security Council, see Ken Conca, Joe Thwaites, & Gouen Lee, *Climate Change and Global Security: What Role for the Security Council?*, in FRIEDERICH-EBERT-STIFTUNG PERSPECTIVE 1, 3 (Oct. 2017), <http://library.fes.de/pdf-files/iez/13767.pdf>.

Kingdom, France, and China) remains frozen in time, despite calls for membership expansion to better reflect modern geopolitical and economic realities. Further complicating matters, the Council is comprised of the world's worst climate offenders who emit the most GHG emissions.¹⁶

Yet the Council has been, in many ways, a dynamic institution since the end of the Cold War, at times even demonstrating a willingness to address the root causes of global instability. For the Charter's first forty-five years, its original premise of a robust "collective security" agenda was largely thwarted by Cold War political realities. Council stonewalling gave way to a rejuvenated "Council 2.0" commencing in 1990 with Council action against Iraqi aggression and follow-on peacekeeping and peacebuilding missions. Since then, the Council has expanded its aperture for action to address an increasing menu of non-traditional security threats to include global health crisis (Ebola and, belatedly, COVID-19), the spread of weapons of mass destruction, and the underlying causes of conflict and human suffering.¹⁷

This article argues that climate change's destabilizing impacts require us to look at existing international governance tools at our disposal with fresh eyes. As such, Council climate action cannot and should not be dismissed out-of-hand. As conflicts rise, migration explodes, and nations are extinguished, how long can the Council remain on the climate sidelines?¹⁸ Hence, my call for a re-conceptualized "Council 3.0" to meet the climate-security challenges this century.

This article proceeds as follows. In Part II, I describe and analyze the current state of climate science and the climate-security threats facing the world. This includes an analysis of the Council's unique role and responsibility to maintain international peace and security within the U.N. Charter system. In Part III, I describe how the Council's agenda has evolved in recent years to include a focus on non-traditional security threats to include climate change.¹⁹ In doing so, I offer a possible roadmap for Council climate

16. The United States, Republic of China, Russia, United Kingdom, and France are all Permanent Five ("P5") Members. At the time of this writing, the United States is the largest historical emitter of GHG emissions while China emits more GHG emissions on an annual basis than any Member nation. See Ctr. for Climate & Energy Sols., *Global Emissions*, C2ES (last visited Feb. 27, 2021), [https://www.c2es.org/content/international-emissions/#:~:text=China%2C%20the%20United%20States%2C%20and,the%20United%20States%20and%20Russia;see%20also%20Mengpin%20Ge%20&%20Johannes%20Friedrich,%204%20Charts%20Explain%20Greenhouse%20Gas%20Emissions%20by%20Countries%20and%20Sectors,WORLD%20RES.%20INST.\(Feb.%206,%202020\),https://www.wri.org/blog/2020/02/greenhouse-gas-emissions-by-country-sector#:~:text=Energy%20consumption%20is%20by%20far,emissions%20and%20other%20fuel%20combustion](https://www.c2es.org/content/international-emissions/#:~:text=China%2C%20the%20United%20States%2C%20and,the%20United%20States%20and%20Russia;see%20also%20Mengpin%20Ge%20&%20Johannes%20Friedrich,%204%20Charts%20Explain%20Greenhouse%20Gas%20Emissions%20by%20Countries%20and%20Sectors,WORLD%20RES.%20INST.(Feb.%206,%202020),https://www.wri.org/blog/2020/02/greenhouse-gas-emissions-by-country-sector#:~:text=Energy%20consumption%20is%20by%20far,emissions%20and%20other%20fuel%20combustion).

17. See, e.g., S.C. Res. 1625, ¶ 1 (Sept. 14, 2005).

18. See NCA 2018, *supra* note 2, at 606–37 (highlighting climate change's international effects); see also Kirsten Davies & Thomas Riddell, *The Warming War: How Climate Change is Creating Threats to International Peace and Security*, 30 GEO. ENV'T L. REV. 47, 48, 50 (2017).

19. Political calculations by each Security Council member will play an outsized role in casting a vote for climate action. Witness the Council's slow response to the COVID-19 coro-

action, showcasing how climate change's existential threat to the territorial integrity and sovereignty of four Pacific Small Island Developing States ("SIDS") will stress and test Council engagement on climate change.²⁰ Part IV addresses the challenges and opportunities to Council climate action. Part V argues that the Council should use its authority under article 39 of the U.N. Charter to affirmatively declare climate change a threat to international peace and security. Doing so activates a series of measured, gradually escalating steps that the Council should take to address the growing international climate governance gap. Rather than dismissing Council climate-involvement, I argue that we should adopt an "institutional risk allocation" approach where numerous institutions address climate change in a holistic, complementary way.²¹ This will require a rejuvenated and reimagined "Council 3.0" that requires a normative reconceptualization of the Council's role in upholding peace and security. Part VI concludes.

II. CLIMATE CHANGE MEETS INTERNATIONAL PEACE AND SECURITY

A. *Climate Change's Destabilizing Security Impacts*

We are entering the climate-security century. As climate change destabilizes the physical environment, it also destabilizes existing governance structures.²² The destabilizing effect of climate change forces us to reexamine the root causes of instability and the accompanying tools at our collective disposal required to combat the climate crisis. According to IPCC and a near-universal scientific consensus, climate change is "extremely likely" caused by human activity.²³ And a growing number of scholars now persuasively argue that we must broaden our definition of security to encom-

navirus crisis. But there are increased calls for increased Security Council action and that may be changing. See Rob Berschinski, *What the UN Security Council Can Do on Coronavirus: A Global Goods Coordination Mechanism*, JUST SEC. (Mar. 24, 2020), <https://www.justsecurity.org/69336/what-the-un-security-council-can-do-on-coronavirus-a-global-goods-coordination-mechanism/>. And Professor Hathaway and others have highlighted that we need to re-think how we define and face national security threats in the face of the coronavirus. Oona Hathaway, *Covid-19 Shows How the U.S. Got National Security Wrong*, JUST SEC. (Apr. 7, 2020), <https://www.justsecurity.org/69563/covid-19-shows-how-the-u-s-got-national-security-wrong/>.

20. It is estimated that four atoll Small Island Developing States—Maldives, Tuvalu, Kiribati, and the Republic of the Marshall Islands—may be uninhabitable by mid-century, threatening their very sovereignty. See Storlazzi et al., *supra* note 9, at 4–5.

21. See United Nations Framework Convention on Climate Change, May 9, 1992, 1771 U.N.T.S. 107, art. 4 [hereinafter Framework Convention].

22. See, e.g., Mark P. Nevitt, *Climate Change: Our Greatest National Security Threat?*, JUST SEC. (Apr. 28, 2019), <https://www.justsecurity.org/63673/climate-change-our-greatest-national-security-threat/> (referring to the twenty-first century as "the climate-security century").

23. See IPCC 1.5 REPORT, *supra* note 2, at 8 (highlighting recent studies that predict an increase in global temperatures up to 8.1 degrees Fahrenheit).

pass climate change, pandemics, and non-traditional threats that have debilitating impacts on health and human security.²⁴

Consider just a few recent examples of climate change's destructive path. In the past two years, massive wildfires destroyed large swaths of Australia and California.²⁵ Hurricanes Michael and Florence ravaged the coastlines of Florida and North Carolina.²⁶ Water shortages, food security, and crop instability—all exacerbated by climate change—contributed to a rapidly deteriorating security situation in many developing nations.²⁷ Scholars now make data-driven, empirical connections between climate change and increases in violent conflict.²⁸ Both climate scientists and national security professionals forecast a dangerous world increasingly defined by climate change.²⁹ Consider the following four ways that climate change impacts international peace and security:

- **Extreme Weather.** The American Meteorological Society recently found that anthropogenic climate change increased the likelihood and severity of fifteen out of sixteen recent extreme weather events.³⁰ As climate scientists refine their models, we

24. See, e.g., Hathaway, *supra* note 19 (arguing that we should broaden the security lens to include pandemics, other public health threats, and climate change).

25. *California Wildfire that Killed Nearly 85 People Nearly Contained*, REUTERS (Nov. 25, 2018,,), <https://www.reuters.com/article/us-california-wildfires/california-wildfire-that-killed-at-least-85-people-fully-contained-idUSKCN1NU0A9>; see also Linda Givetas, *Australian Wildfires Declared Among the 'Worst Wildfire Disasters in Modern History'*, NBC NEWS (July 28, 2020), <https://www.nbcnews.com/news/world/australian-wildfires-declared-among-worst-wildlife-disasters-modern-history-n1235071>.

26. Dakin Andone, *Death Toll From Hurricane Michael Rises to 36*, CNN (Oct. 20, 2018), <https://www.cnn.com/2018/10/20/us/hurricane-michael-death-toll/index.html>; Gabriela Borter, *Hurricane Florence Death Toll Rises to 51*, REUTERS (Oct. 2, 2018,,), <https://www.reuters.com/article/us-storm-florence/hurricane-florence-death-toll-rises-to-51-idUSKCN1MC2JJ>.

27. Campbell & Parthemore, *supra* note 7, at 14; see also Emily Atkin, *Climate Change is Aggravating the Suffering in Yemen*, NEW REPUBLIC (Nov. 5, 2018), <https://newrepublic.com/article/152011/climate-change-aggravating-suffering-yemen>.

28. Kendra Sakaguchi, Anil Varghese & Graeme Auld, *Climate Wars? A Systematic Review of Empirical Analysis on the Links Between Climate Change and Violent Conflict*, 19 INT'L STUD. REV. 622, 622 (2017) (summarizing the existing empirical literature, noting that a "majority of studies find evidence that climate variables are associated with higher levels of violent conflict").

29. For example, the Office of the Director of National Intelligence issued a report acknowledging the global human security challenge posed by climate change. See, e.g., DANIEL R. COATS, U.S. DIR. NAT'L INTEL., STATEMENT FOR THE RECORD: WORLDWIDE THREAT ASSESSMENT OF THE U.S. INTELLIGENCE COMMUNITY 21–23 (Jan. 29, 2019) <https://www.dni.gov/files/ODNI/documents/2019-ATA-SFR—SSCI.pdf>.

30. Yan Yu, John P. Dunne, Elena Shevliakova, Paul Ginoux, Sergey Malyshev, Jamin G. John & John P. Krasting, *Increased Risk of the 2019 Alaskan July Fires Due to Anthropogenic Activity*, in EXPLAINING EXTREME EVENTS OF 2019 FROM A CLIMATE PERSPECTIVE S1 (Stephanie C. Herring, Nikolaos Christidis, Andrew Hoell, Martin P. Hoerling & Peter A. Stott eds., 2021).

will be able to predict with greater certainty the future likelihood of extreme weather events and better pinpoint their size, location and devastating effects.

- **Climate migrants.**³¹ We have witnessed the rise of cross-border climate change migrants that are fleeing their homes in response to climate-exacerbated drought and other environmental hazards. Future climate migrant estimates look bleak: one study found that two-thirds of the world's population faces severe water shortages, a driver of cross-border human migration.³² The Syrian refugee crisis, for example, was preceded by a massive, climate-exacerbated drought that saw internal displacement from rural areas to cities within Syria. This created the conditions for political unrest that quickly spread outside Syria's borders.³³ Yet there is a widening international governance gap to address this pending explosion in climate migration.³⁴ Will the Council play a role in mitigating the effects on the hundreds of millions of climate migrants anticipated this century?
- **Climate Change and Armed Conflict.** Studies predict an increasingly dangerous, Hobbesian world where climate-driven food insecurity, resource wars, and physical destabilization lead to armed conflict, violence, and chaos.³⁵ Scholars now demonstrate a linkage between climate change's impacts and violent conflict.³⁶ The Council specifically connected climate

31. There is a broad literature on what to call people displaced by climate change (environmental refugees, climate refugees, or climate migrants?). I use the broader term of "climate migrants" throughout the paper as it best captures the numerous reasons—all driven by climate change—why people flee their homes. For a helpful discussion of this academic debate, see Philip Dane Warren, Note, *Evaluating Climate Change Displacement*, 116 COLUM. L. REV. 2103, 2109–10 (2017).

32. Nicholas St. Fleur, *Two-Thirds of the World Faces Severe Water Shortages*, N.Y. TIMES (Feb. 12, 2016), <https://www.nytimes.com/2016/02/13/science/two-thirds-of-the-world-faces-severe-water-shortages.html>; *Figures at a Glance*, U.N. HUM. RTS. COMM'N, <http://www.unhcr.org/en-us/figures-at-a-glance.html> (last visited Aug 4, 2020).

33. See F. De Châtel, *The Role of Drought and Climate Change in the Syrian Uprising: Untangling the Triggers of the Revolution*, 50 MIDDLE E. STUD. 521, 526 (2014).

34. For an outstanding discussion of the gaps in international law as it related to refugees, see Jill Goldenziel, *The Curse of the Nation-State: Refugees, Migration, and Security in International Law*, 48 ARIZ. ST. L. J. 579 (2016); see also Lustgarten, *supra* note 7, at 11–23.

35. Campbell & Parthemore, *supra* note 7, at 19; CTR. FOR NAVAL ANALYSIS: NATIONAL SECURITY AND THE THREAT OF CLIMATE CHANGE 16–18, 39 (2007), <https://www.cna.org/reports/climate> (noting that climate change's destabilizing impacts include reduced access to fresh water, impaired food production, health catastrophes, displacement of major populations, greater potential for failed states to include a rise in terrorism, mass migrations, and escalation of conflicts over resources) [hereinafter CNA 2007].

36. Sakaguchi et al., *supra* note 28, at 623 (providing a systematic, empirical analysis connecting climate change with violent conflict).

change's impacts to a conflict area in a series of recent Security Council Resolutions. This reinforces the Council's competence in tackling threats to international peace and security in conflict areas.³⁷ Will the Council build upon these efforts in addressing climate change's role in resource wars and conflict?

- **Nation Extinction.** Scientists now predict that four Pacific Small Island Developing States will be uninhabitable by mid-century due to climate change-driven sea level rise and wave-driven flooding.³⁸ These nations will lose large swaths of their territory, potentially leading to wholesale abandonment. Will the Council—which has the express responsibility to maintain peace and security—stand by while nations lose their territorial integrity and, potentially, their sovereignty?³⁹

These four examples—extreme weather, climate migration, armed conflict, and nation extinction—are a mere snapshot of climate change's security impacts this century.

Despite these threats, our international legal governance institutions have not kept pace. They have lagged behind on making scientific advances, failing to address climate change's security implications. As of this writing, we lack a legally binding path forward to lower worldwide GHG emissions. Indeed, scientists and security professionals estimate that our collective failure to keep the average global temperatures from rising above two degrees Celsius will have devastating consequences, particularly for developing nations with limited climate adaptation resources.⁴⁰ Increases in global temperature beyond two degrees could potentially trigger climate “tipping points,” pouring gasoline on an already simmering climate fire. Further, climate attribution science advances showcase that climate change increases the likelihood of extreme weather throughout the world.⁴¹

In response to our increased understanding of climate change's security impacts, scientists and policy experts have begun to adopt a security vernacular. Climate change is not just an environmental concern—it acts as both a “threat multiplier” and a “catalyst for conflict.”⁴² The 2015 Paris

37. See S.C. Res. 2349 ¶ 26 (Oct. 14, 2017) (recognizing climate change's adverse effects on water scarcity, drought, and desertification in the Lake Chad Basin region).

38. See Storlazzi et al., *supra* note 9, at 4.

39. *Id.*

40. IPCC 1.5 REPORT, *supra* note 2.

41. Yu et al., *supra* note 30, at 11; see also Sarah Kaplan & Angela Fritz, *Climate Change was Behind 15 Weather Disasters in 2017*, WASH. POST (Dec. 10, 2018, 3:55 PM), https://www.washingtonpost.com/science/2018/12/10/climate-change-was-behind-weather-disasters/?utm_term=.61d93dce8d7d.

42. CNA MILITARY ADVISORY BD., NATIONAL SECURITY AND THE ACCELERATING RISKS OF CLIMATE CHANGE 2–5 (2014) [hereinafter CNA 2014]. In addition, former Defense Secretary William Perry claimed that climate change's security challenges are comparable to nuclear war. See Jeff McMahon, *Former Defense Secretary Compares Climate Change to*

Climate Agreement labels climate change an “urgent threat” while recognizing climate change’s pernicious impacts on food security.⁴³ Due to scientific advances, we now have a much clearer understanding of the relationship between human activity, climate change, and global security.⁴⁴

COVID-19’s ongoing deadly global impact—the United States has lost more people to COVID-19 than all conflicts since World War II—bolsters the need to reconceptualize and broaden traditional notions of threats to human and national security.⁴⁵ Tragically, the novel coronavirus crisis may foreshadow even greater global health threats as climate change accelerates the spread of vector-borne diseases around the world.⁴⁶ But COVID-19 may signal the beginning of a new era of public health threats, forcing us to reconceptualize traditional notions of security.

B. *The Security Council’s Responsibility for the Maintenance of International Peace and Security*

In the following section, I analyze the Council’s institutional design, delegated legal authorities, and how conceptions of “legitimacy” impact potential Council climate action.⁴⁷

1. The Council’s Delegated Legal Authorities & Institutional Design

The Council is composed of both permanent and non-permanent members. P5 membership has remained constant since 1945, a source of enormous controversy and criticism since the Charter’s inception. The remaining ten Council seats are held by rotating, non-permanent Members elected for two-year terms.⁴⁸ Highly competitive and sought after, membership eligibil-

Nuclear War, FORBES (Dec. 9, 2018), <https://www.forbes.com/sites/jeffmcmahon/2018/12/09/former-defense-secretary-compares-climate-change-to-nuclear-war/?sh=4848660c60bb>.

43. See IPCC 1.5 REPORT, *supra* note 2.

44. See Yu et al., *supra* note 30 (finding that fifteen of sixteen extreme weather events were made more likely by human caused climate change).

45. Scholars have debated whether it is best to frame climate change as a “human security” or “national security” issue. For a discussion of this debate, see Maryam Jamshidi, *The Climate Change Crisis is a Human Security, Not a National Security Issue*, 93 S. CAL. L. REV. POSTSCRIPT 36, 36 (2019).

46. The COVID-19 crisis, while not directly related to climate change, may foreshadow future global health risks as climate change increases the risk posed by vector-borne diseases. See NCA 2018, *supra* note 2, at 616 (describing climate change’s role in exacerbating vector-borne diseases such as Zika and West Nile virus that are transmitted by mosquitos).

47. U.N. Charter arts. 39–51. For a discussion of the role of the Security Council in the face of climate change, see Trina Ng, *Safeguarding Peace and Security in our Warming World: A Role for the Security Council*, 15 J. CONFLICT & SEC. L. 275, 275 (2010) (arguing that climate change threats are “tantamount to threats to international peace and security given the evolution of threats since . . . 1945”).

48. U.N. Charter art. 23, ¶ 1 (outlining the criteria for election to the Council, noting “due regard” is paid to Members contributing to the maintenance of international peace and security and to “equitable geographical distribution.”).

ity for these ten seats must take into account both “equitable geographic distribution,” as well as Member nations’ respective contribution to the maintenance of international peace and security.⁴⁹ In addition, thirty-eight of the 193 U.N. Members states are designated SIDS that most acutely suffer from climate change’s debilitating effects.⁵⁰ The Charter’s guidance on Council non-permanent membership eligibility, and a comparably large contingent of SIDS, suggest that climate change will play a role in the Council’s rotating membership.⁵¹

As a parliamentary matter, the Council does not require the vote of every Member nation—any Council vote simply requires nine affirmative votes and the concurrence (or abstention) of all five permanent members.⁵² If this voting threshold is met, Council decisions bind the other Member States.⁵³ Hence, the Council could potentially serve as an expedient international venue to address climate change.⁵⁴

The U.N. Charter’s express purpose is to maintain international peace and security,⁵⁵ and “is based on the principle of the sovereign equality of all of its members.”⁵⁶ Article 2(4) of the U.N. Charter reaffirms the prohibition on the use of force. Member nations must “refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state. . .”⁵⁷ And under article 24 of the U.N. Charter, the Council has “primary responsibility” to ensure international peace and security.⁵⁸ With this authority comes a special responsibility—with affirmative duties—for the Council to take measures on behalf of other Member nations to ensure international peace and security.

49. *Id.*

50. U.N. Charter art. 2, ¶ 2.

51. Perhaps not surprisingly, Greta Thunberg and other climate activists scrutinized the climate policies of both Norway and Canada during the most recent Council election in 2020. See discussion *infra* Part I.B.2.

52. U.N. Charter art. 27, ¶¶ 2–3; see Ian Hurd, *The UN Security Council and the International Rule of Law*, CHINESE J. INT’L POL. 1, 11 (2014) (discussing that, although the Charter is silent on the legal import of abstaining from a vote, from the Council’s first meetings, permanent member abstention was not treated the same as a veto. This has been the operating consensus ever since.).

53. U.N. Charter art. 25.

54. And the Security Council has shown the ability to act relatively quickly in using its powers. In the aftermath of September 11th, the Security Council passed Resolution 1373 in under one month. S.C. Res. 1373 (Sept. 28, 2001). For a broader discussion of S.C. 1373, see *infra* Part III.A.2.

55. U.N. Charter art. 1, ¶ 1.

56. U.N. Charter art. 2, ¶ 1.

57. *Id.* art. 2, ¶ 4.

58. U.N. Charter art. 24, ¶ 1 (“In order to ensure prompt and effective action by the United Nations, its members confer on the Security Council *primary responsibility* for the maintenance of international peace and security and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.”)(emphasis added).

The Council, acting on behalf of all other Member States, can tap into its broad enforcement authorities, but only when it has first made a determination that a situation rises to a “threat to the peace, breach of the peace, or act of aggression” within the meaning of article 39.⁵⁹ While the Council has broad discretion in making this legal determination, doing so must still conform with the U.N. Charter’s governing Purposes and Principles.⁶⁰ And the Council must follow-through with effective enforcement and follow-through—something that the Council has historically struggled to do.

Of course, there must be a bona fide threat to international peace and security—purely domestic impacts are beyond the Council’s purview. The Council is prohibited from intervening “in matters which are essentially within the domestic jurisdiction of any state. . . .”⁶¹ GHG emissions and climate change’s corresponding impacts do not respect neat political boundaries. And there is an increased understanding that seemingly domestic climate change matters can spill across international borders quickly, making the international and domestic distinction increasingly a gray area and not a strict dichotomy.⁶²

2. Council Action: Legitimacy Concerns

Simply because the Council can take an action, does that mean it should? To be sure, the Council possesses discretion in determining what rises to a “threat to the peace,” a key term that is undefined under the U.N. Charter.⁶³ If the Council determines that climate change is a threat to the peace within the meaning of article 39, the door is unlocked to powerful Chapter VII authorities.⁶⁴ But core legal and political legitimacy concerns are always lurking in the background. These must be considered prior to the Council tackling climate change.

Broadly speaking, legitimacy is the belief of an agent that a rule or institution has a right to be obeyed.⁶⁵ The Council has few instruments to ensure compliance with its decisions. While Council resolutions are legally

59. U.N. Charter art. 39.

60. U.N. Charter art. 24, ¶ 2.

61. U.N. Charter art. 2, ¶ 7.

62. Cf. Thielbörger, *supra* note 10, at 67–74.

63. U.N. Charter art. 39.

64. *Id.*; see also Christopher K. Penny, *Greening the Security Council: Climate Change as an Emerging “Threat to International Peace and Security”*, 7 INT’L ENV’T AGREEMENTS 35, 53–54 (2007); *Actions with Respect to Threat to the Peace, Breaches of the Peace, and Acts of Aggression*, UNITED NATIONS SEC. COUNCIL, www.un.org/security/council/content/repertoire/actions (last visited July 27, 2020) (listing historic information when the Council “has determined the existence of a threat and examines instances where the existence of a threat was debated”).

65. Hurd, *supra* note 52, at 7–8; see, e.g., TOM TYLER, *WHY PEOPLE OBEY THE LAW* (2006); Oren Gross, *Chaos and Rules: Should Responses to Violent Crises Always be Constitutional?*, 112 YALE L.J. 1011 (2003) (overviewing legal legitimacy).

mandatory, they still depend on states “believing that they have an interest in going along with them.”⁶⁶ Professor Dan Bodansky and others have convincingly argued that democratic government legitimacy principles can be applied to international governance. As international institutions gain greater authority, their consensual underpinnings erode.⁶⁷ Legitimate authority is synonymous with justified authority. “Legitimacy” has a normative and socio-political dimension where perceived legitimacy can affect the Council’s ability to carry out decisions.⁶⁸

Consider the growing connection between sociological-based legitimacy and climate activism surrounding Council membership elections. In the last Council election for non-permanent Membership, nations had their climate policies and commitment to sustainability heavily scrutinized.⁶⁹ Greta Thunberg and other climate change activists, for example, recently spoke out against the climate policies of two prospective non-permanent Security Council members (Canada and Norway) in this year’s Council election. The climate activists argued that these nations were overly reliant on fossil fuels and should take steps to divest their economies from fossil fuels as a condition for Council membership.⁷⁰

While the precise efficacy of these climate-advocacy efforts remains unclear (Norway was elected, but Canada was not), it nevertheless showcased the increasing role that climate policies will have on shaping governance structures and their follow-on actions. The increased awareness of climate change’s devastating impacts—embodied by the work of international climate activists such as Greta Thunberg, popular writing such as David Wallace-Wells’s *Uninhabitable Earth*, and advocacy-legislation such as the American Green New Deal—suggest a growing acceptance for international climate action and a groundswell of support for popular legitimacy.⁷¹

C. Chapter VI Authorities: Pacific Settlement of Disputes

Chapter VI of the U.N. Charter (“Pacific Settlement of Disputes”) reinforces the U.N. Charter’s underlying goal of settling disputes by peaceful means, laying out the Council’s broad investigation powers.⁷² Chapter VI actions can be taken without an article 39 “threat to the peace” determina-

66. Hurd, *supra* note 52, at 8.

67. Bodansky, *supra* note 14, at 597.

68. *Id.* at 601.

69. Megan Darby, *Greta Thunberg Looks to U.N. Security Council Election for Leverage on Climate*, CLIMATE HOME NEWS (June 6, 2020), <https://www.climatechangenews.com/2020/06/10/greta-thunberg-seeks-influence-un-security-council-election/>

70. *Id.*

71. See, e.g., DAVID WALLACE-WELLS, *THE UNINHABITABLE EARTH* (2019).

72. See U.N. Charter art. 33. (“The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or agreements, or other peaceful means of their own choice.”).

tion. Article 34 outlines the Council's broad investigatory powers to "investigate *any dispute or 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."⁷³

The Council may act on disputes by "recommending appropriate procedures or methods of adjustment."⁷⁴ In addition, any Member nation may bring "any dispute" to the attention of the Council or General Assembly.⁷⁵ The Council, in turn, may recommend "appropriate procedures" to settle the dispute or take a specific action such as referring the dispute to the International Court of Justice ("ICJ").⁷⁶

Under article 96 of the U.N. Charter, either the Council or the General Assembly may request that the ICJ "give an advisory opinion on any legal question." Alternatively, the Secretary-General may bring any matter which may threaten the maintenance of peace and security to the Security Council.⁷⁷ Climate-security matters could, theoretically, be brought before the ICJ.⁷⁸ But as Professor Michael Gerrard and others have opined, the ICJ is not a particularly promising path for transformative or even substantive climate action.⁷⁹ Outside the climate change context, the ICJ's jurisdiction and enforcement mandate is not universally accepted.⁸⁰ Other international tribunals have recently addressed climate security matters, shining much needed light on asylum seekers from SIDS.⁸¹ Under my institutional risk allocation approach to climate governance discussed below, I welcome efforts from competent international tribunals to address climate-security matters—

73. U.N. Charter art. 34.

74. U.N. Charter art. 36, ¶ 1.

75. U.N. Charter art. 35, ¶ 1.

76. U.N. Charter art. 36, ¶¶ 1–3.

77. U.N. Charter art. 99.

78. U.N. Charter art. 96, ¶ 1.

79. See Michael B. Gerrard, Professor, Colum. L. Sch., Statement at the Security Council Open Arrria Formula Meeting: The Role of Climate Change as a Threat Multiplier for Global Security (June 30, 2015), http://www.spainun.org/wp-content/uploads/2015/07/Michael-Gerrard_CC_201506.pdf (stating that seeking an ICJ advisory opinion on principles of international law in the mitigation context is not a fruitful path).

80. See, e.g., Scott R. Anderson, *Walking Away from the World Court*, LAWFARE, <https://www.lawfareblog.com/walking-away-world-court> (Oct. 5, 2018) (referencing the U.S. decision to withdraw its consent to the ICJ's general compulsory jurisdiction); see *Military and Paramilitary Activities in and Against Nicaragua* (Nicar. v. U.S.) Judgment, 1986 I.C.J. Rep. 14.

81. In 2020, the United Nations Human Rights Counsel recently addressed climate security arising from an asylum seeker from a Small Island Developing States. While it remains to be seen how this ruling will be implemented by different nations, it nevertheless demonstrates climate change's threats posed to developing nations. See Rob Picheta, *Climate Refugees Cannot Be Sent Back Home, United Nations Rules in Landmark Decision*, CNN (Jan. 20, 2020) <https://www.cnn.com/2020/01/20/world/climate-refugees-unhrc-ruling-scli-intl/index.html>.

provided that they act within their competence and jurisdiction. But I ultimately share Professor Gerrard's skepticism that the ICJ or other relevant international human rights bodies can or will play a leading role in addressing climate change.

D. *Climate Change and the Council's Chapter VII Authorities*

Under Chapter VII, the Council enjoys broad powers to restore and maintain international peace and security.⁸² Before the Council can activate these broad enforcement authorities, it must first determine whether a "threat to the peace, breach of the peace, or act of aggression" exists under article 39.⁸³ In making this critical determination, the Council *shall*:

[D]etermine the existence of any *threat* to the peace, *breach* of the peace, or *act of aggression* and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.⁸⁴

Of the three possible article 39 determinations—(1) threat to the peace; (2) breach of the peace; or (3) act of aggression, the Council heavily relies upon "threat to the peace" when addressing non-traditional security threats.⁸⁵ "Threat to the peace" is undefined within the Charter; the Council is granted broad discretion in making this determination.⁸⁶ If the Council makes an article 39 determination, its powerful Chapter VII authorities are then actuated—a legally expedient approach but one that must take into account core legitimacy concerns.⁸⁷ If the Council overcomes political paralysis in declaring climate change a threat to the peace, what steps might the Council take?

Article 40 of the U.N. Charter authorizes the Council to "call upon the parties concerned to comply with such provisional measure as it deems necessary or desirable."⁸⁸ If article 40 measures prove ineffective, the Council could next employ article 41 economic or diplomatic measures against na-

82. See U.N. Charter arts. 39–51. Any Council action must be consistent with the UN Charter, Chapter I, "Purposes and Principles." U.N. Charter art. 24, ¶ 2.

83. U.N. Charter art. 39.

84. *Id.* art. 39 (emphasis added).

85. I define non-traditional security threats somewhat capaciously to include global health, environmental and climate security, gender security, and the threats posed by non-state actors. As I discuss *supra* Part II.A, the Council has shown a willingness to address such threats.

86. Robert Cryer, *The Security Council and Article 39: A Threat to Coherence?*, 1 J. ARMED CONFLICT L. 161, 163 (1996). See Bodansky, *supra* note 14 at 179; see also Anna M. Vrandenburg, *The Chapter VII Powers of the United Nations Charter: Do They Trump Human Rights Law?*, 14 LOY. L.A. INT'L & COMP. L. REV. 175, 178–79 (1991).

87. This chapter is titled "Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression" and is addressed in Articles 39–51.

88. U.N. Charter art. 40.

tions engaging in extremely harmful climate activities. This authorizes non-military measures, such as economic sanctions, against nations that engage in actions that threaten international peace and security.⁸⁹ To be sure, moving from article 40 to 41 will increase the action's underlying legitimacy risk as the Council ratchets from soft measures to hard compliance measures. As discussed *infra* Part V, article 41 sanctions could take many forms. The Council could directly sanction so-called "climate rogue states" or move to ban the import of a particularly harmful climate product or individual. Brazil's massive deforestation efforts that destroy the Amazon rainforest are but one prominent example. But well-intentioned economic sanctions may counter harmful state action and also end up harming the most vulnerable citizens.⁹⁰

If the article 41 non-military measures prove to be inadequate, the Council can next turn to its awesome article 42 military powers.⁹¹ Article 42 states:

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.⁹²

As I discuss *infra* Part V, I do not recommend the Council employ military measures to address climate change now or in the foreseeable future. Regardless of the legitimacy or practicality of the Council taking climate action today, the Council has the authority to act in a relatively expeditious manner.

E. *Climate Change and the Inherent Right of Self-Defense*

Independent of the Council's Chapter VI and VII authorities, each Member nation possesses the inherent right of self-defense in the event of an "armed attack."⁹³ "Armed attack" includes self-defense against non-state

89. *Id.* art. 41. I borrow the term "climate rogue states" from Professor Martin to describe nations that engage in egregiously destructive environmental behavior with a disproportionate impact on climate change. See Martin, *supra* note 10, at 334.

90. *E.g.* Catherine Tinker, "Environmental Security" in the United Nations: Not a Matter for the Security Council, 59 TENN. L. REV. 787, 794 (1992) (stating that sanctions often punish the citizens of the target state more than its leaders).

91. Martin, *supra* note 10, at 335.

92. U.N. Charter art. 42.

93. *Id.* art. 51. It is beyond the scope of this paper to fully flesh out the legal standard associated with "armed attack" and the inherent right of self-defense under the U.N. Charter. See, e.g., Christine Gray, *Climate Change and the Law on the Use of Force*, in INTERNATIONAL LAW IN THE ERA OF CLIMATE CHANGE 219, 236–38 (Rosemary Rayfuse & Shirley V. Scott eds., 2012).

actors, but climate change poses additional, practical problems in addressing both its causality and attribution.⁹⁴ Nevertheless, some scholars have begun to theorize that climate change provides a just cause for war, at least in principle.⁹⁵ Professor Craig Martin has opened the dialogue for expanding the doctrine of self-defense in the case of atmospheric intervention.⁹⁶

How might the right of self-defense apply to climate-security impacts? Consider the case of a SIDS whose territory is threatened by sea level rise and wave-driven flooding. Climate change is not a traditional armed attack within the meaning of article 51, but its security impacts—loss of land through sea level rise, extreme weather, drought—are no less devastating. But lowering the legal bar or fundamentally changing our collective understanding of what constitutes an armed attack has enormous normative consequences for article 51 and the right to use force.⁹⁷

It is beyond the scope of this paper to fully address the enormous normative implications that a fundamental reconceptualization of article 51 as applied to climate change would entail. The slowly burning climate crisis and widening emissions gap is, nevertheless, forcing scholars to try to reconcile climate change with traditional use of force conceptions.⁹⁸ As discussed below, the Council has shown an increased willingness to address the root causes of armed conflict, to include an increased willingness to address climate change in Council resolutions and Council-sponsored debates.⁹⁹

III. SECURITY COUNCIL ENGAGEMENT ON NON-TRADITIONAL SECURITY THREATS

In what follows, I analyze the Council's steady evolution and willingness to address the root causes of threats to international peace and security. In some cases—such as its Ebola response—the Council made an article 39 threat to the peace determination. The Council's action on Ebola, in particular, offers a potential roadmap for future climate engagement. While political obstacles remain, the Council has demonstrated a halting, but unmistak-

94. This makes it exceedingly difficult to invoke Article 51 to pierce the *jus ad bellum* regime.

95. E.g. Adam Betz, *Preventive Environmental Wars*, 18 J. MIL. ETHICS 223, 223 (2019) (arguing that the “types and scale of prospective harms threatened by climate change are such that, were they to result from an armed attack, there would unequivocally be a just cause for war”). Professor Betz acknowledges that while environmental war may be justified in principle, there are challenges in practice. *Id.* at 233–37.

96. See Martin, *supra* note 10, at 383–92.

97. See *id.*

98. See, e.g., *id.*

99. See, e.g., S.C. Res. 2349, ¶ 26 (Oct. 14, 2017). (recognizing climate change's adverse effects in water scarcity, drought, and desertification in the Lake Chad Basin region). The Lake Chad resolution was followed up by Council references to climate security in four Security Council Resolutions in Somalia, Darfur, West Africa and the Sahel, and Mali.

able, willingness to broaden its jurisdiction to address the root causes to threats to international peace and security.¹⁰⁰

A. *The Council's Evolving Definition of "Threat to the Peace"*

Following limited Council action during the Cold War—where the United States and Soviet Union threatened to veto each other's actions, thus nullifying any Council action—the Council has shown a willingness to expand its definition of what rises to a threat to international peace and security. Beyond the changing political reality, what might account for this change?

First, "threat to the peace" lacks a precise definition within the Charter. The Council is essentially afforded extraordinary discretion in making such a critical legal determination. The Council's broad discretionary authority in making a threat to the peace determination was reaffirmed in the International Criminal Tribunal for the Former Yugoslavia's decision in *Prosecutor v. Tadic*. In *Tadic*, the Court held that while an "act of aggression" is more amenable to a *legal* determination, "threat to the peace" is more of a *political* concept.¹⁰¹ As a political rather than a legal judgment, the Council's authority "expands each time it finds a new kind of problem to be a threat to the peace."¹⁰² Of course, any Council action remains bound by a variety of factors, including the Charter's Purposes and Principles and the action's accepted legitimacy from other Member States.¹⁰³

Second, we now have a better awareness of the linkage between the underlying causes of conflict and its corresponding effects. This includes the threat to international peace and security posed by environmental destruction, non-state actors, weapons proliferation, and global pandemics. In what follows, I analyze five key instances where the Council displayed a willingness to go beyond traditional collective security matters, expanding its conception of what may constitute a threat to international peace and security.

1. Root Causes of Conflict: Environmental and Climate Security

The Council was confronted with massive environmental destruction by Iraqi leadership during the 1990 Persian Gulf War. In the aftermath, the Council passed a resolution declaring that Iraq was "liable under international law for any direct loss, damage, including environmental damage and the depletion of natural resources . . . as a result of Iraq's unlawful invasion

100. See, e.g., S.C. Res. 1625, pmb. (Sept. 14, 2005) ("[r]eaffirming the need to adopt a broad strategy of conflict prevention, which addresses the root causes of armed conflict and political and social crises").

101. *Prosecutor v. Tadic*, Case No. IT-91-1-AR72, Establishment of the International Tribunal, ¶ 29 (Int'l Crim. Trib. for the Former Yugoslavia Oct. 20, 1995).

102. Hurd, *supra* note 52, at 5.

103. See *supra* Part II.B.1; see also THOMAS FRANCK, *THE POWER OF LEGITIMACY AMONG NATIONS* (1990).

and occupation of Kuwait.”¹⁰⁴ Following the conclusion of the armed conflict, in 1992, the Council acknowledged that ecological and social issues could also constitute threats to international peace and security:

The absence of war and military conflicts amongst states does not in itself ensure international peace and security. The non-military sources of instability in the economic, social, humanitarian, and ecological fields have become threats to peace and security.¹⁰⁵

The then-Iraqi President Saddam Hussein’s destruction of the oil fields was inextricably linked to the Council’s Resolution and action in an international armed conflict. By recognizing and acknowledging the destructive capacity of ecological harms, however, the Council took an initial step toward conceptualizing a broader framework of threats to international peace and security beyond merely interstate conflict.

The environmental security connection was further addressed in 2004, when then-U.N. Secretary General Kofi Annan addressed new and emerging threats to international security. He specifically identified environmental degradation and climate change as the driver of natural disasters that undermine international peace and security.¹⁰⁶ In 2005, U.N. Secretary General Kofi Annan stated:

The threats to peace and security in the twenty-first century include not just international war and conflict but civil violence, organized crime, terrorism and weapons of mass destruction. They also include poverty, deadly infectious disease and environmental degradation since these can have equally catastrophic consequences.¹⁰⁷

In 2005, the Council reaffirmed that it was prepared to address the root cause of armed conflict—in the context of conflict’s disparate effects on women and gender issues more broadly—in an effort to “adopt a broad strategy of conflict prevention.”¹⁰⁸ In 2006, Secretary Annan followed up his earlier pronouncements on environmental security, stating that “[g]lobal climate change must take its place alongside [the] threats [of]. . . conflict,

104. S.C. Res. 687, ¶ 16 (Apr. 3, 1991). This marked the first time that the Council determined that a state was liable for harm to the environment itself, apart from injury to people and property. Tinker, *supra* note 90, at 789.

105. U.N. SCOR, 3406th mtg., at 143, U.N. Doc. S/PV.3046 (Jan. 31, 1992). For a brief discussion of the Council’s approach to soft threats, see Mark P. Nevitt, *The Commander in Chief’s Authority to Combat Climate Change*, 37 CARDOZO L. REV. 437, 492–95 (2015).

106. The panel noted, “. . . [i]f climate change produces more acute flooding, heat waves, droughts and storms, this pace [of natural disasters] may accelerate.” Anand Panyarachun, Chairman, High-Level Panel on Threats, Challenges, & Change, *A More Secure World: Our Shared Responsibility*, ¶ 53, U.N. Doc. A/59/565 (Dec. 2, 2004) [hereinafter *A More Secure World*].

107. U.N. Secretary-General, In Larger Freedom: Towards Development, Security and Human Rights for All, ¶ 78, U.N. Doc. A/59/2005 (Mar. 21, 2005).

108. S.C. Res. 1625, pmb. (Sept. 14, 2005).

poverty, [and] the proliferation of deadly weapons . . . that have traditionally monopolized first-order political attention.”¹⁰⁹

2. The Legislative Council: Terrorism (2001) and the Spread of Weapons of Mass Destruction (2004)¹¹⁰

In the aftermath of the September 11th terrorist attacks against the United States, the Council passed Resolution 1373 on September 28, 2001. The Council expressly declared that the terrorist attacks in New York, Pennsylvania, and Washington “constitute a threat to international peace and security.”¹¹¹ In doing so, it reaffirmed the need to “combat by all means . . . threats to international peace and security caused by terrorist acts.”¹¹² Drawing upon its broad Chapter VII authorities and (at that time) overwhelming international support for action, the Council required all Member States to pass domestic legislation to both “prevent and suppress the financing of terrorist acts” and “freeze . . . funds and other financial assets . . . of persons who commit . . . terrorist acts.”¹¹³ Each Member nation was further required to adopt domestic legislation to criminalize the “willful provision or collection, by any means . . . of funds by their nationals or in their territories with the intention that they are to be used, in order to carry out terrorist acts.”¹¹⁴

Three years later, in 2004, the Council made a similar determination addressing the spread of weapons of mass destruction (“WMD”)—to include nuclear, chemical, and biological weapons. In making an article 39 threat to the peace determination,¹¹⁵ the Council cracked down on terrorism financing and strengthened border controls to counter the illegal import of WMD materials.¹¹⁶ Specifically, the Council required states to “refrain from permitting non-state actors access to WMDs and their means of delivery, enforce domestic laws prohibiting non-state actors access to WMDs, and

109. Report of the Conference of the Parties on its Twelfth Session, *Nairobi Framework*, Annex 1, U.N. Doc. FCCC/CP/2006/5 (Jan. 26, 2007).

110. For a discussion of the Security Council as a legislative body, see Eric Rosand, *The Security Council as “Global Legislator:” Ultra Vires or Ultra Innovative?*, 28 *FORDHAM INT’L L.J.* 542, 544, 546 (2004); Alexandra Knight, Note, *Global Environmental Threats*, 80 *N.Y.U. L. REV.* 1549, 1569, n.97 (2005). For a discussion within the international relations literature of the Security Council’s role in combatting climate change, see Ken Conca, Joe Thwaites & Goueon Lee, *Climate Change and the UN Security Council: Bully Pulpit or Bull in a China Shop?*, *GLOB. ENVTL. POL.*, May 2017, at 1, 2.

111. S.C. Res. 1373, ¶ 3 (Sept. 28, 2001).

112. *Id.* para. 5.

113. *Id.* ¶¶ 1(a), 1(c).

114. *Id.* ¶¶ 1(a), 1(c).

115. S.C. Res. 1540, para. 1 (Apr. 28, 2004).

116. *Id.* ¶ 2, 3(c).

develop and maintain border controls to prevent the proliferation of WMDs.”¹¹⁷

The Council’s sweeping actions to address terrorism and the spread of WMDs via implementing domestic legislation remain controversial to this day. Nevertheless, they showcased the Council’s ability to go beyond interstate conflict and state aggression in making a threat to the peace determination within article 39 and follow through with aggressive Chapter VII mandates. It also demonstrated how quickly the Council can take *ex post* action following a catastrophic event. This marked an expansion of the Council’s jurisdiction, which is a significant transformation from the Council’s Cold War stasis.

3. Security Council Action and Natural Disaster Response: Haiti (2010)

The Council has also shown a willingness to act, *ex post*, in response to natural disasters. In responding to a devastating earthquake in Haiti in 2010 that killed up to 300,000 people, the Council adopted Resolution 1908.¹¹⁸ This Resolution expanded a pre-existing United Nations Stabilization Mission in Haiti to include the “immediate recovery, reconstruction and stability efforts” undertaken by the Government of Haiti.¹¹⁹ In response to the earthquake, the Security Council also authorized an increase in the number of military and police personnel assigned to the mission.¹²⁰

The Council did not explicitly mention climate change in the Resolution, and it is unclear if the Council would have ever acted in Haiti if an existing U.N. security mission was not already in place. Yet recent climate attribution science advances elucidate that climate change will cause an uptick in extreme weather, stressing the international community’s ability to respond to future natural disasters.¹²¹ The Council’s response in the 2010 Haitian earthquake suggests, however, that *ex post* responses to extreme weather events are already within the Council’s zone of competence. It remains to be seen, however, whether the Council will take proactive, *ex ante* climate measures outside of armed conflict or independent of an existing U.N. mission.

117. *Id.*; see also Shirley V. Scott & Roberta C.D. Andrade, *The Global Response to Climate Change: Can the Security Council Assume a Lead Role?*, 18 BROWN J. WORLD AFFS. 215, 221 (2012). Some security experts have linked climate change to an uptick in terrorist activity and developing nations have analogized climate change to both terrorism and WMDs. See, e.g., CNA 2014, *supra* note 42. Acknowledging this reality, the President of Nauru recently compared the threats posed by climate change to the threats posed by nuclear proliferation and terrorism.

118. S.C. Res. 1908 (July 17, 2010).

119. *Id.* ¶ 1.

120. *Id.* ¶ 2.

121. See generally Yu et al., *supra* note 30.

4. The Council & International Public Health Crisis: HIV/AIDS (2000, 2011)

In 2000, the Council addressed the global HIV/AIDS health crisis via Resolution 1308.¹²² The Resolution “stress[ed] the need of coordinated efforts of all relevant United Nations organizations.”¹²³ It further noted that the HIV/AIDS pandemic, “if unchecked” may pose a risk to stability and security,¹²⁴ reaffirming the Council’s role and “primary responsibility for the maintenance of international peace and security.”¹²⁵ While stopping short of making an article 39 threat to the peace determination, it encouraged Member States to work with the international community and international organizations such as the Joint United Nations Programme on HIV/AIDS (“UNAIDS”) to develop “long-term strategies for HIV/AIDS education, prevention, voluntary and confidential testing and counselling . . . as part of their participation in peacekeeping operations.”¹²⁶ In 2011, the Council built on this earlier effort in addressing HIV’s debilitating impacts on international peace and security via Resolution 1983.¹²⁷ The Council recognized HIV/AIDS as “one of the most formidable challenges to the development and stability of societies that required a global response.”¹²⁸

In each instance the Council did not find that the HIV/AIDS crisis was a direct threat to international peace and security within the meaning of article 39, thus activating its Chapter VII authority. But the Council’s willingness to more generally address the HIV/AIDS crisis signaled a continual willingness to address underlying threats that destabilize peace and security, not unlike the Council’s 1991 recognition that ecological degradation can threaten peace and security. Similar to climate change, HIV/AIDS acts as a destabilizing force that disproportionately impacts developing nations. As discussed in the Ebola case study below, the Council’s ability to successfully navigate a global health crisis could serve as a roadmap for future climate action.

5. The Council and the 2014 Ebola Public Health Crisis: A Potential Roadmap for Climate Action?

In the summer of 2014, the lethal Ebola virus rapidly spread through the developing world, devastating several West African nations. Thousands died. Fear and misinformation spread throughout the region, further undermining the crisis. In August 2014, the Presidents of Liberia, Sierra Leone,

122. S.C. Res. 1308 (July 17, 2000).

123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.*

127. *See* S.C. Res. 1983 (June 7, 2011).

128. *Id.*

and Guinea requested that the United Nations take measures to respond to the growing Ebola crisis. Shortly thereafter, the World Health Organization (“WHO”) put in place an “Ebola Response Roadmap” designed to help coordinate the complex international response. As the Ebola virus cut an increasingly lethal path through Africa, it became clear that additional international action was needed to combat the crisis. Shortly thereafter the Council acted, declaring that the Ebola outbreak in Africa “constitute[d] a threat to international peace and security” within the meaning of article 39.¹²⁹

In making a threat to the peace determination, the Council called on all Member States to take four specific actions while reserving its most potent Chapter VII authority.¹³⁰ First, it called on Member States to lift travel and border restrictions that were imposed as a result of the Ebola outbreak.¹³¹ Second, it called on nearby Member States to take measures to facilitate the delivery of humanitarian supplies and trained personnel to Ebola-affected areas.¹³² Third, it called on Member States to actively fight an Ebola-disinformation campaign in an effort to provide information to the public to follow proper health and safety protocols.¹³³ Fourth, the Council called on all Member States to provide urgent resources and equipment to the region.¹³⁴

The Ebola crisis was a fast-moving global health crisis and U.S. leadership under then-President Obama proved critical in galvanizing a Council response. Climate change, in contrast, is largely characterized by the slow onset of events—such as sea level rise and wave-driven flooding—punctuated by extreme weather.¹³⁵

But there are many similarities and even a direct connection between public health threats such as Ebola and climate change. Researchers have drawn linkages between environmental factors (such as a changing climate) and increased risk to infectious diseases.¹³⁶ Similar to climate change’s de-

129. S.C. Res. 2177, ¶ 6 (Sept. 18, 2014) (emphasis added). For an outstanding discussion of the global emergency powers implicated in the Ebola response, see generally J. Benton Heath, *Global Emergency Power in the Age of Ebola*, 57 HARV. INT’L L.J. 1 (2016) (arguing that the “expert nature of international bureaucracies fits awkwardly with the political decision making required of crisis managers.”).

130. S.C. Res. 2177, *supra* note 129, ¶¶ 4–7. The Council stopped short of using its most robust Chapter VII authorities—such as the military-sponsored delivery of humanitarian assistance under Article 42—to areas particularly hard hit by the Ebola virus. *See id.*

131. S.C. Res. 2177, *supra* note 129, ¶ 4.

132. *Id.* ¶ 5.

133. *Id.* ¶ 6.

134. *Id.* ¶ 7. This includes “deployable medical capabilities such as field hospitals with qualified and sufficient expertise, staff and supplies, laboratory services, logistical, and transport and construction support capabilities . . .”

135. *See, e.g.,* Storlazzi et al., *supra* note 9.

136. David W. Redding, Peter M. Atkinson, Andrew A. Cunningham, Gianni Lo Ianoco, Lina M. Moses, James L.N. Wood & Kate E. Jones, *Impacts on Environmental and Socio-*

stabilizing characteristics, the Council was deeply concerned that Ebola's spread would lead to "civil unrest, social tensions and a deterioration of the political and security climate."¹³⁷ Similar to Ebola, security professionals illuminate how climate change—a "catalyst for conflict"—can lead to unrest and suffering. In its Ebola response, the Council had to navigate other international institutions and global health efforts both inside and outside the United Nations.¹³⁸ The Council's willingness to address a non-traditional security threat while navigating the work of the World Health Organization, U.N. stakeholders, and other international organizations suggests that future climate action may be within the Council's zone of competency.

Of course, the Council's prior willingness to address an increasing menu of non-traditional threats is not guaranteed. For example, witness the Council's sluggish response to the COVID-19 crisis. The Council has not (yet) declared the COVID-19 crisis a threat to international peace and security.¹³⁹ But this, too, may be changing. In July 2020, the Council addressed the novel coronavirus crisis via Resolution 2532, calling for a general and immediate cessation of hostilities as the world responds to the novel coronavirus crisis. The Council specifically called upon all parties to armed conflict to engage in a ninety-day "durable humanitarian pause" to facilitate the safe, unhindered and sustained delivery of humanitarian assistance."¹⁴⁰ Yet it is difficult to predict whether the Council's slow response to COVID-19 signals a broader trend toward retrenchment on global collective action is-

economic Factors on Emergence and Epidemic Potential of Ebola in Africa, NATURE COMMUN (Oct. 10, 2019), <https://www.nature.com/articles/s41467-019-12499-6>.

137. S.C. Res. 2177, *supra* note 129, at 1 ("Recognizing that the peacebuilding and development gains of the most affected countries concerned could be reversed in light of the Ebola outbreak and underlining that the outbreak is undermining the stability of the most affected countries concerned and, unless contained, *may lead to further instances of civil unrest, social tensions and a deterioration of the political and security climate*") (emphasis added). The Ebola crisis also undermined food security, not unlike climate change's impacts on food security. *Id.* at 3.

138. This included a complex web of actors to include the United Nations General Assembly, Economic and Social Council, Peacebuilding Commission, World Health Organization, and the broader Global Health Security Agenda. *Id.* at 3. At the time of S.C. Resolution 2177's passage, the Secretary General was planning on convening a meeting to urge an exceptional and vigorous response" to Ebola at the sixty-ninth General Assembly. *Id.* The Council also had to navigate the ongoing efforts of several first-line responders such as Doctors Without Borders and multinational organizations to include the African Union and Economic Community of West African States ("ECOWAS"). *Id.* at 2.

139. See, e.g., Jolie Myers & Ari Shapiro, *UN Chief: Security Council Gridlock Blocks Effective Coronavirus Response*, NPR NEWS, (June 9, 2020, 4:50 PM ET) <https://www.npr.org/sections/coronavirus-live-updates/2020/06/09/873060941/u-n-chief-security-council-gridlock-blocks-effective-coronavirus-response>. At the time, United Nations Secretary-General António Guterres stated "there was no unity around the world in the strategy to fight the pandemic." *Id.*

140. S.C. Res. 2532 (July 1, 2020). And P5 political calculations drive decision-making in more traditional use of force security contexts—witness the Council's complete failure to manage the conflict in Syria or find a consensus on the North Korean nuclear threat.

sues. Table A provides a snapshot of recent Council responses to effectively address non-traditional security threats.

TABLE A: SECURITY COUNCIL RESPONSE TO NON-TRADITIONAL THREATS

Date	Issue	Council Action
1991	Environmental damage	Iraq liable for environmental destruction to oil fields during the Gulf War. ¹⁴¹
2000	HIV/AIDS	HIV/AIDS “may pose a risk to stability and security” if unchecked. ¹⁴²
2001	Terrorism	Article 39 specifically triggered. “Terrorist acts” a threat to international peace and security. Quasi-legislative action. ¹⁴³
2004	Weapons Proliferation	Article 39 specifically triggered. Spread of WMD a threat to international peace and security. Quasi-legislative action. ¹⁴⁴
2010	Natural Disaster (Haiti)	Increased security presence following a natural disaster. ¹⁴⁵
2011	HIV/AIDS	Article 39 not triggered. HIV/AIDS “one of the most formidable challenges to the development and stability of societies.” ¹⁴⁶
2014	Ebola Health Crisis	Article 39 specifically triggered. The Ebola outbreak “constitutes a threat to international peace and security.” ¹⁴⁷
2020	COVID-19 Health Crisis	COVID-19 “likely to endanger the maintenance of international peace and security”; Calls upon Member States to enact “a general and immediate cessation of hostilities in all situations.” ¹⁴⁸

141. S.C. Res. 687, *supra* note 104, ¶ 16.

142. S.C. Res. 1308, *supra* note 122, at 2.

143. S.C. Res. 1373, *supra* note 111, at 1. For background on the Council as global legislator, see Rosand, *supra* note 110, at 543–44.

144. S.C. Res. 1540, *supra* note 115, at 1.

145. S.C. Res. 1908, *supra* note 118, ¶¶ 1–2.

146. S.C. Res. 1983, *supra* note 127, at 1.

147. S.C. Res. 2177, *supra* note 129, at 1.

148. S.C. Res. 2532, *supra* note 140.

B. *Security Council Climate Debate & Resolutions: A Stepping-Stone for Climate Action?*

In addition to the Council's willingness to address environmental security matters and other non-traditional security threats, since 2007 the Council has sponsored several high-level forums discussing climate change's destabilizing effects on international peace and security.¹⁴⁹ Concurrent with scientific advances, U.N. leadership has increasingly spoken out about the link between climate change and international peace and security.¹⁵⁰ While the Council has not yet determined that climate change is a threat to international peace and security within the meaning of article 39, it has gradually—albeit in an ad hoc manner—addressed climate security matters via a variety of fora.¹⁵¹ The Council has examined the linkages between climate change and security via an open debate forum four times: April 2007, July 2011, July 2018, and January 2019.¹⁵²

In 2007, the Council convened its first open debate on climate change and security at the initiative of the United Kingdom.¹⁵³ This meeting offered the first insight into how different states view Council action on climate security matters, foreshadowing Member nations one day possibly supporting broader Council action. From the onset, many Pacific SIDS and many European Union members argued that the Council should expand its role to address climate change's security implications.¹⁵⁴ Among the P5 members, France envisioned a more active role for the Council in line with Resolution 1625's call to address the root causes of armed conflict. Meanwhile, the United Kingdom argued that the Council should raise awareness on the root causes of armed conflict.¹⁵⁵ Perhaps not surprisingly, many of the SIDS—who are at climate change's frontlines—put forward that the Council had an affirmative obligation to address climate change's devastating effects.¹⁵⁶ The island nation of Tuvalu, for example, described climate change as a “con-

149. For a summary of Security Council actions on environmental and climate-related matters, see generally Dane Warren, *Possible Roles for the UN Security Council in Addressing Climate Change*, SABIN CTR. FOR CLIMATE CHANGE L., July 2015, at 1, 1–5.

150. See, e.g., *A More Secure World*, *supra* note 106, ¶ 53.

151. See Warren, *supra* note 149, at 1–5.

152. Press Release, Security Council, Climate Change 'Biggest Threat Modern Humans Have Ever Faced', World-Renowned Naturalist Tells Security Council, Calls for Greater Global Cooperation, U.N. Press Release SC/14445 (Feb. 23, 2021).

153. Francesco Sindico, *Climate Change: A Security (Council) Issue?*, 1 CARBON & CLIMATE L. REV. 29, 30 (2007).

154. See Warren, *supra* note 149, at 2.

155. See Sindico, *supra* note 153, at 2.

156. Papua New Guinea, a Small Island Developing State, declared that “the impact of climate change on small islands was no less threatening than the dangers guns and bombs posed to large nations.” Press Release, Security Council, Security Council Holds First-ever Debate on Impact of Climate Change on Peace, Security, Hearing Over 50 Speakers, U.N. Press Release SC/9000 (Apr. 17, 2007).

flict . . . not being fought with guns and missiles but with weapons from everyday life—chimney stacks and exhaust pipes.”¹⁵⁷

In contrast, China, Russia, and many nations within the Group of 77 (representing much of the developing world) vocally discouraged any Council climate action. In part, this was aligned with historic antipathy toward a greater role for the Council shared by many developing nations. They argued that Council climate action encroached on the General Assembly, ECOSOC, and the Framework Convention’s governing mandate.¹⁵⁸

Despite the lack of a cohesive position on Council climate action, the Pacific SIDS kept the issue of climate security alive, bringing climate change’s adverse impacts before the U.N. General Assembly in 2009. Here, the U.N. General Assembly passed a Resolution that both reaffirmed the Framework Convention as the “key instrument for addressing climate change” while explicitly labeling climate change as a “threat multiplier.”¹⁵⁹ It also called on other U.N. organs to consider climate change’s security implications, leaving the door open for future Council engagement.¹⁶⁰

At the behest of several Pacific island nations and Germany—two consistent cheerleaders for Council climate engagement—the Council sponsored its second formal climate-security debate in 2011.¹⁶¹ This Council-sponsored debate focused on addressing climate change’s role in rising sea-levels and food insecurity.¹⁶² Once again, Russia and China opposed Council climate engagement, but the U.S. Ambassador to the U.N., Ambassador Susan Rice, supported a Council climate role as part of the Council’s core responsibilities. Further, a divide began to emerge between the Pacific and

157. Ken Conca, *Is There a Role for the UN Security Council on Climate Change?*, 61 ENV’T: SCI. & POL’Y FOR SUSTAINABLE DEV. 4, 9 (2019), <http://www.tandfonline.com/venv>.

158. *Id.* at 9–10.

159. U.N. Secretary General, *Climate Change and Its Possible Security Implications*, ¶ 13, U.N. Doc. A/64/350 (Sept. 11, 2009).

160. *Id.* The 2008 U.S. Presidential election signaled an important change in the U.S. role and leadership in climate governance. *See, e.g.*, Jim Tankersley, *Obama Hails Copenhagen Deal as ‘Unprecedented Breakthrough’*, L.A. TIMES (Dec. 19, 2009), <https://www.latimes.com/archives/la-xpm-2009-dec-19-la-fg-obama-climate19-2009dec19-story.html>. The Copenhagen Accord was near universally adopted in 2009 at the Fifteenth Meeting of the Parties (“COP-15”) with President Obama in attendance. *Id.* This reflected a shift in the Framework Convention’s approach to address emissions from both developing and developed nations, a source of controversy that led to nations pulling out of the Kyoto Protocol. *Id.*

161. Germany has consistently advocated for a robust Council role to address climate change. *See, e.g.*, Mary Lobo & Stefan Talmon, *Germany on a Mission: Putting Climate Change on the Agenda of the UN Security Council*, GERMAN PRAC. INT’L L. (June 15, 2020), <https://gpil.jura.uni-bonn.de/2020/06/germany-on-a-mission-putting-climate-change-on-the-agenda-of-the-un-security-council>. As of this writing, Germany chairs the Council’s rotating presidency and has expressed a desire to address climate security matters before the Council. *Id.*

162. The full transcript of the 2011 debate is available at U.N. SCOR, 66th Sess. 6587d mtg., U.N. Doc. S/PV.6587 (July 20, 2011).

Caribbean states on Council climate action. Many Caribbean developing nations remained suspicious of the Council wielding greater power while some Pacific SIDS welcomed *any* international action and attention.¹⁶³ The 2011 debate concluded with a Presidential Statement that acknowledged climate change's potential to aggravate existing threats to international peace and security, while highlighting climate change's impact on sea-level rise on small low-lying island states.¹⁶⁴

In 2017, the Council took the historic step of referencing climate change as a destabilizing security impact in a Security Council Resolution. In addressing the deteriorating security situation in the Lake Chad region, the Council specifically highlighted the "adverse effects of climate change and ecological change" in destabilizing the security situation in the Lake Chad Basin.¹⁶⁵ The Council followed up in 2018 by recognizing climate change's destabilizing effects on the ongoing conflict in Somalia, Darfur, West Africa and the Sahel, and Mali.¹⁶⁶

The Council held its third open debate on climate change in July 2018. Member nations proposed a new "Special Representative of the Secretary General on Climate and Security" as well as the establishment of an institutional hub for climate-security matters within the United Nations system.¹⁶⁷ The Nigerian U.N. Deputy Secretary General, Amina Mohammed, highlighted climate change's grave threat to African food security, noting that the world's most vulnerable people face the greatest risk of droughts and food insecurity.¹⁶⁸ While Russia and China continued their skepticism of Council climate engagement, the meeting highlighted another frontline climate security issue: climate change's debilitating impacts on food insecurity in the African Sahel. The Sahel is one of the poorest regions in the world that is uniquely vulnerable to food insecurity and drought—ninety percent of the economy is agriculture-based.¹⁶⁹

163. Warren, *supra* note 149, at 3–4. The Caribbean SIDS diverged from their Pacific counterparts in siding with the Group of 77, in part because climate change's impacts are more acutely felt by the Pacific SIDS. Outside the climate change context, the Group of 77 has been generally skeptical of a greater Council role in international governance. As discussed *infra* Part III, all four atoll nations that face extinction reside in the Pacific. *Id.*

164. S.C. Pres. Statement 2011/15 (July 20, 2011).

165. S.C. Res. 2349, ¶ 26 (Oct. 14, 2017).

166. See, e.g., S.C. Res. 2408 (Mar. 27, 2018).

167. Security Council Meetings Coverage, United Nations, Addressing Sec. Council, Pac. Island President Calls Climate Change Defining Issue of Next Century, Calls for Special Representative on Issue (Dec. 17, 2018), www.un.org/press/en/2018/sc13417.doc.htm [hereinafter 2018 Council Debate].

168. *Id.*

169. *Id.*

The Council held its most recent open climate change debate in January 2019.¹⁷⁰ Here, the U.N. political affairs chief acknowledged that climate-related disasters are a present-day reality for millions around the globe. Further, the debate highlighted the complex relationship between climate-related risks and conflict, which intersects with political, social, economic, and demographic factors. Both the Administrator of the U.N. Development Program (“UNDP”) and representatives from the U.N. World Meteorological Organization (“WMO”) were in attendance to brief the Council on the link between climate and extreme weather.¹⁷¹ The Council invited the WMO to the 2019 debate. The WMO Chief Scientist stated that:

Climate change has a multitude of security impacts—rolling back the gains in nutrition and access to food; heightening the risk of wildfires and exacerbating air quality challenges; increasing the potential for water conflict; leading to more internal displacement and migrations . . . it is increasingly regarded as a national security threat.¹⁷²

This dialogue between the security and scientific communities represents a positive step as the Council seeks to better understand climate change’s security impacts. These efforts and similar engagement should be built upon at future Council-sponsored climate dialogues.

At this most recent debate, the Council’s youth representative specifically requested a resolution that formally recognized climate change as a threat to international peace and security.¹⁷³ This 2019 debate stopped short of the Council determining that climate change is a “threat to the peace” within the meaning of article 39.¹⁷⁴ While this specific request fell short of achieving its goal, the 2019 debate demonstrated that a steady, growing core group of Member States (seventy were in attendance) are invested in examining the complex relationship between climate change and security under the umbrella of Council leadership.¹⁷⁵

170. See *Climate Change Recognized as “Threat Multiplier,” UN Security Council Debates Its Impact on Peace*, U.N. NEWS (Jan. 25, 2019), <https://news.un.org/en/story/2019/01/1031322>.

171. The U.N. Development Program Administrator called on the Security Council to “recognize the science and empirical evidence, leverage all possible measure that can slow global warming, and invest in climate adaptation and risk reduction for the millions of people already suffering from the effects of climate change.” *Id.*

172. *Id.* (quoting Professor Pavel Kabat, Chief Scientist, UN World Meteorological Organization).

173. *Id.*

174. In 2019 concerns over governance issues remained. See *id.* (reporting that “[some] Member States believe that this is stepping on the toes of other UN entities, specifically mandated with taking a lead on social and economic development, or environmental protection”).

175. In doing so, this “climate-security core” called upon the Security Council to engage with the science and empirical evidence while building its capacity for future action. *Id.* In addition to the four open debates, the Security Council hosted several more informal “Arria-

In sum, while these four debates and more informal Council-sponsored Arria-Formula¹⁷⁶ meetings on climate are not legally binding, they provide the building blocks for a greater potential role for Council climate engagement. Whether this increased Council climate engagement portends substantive follow-on action remains to be seen. But as discussed below, climate change's existential threat to several SIDS virtually ensures that the Council will grapple with climate change in some capacity. Table B provides an overview of the core Council debates and actions on climate change.

TABLE B: KEY SECURITY COUNCIL CLIMATE CHANGE DEBATES AND RESOLUTIONS¹⁷⁷

Date	Nature	Key Takeaways
April 2007	First Open Debate	First formal Council-sponsored climate change debate. ¹⁷⁸ Russia and China expressed reluctance that the Council was the right forum.
July 2011	Second Open Debate	Initiated by Germany, Secretary General Ban Ki-Moon explicitly declares "climate change a threat to international peace and security." Presidential Statement on Climate Change Issued ¹⁷⁹
Mar. 2017	Resolution 2349	Recognized climate change's adverse impacts on the stability of the Lake Chad Basin.

Formula Meetings." See *Climate and Security, July 2020 Monthly Forecast*, SEC. COUNCIL REP. (June 30, 2020), <https://www.securitycouncilreport.org/monthly-forecast/2020-07/climate-and-security.php>. Once again, Russia and China took a stand against any substantive Security Council role in addressing climate change, while the Pacific SIDS described climate change's immediate impacts. See *id.*; *Security Challenges for Small Island Developing States, July 2015 Monthly Forecast*, SEC. COUNCIL REP. (July 1, 2015), https://www.securitycouncilreport.org/monthly-forecast/2015-07/maintenance_of_international_peace_and_security.php.

176. For a further discussion of these Arria-Formula discussions, see Camilla Born, *A Resolution for a Peaceful Climate: Opportunities for the UN Security Council*, 5 (Stockholm Int'l Peace Research Inst., Policy Brief, Jan. 2017), <https://www.sipri.org/sites/default/files/Resolution-for-peaceful-climate.pdf>.

177. This table does not include the Council-sponsored "Arria-Formula" closed debates or more informal sessions.

178. Papua New Guinea, speaking on behalf of the Pacific Small Island and Developing States, stated that "the impact of climate change on small islands was no less threatening than the dangers of guns and bombs posed to large nations." See Moztfeldt Kravik, *The Security Council and Climate Change – Too Hot to Handle?*, EJIL: TALK! (Apr. 26, 2018) <https://www.ejiltalk.org/the-security-council-and-climate-change-too-hot-to-handle/>.

179. Because of China and Russia's insistence that the Council was not the right forum for climate change, Presidential Statement was significantly watered down, merely stating that "possible adverse effects of climate change may, in the long run, aggravate certain existing threats to international peace and security." S.C. Pres. Statement 2011/15 (July 20, 2015).

		Emphasized the need for the U.N. to develop adequate risk management strategies. ¹⁸⁰
Jan. 2018	Council Pres. Statement	Climate change affecting stability across West Africa and Sahel, requiring better risk assessment and risk management strategies.
June 2018	Resolution 2423	Climate change's negative effects acknowledged in Mali's security situation.
July 2018	Third Open Debate	Nauru President declared "climate change the defining issue of the next century." Calls for an "institutional hub" for climate security matters and a Special Representative on Climate & Security; renewed focus on African food insecurity. ¹⁸¹
July 2018	Resolution 2408	Extended mandate of U. N. Mission in Somalia while recognizing "the adverse effects of climate change, ecological changes, and natural disasters . . . on the stability of Somalia." ¹⁸²
July 2018	Resolution 2429	Climate change's negative effects acknowledged in Darfur.
Jan. 2019	Fourth Open Debate ¹⁸³	Climate change recognized as a "threat multiplier" by scientists. ¹⁸⁴ Youth resolution for the Council to recognize climate change as a "threat to international peace and security" falls short.

180. S.C. Res. 2349, *supra* note 165, ¶ 26. Lake Chad has shrunk by more than ninety percent since the 1960s, impacting 45 million people. The relevant text states,

[The Security Council] recognizes the adverse effects of climate change and ecological changes among other factors on the stability of the Region, including water scarcity, drought, desertification, land degradation and food insecurity, and emphasizes the need for adequate risk assessment and risk management strategies by governments and the United Nations relating to these factors.

181. 2018 Council Debate, *supra* note 167.

182. S.C. Res. 2408, *supra* note 166. In addition, S.C. Resolution 2408 reiterated its continued concern "at the high number of refugees and internally displaced person, including persons newly displaced by the drought." *Id.* ¶ 25.

183. This meeting was initiated by the Dominican Republic, at the time a non-permanent member of the Security Council. See Stella Schaller & Benjamin Pohl, *Security Council Debates How Climate Disasters Threaten International Peace and Security*, WILSON CTR.: NEW SEC. BEAT (Feb. 4, 2019), <https://www.newsecuritybeat.org/2019/02/security-council-debates-climate-disasters-threaten-international-peace-security>.

184. See *Climate Change Recognized as "Threat Multiplier," UN Security Council Debates Its Impact on Peace*, *supra* note 170.

C. Nation Extinction: A Growing International Climate Governance Gap

How might Council climate engagement be accelerated beyond debates and forums? In what follows, I analyze possible pathways for future Council climate action. Of course, a “green swan” event such as the breaking off of the East Antarctic ice sheet or sudden polar ice cap melting—resulting in massive global sea level rise—could spur immediate Council action.¹⁸⁵ Such an apocalyptic “Climate 9/11” event could spark the Council to overcome gridlock, not unlike the Council’s sweeping action on terrorism in the aftermath of the September 11th attacks.

But regardless of a future green swan event, two forthcoming global climate report cards will continue to pressurize Council action and attention.¹⁸⁶ First, the widening emissions gap will be highlighted in the IPCC Sixth IPCC Assessment, scheduled for 2022. The Sixth Assessment is widely anticipated to paint a bleak picture of collective GHG emissions, building off its 2018 “Global Warming of 1.5 Celsius” Report that highlighted the ten-year window to massively reduce global emissions.¹⁸⁷ Second, the Paris Accord’s first comprehensive “global stocktake” is set to take place in 2023 (with a second one to follow in 2028). As of this writing, the global stocktake is anticipated to fall far short of expectations, thus ensuring a continual international spotlight on our widening emissions gap.¹⁸⁸

Climate-driven environmental deterioration will continue to display the terrifying consequences of the world’s collective failure to address our collective GHG emissions gap. The emissions gap will continue to manifest itself in a vivid and violent manner through increased violent unrest, climate-drive migration and conflict.¹⁸⁹ And as discussed below, the stakes associated with the threat of nation extinction will continue to force climate change on the Council’s agenda regardless of political preferences and Council paralysis.

185. In a recent scientific study, National Geographic reported that an ice sheet collapse in East Antarctica ice sheet (holding more than 80 percent of the Earth’s water) is much closer to collapse than previously thought. See Charlotte Hartley, *Antarctic Ice Sheet Collapse Could Add 3 Meters to Sea-Level Rise*, SCI. MAG. (Jul. 23, 2020) <https://www.sciencemag.org/news/2020/07/antarctic-ice-sheet-collapse-could-add-3-metres-sea-level-rise>. For a discussion of the black swan effect, see NASSIM TALEB, *THE BLACK SWAN* (2010). The term “green swan” pertains to an unprecedented environmental event.

186. Literature, too, can play a powerful role in raising consciousness about collective action problems. See, e.g., RACHEL CARSON, *THE SILENT SPRING* (1962) (documenting the widespread use of pesticides, helping to spark a grassroots environmental movement).

187. NCA 2018, *supra* note 2.

188. See *The Paris Agreement, Five Years Later: What Research Says About Future Directions*, ENERGY INNOVATIONS (Dec. 17, 2020), <https://energyinnovation.org/2020/12/17/the-paris-agreement-five-years-later-what-research-says-about-future-directions>.

189. See generally Campbell & Parthemore, *supra* note 7.

Climate change dramatically exacerbates sea level rise, wave-driven flooding, and extreme weather.¹⁹⁰ Indeed, scientists predict that four island nations—Kiribati, Maldives, Republic of Marshall Islands, and Tuvalu—will be uninhabitable by mid-century.¹⁹¹ Climate change will force full-scale abandonment of their homeland,¹⁹² raising the specter of imminent nation extinction.¹⁹³ Despite their small physical size, economies, and populations, SIDS have equal standing with other U.N. Member States. We must begin to address climate impacts on small island developing states *now*. Delaying action today presents climate opportunity costs as the emissions gap widens and climate impacts become more pronounced.

The island climate migrants' plight also shines a light on another international governance gap outside the Framework Convention that will grow in importance. The World Refugee Convention is silent on migrants fleeing environmental disaster. And the Framework Convention and follow-on accords do not directly provide legal protections for climate migrants fleeing environmental or imminent climate disaster.¹⁹⁴

While SIDS lack a permanent seat on the Security Council, their influence and governance voice are growing.¹⁹⁵ As a group, SIDS comprise approximately twenty percent of all U.N. members and have recently been a driving force behind the Council's climate-security debates and discussions.¹⁹⁶ SIDS and other neighboring, poor, low-lying states overwhelmingly lack the capacity to address climate impacts via traditional climate adaptation measures such as investment in climate resilient infrastructure.¹⁹⁷ For these small island nations, climate change poses an immediate, existential threat. This virtually ensures that climate–security matters will remain active in the international public discourse.¹⁹⁸

190. *See id.* at 19.

191. For a discussion of the challenges facing the Marshall Islands, see generally J. Chris Larson, *Racing the Rising Tide: Legal Options for the Marshall Islands*, 21 MICH. J. INT'L L. 495 (2000).

192. Storlazzi et al., *supra* note 9, at 1.

193. Conca et al., *supra* note 110, at 11 (highlighting that the specter of “stateless” U.N. Member States raises complex legal and political questions around sovereignty).

194. In finding a threat to international peace and security in the 1998 Kosovo crisis, the UN Security Council previously recognized that the massive flow of refugees contributed to a deteriorating security situation. S. C. Res. 1199 (Sept. 23, 1998).

195. Of the Security Council's ten non-permanent members, one seat is filled by the Asia Pacific Regional Group, Vietnam. *See Current Members | United Nations Security Council*, UNITED NATIONS, <https://www.un.org/securitycouncil/content/current-members> (last visited Mar. 5, 2021).

196. *See, e.g.*, 2018 Council Debate, *supra* note 167. The Pacific SIDS are part of the Asia-Pacific Group, comprised of fifty-three Member States in Asia and Oceania.

197. *See generally* Eric Posner & Cass Sunstein, *Climate Change Justice*, 96 GEO. L.J. 165 (2008).

198. Complicating matters, the Pacific Small Island Developing States have differed from the Caribbean Small Island Developing States in seeking Security Council action. The

Indeed, the specter of “stateless” U.N. Member States strikes at the heart of the U.N. Charter-system. The U.N. Charter upholds the principle of sovereignty and the sovereign equality of each Member nation.¹⁹⁹ The Council, in turn, plays a central, stabilizing role in upholding each nation’s sovereignty and territorial integrity. The Council’s responsibility and mandate to address all matters of international peace and security suggest that the Council cannot avoid addressing climate-driven nation extinction without paying some external cost to its own legitimacy.

While climate change’s impact on these island nations favors an equitable solution, this outcome very much remains in doubt and remains subject to the whims of “political expediency.”²⁰⁰ In the following sections, I provide more specificity on the challenges and opportunities of a new “Climate-Security Council.”

IV. A CLIMATE-SECURITY COUNCIL: CHALLENGES & OPPORTUNITIES FOR ACTION

What are the challenges facing a re-conceptualized Climate-Security Council? Skeptics of *any* Council action already recoil against its top-down, anti-democratic approach. Exacerbating matters, developing countries lack a permanent seat at the Council’s table but stand to face the brunt of climate change’s impacts.²⁰¹ But upon closer inspection, one may see an opportunity for Council climate action that is consistent with its understood mandate. If the Council can deftly navigate core legitimacy challenges and align its work with ongoing international climate efforts, it can play a substantive and important role today that is in accord with its expertise and governing mandate. Indeed, a fully engaged “Climate-Security Council” reinforces and upholds the Council’s historic role in maintaining international peace and security.²⁰² I turn to the challenges and opportunities behind any Council climate action below.

Caribbean Small Island Developing States has previously endorsed the Group of 77 (“G77”) opinion that the Council must “refrain from encroaching on the functions and powers that the Charter and tradition have placed within the purview of the General Assembly.” Conca et al., *supra* note 110, at 11.

199. U.N. Charter art. 2, ¶ 1. The United Nations is “based upon the principle of the sovereign equality of all its Members.” *Id.* ¶ 1.

200. Restatement (Third) of Foreign Relations Law § 201 cmt. A (Am. Law Inst. 1985).

201. In part because of this concern, many G77 developing nations have been reluctant to endorse any Security Council role in addressing climate change. See *Statement of Behalf of the Group of 77 and China by Ambassador John Ashe, Permanent Representative of Antigua and Barbuda to the United Nations, at the Thematic Debate of the General Assembly on “Addressing Climate Change: The United Nations and the World at Work,”* GROUP 77 (Feb. 12, 2008), <https://www.g77.org/statement/getstatement.php?id=080212>.

202. See U.N. Charter art. 24, ¶¶ 1–2.

A. *Challenge: Climate Change is Outside the Security Council's Competence and Jurisdictional Mandate*

There are six principal organs within the United Nations: the Council, ECOSOC, General Assembly, Trusteeship Council, ICJ, and a Secretariat.²⁰³ ECOSOC and the United Nations Environmental Program are the U.N. entities most heavily focused on environmental matters while the General Assembly and ECOSOC have historically shared responsibility over climate change and sustainable development goals.²⁰⁴

The Charter is silent on where, exactly, environmental matters reside. This is not at all surprising: The Charter was drafted in the wake of World War II, well before the environmental awakening and a full understanding of climate change's impacts came into focus.²⁰⁵ In turn, the 1992 UNFCCC and follow-on agreements have served as the central international legal mechanisms to address global climate change, but at some point, they overlap with the Council's authority on security matters.²⁰⁶

Any future Council action on climate must also take into account its complex seventy-five-year history. Irrespective of prospective climate action, the legitimacy of Council actions—particularly in its exercise of its Chapter VII authorities—has been a core concern since the UN Charter's inception. Developing nations within the Group of 77 have routinely criticized the Council's anti-democratic nature and its closed, static membership since 1945.²⁰⁷ Irrespective of climate change, there is wariness of the Council taking on too large a role within international governance. Indeed, an overly robust Council climate agenda that generates binding legal obligations on all Member nations risks causing a climate backlash.²⁰⁸ This shines light on historical critiques that the Council is an anti-democratic institution that is further straying from its core mandate.²⁰⁹

Complicating any legitimacy analysis, the Council is comprised of the worst climate offenders—a point routinely made by developing nations. The P5 accounts for the majority of the world's GHG emissions, undermining the Council's credibility to address climate change.²¹⁰ Any Council climate

203. *Id.* art. 7, ¶ 1.

204. *See, e.g.*, Climate Security 2009, *supra* note 8.

205. The Charter is also difficult to amend. *See* U.N. Charter art. 108.

206. Framework Convention, *supra* note 21; Climate Security 2009, *supra* note 8, para. 4. The resolution also noted the respective responsibilities of the principal U.N. organs. Climate Security 2009, *supra* note 8, para. 3.

207. Warren, *supra* note 149, at 3.

208. *See* Neil MacFarquhar, *U.N. Deadlock on Addressing Climate Shift*, N.Y. TIMES, July 20, 2011.

209. Ash Murphy, *Climate Change Is a Security Threat, So Where Is the Security Council?*, CONVERSATION (May 15, 2018), <https://theconversation.com/climate-change-is-a-security-threat-so-where-is-the-un-security-council-96658>.

210. China produces the most GHG emissions of any one nation on an annual basis and the United States is the world's largest historic emitter of GHG emissions. The United States

action is subject to the normal political constraints by the P5 and non-permanent members.²¹¹ As such, the P5 may already be institutionally disincentivized to take forward-looking climate mitigation measures that may harm their economies. But the political and institutional incentives centered around climate mitigation measures may well act as a silver lining, disentangling the Council from the Framework Convention's core mitigation efforts. This will drive the Council to focus its efforts on security matters and addressing mitigation with precise action.²¹²

The Council's slow response in addressing the ongoing COVID-19 global health crisis showcases the difficulty in rallying Council action around complex international collective action problems.²¹³ Unlike the Council's approach to the Ebola crisis, the Council has not (yet) declared the coronavirus crisis a threat to international peace and security, but it has taken the remarkable step of calling for an immediate cessation of hostilities as the world grapples with the pandemic.²¹⁴ But the COVID-19 crisis arose unexpectedly, requiring the Council to act overnight to harness a complex global response. In contrast, the climate crisis has been simmering for decades. There is an existing international governance infrastructure and scientific community already at work, laying the groundwork for action.

In sum, underlying Council legitimacy and political economy problems must be taken seriously. Any Council effort to address climate change must first proceed with due regard for the rights and economic realities of developing nations and the Framework Convention and other international climate efforts.²¹⁵ As it dips its toes into the climate waters, the Council should

has recently publicly stated that natural disasters causing widespread displacement should be within the Council's ambit. Press Release, Security Council, Addressing Security Council, Pacific Island President Calls Climate Change Defining Issue of Next Century, Calls for Special Representative on Issue, U.N. Press Release SC/13417 (July 11, 2018) [hereinafter U.N. Security Council Press Release].

211. A complete discussion of the political economy and decision-making of the Council is beyond the scope of this paper. For a fuller discussion of the constraints, restraints, and incentives of Council decision-making, see Conca et al., *supra* note 110.

212. Security Council action to assist developing nations is consistent with the core international law principle of common but differentiated responsibilities between developed and developing nations. Common but differentiated responsibilities is a core international environmental law principle as set forth in the Rio Declaration and the Framework Convention on Climate Change. See Framework Convention, *supra* note 21, art. 3(1).

213. The current U.N. Secretary General has called the coronavirus pandemic "the most challenging crisis since the [United Nations] founding." U.N., *Responding to the Socio-Economic Impacts of COVID-19 - UN Chief*, YOUTUBE (Mar. 31, 2020), <https://www.youtube.com/watch?v=etxjLz7eRU4>.

214. S.C. Res. 2532, *supra* note 140, ¶ 2; see Rick Gladstone, *U.N. Leader Describes Grave Threat, but the Security Council is Mum*, N.Y. TIMES, Apr. 5, 2020, at A5. The General Assembly has also addressed the current coronavirus crisis, adopting a resolution expressing support for a strong, unified response to the coronavirus pandemic. Yet the General Assembly lacks the broader security and enforcement mandate enjoyed by the Security Council.

215. Framework Convention, *supra* note 21, art. 3(1) ("The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of

strive to be in sync with ongoing climate efforts, playing a substantive role that is aligned with its core expertise and mandate.

B. *Opportunity: Adapting an Institutional Risk Allocation Framework for Climate Change*

The UNFCCC and its follow-on climate accords have gradually expanded their scope beyond addressing exclusively climate mitigation measures. Complex security questions—such as how the international community should address the rising number of climate migrants—have yet to be addressed by the Framework Convention or other international governing bodies. The Council alone holds that special mandate. Indeed, the landmark 2015 Paris Climate Accord is silent on climate change’s adverse effects on international peace and security, with only a brief mention of food security.²¹⁶ Further, in the unlikely event that all the Paris Climate Accord’s mitigation commitments are met, climate change will still massively disrupt international peace and security. As the emissions gap expands, the security implications will be extraordinary, particularly in the developing world. Devastating climate realities will force us to adopt a legal entrepreneurship mindset—using existing legal tools in new and innovative ways—in solving the climate security crisis.

Security matters are not within the General Assembly and ECOSOC’s mandate, and the Paris Agreement does not squarely address climate security matters.²¹⁷ Previously, the United Nations High Level Panel on Threats, Challenges, and Change found what amounts to an “implementation gap” in environmental treaties between what is written as a legal obligation and how those environmental obligations are implemented and enforced.²¹⁸ Such treaties are “undermined by inadequate implementation and enforcement by the Member States.”²¹⁹

Relying upon the Framework Convention, ECOSOC, and the General Assembly alone to provide the international legal framework to address climate change ignores stark security realities. Climate change is a “super-

equity and in accordance with their common but differentiated responsibilities and respective capabilities.”).

216. The Paris Climate Accord does state that there is a “need for an effective and progressive response to the urgent *threat* of climate change . . .” *Paris Agreement*, *supra* note 3, pmbl. (emphasis provided). Under Article 8(4), the Paris Agreement identifies areas of cooperation to include emergency preparedness, early warning, risk management and slow onset events. *Id.* art. 8(4). The Warsaw International Mechanism for Loss and Damage is the UNFCCC-mechanism to address loss and damage associated with the adverse effects of climate change. *Id.* art. 8(3).

217. Of note, the Paris Climate Accord does not address security concerns directly, referring only to the problem of climate change’s impact on food security as one of its adverse impacts and highlights the need for “an effective and progressive response to the urgent threat of climate change.” *See id.* pmbl.; *see also* Nevitt, *supra* note 105.

218. *A More Secure World*, *supra* note 106.

219. *Id.*

wicked problem” with massively destabilizing security effects.²²⁰ In the face of massively disruptive climactic change, I propose an “institutional risk allocation” approach that considers the respective competencies of all relevant international organs, including the Council.²²¹

An institutional risk allocation approach better allocates governance risk across a wide spectrum of competent international institutions and governance frameworks. As such, the Council can play a legal gap-filling role that complements the concurrent efforts of the Framework Convention and other international climate efforts. Even in the best-case scenario—the United States rejoins the Paris Accord in 2021 and global emissions begin a steady march downward—past GHG emissions stay in the atmosphere for decades, thus ensuring a steady increase in global temperatures and climate disruption. Advances in climate science and climate change’s corresponding impacts on international peace and security make clear that we must take massive action to both lower our GHG emissions and prepare for climate change’s destabilizing effects today.²²²

Of course, the Council may never be the central venue to address climate change’s multivariate impacts. But each day of delay presents enormous climate opportunity costs that must be taken into account. They will increasingly be felt by SIDS and poorer, developing nations that are most vulnerable to climate change’s effects. Irrespective of Council action, efforts must be intensified across all relevant U.N. organs.²²³ Doing so is consistent with past Council practice and the role envisioned by earlier Council efforts to adopt a broad strategy of conflict prevention.²²⁴ The Council plays the central role in the maintenance of international peace and security.²²⁵ Implicit in this mandate is upholding and protecting the sovereign equality of all Member States from all threats, however defined.

C. Principles for Council Climate Action

Prior to taking any Council action on climate, I propose three principles that the Council should follow, with a brief discussion of how this might work in practice.

220. Lazarus, *supra* note 2, at 1160.

221. The United States’ announcement that it intends to walk away from the Paris Accord showcases the danger of the over-reliance on putting all our eggs in one “climate basket.”

222. See, e.g., IPCC 1.5 REPORT, *supra* note 2; see also WALLACE-WELLS, *supra* note 71 (summarizing the leading scientific evidence governing climate change).

223. Climate Security 2009, *supra* note 8, para. 9 (1).

224. S.C. Res. 1625, *supra* note 17, pmb1.

225. U.N. Charter art. 39.

1. Work in Governance Harmony with Ongoing International Climate Efforts

First, the Council must act in “governance harmony” with an increasingly complex web of international climate efforts, scientific advances, and legal frameworks. As a legal matter, the Council does not have to take a backseat to other international agreements—the Council’s authority is preeminent—but a governance harmony approach should initially be followed to bolster the legitimacy and acceptability of Council climate action.

We already have a potential climate governance overlap between the Paris Climate Accord and the Council. For example, the Paris Climate Accord has a loss and damage provision that relates to the Council’s security mandate.²²⁶ This loss and damage provision specifies several possible areas for cooperation to include emergency preparedness, slow onset events, and community resilience.²²⁷ Yet it remains unclear how the loss and damage measures will be fully implemented and incorporated within the existing Framework Convention structure. Taking a “governance harmony” approach disfavors Council action on matters that are already being addressed by the Framework Convention, such as mandating that the Paris Accord’s provisions be followed. But harmonizing the Council with existing efforts leaves substantial room for Council action. This could include addressing particularly pernicious climate activities from climate rogue states and assisting developing nations with climate adaptation investment and aid.

The Council’s response to the Ebola health crisis may offer some insights in navigating existing governance efforts. Professors Dena Adler and Daniel Esty have analogized climate change to public health threats, arguing that a multi-tiered governance approach is required to both pandemics and climate governance.²²⁸ After all, both climate change and public health threats require coordinated, international action and goal setting. Professor Esty argues that the Framework Convention has structural shortcomings where “climate change could demonstrate the value of a new international legal architecture for the twenty-first century . . .”²²⁹ Thankfully, the Ebola crisis abated shortly after the Council acted, and a multi-tiered governance approach was not required. But one could imagine a scenario where the Council—having already declared the Ebola crisis a threat to the peace—would seek to take more prescriptive measures in response to a worldwide health epidemic.

226. *Paris Agreement*, *supra* note 3, art. 8.

227. *Id.* art. 8(4). Under the loss and damage report, “Parties recognize the importance of averting, minimizing and addressing loss and damage associated with the adverse effects of climate change, including extreme weather events and slow onset events, and the role of sustainable development in reducing the risk of loss and damage.” *Id.* art. 8(1).

228. Dena P. Adler & Daniel C. Esty, *Changing International Law for a Changing Climate*, 112 AM. J. INT’L L. UNBOUND 279, 281, 283 (2018).

229. *Id.* at 284.

2. Striking a Legitimacy Balance Between Action & Inaction

Second, any Council action must attempt to strike a “legitimacy balance” where the Council must act in accordance with both its understood area of expertise while not shirking away from its responsibilities for the maintenance of international peace and security. Critics of any prospective Council climate action will assert that the Council is overstepping its mandate, and climate change is best left to the ECOSOC and the Framework Convention. Within the Council, both Russia and China have leveled those critiques. The Council must ultimately find the right “Goldilocks” approach that walks a precarious “legitimacy tightrope” between action and inaction.

While the Council has broad authority to take action, it must act in accordance with the “Purposes and Principles of the United Nations” in discharging its duties.²³⁰ In taking proactive measures to safeguard the nations facing existential crisis, the Council is upholding the principle of sovereignty in accordance with these core U.N. Charter principles.²³¹ Under customary international law predating the U.N. Charter, states are prohibited from knowingly allowing their territory to cause harm to other states.²³² If the Council cannot save nations from the scourge of climate change, this may undermine the Council’s legitimacy in maintaining international peace and security. Climatizing the Council breathes life into the Council’s role in protecting the sovereign equality of all its members.

3. Define Climate Change’s Causes and Security Effects with Precision

Third, the Council must take the necessary steps to define both climate change’s contributing causes and impacts with precision. After all, climate change is caused by a wide variety of human activity, but some activities are particularly harmful—the creation of new coal-fired power plants and deforestation efforts in Brazil and the Democratic Republic of the Congo are two examples of egregious climate behavior. While declaring climate change a threat to international peace and security may raise international awareness, it could engender follow-on paralysis if the precise impacts are not defined with sufficient clarity and understanding. By focusing on a clear linkage between climate change and its tangible impacts, the Council could

230. U.N. Charter art. 2.

231. U.N. Charter art. 2(1).

232. See *Trail Smelter Arbitration* (U.S. v. Can.), 3 R.I.A.A. 1905, 1936 (1941). The Trail Smelter principle is reiterated in the Framework Convention on Climate Change: “States have in accordance with the Charter of the United Nations and the principle of international law. . . the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.” Framework Convention, *supra* note 21, para. 8.

fashion a more precise and actionable remedy that bolsters the credibility of the action.²³³

V. RECOMMENDATIONS FOR SECURITY COUNCIL ACTION ON CLIMATE CHANGE

In the following sections, I offer six specific recommendations for the Council to take on climate security, arguing that the Council should affirmatively determine that climate change is a threat to international peace and security under article 39.²³⁴ Doing so is aligned with earlier Council efforts to address the underlying cause of threats to international peace and security. It also reflects a mature acknowledgement that climate change destabilizes human security and unlocks the Council's awesome Chapter VII authorities. If this is politically untenable, the Council should take the initial step—similar to its COVID-19 response—to declare that climate change is *likely to* endanger international peace and security.²³⁵ At the very least, the Council must remain engaged on climate security matters.

Outside of a threat to the peace determination, there are several actions that the Council should take today. If the Council political paralysis takes over, international governmental organizations, non-governmental organizations, and climate activists alike should welcome and advocate for continual Council climate engagement to close the governance gap.

A. Recommendations for Council Climate Action Outside of a Threat to the Peace Determination

1. Synchronize Council Climate Efforts with the Framework Convention's Work

First, the Council should build upon its efforts to host high-level discussions on climate security matters that are within its zone of competence and mandate. International organizations and non-governmental organizations should push for continued Council climate engagement, and the Conference of Parties ("COP") should embrace a Council role on climate security matters. Right now, Council climate discussions occur in an ad hoc, reactive manner, and are highly dependent on who holds the Council Presidency. At a minimum, Council-led climate security discussions and forum should take

233. To be sure, in the United States and elsewhere, there is a vocal climate-denial community that dismisses human activity and anthropogenic climate change. Scholars such as Wharton's Professor Sarah Light have argued that linking climate change with national security may assist in bridging a highly partisan issue. See Sarah Light, *Valuing National Security: Climate Change, the Military, and Society*, 61 UCLA L. REV. 1772 (2014). For a similar argument, see Mark P. Nevitt, *On Environmental Law, Climate Change and National Security*, 44 HARV. ENV'T L. REV. 321 (2020).

234. U.N. Charter art. 39.

235. S.C. Res. 2532, *supra* note 140 (emphasis provided).

place in a more systematic manner. It makes sense to synchronize all climate efforts in coordination with the Framework Convention, the work of the IPCC, and broader scientific community. In a hopeful sign, the Council invited the WMO to its January 2019 climate open debate. Such science-security dialogues should be built upon.

Thankfully, the COP already meets annually in accordance with article 7 of the Framework Convention.²³⁶ Why not establish follow-on “Security-COPs” that could tap into the Council’s expertise and authority? These Security COPs should work in governance harmony with the Framework Convention.²³⁷ Doing so will facilitate information flow and allow the Framework Convention members to pose climate-security questions and issues directly to the Council. This allows the Council to be better integrated and placed within the central international climate governance process. It also alleviates concerns that the Council is encroaching on the work of other U.N. organs—a “Climate-Security COP” reaffirms the Framework Convention’s central role in international climate governance while tapping into Council expertise and authorities.

Regardless of the precise manner that future Council climate engagement unfolds, it should be open, transparent, routine, and integrated within existing governance efforts. Climate *response* measures—to include climate change’s security impacts—have yet to be fully addressed within the Framework Convention’s body of work, leaving ample space for Council action and input.²³⁸ As nations report on their emissions reductions via routine global stocktakes under the Paris Agreement, we will be better able to assess our collective progress (or failure) to keep our GHG emissions below the critical two-degree Celsius threshold. A follow-on “Security COP” would also provide enough periodicity to shine light on what nations are falling short of their commitments to reduce GHG emissions and would engage with the most recent climate science.

In sum, by remaining seized of climate change in a systematic and routine way, the Council can facilitate information sharing, bring in its own expertise, and fuse the latest national security, intelligence, and scientific expertise on climate. It would also likely build trust across governance structures. Follow on Security COPs can help inform the Council follow-on actions, setting the stage for future potential enforcement measures.

236. The next COP is scheduled for Glasgow, Scotland in 2021. “. . . ordinary sessions of the Conference of the Parties shall be held every year unless otherwise decided by the Conference of the Parties.” Framework Convention, *supra* note 21, art. 7(4).

237. Alternatively, Council climate discussions could follow the release of key IPCC climate reports. The Sixth Climate Assessment is scheduled to be released in 2022. Doing so would also eliminate the need for a second round of air travel, sending a message about the importance of reducing GHG emissions.

238. *Paris Agreement*, *supra* note 3, para. 10. The Paris Accord already references climate change’s adverse effects on food security and hunger, an issue that directly relates to the Security Council’s work.

2. The Council Should Adopt *Ex Ante*, Risk-Based Measures on Climate Security

Second, the Council should also play a greater role, *ex ante*, in addressing the role that climate change will have in future conflicts. The Council has recently demonstrated a willingness to address climate change's adverse effects within existing Council Resolutions in the context of violent conflict in both 2017 (Lake Chad Basin)²³⁹ and 2018 (Somalia).²⁴⁰ Future Council resolutions should not shy away from making similar pronouncements *ex ante*, outside of active conflict, highlighting future areas where there is a clear linkage between climate change and security matters (e.g. food and water security).²⁴¹ In taking such *ex ante* measures, the Council could play an important, early-warning role in addressing climate-related conflict prevention by coordinating climate security concerns across U.N. organs. This could potentially include the development of an early climate warning system or the formal development and incorporation of climate change into United Nations planning and strategy.²⁴²

The Security Council should also build upon its earlier efforts to squarely address climate change's impacts in Council resolutions and reports. Climate change has been briefly referenced in Council resolutions since 2017. But a single, climate change-focused resolution would elevate climate change on the international agenda and highlight the widespread connection between conflict and climate change. This is aligned with the Council's historic role in taking action to prevent conflicts and a renewed recognition of the need to address the root cause of armed conflict.²⁴³

Relatedly, the Council should establish an early warning information-sharing "clearinghouse" system or institutional home to assist the U.N. in responding to climate crisis.²⁴⁴ Such a system could help identify the emergent "climate hotspots," facilitating the U.N.'s ability to deliver aid and resources rapidly. Council action could be further expanded, for example, to address the unique climate security challenges outside of "hot" conflict zones, such as the climate impacts felt by small island nations. The Council could invest in better risk assessment tools, resources, information sharing, and strategies. Why not adopt a proactive, risk-based approach, rather than waiting for disaster and conflict to strike?

239. S.C. Res. 2349, *supra* note 37, ¶ 26.

240. S.C. Res. 2408, *supra* note 166, pmbl.

241. For a similar argument, see Kravik, *supra* note 178.

242. Conca et al., *supra* note 15, at 11.

243. S.C. Res. 1625, *supra* note 17, pmbl.

244. Karl Mathiesen & Natalie Sauer, *UN Security Council Members Mount New Push to Address Climate Threat*, CLIMATE HOME NEWS (Jan. 25, 2019), <https://www.climatechangenews.com/2019/01/25/un-security-council-members-mount-new-push-address-climate-threat>.

Of course, a proactive Council on climate change requires political will. But doing so acknowledges the existing scientific evidence that ties climate change to deteriorating security situations. The Council should work with leading IPCC, climate scientists and the proposed “Security COPs” to highlight climate change’s security implications and move resources to future climate hotspots.²⁴⁵

3. Employ the Council’s Chapter VI Investigatory Authorities

Third, the Council should turn to its Chapter VI investigatory powers to investigate climate change’s impacts on developing nations, to include the four atoll nations facing imminent climate danger. Under Chapter VI, the Council can investigate *any situation* that may endanger the maintenance of peace and security.²⁴⁶ For example, the Council could investigate and apply resources to the SIDS climate crisis, address the scope and scale of food security hotspots, or changing, climate-driven migration patterns. In exercising its investigatory authority, the Council could work with other international institutions in developing options for the citizens of these atoll nations.

As it relates to the small island crisis, I envision two ways that this comes before the Council. First, under article 99, the U.N. Secretary General “may bring to the Security Council any matter which in his opinion may threaten the maintenance of international peace and security.”²⁴⁷ Alternatively, under article 35, any Member nation can bring any dispute to the Council (or General Assembly) “which might lead to international friction or give rise to a dispute.”²⁴⁸ This provides the legal pathway for the plight of these island nations to be formally placed before the Council.²⁴⁹

Consider a realistic scenario that draws upon the Council’s article VI investigatory authorities. Under article 35, the Republic of the Marshall Islands requests that the Council investigate climate change’s impacts on the loss of its territory and other core habitability-related concerns.²⁵⁰ The Council decides to investigate the scope and scale of the crisis, turning to

245. For example, the Office of the Director of National Intelligence issued a report acknowledging the global human security challenge posed by climate change. *See, e.g.*, COATS, *supra* note 29, at 21–23.

246. U.N. Charter art. 34 (emphasis added).

247. U.N. Charter art. 99.

248. U.N. Charter art. 35 (referencing art. 34).

249. *See* U.N. Charter art. 35. Recall that in the Security Council’s response to the Ebola crisis, the Presidents of Liberia, Sierra Leone and Guinea requested that the UN Secretary General take action to coordinate and respond to the Ebola outbreak. S.C. Res. 2177, *supra* note 129, para. 9. In September 2011, Palau and the Republic of the Marshall Islands announced plans to seek an advisory opinion from the International Court of Justice to determine “whether state have obligations under international law to ensure activities in their territory do not harm other states.” Davies & Riddell, *supra* note 18, at 69–70.

250. U.N. Charter art. 35, ¶ 1.

the world's leading climate scientists, policymakers, academics, and others with expertise in addressing climate impacts at developing nations. This science-based investigation would be Council-led but could collaborate with IPCC scientists, other international governance entities, and academic institutions. The Council may take a page from the Ebola playbook to call on Member nations to assist the most vulnerable island nations in adapting to climate change. This could take many forms—the Council could call on Member nations to offer aid and assistance, accept vulnerable populations into their own population, or even ask the worse climate offenders to carve out territory for these new climate migrants.²⁵¹

Alternatively, the Council could investigate the extent of dangerous climate activities that have a particular devastating impact on peace and security. Brazilian President Bolsonaro's failure to enforce environmental regulations is one likely candidate, although there are many others. The investigation's conclusions would highlight the scope of the climate destruction and provide the impetus for follow-on enforcement action.

At the Chapter VI investigation's conclusion, the Council could recommend concrete steps that Member nations should take to assist the Marshall Islands.²⁵² For example, the Council could call on nations to assist the Marshall Islands financially or through the provision of scientific or technical expertise. Nevertheless, such action could raise awareness of the plight of atoll nations and, more importantly, serve as a building block for future action.²⁵³ The Council's earlier response to the Ebola crisis may serve as a helpful playbook, as it called upon Member nations to assist in aid and support to vulnerable nations suffering the worst consequences of the outbreak.

Chapter VI's soft law approach works hand in glove with Chapter VII's powerful and legally binding tools that are always at the Council's disposal. Indeed, merely keeping alive the possibility a Council article 39 determination may serve as a prod for international action—a successful strategy in other contexts.²⁵⁴ As discussed below, making a threat to the peace determination would highlight climate change's threat to the international community and would be aligned with prior Council efforts to address non-traditional, underlying threats to international peace and security.

251. This idea was proposed by Professor Michael Gerrard of Columbia Law School's Sabin Climate Center. See Michael Gerrard, *America is the Worst Polluter in the History of the World. We Should Let Climate Change Refugees Resettle Here.*, WASH. POST (June 25, 2015), https://www.washingtonpost.com/opinions/america-is-the-worst-polluter-in-the-history-of-the-world-we-should-let-climate-change-refugees-resettle-here/2015/06/25/28a55238-1a9c-11e5-ab92-c75ae6ab94b5_story.html.

252. Some scholars have intimated in other contexts that Chapter VI measures can be binding. See, e.g., Rosalyn Higgins, *The Advisory Opinion on Namibia: Which UN Resolutions Are Binding Under Article 25 of the Charter?*, 21 INT'L & COMP. L.Q. 270, 275 (1972).

253. See CAMILLA BORN, A RESOLUTION FOR A PEACEFUL CLIMATE: OPPORTUNITIES FOR THE UN SECURITY COUNCIL (Jan. 2017).

254. See Benjamin Ewing & Douglas A. Kysar, *Prods and Pleas: Limited Government in an Era of Unlimited Harm*, 121 YALE L.J. 350, 373 (2011).

B. *Recommendations for Council Climate Action Via an Article 39 Threat to the Peace Determination*

In what follows, I argue that the Council should declare climate change a threat to international peace and security, squarely elevating climate change and its security impacts before the Council and setting the stage for broader Chapter VII enforcement action.

1. *Affirmatively Declare Climate Change a Threat to International Peace & Security Under Article 39*

In light of the overwhelming science and dire predictions of our destabilized climate century, the Council should formally declare climate change a threat to international peace and security.²⁵⁵ In the event of Council paralysis, Small Island Developing States, developing nations, and international activists should advocate that the Council make an explicit article 39 threat to the peace determination. Doing so acknowledges the state of the current science and likely future security impacts, setting the stage for follow-on enforcement action under Chapter VII.

Indeed, the Council could simply declare climate change a threat to international peace and security under article 39 without activating its follow-on authorities. Certainly, there is rhetorical value in this, as it places climate change squarely on the Council's agenda. And doing so is not without precedent—the Council declared the Ebola health crisis a threat to international peace and security in 2014 without fully flexing its Chapter VII authorities.²⁵⁶ This elevates the issue to the broader international community, provides an opportunity to “test the legitimacy waters” and set the stage for follow-on action.

How might an article 39 determination come about? Ideally, climate change would be brought to the Council's attention via a formal process such as a small island nation formally seeking Council action. This request could help alleviate legitimacy concerns that the Council is exceeding its mandate. Despite current political challenges and intransigence, the Council remains a powerful, agenda-setting venue with tremendous delegated legal authorities. Any issue before the Council gains immediate international exposure. So even the Council's non-binding resolutions, debates, and proclamations may serve as a prod for action.²⁵⁷

Alternatively, the Council could work with ongoing Framework Convention efforts in adopting a “name and shame” approach for states that engage in particularly harmful climate activities. This has already occurred in the environmental security context: The Council condemnation of Iraq's en-

255. U.N. Charter art. 39.

256. See *supra* Part III.A.

257. See Ewing & Douglas, *supra* note 254, at 373.

vironmental destruction is but one notable example.²⁵⁸ Once an article 39 determination is made, what explicit Chapter VII actions should follow? I turn to that below.

2. Article 40: Taking “Such Provisional Measures”

Article 40, U.N. Charter, authorizes the Council to “call upon the parties concerned to comply with such provisional measure as it deems necessary or desirable.”²⁵⁹ Historically, the Council has relied upon article 40 authorities when calling on Member States to withdraw armed forces, cease hostilities, and observe ceasefires.²⁶⁰ In the climate change context, the Council could use article 40 to urge states to accept climate migrants, assist developing nations in adaptation efforts, or stop the destruction of GHG sinks and reservoirs—such as Brazil’s decimation of the Amazon rainforest. Once again, these are non-binding, soft compliance measures. While its applicability to climate change remains untested, the Council has used article 40 as a compliance tool prior to imposing sanctions or using force.²⁶¹ It also sets the stage for article 41 economic sanctions or diplomatic measures against climate rogue states, individuals, or corporations.

3. Article 41: Carefully Constructed Economic Sanctions Against “Climate Rogue Actors”²⁶²

In conjunction with the proposed follow-on “Security COPs,” the Council should take action under article 41 under its “partial disruptions of economic relations” provision.²⁶³ Doing so could target states that are flagrantly violating their climate change legal obligations in a manner that recklessly increases the threat to international peace and security. The framework of what activities amount to a “reckless disregard” of climate change should be the subject of an aforementioned Security COP.²⁶⁴ Ideally, the proposed Security COP or Chapter VI investigation into climate-wrongdoing should help inform the decision-making process. This could include the banning of particularly pernicious goods that contribute to global warming or the sanctioning of nations that fail to provide adequate climate oversight.

258. S.C. Res. 687, ¶ 16 (Apr. 3, 1991).

259. U.N. Charter art. 40.

260. Warren, *supra* note 149, at 10.

261. *Id.*

262. I borrow this term from Professor Craig Martin and his work on “atmospheric intervention.” Martin, *supra* note 10, at 334.

263. U.N. Charter art. 41.

264. At least one commentator has proposed a five-prong analytical framework for determining when the Application of Article 41 is appropriate and legal. Knight, *supra* note 110, at 1571–84.

Saudi Aramco, for example, is the world's largest oil and gas producer and has contributed more GHG emissions than any one corporation over the past fifty years.²⁶⁵ Unlike other investor-backed oil companies—such as the privately-held Exxon and Chevron—the nation of Saudi Arabia owns Aramco. Saudi Arabia, a member of the United Nations, has aggressively underwritten Aramco's fossil fuel extraction with devastating consequences for developing nations. The Council could investigate Saudi Arabia's domestic climate change laws and policies to inquire whether Saudi Arabia is encouraging destructive climate activities to the detriment of international peace and security. Following this investigation, the Council could consider instituting targeted economic sanctions against Saudi Arabia to better reflect the climate harm caused by Aramco's massive carbon release.²⁶⁶

Article 41—or the threat of its invocation—could once again serve as a powerful tool to address climate change by employing targeted sanctions to punish particularly destructive climate actions by nations. This coercive authority, of course, must be employed carefully. It is beyond the scope of this paper to comprehensively address the normative implications of economic sanctions, but studies suggest that they often harm the most vulnerable citizens and run into enforcement challenges.²⁶⁷ Short of an article 41 determination, the Council could use its position to condemn nations engaging in particularly egregious behavior, such as Brazilian President Bolsonaro's destruction of the Amazon basin in Brazil.

Alternatively, the Council could use its platform to shine a light on corporations that operate with little international scrutiny and engage in particularly harmful climate activities. Some commentators have suggested that such an approach could prod states toward compliance.²⁶⁸

To be clear, I do not support the Council specifically using its authorities to enforce the Paris Agreement's provisions at this time. For one, the 2015 Paris Agreement is a process-oriented, bottom-up agreement, a marked contrast from the more hierarchical 1997 Kyoto Protocol that faced

265. According to the Climate Accountability Initiative, Aramco has produced 4.38 percent of worldwide GHG emissions from 1965-2017. Matthew & Jonathan Watts, *Revealed: The 20 Firms Behind a Third of All Carbon Emissions*, GUARDIAN (Oct. 19, 2019).

266. Council action could also include targeted sanctions imposed against individuals and private entities; this occurred in both the terrorism context and against individuals associated with Iran's nuclear program. S.C. Res. 1737, ¶ 4 (December 23, 2006) (imposing targeted sanction on individuals associated with Iran's nuclear program). To be sure, there is no shortage of states, corporations, and entities that are engaging in harmful climate behavior. I highlight Saudi Aramco based on its aggregate GHG emissions, weak Saudi environmental laws, and its unique nature as a state-owned corporation.

267. See, e.g., Devon Whittle, *The Limits of Legality and the United Nations Security Council: Applying the Extra-Legal Measures Model to Chapter VII Action*, 26 EUR. J. INT'L L. 671, 695 (2015).

268. See Christina Voigt, *Security in a "Warming World": Competencies of the U.N. Security Council for Preventing Climate Change*, in SECURITY: A MULTIDISCIPLINARY NORMATIVE APPROACH 297, 310 (Cecilia M. Baillet ed., 2009).

immediate resistance, leading to its failure. The Paris Accord relies upon voluntary nationally determined contributions that ratchet up over time.²⁶⁹ Independent Council action that seeks to enforce pre-existing Paris Accord climate mitigation commitments would exceed the legal commitments agreed to by the Paris parties. While Council action offers an appealing and expeditious venue on climate action, it must walk a “legitimacy tightrope” that considers other climate efforts.²⁷⁰

In sum, by making an explicit article 39 determination, the Council is setting the stage for future action under Chapter VII. It is also aligned with underlying security concerns and is accord with precedent in addressing non-traditional security threats. In responding to the Ebola crisis, the Council made an explicit article 39 determination. The Council’s role on climate can expand or contract to match developments in climate science and the corresponding international action (or inaction) to reduce global GHG emissions.

C. Chapter VII Actions that the Council Should Not Employ at This Time

Let’s consider what actions may be considered by the Council in the not-too-distant future but should be treated with immense caution. To be clear, I am not advocating that the Council take any military action to address climate change, nor do I envision this as a particularly fruitful or helpful path soon.

1. A Robust Climate-Legislative Council

The Council may consider taking legislative action, akin to earlier Council action on terrorism and combatting the spread of weapons of mass destruction.²⁷¹ The Council’s 2001 resolution, for example, ordered states to take specific actions to counter the threat of terrorism.

While legislative action on climate may look appealing, it would be enormously controversial and strike at the core of the Council’s legal legitimacy. The 2001 and 2004 Resolutions remain controversial with some scholars arguing that the Council was acting *ultra vires*.²⁷² Imagine a scenario where the Council acted requiring nations to pass legislative action to implement the Paris Accord’s emissions targets. This option may be consid-

269. *Paris Agreement*, *supra* note 3, art. 4(2) (“Each Party shall prepare, communicate and maintain successive nationally determined contributions that it intends to achieve.”).

270. *See* Bodansky, *supra* note 14, at 606.

271. *See* discussion, *infra* Part III.A.

272. *See, e.g.*, Daniel Joyner, *Non-Proliferation and the United Nations System: Resolution 1540 and the Limits of the Power of the Security Council*, 20 LEIDEN J. INT’L L. 489, 490 (2007); *see also* Paul C. Szasz, *The Security Council Starts Legislating*, 96 AM. J. INT’L L. 901 (2002) (describing the debate about the Council’s legislative authority under international law).

ered if the forthcoming 2023 “stocktake” falls far short of commitments. Such an action would be open to criticism that the Council is exceeding the scope of the Paris Agreement and that such action is not sufficiently related to the maintenance of peace and security. Action outside the Paris Agreement—such as requiring nations to accept climate migrants from the most vulnerable nations fleeing environmental crisis—may be perceived as more legitimate because it is in response to a widening gap in international law. Moreover, climate migration has a more direct linkage to the maintenance of peace and security. Still, the Council could stop short of transforming into a robust Climate-Legislative Council absent a greater acceptance of the Council’s role in addressing climate change.

2. Article 42: Military Measures

It is only when article 41 measures are inadequate to meet the threat, that Council may use its article 42 military authorities. Here, the Council possesses the authority to use “air, sea, or land forces as may be necessary to maintain or restore international peace and security.” In a crisis, the Council could turn to this authority to provide humanitarian assistance or evacuate displaced persons from their homeland.

This authority could be employed to encompass military-assisted humanitarian assistance missions to protect citizens vulnerable to climate change when their own government fails to act or is incapable of protecting its citizens.²⁷³ But just as the Responsibility to Protect (“R2P”) doctrine remains enormously controversial, so too will any expansion of Responsibility to Protect that specifically takes into account climactic conditions.²⁷⁴ Yet it is difficult to imagine a situation requiring such a dramatic step in the foreseeable future. Besides being politically difficult, this would open a “legitimacy Pandora’s box” that would be difficult to close.²⁷⁵ Underlying concerns about the “militarization” and “securitization” of climate change would be rekindled, distracting from the climate crisis at hand.²⁷⁶ Using article 42 authorities to address climate change is simply too blunt an instrument that is fraught with too many legitimacy concerns at this time. Howev-

273. See U.N. Charter art. 42.

274. It is beyond the scope of this article to provide a thorough discussion of the Responsibility to Protect Doctrine as applied to climate change, but for a thorough discussion of Responsibility to Protect (“R2P”), its embrace by the human rights community, and its evolution from Kosovo to present, see SAMANTHA POWER, *EDUCATION OF AN IDEALIST* (2019); see also Martin, *supra* note 10, at 398 (discussing humanitarian intervention in the event of “atmospheric intervention”).

275. The military also releases an enormous amount of GHG emissions. See NETA C. CRAWFORD, *PENTAGON FUEL USE, CLIMATE CHANGE, AND THE COSTS OF WAR*, 2 (Brown Univ. Watson Inst. Int’l & Pub. Affs. Costs of War Project ed., 2019) (highlighting that the U.S. military alone ranks as the fifty-fifth largest emitter of GHG, larger than many European nations).

276. Critics of Security Council action on climate change date back until at least 1991. See Tinker, *supra* note 90, at 790.

er, the mere potential for Chapter VII action could serve as a prod for international action, akin to common law nuisance lawsuits that have served as a prod for environmental action within the United States.²⁷⁷

In sum, Council climate action should proceed in a principled manner in accordance with the governing principles outlined in Part IV. As a forum to address climate change, the Council has several structural advantages that allow for expedient action, if necessary. If the gap continues to widen between climate change's threat to international peace and security and international action, the Council's authorities and competencies will likely look attractive. In the table C below, I highlight various options for prospective Council action on climate change.

TABLE C: POTENTIAL UN SECURITY COUNCIL CLIMATE ACTIONS

Action ²⁷⁸	Charter-Based Legal Authority?	Legitimacy Concern? ²⁷⁹
Follow-On Security Council Conference of Parties (COPs)	Article 24	Low
Integration of Climate Security Matters into Security Council Resolutions	Article 24 and 34	Low
Implement Ex Ante, Risked-Based Climate Measures ²⁸⁰	Article 24	Low-Medium
Formal Council Investigation on	Chapter VI,	Medium ²⁸¹

277. Cf. Ewing & Douglas, *supra* note 254, at 373; see also Mark P. Nevitt & Robert V. Percival, *Could Official Climate Denial Revive the Common Law as a Regulatory Backstop?*, 96 WASH. U. L. REV. 441, 441 (2019).

278. I use the term "action" here but also note that there is likely a legitimacy concern for UNSC *inaction* based upon its Article 24 authorities.

279. For the legitimacy concern, I use a five-part ranking (Low, Medium-Low, Medium, Medium-High, and High). I base my ranking by looking to any record of past practice on the specific UNSC action, public pronouncements from both UNSC Members and non-Members on the UNSC action, and underlying principles of international law. The actual legitimacy concern will depend heavily on the precise nature of the Council's action.

280. Ideally, the development of this early warning system and risk analysis would be integrated into the Paris Accord's Warsaw International Mechanism on Loss and Damage, which may include early warning systems, emergency preparedness, slow onset events, events that may involve irreversible and permanent loss and damage, comprehensive risk assessment and management, climate risk insurance facilities, non-economic losses, and resilience of communities, livelihoods, and ecosystems. *Paris Agreement*, *supra* note 3, art. 8(4)(a)–(h). The Pacific Island President from Nauru requested the Appointment of a "Special Representative of the Security General on Climate & Security" in Dec. 2018 in order to fill a "critical gap in the United Nations system and provide the Council with the information it needs." U.N. Security Council Press Release, *supra* note 210.

281. This may depend, in part, on the impetus for the investigation and its subject matter.

Threats Posed by Climate Change	Article 34	
Declare Climate Change a “Threat to the Peace” under Article 39 ²⁸²	Article 39	Medium
Article 40 “Provisional Measures”	Article 40	Medium ²⁸³
Imposition of Targeted Economic Sanctions	Article 41	Medium-High
Climate-Legislative Council	Article 24, 48(1)	High
Responsibility to Protect (R2P) on Climate Change – Use of Military Force	Article 42	Extraordinarily High

VI. CONCLUSION

This “climate-security century” will increasingly demand bold and innovative legal solutions.²⁸⁴ We will need to think boldly about all the legal, policy, and technological tools at our disposal to address climate change’s multifaceted international peace and security challenges.²⁸⁵ Due to current political realities, the Council may not take immediate, legally binding action on climate change today. But it can no longer ignore advances in climate science that show a clear linkage between human-caused climate change and threats to peace and security. A logical first step is to simply acknowledge what the science demonstrates: climate change is a threat to international peace and security, similar to pronouncements on terrorism, weapons of mass destruction and Ebola.

The Council is the international forum to address security matters—fully averting its eyes to non-traditional security threats such as climate change is an abdication of its responsibility that it exercises on behalf of all 193 Member nations. As such, the Council must play a measured role that walks a “legitimacy tightrope,” balancing its authority while ensuring that it does not stray from its governing security mandate. As a scientific and policy matter, we already know that climate change threatens international peace and security; whether the Security Council remains seized of the mat-

282. This could also entail declaring a specific climate impact a threat to the peace. I assess this action to be medium based upon historical practice (for example the Ebola determination that the disease is a threat to the peace).

283. The legitimacy of this action depends heavily upon the nature and scope of these measures.

284. See generally Lazarus, *supra* note 2.

285. Mark Nevitt, *Military Planning for the Climate Century*, JUST SEC. (Oct. 19, 2017), <https://www.justsecurity.org/46109/planning-climate-century-u-s-worlds-militaries>. (discussing the creation of a new expert governmental entity as a direct way for Congress to ensure that certain interests are given due weight during agency implementation of climate change legislation).

ter and makes a similar legal determination with follow-on actions remains to be seen. The Security Council has demonstrated its capacity tackle non-traditional security threats to include terrorism and global health epidemics.²⁸⁶ This suggests a greater potential role for the Council on matters of climate security. Indeed, the UN Charter already places a special trust and responsibility in the Security Council for the maintenance of international peace and security — regardless of its source.

Yet re-conceptualizing climate change as a security issue worthy of Council attention and action will not be without controversy: Any potential Security Council action must walk a fine “legitimacy tightrope” that balances its inherent, delegated authority with its understood mandate. Straying too far from its mandate could prove disastrous. Yet ignoring climate change’s security costs and threat to individual state’s existence comes with its own legitimacy costs.

Climate change remains a “super-wicked problem” regardless of what legal approach is followed. It will result in mass migration, starvation, pandemics and cascading levels of armed conflict. The rise in armed conflict will require Council engagement and is squarely within the Council’s legal mandate to address. Why not take proactive steps today to ameliorate future human suffering and conflict?

The Security Council has powerful and unique delegated authorities to restore peace and security on behalf of all other Member nations. We are running out of time to take international climate action. In doing so, the Security Council can fulfill a gap-filling role, plugging an ever-widening climate-security hole. Traditional international environmental laws are proving to be increasingly inadequate in substance (lacking a security mandate) and implementation (free-riding and enforcement of existing provisions). After all, addressing matters that undermine international peace and security are the ultimate responsibility of the Security Council. After all, the earth continues to warm regardless of how we address (or fail to address) climate change.

286. S.C. Res. 2177, *supra* note 129, para. 9.

