

RUSSIAN COLLECTIVE SECURITY IN THE GULF:
THE AFFIRMATIVE OBLIGATION TO
CONSTRUCTIVELY ENGAGE

BY WALTER BONNÉ*

I.	INTRODUCTION	154
II.	BACKGROUND: THE GULF CONFLICT AND THE U.N. SECURITY COUNCIL	158
	A. <i>Sectarian Beginnings</i>	158
	B. <i>The Conflict Today</i>	160
	C. <i>The History of the U.N. Security Council and FDR's Vision</i>	163
	D. <i>Global Response to Russia's Collective Security Concept</i>	166
III.	VIOLATIONS UNDER INTERNATIONAL LAW	168
	A. <i>The Security Council's Affirmative Obligations Under International Law</i>	168
	B. <i>Legal Exposure of Individual Member States Within the Security Council</i>	170
	C. <i>Other Obligations Under International Law: "R2P" and Ergo Omnes Obligations</i>	171
	D. <i>U.S. Lack of Accountability in International Law</i>	177
IV.	PROPOSAL: MEDIATION AND MULTILATERALISM	179
	A. <i>Historical Precedent</i>	183
	B. <i>Regional Geopolitical Implications</i>	185
	C. <i>Global Geopolitical Implications</i>	187
	D. <i>Regional Objectors</i>	190
V.	LEGAL TOOLS	192
	A. <i>Domestic Law</i>	192
	1. <i>Promotion of International Development</i>	192

* J.D. Candidate, New York University School of Law, 2022; B.A., 2015, University of Maryland, College Park. I am grateful to Professor Stephen Holmes for his guidance and support throughout the writing process, and for imparting his unique insight into national security law. I would also like to thank Professor Mattias Kumm for his critical feedback. I am also grateful to the editors of the NYU Journal of International Law & Politics for their thoughtful comments and edits. Lastly, I am deeply appreciative to my friends and family for their unwavering support.

2. <i>Economic Sanctions</i>	196
3. <i>Arms Sales</i>	199
B. <i>International Law</i>	202
1. <i>UN Resolutions</i>	202
2. <i>Human Rights Law</i>	203
VI. CONCLUSION: THE TIMING IS RIPE	204

In 2019, tensions in the Persian Gulf reached a breaking point when Iranian missiles attacked and destroyed two key, state-owned oil facilities in Saudi Arabia. However, confrontation between the two Middle Eastern powers, often referred to as the ‘Middle East Cold War,’ is not new. The two regional powers have engaged in proxy wars throughout the twenty-first century, creating upheaval, instability, and devastation across the Middle East and Africa. In response to these escalated tensions, Russia recently proposed the “Collective Security Concept for the Persian Gulf Region,” a multilateral system comprised of interested stakeholders tasked with creating a security architecture that de-escalates the Persian Gulf for the foreseeable future. The proposal received overwhelming support from the Security Council, with an exception from the United States, who categorically rejected the Collective Security Concept in favor of increased pressure on Iran.

This Note contends that the United States, in unequivocally rejecting the proposal without any form of critical engagement, both (1) violated international law; and (2) reached a historically significant low point in the global order, antithetical to the role that President Franklin Roosevelt envisioned the United States to represent in the post-war collective security architecture. Consistent with international and domestic law, this Note recommends that the Biden Administration, in its triumphant return to multilateralism, engage with the Russian proposal, in order to create a lasting collective security regime built on principles of cooperation, peace, and diplomacy.

I. INTRODUCTION

In July 2019, Russia sent a letter to the UN Secretary-General outlining its proposal for a “Collective Security Concept for the Persian Gulf Region” (the Concept).¹ The proposal primarily focused on the de-escalation of the conflict between Iran and Saudi Arabia through a neutral “Organization for Security and Cooperation in the Persian Gulf,” comprised of regional states and interested observers such as Russia, China,

1. Permanent Rep. of the Russian Fed’n to U.N., Letter dated July 26, 2019 from the Permanent Rep. of the Russian Federation to the United Nations addressed to the Secretary-General, U.N. Doc. A/73/971-S/2019/604 (Aug. 5, 2019).

the United States, the European Union, and India.² In October 2020, Russia presented its proposal at the U.N. Security Council's "Maintenance of International Peace and Security: Comprehensive Review of the Situation in the Persian Gulf."³ During the debate, every member of the Security Council expressed support for a collective security regime,⁴ except the United States. Instead, U.S. Ambassador Kelly Craft dismissed any idea of collective security and used the allotted time to blame the conflict entirely on Iran.⁵

The current conflict between Iran and Saudi Arabia has had devastating consequences throughout the world.⁶ Namely, the conflict's escalation has manifested in proxy wars throughout the Middle East and Africa,⁷ now referred to as the "the

2. *Comprehensive Review of the Situation in the Gulf Region*, SEC. COUNCIL REP. (Sep. 30, 2020), <https://www.securitycouncilreport.org/monthly-forecast/2020-10/comprehensive-review-of-the-situation-in-the-gulf-region.php>. For details on Russia's full proposal, see *Russia's Security Concept for the Gulf Area*, EMBASSY OF THE RUSSIAN FED'N IN THE REPUBLIC OF S. AFR. (July 29, 2019), <https://perma.cc/A9KH-FKCB> [hereinafter *Russia Security Concept*].

3. Permanent Rep. of the Russian Fed'n to the U.N., Letter dated Oct. 14, 2020 from the Permanent Rep. of the Russian Federation to the United Nations addressed to the Secretary-General, U.N. Doc. S/2020/1013 (Oct. 15, 2020), <https://undocs.org/S/2020/1013>.

4. Press Release, Security Council, Concerned about Lasting Conflicts, Terrorism, Sectarian Tensions Plaguing Persian Gulf, Speakers in Security Council Stress Need for Coherent Approach to Collective Security, U.N. Press Release SC/14333 (Oct. 20, 2020), <https://perma.cc/U7EG-M6TR> [hereinafter *Security Council Press Release*].

5. See Ambassador Kelly Craft, Permanent Rep. of U.S. to the U.N., Remarks at a UN Security Council High-Level Debate on a Comprehensive Review of the Situation in the Persian Gulf Region (Oct. 20, 2020), <https://perma.cc/P2DV-FNSJ> ("I understand that my Russian colleagues have proposed creating a Persian Gulf Security construct to promote stability in the region. Respectfully, I think the solution is much easier: this Council must simply muster the courage to hold Iran accountable to its existing international obligations."); *Russia Calls for Collective Security in the Persian Gulf, US Blames Iran*, BUS. STANDARD (Oct. 21, 2020), <https://perma.cc/2YF8-N526> ("U.S. Ambassador Kelly Craft, meanwhile, dismissed any idea of collective security for the Gulf, touting instead the Trump administration's new approach to the Middle East.").

6. See Ross Harrison, *Too Big to Fail: The Iran-Saudi Relationship*, MIDDLE E. INST. (Jan. 19, 2016), <https://perma.cc/9ELJ-UEK6> (predicting the "catastrophic effects that could come from continued hostility between Iran and Saudi Arabia.").

7. See INTERNATIONAL CRISIS GROUP, MIDDLE E. REP. NO. 212, THE MIDDLE EAST BETWEEN COLLECTIVE SECURITY AND COLLECTIVE BREAKDOWN, at i

Middle East Cold War.”⁸ The United States, the only country in the Security Council to disavow the Collective Security Concept,⁹ elected a position antithetical to the role that President Franklin Delano Roosevelt (FDR) envisioned the United States would play in a post-World War II, collective security regime.¹⁰ While many hoped that the new administration under President Biden would immediately reverse course on the previous administration’s “America First” agenda, in order to engage with Russia’s Concept, the Biden Administration’s position is not clear, especially considering the likely continued deterioration of U.S.-Russian relations under President Biden.¹¹

(Apr. 27, 2020), <https://perma.cc/NL24-3T46> (discussing proxy battles in Syria, Yemen, Iraq, and Lebanon); Robert Malley, *What Happens in the Gulf Doesn't Stay in the Gulf*, THE ATLANTIC (June 7, 2018), <https://perma.cc/U677-XCAZ> (“A year after the Qatar crisis began, it’s having potentially dangerous reverberations in the Horn of Africa.”).

8. F. GREGORY GAUSE, III, BROOKINGS DOHA CTR., *BEYOND SECTARIANISM: THE NEW MIDDLE EAST COLD WAR I* (2014), <https://perma.cc/4CQD-S9YD> (“The best framework for understanding the regional politics of the Middle East is as a cold war in which Iran and Saudi Arabia play the leading roles.”).

9. See *Security Council Press Release*, *supra* note 4 (providing statements from member states regarding the prospect of a collective security regimes in the Persian Gulf, including the US disavowal of such a regime); BUS. STANDARD, *supra* note 5 (summarizing the representatives’ positions supporting a collaborative approach and the U.S.’s opposition to that approach).

10. See *War!: Planning for Peace Abroad*, FRANKLIN D. ROOSEVELT PRESIDENTIAL LIBR. & MUSEUM, <https://perma.cc/XGF3-FCUW> (last visited Oct. 10, 2021) (“His vision combined elements of idealism and realism. Roosevelt imagined an organization of nations dedicated to equality and mutual security. But its backbone would be the “Four Policemen” – The United States, Great Britain, Soviet Union, and China – who would enforce the peace through a Security Council.”); Mary-Lea Cox, *Freedom from Fear*, CARNEGIE COUNCIL FOR ETHICS IN INT’L AFFS. (Sept. 28, 2005), <https://perma.cc/4G7S-NUHZ> (“For FDR, who had experienced two world wars, freedom from fear meant a worldwide reduction of armaments and the building of a collective security mechanism. Collective Security, along with human rights and economic cooperation, was one of the three great pillars on which FDR based his concept of the postwar world order – elements that found their way into the United Nations charter, taking concrete expression in global and regional institutions that remain with us today.”).

11. See Abdel Aziz Aluwaisheg, *Russia’s Proposal for Gulf Security Faces New Hurdles*, ALARABIYA NEWS (Jan. 4, 2021), <https://perma.cc/X9X7-AKJK> (“The US makes no secret of its opposition to Russia’s stance on Gulf security, but that opposition may be even more pronounced during a Joe Biden presidency.”); Anton Troianovski, *Russia Erupts in Fury Over Biden’s Calling Putin a Killer*, N.Y. TIMES (May 25, 2021), <https://perma.cc/MV8Y-HR3X>

This note makes several arguments. First, it contends that the United States, in being the only Security Council nation to outright reject Russia's proposal for a collective security regime aimed at resolving the Tehran/Riyadh conflict, is both 1) in violation of its affirmative obligations under international law as one of the five permanent members (P5) of the Security Council, and 2) has led to a historically significant low point in the postwar collective security order, inapposite to the role FDR envisioned for the United States. Second, it contends that the Biden Administration has a chance to remedy this wrong by constructively engaging with Russia's Concept (or other likeminded proposals) and by working with the Security Council to initiate a Collective Security Concept aimed at de-escalating the conflict between Tehran and Riyadh. Finally, given the reduced domestic appetite for American involvement in international conflicts,¹² this note explores tools the United States may utilize under both international and domestic law to further de-escalate the conflict through multilateral diplomacy and mediation. Through de-escalation, the United States would help create a lasting collective security regime that negates the need for future U.S. intervention.

This note is composed of six sections. Section II provides a brief history of the Iranian/Saudi conflict, from sectarian beginnings to the current geopolitical contest for power. It also provides a brief history of the U.N. Security Council and the role that FDR originally imagined for it. It then compares the international community's response to Russia's Concept with that of the lone American position. Section III argues that the United States violated its affirmative obligations under international law, both as a member of the Security Council and the general international community. Section IV presents a recommendation to the Biden Administration: that the United States, instead of taking sides in the conflict through a maxi-

(noting that President Biden's combative stance punctured some analysts' hopes of a productive working relationship).

12. See Judah Grunstein, *Why Restraint is Winning Over More of the U.S. Foreign Policy Establishment*, *WORLD POL. REV.* (Sept. 4, 2019), <https://perma.cc/4HZW-U6Z4> (discussing how decades of failed U.S. wars led to the foreign policy establishment preferring restraint over interventionism); A. Trevor Thrall, *Americans Prefer Foreign Policy of Restraint Over Interventionism*, *CATO INST.* (June 12, 2016), <https://perma.cc/HL67-U2ZH> (discussing the U.S. public's foreign policy preference for restraint over interventionism).

imum pressure campaign against Iran, should act as a neutral arbiter through mediation, multilateral diplomacy, and institution-building. It provides both positive and negative historical precedent to support this proposition, along with other geopolitical and national security implications. Section V then presents and discusses various international and domestic legal tools that can be used to implement a workable collective security regime. Section VI concludes with a final warning that stresses the temporal urgency of such a plan, based on the current state of domestic politics and foreign affairs.

II. BACKGROUND: THE GULF CONFLICT AND THE U.N. SECURITY COUNCIL

A. *Sectarian Beginnings*

While today's conflict between Iran and Saudi Arabia most closely resembles a contest for influence and a balance of power struggle,¹³ the rivalry has historically been grounded in sectarian conflict.¹⁴ In 632 CE, after the death of the Prophet Muhammad, a schism emerged between two groups, the Shiite, who believed that Muhammad's cousin and son-in-law should be successor, and the Sunni, who believed that the new leader should be chosen by consensus.¹⁵ The Saudi State, a Sunni-Wahhabi regime founded in 1744 through the marriage of two royal families, has always pursued an anti-Shia agenda.¹⁶ In contrast, since the sixteenth century, Iran has been a

13. See GAUSE, *supra* note 8, at 1, 6 (arguing that labeling the conflict as "Sunni versus Shia" is overly simplistic, in actuality, "Riyadh and Tehran are playing a balance of power game"); Hussein Agha & Robert Malley, *The Middle East's Great Divide is Not Sectarianism*, NEW YORKER (Mar. 11, 2019), <https://perma.cc/DWZ7-LJRT> ("Past and present tensions between the two main branches of Islam inarguably play a part in the region's dynamics. But the vast majority of recent violence that has brought desolation and ruin to large parts of the Middle East has little to do with those strains.").

14. Suzanne Maloney & Bruce Riedel, *The Origins of the Saudi-Iranian Battle for the Broader Middle East*, in THE IRANIAN REVOLUTION AT FORTY 156, 157 (Suzanne Maloney ed., 2020) (discussing the roots of the Saudi-Iranian rivalry, based on the Wahhabi ideology of the Saudi state that rejects Shia jurisprudence).

15. See generally *What's the Difference Between Sunni and Shia*, ARAB WORLD MEDIA (Aug. 8, 2018), <https://perma.cc/7DJW-3K3R>; John Harney, *How Do Sunni and Shia Islam Differ?*, N.Y. TIMES (Jan. 3, 2016), <https://perma.cc/6GCV-7CHT>.

16. Maloney & Riedel, *supra* note 14, at 157–58.

predominantly Shia state.¹⁷ Since eighty-seven to ninety percent of the Muslim world are Sunni,¹⁸ Shia Muslims often represent a persecuted minority throughout the Middle East.¹⁹ Prior to the Islamic Revolution, Iran and Saudi Arabia had friendly relations and were considered the “twin pillars” of regional order.²⁰ However, this relationship was short-lived. Following the Islamic Revolution of 1979 and the ouster of the secular, pro-western Pahlavi regime, Iran has been accused of exporting its version of religious, Shiite-brand politics to Shiite minorities across the Middle East.²¹ Saudi Arabia, home to the Islamic holy site of Mecca, stands opposite. Saudi Arabia sees itself as the leader of the Sunni Islamic world, in constant conflict with the largest Shia state.²²

Of course, describing the conflict in harshly sectarian terms is over-simplistic.²³ Both states, in attempting to secure their regional influence, have crossed sectarian lines in order

17. *Id.* at 158.

18. *See id.* at 157 (“As the self-proclaimed leader of the Sunni world, which includes approximately 87-90 percent of Muslims, Saudi Arabia condemns the largest Shia state, Iran, as polytheist.”).

19. *See* Jeffrey Feltman, *Hezbollah: Revolutionary Iran’s Most Successful Export*, in *THE IRANIAN REVOLUTION AT FORTY* 143, 153 (Suzanne Maloney ed., 2020) (“The utter neglect, for decades, of Lebanon’s Shia population by the Sunni-Maronite elite and the Shia feudal families . . . prepared the land for the seeds Iran then planted and nurtured.”); Simon Mabon & Edward Wastnidge, *Saudi Arabia, Iran: Resilient Rivalries and Pragmatic Possibilities*, SEPAD: SECTARIANISM, PROXIES & DE-SECTARIANISATION (June 23, 2020), <https://perma.cc/M4KW-BEQW> (“A key component of the nascent Islamic Republic’s foreign policy was to provide support to the ‘downtrodden’ of the Muslim world – the spirit of the *Battle of Karbala* – enshrined in Article 3.16 of the Iranian Constitution.”).

20. Iulia Oprea, *Saudi-Iranian Cold War: Stirring Up Sectarian Hostilities*, *MEDITERRANEAN AFFS.* (Nov. 17, 2016), <https://perma.cc/ZMX3-77M9>.

21. *See* Mabon & Wastnidge, *supra* note 19 (noting the new Islamic Republic’s policy of support for the “downtrodden” of the Muslim world “was quickly put into practice with support for groups across the Middle East, notably Hizballah, and the Islamic Front for the Liberation of Bahrain”).

22. Maloney & Riedel, *supra* note 14, at 157 (“As the self-proclaimed leader of the Sunni world . . . Saudi Arabia condemns the largest Shia state, Iran.”).

23. GAUSE, *supra* note 8, at 1, 6 (arguing that labeling the conflict as “Sunni versus Shia” is overly simplistic, in actuality, “Riyadh and Tehran are playing a balance of power game”).

to procure allies.²⁴ In fact, Shia and Sunni Muslims have lived together peacefully for more years than they have fought.²⁵ The conflict is better described as a regional contest of power.²⁶ Both countries exploit sectarian tensions in order to increase their sphere of influence over the greater Middle East.²⁷ For example, during the Iran-Iraq war in the 1980s, Saudi Arabia provided financial support to Saddam Hussein's invasion of Iran.²⁸ While the royal Saudi monarchy and Saddam's Socialist Ba'ath Party seemed unlikely friends, the alliance can be rationalized through the lens of the historic religious divide: Saddam and his Sunni denominated party violently suppressed the Iraqi Shiite majority that Iran sought to galvanize.²⁹ In 1981, Saudi Arabia, along with Bahrain, Qatar, UAE, Kuwait, and Oman, formed the Gulf Cooperation Council (GCC). This organization was meant to promote regional security but was in practice used as a weapon against the perceived Iranian threat.³⁰

B. *The Conflict Today*

In 2019, the conflict saw its most direct escalation to date when Iran, using its own military forces, attacked two key oil installations within Saudi Arabia's borders.³¹ But the Iran/Saudi rivalry, often considered one of the biggest threats to collective security in the Middle East,³² has primarily mani-

24. *See id.* at 6 (noting examples such as Iran developing relationships with Hamas, Islamic Jihad, and the patriotic Union of Kurdistan).

25. *Id.* at 5.

26. *See id.* at 6 ("Riyadh and Tehran are playing a balance of power game. They are using sectarianism in that game, yet their motivations are not centuries-long religious disputes but a simple contest for regional influence.").

27. *See Oprea, supra* note 20 ("Sectarian relations are not the cause but the weapon used to mobilize Muslims under the umbrella of Saudi or Iranian leadership.").

28. BRYAN R. GIBSON, *COVERT RELATIONSHIP: AMERICAN FOREIGN POLICY, INTELLIGENCE, AND THE IRAN-IRAQ WAR, 1980-1988*, at 72 (2010) ("Iraq had received a total of \$14 billion from Saudi Arabia . . . from 1980-1982.").

29. It was fear of Shiite revolution that convinced Saudi Arabia to participate in Iraq's invasion of Iran. *See Oprea, supra* note 20.

30. *Id.*

31. Ben Hubbard, Palko Karasz & Stanley Reed, *Two Major Saudi Oil Installations Hit by Drone Strike, and U.S. Blames Iran*, N.Y. TIMES (Sept. 14, 2019), <https://perma.cc/6VNP-E5NY>.

32. *See Harrison, supra* note 6 (advising that an "all-hands-on-deck approach" to repairing relations should be taken because "[t]he Iran-Saudi re-

fested over the years as proxy wars.³³ The origins of today's modern conflict developed during the Arab Spring of 2011 when populations across the Arab world organized different forms of protests, revolutions, and rebellions against oppressive regimes.³⁴ Iran and Saudi Arabia both provided financial and military support to movements friendly to their regional interests.³⁵ In one of the most violent civil wars of the twenty-first century, Iran funded Bashar al-Assad's regime in Syria, while the Saudis backed Sunni Jihadist militants, many linked to al-Qaeda.³⁶ The Civil War in Syria, perhaps the most grotesque example of the Saudi/Iranian proxy battlefield, has amassed over 400,000 deaths, gross violations of humanitarian law with the use of chemical weapons against civilian populations, a refugee and humanitarian crisis, and the forced involvement of many global, non-regional powers.³⁷ The proxy battle also appeared in Yemen's civil war, which has resulted in over 233,000 deaths³⁸ and at least 20 million Yemeni civilians experiencing food and water insecurity.³⁹ The civil war in Yemen reflects the balance of power struggles between Riyadh and Tehran, where the Iranian-backed Shiite Houthis violently seized control of the country, and Saudi Arabia responded

lationship is too big to fail, and failure is not an option for the Middle East primarily and the global community at large").

33. See INTERNATIONAL CRISIS GROUP, *supra* note 7, at i (discussing proxy wars in Syria, Yemen, Iraq, and Lebanon).

34. See Oprea, *supra* note 20 (pointing to the Arab Spring in 2011, along with the 9/11 attacks and the invasion of Iraq in 2003, as destabilizing three major regional actors, Iraq, Syria and Egypt and creating a power void that Iran, Saudi Arabia and Turkey rushed to fill).

35. See *id.* ("It's not a secret that the two states compete for influence in the region, their interests clashing in Syria, Iraq, Bahrain and Yemen.").

36. *Id.*

37. See *Note to Correspondents: Transcript of Press Stakeout by United Nations Special Envoy for Syria, Mr. Staffan de Mistura*, UNITED NATIONS (Apr. 22, 2016), <https://perma.cc/8F4X-TJYB> (U.N. Special Envoy for Syria predicting that the number of deaths in Syria has reached 400,000); *Global Conflict Tracker: Civil War in Syria*, COUNCIL ON FOREIGN RELS. (last visited Apr. 15, 2021), <https://perma.cc/D5BZ-Y7QH> (estimating 5.6 million Syrian refugees and 6.2 million internally displaced people in Syria and further discussing use of chemical weapons and foreign interference).

38. *UN Humanitarian Office Puts Yemen War Dead at 233,000, Mostly from Indirect Causes*, UN NEWS (Dec. 1, 2020), <https://perma.cc/5YUF-FPJF>.

39. *Yemen: Events of 2019*, HUM. RTS. WATCH (2019), <https://perma.cc/AKH2-J5GV>.

with a vicious bombing campaign.⁴⁰ In Yemen, Iran and Saudi Arabia have directly committed egregious human rights violations by funding Yemeni forces and employing their own military forces to indiscriminately slaughter Yemeni civilians.⁴¹

Iran and Saudi Arabia also fund various sectarian divides in Bahrain, Lebanon, and Iraq, causing political upheaval.⁴² Beyond the Middle East, both states funded revolutions in Egypt, Libya, Sudan, and Somalia.⁴³ The conflict has also extended beyond States. Saudi Arabia has weaponized the Organization of the Petroleum Exporting Countries (OPEC) against Iran, significantly harming the stability of global commodity markets.⁴⁴ Saudi Arabia even rendered the Organization of Islamic Cooperation (OIC), the second largest interna-

40. See Oprea, *supra* note 20 (“Iranian and Saudi foreign policy clashes in Yemen, where Saudi Arabia fight against the Houthis (Shiite), who took control of the country in 2015, allegedly supported by Iran.”).

41. See Dr. Majid Rafizadeh, *Iran’s Human Rights Abuses on the Increase*, ARAB NEWS (Mar. 28, 2021), <https://perma.cc/R2CS-EF9Y> (“For example, in addition to launching rockets into other countries such as Saudi Arabia, the Iran-backed Houthis in Yemen have been using landmines, which are causing civilian deaths and injuries.”); *Yemen: Events of 2020*, HUM. RTS. WATCH (2020), <https://perma.cc/AKH2-J5GV> (“In 2020, Saudi-led coalition forces conducted airstrikes that indiscriminately killed and injured civilians.”).

42. See Max Fisher, *How the Iranian-Saudi Proxy Struggle Tore Apart the Middle East*, N.Y. TIMES (Nov. 19, 2016), <https://perma.cc/LZG2-KB9Y> (discussing how Iran and Saudi Arabia exploited Lebanon’s frail democracy recovering from civil war by “waging a new kind of proxy struggle,” discussing Iran and Saudi Arabia exploitation of the political vacuum left open in Iraq after the American-led invasion, and discussing how “[a]fter pro-democracy protesters rose up in Bahrain, a Saudi ally whose Sunni king rules over a majority Shiite population, Saudi Arabia sent 1,200 troops”).

43. See *id.* (discussing political interference and funding in Egypt and Libya); Malley, *supra* note 7 (“What happens in the Gulf is increasingly having destabilizing and dangerous effects elsewhere. Nowhere is this more apparent than in Somalia.”); Jean-Baptiste Gallopin, *The Great Game of the UAE and Saudi Arabia in Sudan*, in 40 POMEPS STUDIES, AFRICA AND THE MIDDLE EAST: BEYOND THE DIVIDES 25, 25–28 (2020), <https://perma.cc/M4GH-35V3> (discussing how Sudan has recently left Iran’s axis for Saudi Arabia and UAE’s sphere of influence after Saudi Arabia financially supported Sudan’s military).

44. See Samuele F. Vasapollo, *Saudi Arabia and Iran: De-Escalating the Gulf 11–12* (July 2020) (unpublished manuscript) (on file with author) (discussing how OPEC could have been used to ease a rapprochement between Saudi Arabia and Iran, but instead, it “transformed into its most powerful country’s threatening apparatus, creating the premise for what we might quite rightly call ‘The OPEC’s missed opportunity’”).

tional body after the United Nations, a tool in its cold war conflict.⁴⁵

The struggle between Iran and Saudi Arabia has engulfed actors across the globe, reminiscent of the Cold War between the United States and Russia in the second half of the twentieth century.⁴⁶ The international order, only seventy-five years separated from the all-out conflict encompassing WWII, faces an analogous, impending threat to global collective security.

C. *The History of the U.N. Security Council and FDR's Vision*

The United Nations was founded in 1945. The drafters of the U.N. Charter, in the preamble, stated that the organization's purpose was to "save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind."⁴⁷ Broadly speaking, the "world security organ" that eventually turned into the United Nations was FDR's brainchild, one that he pursued both relentlessly and obsessively.⁴⁸ FDR "dreamed of going down in history as the president who had succeeded where Woodrow Wilson failed in making the United States the great bastion" of a collective security system.⁴⁹ He specifically advocated for the U.N. Conference on International Organization (the San Francisco Conference) to take place in San Francisco, in order to emphasize "the feeling of American responsibility" towards a global, collective security regime.⁵⁰

45. See Ildus G. Ilishev, *The Iran-Saudi Arabia Conflict and its Impact on the Organization of Islamic Cooperation*, WILSON CTR. (June 2016), <https://perma.cc/B3HH-W4VK> (discussing how the OIC is no longer observing a policy of neutrality, but instead favors Saudi Arabia in opposition of Iran).

46. GAUSE, *supra* note 8, at 1 ("The best framework for understanding the regional politics of the Middle East is as a cold war in which Iran and Saudi Arabia play the leading roles.")

47. U.N. Charter pmbl.

48. Stephen Schlesinger, *FDR's Five Policemen: Creating the United Nations*, 11 *WORLD POL'Y J.* 88, 88 (1994) ("His primary interest, among all the global entities he envisaged, was a world security organ—namely, the United Nations. Though not evident in news reports of the time, FDR's attention to constructing a United Nations was a relentless and almost obsessive desire behind the scenes.")

49. Anne O'Hare McCormick, *His 'Unfinished Business' And Ours*, N.Y. *TIMES* (Apr. 22, 1945), <https://perma.cc/ATJ9-HR49>.

50. *Id.*

The principal tool for the enforcement of FDR's collective security regime would be the U.N. Security Council, whose primary responsibility, according to the U.N. Charter, is "maintenance of international peace and security."⁵¹ The Security Council consists of fifteen members, ten elected and non-permanent members, and five permanent members.⁵² The Security Council has been subject to criticism, mainly due to the P5's veto function,⁵³ and the fact that this function allowed the United States and the Soviet Union to stymie global collective security efforts during the Cold War.⁵⁴ Namely, the United States pursued an interventionist policy of "Containment" during the Cold War to curb the expansion of the USSR's influence, and the spread of Communism globally.⁵⁵ Even though U.S. leaders subjectively believed they were pursuing a collective security agenda,⁵⁶ U.S. interventionism during this era, in conjunction with Security Council ineffectiveness, has been heavily criticized for destabilizing various regions across the globe.⁵⁷

51. U.N. Charter art. 24, ¶ 1.

52. *Id.* art. 23, ¶ 1.

53. *See, e.g.*, Meetings Coverage, UN General Assembly, Member States Call for Removing Veto Power, Expanding Security Council to Include New Permanent Seats, as General Assembly Debates Reform Plans for 15-Member Organ, U.N. Meetings Coverage GA/12091 (Nov. 20, 2018), <https://perma.cc/SW6G-GKNB> ("Many called for . . . abolishing the permanent membership's use of veto power to overrule the adoption of draft resolutions.").

54. *UN Security Council Working Methods: The Veto*, SEC. COUNCIL REP., (Dec. 16, 2020), <https://perma.cc/2KBU-LDDD> ("In the early years, the USSR cast most of the vetoes . . . Since 1970, the US has used the veto far more than any other permanent member . . .").

55. Office of the Historian, *Kennan and Containment, 1947*, U.S. DEP'T STATE, <https://perma.cc/W4ZK-FMDN> (last visited Oct. 26, 2021) (explaining that Containment, formulated by George Kennan, was a "long-term, patient but firm and vigilant containment of Russian expansive tendencies").

56. *See id.* ("To that end, he called for countering 'Soviet pressure against the free institutions of the Western world' through the 'adroit and vigilant application of counter-force at a series of constantly shifting geographical and political points corresponding to the shifts and maneuvers of Soviet policy.'").

57. *See, e.g.*, Tiffany Kwok & Wu Xiao, *Perspectives on U.S. Intervention in Latin American Affairs Through History*, NATO ASSOC. CAN. (May 31, 2019), <https://perma.cc/CFN5-2PLU> (discussing U.S. intervention in Guatemala which resulted in four decades of instability and civil war and U.S. intervention and its unwarranted consequences in Chile, Argentina, and Panama).

After the Cold War, the Security Council and U.N. activism saw greater success. With the exception of the genocides in Bosnia and Rwanda,⁵⁸ the United Nations and its Security Council oversaw a decline in the amount of wars, genocides, and human rights abuses.⁵⁹ According to the Human Security Report of 2005, the most compelling explanation for this decline is the “unprecedented upsurge of international activism, spearheaded by the UN, which took place in the wake of the Cold War.”⁶⁰ For example, the U.N. Security Council effectively collaborated to pass resolutions and take subsequent action during the 1990 Iraqi invasion of Kuwait⁶¹ and the 2011 civil war in Libya.⁶²

Unfortunately, this progress does not seem likely to continue. The United States’ contemporary, categorical rejection of the Gulf Collective Security Concept, in favor of a maxi-

58. See Michael N. Barnett, *The UN Security Council, Indifference, and Genocide in Rwanda*, 12 *CULTURAL ANTHROPOLOGY* 551 (1977) (discussing the UN Security Council’s failure in stopping the Rwanda Genocide); Sheila Zulfiqar Ahmad, *The UN’s Role in the Bosnian Crisis: A Critique*, 51 *PAK. HORIZON* 83 (1998) (focusing “on areas where the UN utterly failed and analyzing the causes responsible for those failures” in the Bosnian crisis).

59. *Human Security Report Project*, STAN. U. LIBRS., <https://perma.cc/ZX6S-89LG> (last visited Oct. 26, 2021) (“The first *Human Security Report* documents a dramatic, but largely unknown, decline in the number of wars, genocides and human rights abuse over the past decade.”).

60. *Id.*

61. S.C. Res. 660, ¶ 2 (Aug. 2, 1990) (calling for the unconditional withdrawal of all Iraqi forces from Kuwait); S.C. Res. 678, ¶ 2 (Nov. 29, 1990) (authorizing the “use of all necessary means” to implement resolution 660 and to otherwise “restore international peace and security in the area.”); see also George N. Grammas, *Multilateral Responses to the Iraqi Invasion of Kuwait: Economic Sanctions and Emerging Proliferation Controls*, 15 *MD. J. INT’L L.* 1, 5 (1991) (discussing how the U.N. Security Council “adopted twelve resolutions concerning the Iraqi invasion of Kuwait” and concluding that “the Iraqi invasion of Kuwait has set a precedent for world-wide cooperation in imposing economic sanctions through the United Nations”). After U.N. intervention, Iraqi forces withdrew from Kuwait and accepted the terms of a U.N. resolution ending the conflict. See *This Day in History: August 2: Iraq Invades Kuwait*, HISTORY (Nov. 24, 2009), <https://perma.cc/UBL6-5B3X>.

62. S.C. Res. 1973 (Mar. 17, 2011) (authorizing military intervention in Libya); see *NATO and Libya*, NATO (Nov. 9, 2015), <https://perma.cc/5VJJ-ATWK> (discussing how a NATO-led coalition, in response to the United Nation’s call to the international community to protect the Libyan people, “began enforcing an arms embargo, maintaining a no-fly zone and protecting civilians and civilian populated areas from attack or the threat of attack in Libya under Operation Unified Protector.”).

imum pressure campaign against Iran, risks returning the Security Council, and the United States' role in the international order, back to its previous Cold War era low point—a position antithetical to the one envisioned by FDR at the inception of the United Nations.

D. *Global Response to Russia's Collective Security Concept*

For the most part, each P5 member state has signaled its intent to explore ways to bring about a peaceful resolution to the Gulf conflict.⁶³ China, which has historically endorsed a non-interventionist approach within the P5,⁶⁴ welcomed Russia's plan.⁶⁵ And while the motives of Russia and China may appear inconsistent, U.S. allies like India,⁶⁶ Germany, France, and the United Kingdom,⁶⁷ regional allies like Iraq, and global institutions such as the European Union, all expressed an interest in exploring either Russia's plan or other similar versions of a multilateral, collective peace process.⁶⁸ There have

63. See, e.g., *Security Council Press Release*, *supra* note 4 (outlining positions taken by the P5 powers and other member states on the idea of a collective security regime in the Persian Gulf).

64. Xue Lei, *China as a Permanent Member of the United Nations Security Council*, in *UN SECURITY COUNCIL IN FOCUS* (Friedrich Ebert Stiftung ed., 2014), <https://perma.cc/226F-T6RH> (“China has demonstrated a certain level of policy consistency in its adherence to the guiding principles in the Council, in particular respect for national sovereignty and the non-interference principle.”).

65. *China Welcomes Russian Concept of Collective Security in Persian Gulf*, TASS RUSSIAN NEWS AGENCY (July 25, 2019), <https://perma.cc/4QVM-BXGV>.

66. *India Seriously Considering Russia's Security Concept for Persian Gulf Envoy to UN*, BRICS INFO. PORTAL (Oct. 1, 2020), <https://perma.cc/6E87-29MA>.

67. BUS. STANDARD, *supra* note 5 (“U.S. allies Britain, France and Germany all supported confidence building measures in the Gulf . . .”).

68. See, e.g., *Security Council Press Release*, *supra* note 4 (noting that a senior Iraqi foreign official “called for realistic and pragmatic approach towards stability, highlighting the need to address a lack of dialogue and mutual accusations and the importance of fostering understanding that all Gulf countries are co-located in one geographic region and that security of one country guarantees security of all.”); INTERNATIONAL CRISIS GROUP, *supra* note 7, at 13–14 (“In an extraordinary EU Foreign Affairs Council meeting responding to the spike in U.S.-Iran violence in Iraq, convened on 10 January 2020, EU Foreign ministers gave the EU’s high representative for foreign affairs and security policy, Josep Borrell, a mandate to ‘carry out diplomatic efforts with all parties in order to help secure a de-escalation of tensions in the

even been signals from the conflict's central agitators—Iran and Saudi Arabia—indicating a willingness to explore multilateral peace negotiations in front of a collective and neutral mediation body.⁶⁹ For instance, in 2019, Iran proposed the Hormuz Peace Endeavor Initiative (HOPE), which outlined a collective security regime in which regional actors would prioritize de-escalation through commitments to peace under international law.⁷⁰

So far, the United States has been the sole international actor to publicly reject the collective security Concept. The United States has categorically condemned Iran and vowed to increase pressure on the Islamic State, despite ample evidence that ongoing pressure hurts the Iranian people without reducing the Iranian government's appetite for conflict.⁷¹ This has been true even when Saudi Arabia's foreign and internal policies do not align with core U.S. values, such as the preservation of human rights, freedom of the press, and minority's rights.⁷² The United States' vocal rejection of the Concept, as the lone

region, to support political dialogue and to promote a political regional solution.”).

69. See Jackie Northam, *Saudi Arabia Sought Dialogue With Iran. Then The U.S.-Iranian Conflict Escalated*, NPR (Jan. 9, 2020), <https://perma.cc/HAB9-B6SR>; Ahmadinejad: *Resolving Iran, Saudi Arabia's Issues Would Be a Lasting Favor to the Region, World*, ASHARQ AL-AWSAT (Nov. 13, 2020), <https://perma.cc/2EWD-2LX3>; Philip H. Gordon, *The Next Administration Needs a Plan for De-escalation in the Gulf*, FOREIGN POL'Y (Oct. 22, 2020), <https://perma.cc/C48G-CG2L> (discussing existing incentives that Iran and Saudi Arabia have to pursue peace).

70. Permanent Rep. of Islamic Republic of Iran to the U.N., Letter dated Dec. 9, 2019 from the Permanent Rep. of the Islamic Republic of Iran to the United Nations addressed to the Secretary-General, U.N. Doc. A/74/581-S/2019/933 (Dec. 10, 2019), <https://perma.cc/TU3S-HUEE>.

71. See Tara Sepehri Far, “Maximum Pressure”: *US Economic Sanctions Harm Iranians' Right to Health*, HUM. RTS. WATCH (Oct. 29, 2019), <https://perma.cc/LX8Y-N6V6> (focusing on the impact of sanctions on Iranian healthcare); Marcin Krzyzanowski, *Will the “Maximum Pressure” Campaign Force Iran to Negotiate with the US?*, WARSAW INST. REV. (Oct. 29, 2020), <https://perma.cc/3LZ3-4982> (discussing how American economic pressure on Iran has failed to translate into strategic achievements but has instead had the opposite effect by making “the Iranian position more rigid and strengthened the radical wing of the Iranian political scene”).

72. See *Saudi Arabia, Events of 2019*, HUM. RTS. WATCH (2019), <https://perma.cc/ay72-ggr3> (discussing Saudi Arabia's dismal treatment of dissidents, human rights activists, journalists, and Saudi Arabia's military campaign in Yemen).

P5 member state to do so,⁷³ has violated its affirmative obligations under international law, exposing the United States to legal accountability and geopolitical isolation in the global theater.⁷⁴

III. VIOLATIONS UNDER INTERNATIONAL LAW

A. *The Security Council's Affirmative Obligations Under International Law*

The United States, in completely disavowing Russia's security Concept without any form of constructive engagement has violated its affirmative obligations under international law, as a member of the P5. When the U.N. drafters first created the Security Council, "the Charter of the United Nations provided the most powerful States with permanent membership on the Security Council . . ." but, "[i]n exchange, they were expected to use their power for the common good and promote and obey international law."⁷⁵

While a minority of historical scholars have argued that the Security Council has unlimited powers, the majority view is that the Security Council, established by treaty, is subject to certain legal limitations.⁷⁶ Article 24(2) of the U.N. Charter specifically states "[i]n discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations."⁷⁷ The Security Council's compulsory consent to follow international law is not only stated in the U.N. Charter,⁷⁸ but has been identified by multiple legal bodies, such as the International Criminal Tribunal for the

73. See *Security Council Press Release*, *supra* note 4 (citing the United States position that "Iran fuelled much of the region's conflict" and its desire for "unified approach by the Council," rather than a collective security regime); BUS. STANDARD, *supra* note 5 (discussing support from other P5 members for "confidence building measures" and a "platform for multilateral dialogue").

74. See *infra* Part III.

75. Chairman of the U.N. High-Level Panel on Threats, Challenges and Change, *A More Secure World: Our Shared Responsibility*, U.N. Doc. A/59/565, at 13 (Dec 1, 2004).

76. Daniel Moeckli & Raffael N. Fasel, *A Duty to Give Reasons in the Security Council*, 14 INT'L ORGS. L. REV. 13, 25 (2017).

77. U.N. Charter art. 24, ¶ 2.

78. Agreeing to "act in accordance with the Purposes and Principles of the United Nations" indicates compulsory consent to follow international law. See *id.*

former Yugoslavia (ICTY), which held that “neither the text nor the spirit of the Charter conceives of the Security Council as *legibus solutus* (unbound by law).”⁷⁹ Given the Security Council’s legal obligation to act on matters of “international peace and security,”⁸⁰ some legal scholars currently argue that a decision not to act may constitute a violation of international law.⁸¹ Not only are Security Council members subject to legal limitations according to international law and the U.N. Charter, but a failure to act may also constitute a violation of international law.⁸²

Under international human rights law, the positive obligation to prevent particularly atrocious human rights violations has been interpreted to require security council states “to exercise due diligence” in response to particularly egregious human rights violations.⁸³ When translating that obligation from states to the Security Council, the Security Council could be held responsible “for a failure to conduct itself adequately, independent of any causality for the result.”⁸⁴ It follows that the Security Council’s legal obligation is not to resolve all matters of international peace and security, but instead—given the historical backdrop of the U.N. Security Council’s inception—resolve matters that can foreseeably culminate to a WWII level threat.⁸⁵ Furthermore, the Security Council also

79. *Prosecutor v. Tadic*, Case No. IT-94-1-I, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, ¶ 28 (Int’l Crim. Trib. for the Former Yugoslavia Oct 2, 1995).

80. U.N. Charter art. 24, ¶ 1.

81. See, e.g., Anne Peters, *Ch. V The Security Council, Functions and Powers, Article 24*, in 1 *THE CHARTER OF THE UNITED NATIONS: A COMMENTARY* 761, 773 (Bruno Simma et al. eds., 3d ed. 2012) (“The question is whether—in extreme cases such as these—the Council might be under a legal obligation to take a (specific) decision, with the consequence that its passivity would be illegal, and would trigger the international legal responsibility (in the sense of liability, on the second level of law) of the United Nations.”).

82. *Id.* (“A legal obligation to act, incumbent on the Council, is especially plausible in the context of human rights violations, taking into account that these are, under the practice of the Council, apt to constitute threats to the peace.”).

83. *Id.* at 774.

84. *Id.*

85. See *Maintain International Peace and Security*, UNITED NATIONS, <https://perma.cc/EJ8Q-KZ62> (last visited Oct. 10, 2021) (“The United Nations was created in 1945, following the devastation of the Second World War, with one central mission: the maintenance of international peace and security.”).

has a “legal obligation of conduct which can be violated by the Council’s complete passivity or its obviously inadequate reaction in the face of massive atrocity.”⁸⁶

In the face of continued human rights violations committed by Iran and Saudi Arabia,⁸⁷ in conjunction with the sheer number of proxy conflicts constituting significant threats to global peace and security at levels reminiscent of a world war,⁸⁸ it can be argued that, at the very least, the Security Council has a duty to “exercise due diligence,” in response to Russia’s Collective Security Concept.⁸⁹

B. *Legal Exposure of Individual Member States Within the Security Council*

Under the conclusion that Security Council member states have affirmative legal obligations, it follows that a failure to meet these affirmative obligations could result in legal exposure for each individual member state. Article 24 of the U.N. Charter states that “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.”⁹⁰ This text has been interpreted to mean that the Security Council is a trustee and the states are a principal of the Council, therefore the “predominant accountability-holder in the case of the Security Council . . . [is] each and

86. Peters, *supra* note 81, at 775.

87. See, e.g., Rafizadeh, *supra* note 41 (“Meanwhile, Iran’s militia groups in Iraq, Syria and Yemen are following their paymaster’s example when it comes to committing egregious human rights violations.”); Yemen, *Events of 2020*, HUM. RTS. WATCH (2020), <https://perma.cc/AR2A-CYG7> (“In 2020, Saudi-led coalition forces conducted airstrikes that indiscriminately killed and injured civilians.”).

88. See *Saudi Arabia-Iran Proxy War*, ORG. FOR WORLD PEACE, <https://perma.cc/S6Q9-HG5P> (last visited Oct. 10, 2021) (discussing proxy wars in Iraq, Syria, Yemen, and Afghanistan); Fisher, *supra* note 42 (discussing proxy wars in Bahrain, Lebanon, Egypt and Libya); Gallopin, *supra* note 43 (discussing how Sudan has recently left Iran’s axis for Saudi Arabia and UAE’s sphere of influence after Saudi Arabia financially supported Sudan’s military); Malley, *supra* note 7 (“What happens in the Gulf is increasingly having destabilizing and dangerous effects elsewhere.”).

89. Peters, *supra* note 81, at 774.

90. U.N. Charter art. 24, ¶ 1.

every member state.”⁹¹ Furthermore, “when a state participates in the decision-making process of an international organization, this can be qualified as an act of that state which may entail its international responsibility.”⁹² Therefore, a state’s decision to vote, or not to vote, can “constitute a breach of an international obligation of that state.”⁹³

Under this interpretation, the United States, as a member of the P5, has a legal obligation at the very least, to perform some level of due diligence towards Russia’s Concept. While Russia’s proposal has not yet come to a Security Council vote, when and if it does, members of the Security Council are obligated to use their voting power “in good faith, in accordance with the Purposes and Principles of the Organization and in such a manner as not to involve any breach of the Charter.”⁹⁴

C. *Other Obligations Under International Law: “R2P” and Ergo Omnes Obligations*

While U.S. legal obligations may be heightened due to its membership on the Security Council, there are obligations stemming from other international legal sources that also compel the United States to explore peaceful resolution to the Gulf Crisis. For example, an affirmative obligation to explore Russia’s Concept can be interpreted from the 2005 “Responsibility to Protect” (R2P) doctrine.⁹⁵ The R2P was adopted in response to the humanitarian crises in the Balkans and Rwanda, and gave the international community an affirmative

91. Peters, *supra* note 81, at 775 (quoting ANTONIOS TZANAKOPOULOS, *DISOBEYING THE SECURITY COUNCIL: COUNTERMEASURES AGAINST WRONGFUL SANCTIONS* 13 (2011)).

92. Moeckli & Fasel, *supra* note 76, at 36.

93. *Id.* at 38.

94. Conditions of Admission of a State to the United Nations (Article 4 of Charter), Advisory Opinion, 1948 I.C.J. 82, ¶ 25 (dissenting opinion by Basdevant, Winiarski, McNair & Read, JJ.); see Moeckli & Fasel, *supra* note 76, at 39 (“This legal limit on the voting behaviour in the Council has been recognized by the judges of the ICJ Basdevant, Winiarski, McNair . . . that, when voting in the Council, its members . . . do not enjoy unlimited freedom but must use their voting power ‘in good faith, in accordance with the Purposes and Principles of the Organization and in such a manner as not to involve any breach of the Charter.’”).

95. See *Responsibility to Protect*, U.N. OFF. ON GENOCIDE PREVENTION AND THE RESP. TO PROTECT, <https://perma.cc/HSF8-R4RY> (last visited Oct. 10, 2021) (providing a historical background of the “R2P” doctrine).

“responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help protect populations from genocide, war crimes, ethnic cleansing, and crimes against humanity.”⁹⁶ The R2P also stresses the international community’s commitment to “helping States build capacity to protect their populations”⁹⁷

While the R2P places an initial obligation on the international community to act through “appropriate diplomatic, humanitarian and other peaceful means,” it cautions that the Security Council will “take collective action” should peaceful means prove “inadequate.”⁹⁸ It follows that individual states have a primary obligation to address human rights violations peacefully and diplomatically, and a secondary obligation to address human rights violations through the Security Council, should initial peaceful attempts fail.⁹⁹ This language demonstrates that prior invocation of the R2P, such as the Security Council’s 2011 forced removal of Muammar Gaddafi’s regime in Libya through military intervention, was misguided.¹⁰⁰ The R2P, understood correctly, obliges the international community to first resolve human rights violations through peaceful measures, measures like those frequently cited throughout Russia’s Collective Security Concept.¹⁰¹ Should that fail, the international community may then, and only then, consider military intervention through the Security Council.¹⁰² While the

96. G.A. Res. 60/1, 2005 World Summit Outcome, ¶ 139 (Sept. 16, 2005).

97. *See id.*

98. *Id.*

99. *Id.*

100. *Libya*, GLOBAL CTR. FOR THE RESP. TO PROTECT (Oct. 20, 2021), <https://perma.cc/US59-WSRC> (“In response to these attacks the UN Security Council adopted resolutions 1970 and 1973, invoking the Responsibility to Protect, authorizing the use of force to protect populations.”). Security Council military authorization in Libya, meant to topple Qadhafi, clearly didn’t work because the conflict is “now in its tenth year.” *See* Press Release, As Foreign Interference in Libya Reaches Unprecedented Levels, Secretary-General Warns Security Council ‘Time is Not on Our Side’, Urges End to Stalemate, U.N. Press Release SC/14243 (July 8, 2020).

101. Russia’s Security Concept makes frequent use of terms such as “peaceful means” and “peacemaking operations” throughout the proposal. *Russia’s Security Concept*, *supra* note 2.

102. *See* 2005 World Summit Outcome, *supra* note 96 (instructing States to use “appropriate diplomatic, humanitarian and other peaceful means.”) The

R2P's status as binding international law is debated,¹⁰³ many of R2P's principles simply crystallized existing customary international law and *jus cogens* prohibitions of crimes against humanity.¹⁰⁴

It can also be argued that the United States, as a general member of the international community, has a duty to address violations of *jus cogens* (peremptory norms), because those norms are owed *erga omnes* (to the entire international community). The human rights atrocities committed in the Gulf constitute violations of such peremptory norms that entitle all members of the international community to legal redress.¹⁰⁵ The premise of *erga omnes*, first announced in the influential *Barcelona Traction Case* of 1970¹⁰⁶ and then re-emphasized in Article 1 of "the Protection of Human Rights and the Principle of Non-Intervention in Internal Affairs of States," states "[t]his international obligation, as expressed by the International Court of Justice, is *erga omnes*; it is incumbent upon every State in relation to the international community as a whole, and

resolution further states that "we are prepared to take collective action, in a timely and decisive manner, through the Security Council . . . should peaceful means be inadequate and national authorities manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity.").

103. See Peter Stockburger, *Emerging Voices: Is the R2P Doctrine the Greatest Marketing Campaign International Law Has Ever Seen?*, OPINIOJURIS (Aug. 23, 2013), <https://perma.cc/8JTL-YFUF> ("Legally, the doctrine's legacy has been questioned in places such as Libya and the Ivory Coast. But in both, the R2P doctrine is generally described in one of two ways: (1) either as an emerging norm of customary international law or (2) as a new binding principle of customary international law.").

104. For example, there has been a move towards strengthening responses to crimes against humanity. See Anees Ahmed & Merryn Quayle, *Can genocide, crimes against humanity and war crimes be pardoned or amnestied?*, 79 AMICUS CURIAE, Autumn 2009, at 15 ("There is a 'crystallising international norm' against impunity which denies the legal possibility of pardon or amnesty for serious international crimes . . . Due to the grave nature of these crimes, and their *jus cogens* status in international law as fundamental principles from which no derogation is permitted . . .").

105. For a discussion of the *erga omnes* obligation of preventing human rights violations, and its status "as settled law today," see Yoram Dinstein, *The erga omnes Applicability of Human Rights*, 30 Archiv des Völkerrechts 16, 16 (1992).

106. *Barcelona Traction, Light and Power Company, Ltd. (Belg. v. Spain)*, Judgment, 1970 I. C. J. Rep. 3, ¶ 32 (Feb. 5).

every State has a legal interest in the protection of human rights.”¹⁰⁷

This principle was later codified in the United Nations’ “Responsibility of States for Internationally Wrongful Acts.”¹⁰⁸ Chapter III, which “applies to the international responsibility which is entailed by a serious breach by a State of an obligation arising under a peremptory norm of general international law,”¹⁰⁹ reads “States *shall* cooperate to bring an end through lawful means any serious breach within the meaning of article 40.”¹¹⁰ Article 48 further expands on the legal claims that “[a]ny State” is entitled to invoke when an obligation that “is owed to the international community as a whole” is breached.¹¹¹ While the commentary to Article 41 states that “[i]t may be open to question whether general international law at present prescribes a positive duty of cooperation, and paragraph 1 in that respect may reflect the progressive development of international law,”¹¹² the statutory construction of the word “shall” often implies an “obligation or direction to do some act.”¹¹³ While it is heavily debated whether the duty to cooperate constitutes customary international law, states are implored to cooperate to bring about an end to systematic human rights violations in multiple treaties that are recognized as customary international law, such as the Genocide Convention, The Universal Declaration of Human Rights, the International Convention on Civil and Political Rights, the European Convention for the Protection of Human Rights and

107. Institut de Droit International, *The Protection of Human Rights and the Principle of Non-intervention in International Affairs of States*, 1989 Session of Santiago de Compostela Res. II 1, 2 (Sept. 13), <https://perma.cc/5RDF-V46V> (“The obligation further implies a duty of solidarity among all States to ensure as rapidly as possible the effective protection of human rights throughout the world.”).

108. G.A. res. 56/83, annex, *Responsibility of States for Internationally Wrongful Acts* (Dec. 12, 2001).

109. *Id.* at 9.

110. *Id.* (emphasis added).

111. *Id.* at 11.

112. *Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries*, [2001] 2 Y.B. Int’l L. Comm’n pt. 2, 114, U.N. Doc. A/CN.4/SER.A/2001/Add.1.

113. *Shall*, BARRON’S LAW DICTIONARY (6th ed. 2010) (continuing the definition by stating that “however, it is sometimes considered to be permissive where it is necessary to give effect to the intent of the word, and to mean the same as the word ‘may.’”).

Fundamental Freedoms, and the African Charter on Human and Peoples' Rights.¹¹⁴ The main view is that Article 41 “clearly represents the progressive development of international law.”¹¹⁵

Specific examples of *jus cogens* that are owed *erga omnes*, and therefore entitle the entire international community to invoke legal redress, include “the prohibition of aggression; the prohibition of crimes against humanity; and the basic rules of international humanitarian law.”¹¹⁶ It is universally established that there are “serious violations of international humanitarian law, including war crimes, and gross human rights abuses” in Syria,¹¹⁷ Yemen,¹¹⁸ and Iraq.¹¹⁹ These egregious human

114. See Annie Bird, *Third State Responsibility for Human Rights Violations*, 21 EUR. J. INT'L L. 883, 887 (“Although the ILC admits that the duty to cooperate cannot clearly be found in present international law, it is explicitly recognized in the preamble to the Genocide Convention, which states that ‘international cooperation is required’ to ‘liberate mankind from such an odious scourge.’ Several other preambles to human rights treaties mention international cooperation but do not require it. . . . The Universal Declaration of Human Rights pledges cooperation with the UN to promote universal respect for and observance of human rights and fundamental freedoms. . . . ICCPR highlights the ‘obligation of States under the UN charter to promote universal respect for, and observance of, human rights and freedoms’. . . . ECHR refers to the ‘collective enforcement of certain of the rights stated in the Universal Declaration’. . . . Banjul Charter reaffirms the pledge ‘to coordinate and intensify their cooperation and efforts to achieve a better life for the peoples of Africa and to promote international cooperation.’”).

115. See *id.* at 888 (“The duty of cooperation outlined in Article 41 clearly represents the progressive development of international law, since it would be premature to conclude that third states believe they are under an obligation to cooperate to stop serious breaches. However, human rights treaties’ preambles, state practice, and case law, as well as the R2P concept, contribute to the idea set out in Article 41 and may justify third state cooperation when serious breaches of peremptory norms take place in the future.”).

116. Int'l Law Comm'n, Rep. on the Work of Its Seventy-First Session, U.N. Doc. A/74/10, at 146–47 (2019).

117. *Syria*, AMNESTY INT'L, <https://perma.cc/ZEF3-LCV7> (last visited Oct. 27, 2021); see *Syria: Events of 2019*, HUM. RTS. WATCH, <https://perma.cc/SS9J-X4AB> (last visited Oct. 27, 2021).

118. See *Yemen: Events of 2019*, HUM. RTS. WATCH, <https://perma.cc/AKH2-J5GV> (last visited Oct. 27, 2021).

119. See U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., Iraq 2020 Human Rights Report 4 (Mar. 30, 2021), <https://perma.cc/22MC-52U5> (“Human rights organizations reported that Iran-aligned Popular Mobilization Forces (PMF) militia groups engaged in killing, kidnapping, and extortion throughout the country, particularly in ethnically and religiously

rights violations are not attenuated from Saudi Arabia and Iran; they are a direct result of funding and military force currently employed by both states.¹²⁰ As a general member of the international community, it may be argued that the United States has an obligation to respond to *jus cogens* violations by “cooperat[ing] to bring an end through lawful means any serious breach within the meaning of Article 40.”¹²¹ Even though the legal status of an affirmative obligation resulting from a *jus cogens* violation is still debated, it may be argued that concurrent U.S. obligations in this context are heightened.

Ultimately, there are three primary sources of the United States’ relevant obligations. First, there are the U.S. obligations as a member of the general international community. Second, there are the U.S. obligations as a member of the Security Council. Finally, there is the large rift between the historical role that the United States was meant to fill within the Security Council, and its present position as the sole Security Council member opposing Russia’s Concept. Therefore, due to the numerous peremptory norm violations committed in the Gulf conflict, the United States has an affirmative legal duty to constructively engage with Russia’s Concept.

mixed provinces.”); Mohammed Al-Sulami, *Iran’s Militias Push Middle East Toward All-Out War*, ARAB NEWS (Mar. 30, 2021), <https://perma.cc/Z9AZ-9BX4> (discussing the purpose of Iranian meddling in Iraq, for example, “[t]hrough these attacks, Iran seeks to achieve multiple objectives simultaneously, including opening a new front on the northern border of Saudi Arabia”).

120. See U.S. Dep’t of State, Bureau of Democracy, H.R. and Lab., *Iran 2020 Human Rights Report 1–2* (Mar. 30, 2021), <https://perma.cc/R5M8-N9HQ> (“[Iranian] Government officials materially contributed to human rights abuses not only against Iranians, but also in Syria, through their military support for Syrian president Bashar Assad and Hizballah forces in Iraq, through aid to pro-Iran Iraqi militia groups; and in Yemen, through support for Houthi rebels.”); *Yemen: Events of 2020*, HUM. RTS. WATCH, <https://perma.cc/HZY2-ZJXZ> (last visited Oct. 27, 2020) (“In 2020, Saudi-led coalition forces conducted airstrikes that indiscriminately killed and injured civilians.”); Rafizadeh, *supra* note 41 (“Meanwhile, Iran’s militia groups in Iraq, Syria and Yemen are following their paymaster’s example when it comes to committing egregious human rights violations.”).

121. G.A. res. 56/83, *supra* note 108, at 9.

D. *U.S. Lack of Accountability in International Law*

Even if the United States has an affirmative legal obligation to conduct due diligence towards Russia's Security Concept, it is unlikely that there is a legal mechanism that can formally hold the United States accountable. While domestic legal systems have courts of general jurisdiction,¹²² there are often obstacles to the enforcement of international legal norms because of the lack of a clear court of general, automatic jurisdiction over international legal obligations.¹²³ For example, in order for the International Court of Justice (ICJ) to exercise jurisdiction over an issue pertaining to a State, that State must consent to the jurisdiction of the ICJ.¹²⁴ The US has historically been uncooperative with the ICJ, most notably in the 1984 *Nicaragua Case*.¹²⁵ In this case, Nicaragua alleged that the United States violated customary international law and treaty law by initiating military and paramilitary activities in Nicaragua.¹²⁶ After the ICJ rejected the United States' objection to jurisdiction, the United States announced its intent to completely withdraw from any further ICJ proceeding on the merits.¹²⁷ A year later, the United States terminated its consent

122. *Jurisdiction*, JRANK, <https://perma.cc/6792-62LJ> (last visited Sept. 12, 2021) ("A court of general jurisdiction is a trial court that is empowered to hear all cases that are not specifically reserved for courts of special jurisdiction.")

123. *See, e.g., Basis of the Court's Jurisdiction*, INT'L CT. OF JUST., <https://perma.cc/8Q2Q-MHP6> (last visited Oct. 27, 2021) (describing how "[t]he jurisdiction of the Court in contentious proceedings is based on the consent of the States to which it is open," and providing eight examples where the Court would not allow an application in which it was acknowledged that the opposing party did not accept its jurisdiction).

124. *Id.*

125. *The United States and the ICJ*, COUNCIL ON FOREIGN RELS. (Dec. 23, 2011), <https://perma.cc/7BEQ-LYR3> (explaining how the "United States has long had an uneasy relationship with the International Court of Justice," for example, "[t]he United States withdrew from the court's compulsory jurisdiction in 1986 after the court ruled it owed Nicaragua war reparations," and noting that "[t]he United States also disagreed with the court's stance that it failed to fulfill its obligations under the Vienna Convention on Consular Relations in 2005 in cases involving Mexican nationals on death row").

126. *Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.)*, Judgment, 1984 I.C.J. 392 (Nov. 26).

127. *See* United States: Statement on US Withdrawal from the Proceedings Initiated by Nicaragua in the International Court of Justice (Jan. 18, 1985), *reprinted in* 24 INT'L LEGAL MATERIALS 246 (1985).

to the ICJ's compulsory jurisdiction.¹²⁸ After the ICJ issued a judgment against the absentee US for violating the prohibition against the Use of Force, the US government attempted to delegitimize the Court by announcing that "it would not abide the by the judgment, vetoed subsequent proposed Security Council resolutions seeking to enforce the judgment, and appropriated additional funds for the actions in question it had taken against Nicaragua."¹²⁹

The United States has also been openly hostile to other international institutions that could have potentially adjudicated this issue, such as the International Criminal Court (ICC). The United States terminated the ICC's jurisdictional authority over U.S. citizens by withdrawing from the Treaty of Rome and then taking bilateral measures to ensure immunity from its jurisdiction.¹³⁰ Under the Trump Administration, the United States revoked the visa of Fatou Bensouda, the ICC prosecutor, in anticipation of a pending investigation into U.S. war crimes in Afghanistan.¹³¹ Both past and current events show the unlikelihood that the United States will receive formal sanctions for its noncompliance with its international legal obligations.

However, despite the absence of a legal mechanism that can formally adjudicate U.S. conduct, revelations from the *Nicaragua Case* demonstrate that there are geopolitical implications that should nonetheless incentivize the United States to conform its conduct with international law. After the ICJ's de-

128. See United States: Department of State Letter and Statement Concerning Termination of Acceptance of I.C.J. Compulsory Jurisdiction (Oct. 7, 1985), reprinted in 24 INT'L LEGAL MATERIALS 1742 (1985).

129. Robert J. Delahunty & John Yoo, *Executive Power v. International Law*, 30 HARV. J.L. & PUB. POL'Y 73, 111 (2007) (quoting JOHN F. MURPHY, THE UNITED STATES AND THE RULE OF LAW IN INTERNATIONAL AFFAIRS 263 (2004)).

130. See United States "Unsigning" Treaty on War Crimes Court, HUM. RTS. WATCH (May 6, 2002), <https://perma.cc/9WZY-VL5L> (describing the withdrawal of the U.S. signature from the treaty establishing the ICC); *A Campaign for US Immunity from the ICC*, AM. NON-GOVERNMENTAL ORGS. COAL. FOR THE INT'L CRIM. CT. (July 28, 2013), <https://web.archive.org/web/20130728160441/http://amicc.org/usicc/biacampaign> ("The Bush administration conducted a vigorous campaign of trying to conclude BIAs to remove US nationals from the reach of the Court.")

131. Marlise Simons & Megan Specia, *U.S. Revokes Visa of I.C.C. Prosecutor Pursuing Afghan War Crimes*, N.Y. TIMES (Apr. 5, 2019), <https://perma.cc/5G6U-CK34>.

cision in the *Nicaragua Case*, U.S. soft power was notably impaired.¹³² Due to U.S. noncompliance with the ICJ's judgment, the majority of the international community proceeded to rebuke the United States and demand it comply with the judgment.¹³³ The international community then reversed its previous posture and condemned continued U.S. trade embargos against Nicaragua.¹³⁴ The events succeeding the *Nicaragua case* demonstrate that although it is unlikely that a traditional adjudicatory body will formally sanction the United States, it is still imperative that the US conform its conduct with international law, in order to avoid geopolitical and reputational harm.

IV. PROPOSAL: MEDIATION AND MULTILATERALISM

Historically, the United States has proven volatile—it is difficult to predict whether, in a given moment, it will employ an isolationism or interventionist foreign policy scheme.¹³⁵ This note contends that, instead of acting as a global police force through military intervention, the Biden Administration should craft the United States as a mediator and cooperate with other global powers in order to broker a lasting resolution, which ultimately will reduce the need for future U.S. intervention.

132. See James R. Crawford, *Military and Paramilitary Activities in and Against Nicaragua Case*, OXFORD PUB. INT'L L. ENCYCLOPEDIA n. 41, <https://perma.cc/DT2P-LNXV> (“[R]evelations about the domestic aspects of US aid to the contras (especially the Senate hearings in the Iran-Contra affair and the subsequent conviction of US officials for various related offences) tended to discredit US policy in the conflict, and substantial majorities in the UN called on the US to comply with the judgment.”).

133. See G.A. Res. 44/43, Judgment of the International Court of Justice of 27 June 1986 Concerning Military and Paramilitary Activities in and Against Nicaragua: Need For Immediate Compliance (Dec. 6, 1989), <https://perma.cc/S5XB-Q97E> (calling on the US to comply with ICJ judgment).

134. See G.A. Res. 44/217, Trade Embargo Against Nicaragua (Dec. 22, 1989), <https://perma.cc/EF8B-487C> (calling for the revocation of trade embargoes against Nicaragua).

135. See Margaret Macmillan, *Why the U.S. Has Spent 200 Years Flip-Flopping Between Isolationism and Engagement*, HISTORY (Jan. 31, 2019), <https://perma.cc/8T7W-PSN2> (discussing U.S. foreign policy changes).

This sentiment is not novel.¹³⁶ The role of mediator in international conflicts carries multiple, identifiable economic and geopolitical benefits. First, this role is seen as a low-risk, high-reward endeavor because a successful mediation entails a host of benefits including the improvement of global public opinion, trade relations, and global peace and security.¹³⁷ Should the mediation fail, the consequences are often minimal, because the mediator may still generate positive goodwill as a result of its sincere efforts.¹³⁸

Proponents of American isolationism will not find this role to be simply a peaceful, non-military version of the “indispensable nation” ideology (an ideology interventionism has historically emulated).¹³⁹ Instead, working together with Russia and other global players would embody what Professor Ganesh Sitaraman coined “Resilient Multilateralism.”¹⁴⁰ Under this strategy, the United States would “use its influence to ensure that its allies and partners can accomplish shared goals even when the United States is not involved.”¹⁴¹ Instead of the United States acting as an “indispensable” crutch for democracy globally, Resilient Multilateralism envisions the United States cooperating with other world powers to initiate institution building. An example of Resilient Multilateralism is

136. See Amitai Etzioni, *Mediation as a World Role for the United States*, 18 WASH. Q. 75 (1995) (“Rather than acting as the world’s police force, in several cases the United States has provided adversarial parties with its good offices and tried to broker resolutions to long-festered conflicts.”).

137. See *id.* at 86 (arguing that mediation as a major element of foreign policy is particularly suitable for when the US needs to put “its own house in order”).

138. See *id.* at 76 (“There is little need for major economic outlays because mediation, as a rule, entails little more than the use of skilled diplomats, shuttle diplomacy, state visits, and the like.”).

139. See *Secretary of State Madeleine K. Albright: Interview on NBC-TV “The Today Show” with Matt Lauer*, U.S. DEP’T OF STATE ARCHIVES (Feb. 19, 1998), <https://perma.cc/WX8E-NCHN> (“It is the threat of the use of force and our line-up there that is going to put force behind the diplomacy. But if we have to use force, it is because we are America; we are the indispensable nation. We stand tall and we see further than other countries into the future, and we see the danger here to all of us. I know that the American men and women in uniform are always prepared to sacrifice for freedom, democracy and the American way of life.”).

140. Ganesh Sitaraman, *A Grand Strategy of Resilience*, FOREIGN AFFS. (Sept./Oct., 2020), <https://perma.cc/U5SC-3LWP>.

141. *Id.*

the Africa Centers for Disease Control (the Africa CDC),¹⁴² an international public health institution established by the African Union in 2016 to support public health initiatives of Member States.¹⁴³ Similarly, a Gulf Collective Security Concept envisions a public institution comprised of interested stakeholders supporting the collective security initiatives of Member States.

While the Gulf Collective Security Concept would involve cooperating with two of the United States' largest adversaries—China and Russia—this could actually strengthen U.S. national security because “[f]unctional relationships with China and Russia will make open conflict less likely by reducing the risk of misperceptions and misunderstandings.”¹⁴⁴ While relations with both Russia¹⁴⁵ and China¹⁴⁶ appear murky, at best, under the Biden Administration, “cooperation and communication do not require affection or a shared ideology, nor do they prevent countries from acknowledging their differences or seeking greater economic independence from one another.”¹⁴⁷ Competitive adversaries do not need

142. *See id.* (“Today, Washington should instead use its influence to ensure that its allies and partners can accomplish shared goals even when the United States is not involved—call it ‘resilient multilateralism.’ The African Union’s creation, in 2016, of the Africa Centers for Disease Control is a good example of what such institution building can look like.”).

143. *About Us*, AFRICA CDC, <https://perma.cc/TL6R-8K69> (last visited Sept. 12, 2021).

144. Sitaraman, *supra* note 140.

145. *See* Troianovski, *supra* note 11 (highlighting Russian fury after President Biden described President Putin as a killer); Andrew E. Kramer, Russia Will Expel 10 Diplomats in Retaliation for Sanctions, N.Y. TIMES (Apr. 16, 2021), <https://perma.cc/9D2T-UB6U> (documenting increasing political tensions between Russia and the United States); David E. Sanger & Andrew E. Kramer, U.S. Imposes Stiff Sanctions on Russia, Blaming it for Major Hacking Operation, N.Y. TIMES (Apr. 15, 2021), <https://perma.cc/6QN9-5K3V> (further documenting the political tensions around 2021 US sanctions on Russia).

146. *See A Hostile Meeting Sets the Tone for US-China Relations*, ECONOMIST (Mar. 20, 2021), <https://perma.cc/JV7S-4NBX> (noting that Biden will continue Trump’s confrontational approach to China).

147. Sitaraman, *supra* note 140; *see also* Evan A. Feigenbaum, *Why the United States and China Forgot How to Cooperate*, CARNEGIE ENDOWMENT FOR INT’L PEACE (Apr. 28, 2020), <https://perma.cc/9G9Y-GTUL> (“Countries don’t need to be ‘friends’ to get meaningful things done.”).

“common interests to get things done, just complementary ones.”¹⁴⁸

Perhaps most importantly, the global collective security order, which endured consistent attacks by the Trump Administration,¹⁴⁹ has the most to gain from the Biden Administration’s immediate embrace of a Gulf Collective Security Concept constructed through multilateralism. Furthermore, it is imperative that the Biden Administration promptly engage with Russia’s Concept. As demonstrated by the Trump Administration’s withdrawal from the Nuclear Deal three years after its creation,¹⁵⁰ the window to engage with a Collective Security Concept may narrow with a subsequent U.S. administration.

Finally, a Gulf Collective Security Concept would be the most cost-effective form of foreign policy due to its prioritization of 1) international burden sharing and 2) the creation of a long-lasting multilateral institution that would make future U.S. involvement obsolete.¹⁵¹ In conclusion, adversarial cooperation that is focused on building a comprehensive international institution designed to facilitate lasting peace, in a region currently embroiled in proxy war after proxy war, has

148. Feigenbaum, *supra* note 147 (describing how China and the United States have effectively collaborated on stopping Ebola, reducing the production and consumption of hydrofluorocarbons, forestalling financial contagion, and assuring food safety).

149. See Richard Gowan, *Trump Failed to Kill Multilateralism, and Might’ve Even Made it Stronger*, *WORLD POL. REV.* (Nov. 3, 2020), <https://perma.cc/SFF6-SS42> (discussing the Trump Administration’s attacks on the WHO, Paris Climate Agreement, and other UN institutions like the Human Rights Council, known as “crisis of multilateralism”).

150. See Mark Landler, *Trump Abandons Iran Nuclear Deal He Long Scorned*, *N.Y. TIMES* (May 8, 2018), <https://perma.cc/9MUY-XTM3> (describing the US withdrawal from the Iran nuclear deal).

151. See *Russia’s Security Concept for the Gulf Area*, *supra* note 2 (“The central *long-term* objective is the creation of a security and cooperation organization in the Persian Gulf . . . that would include, in addition to the Gulf countries, Russia, China, the USA, the EU, India and other stakeholders as observers or associated members.”) (emphasis added). This is consistent with the Department of States Policy. U.S. DEP’T OF STATE, 2020 UNITED STATES STRATEGY TO PREVENT CONFLICT AND PROMOTE STABILITY 2 (2020) <https://perma.cc/B455-EZYJ> (“The United States cannot and should not pursue these efforts alone. Accordingly, this Strategy outlines a commitment to forge new partnerships with civil society, the private sector, regional partners, and bilateral and multilateral contributors who can provide expertise and share the financial burden.”).

multiple national security and geopolitical benefits, with little economic and military risk.

A. *Historical Precedent*

The Biden Administration, in taking an affirmative role in the de-escalation of a violent global conflict, would be following precedent and continuing to play the role that the United States has traditionally played in the post-war era,¹⁵² even when one party is a U.S. ally and the other is not. In fact, the U.S. role of mediator is more the norm than the exception.¹⁵³ The United States, for example, risked its Cold War-driven “Special Relationship” with the United Kingdom—an ally whose relationship with the United States far exceeds the commitments between the United States and Saudi Arabia—when President Clinton spearheaded the Good Friday Agreement to end the violent and decades long Northern Ireland Conflict.¹⁵⁴ Throughout history, the United States has continuously tried to broker a diplomatic solution to the Israeli/Palestinian conflict that will reconcile the competing claims of both peoples, even though the United States has its own Special Relationship with Israel.¹⁵⁵ The Clinton Administration spent extensive time and resources to help negotiate and implement the 1993 Oslo Accords between Israel and the Palestine Liber-

152. See Etzioni, *supra* note 136, at 75 (“Rather than acting as the world’s police force, in several cases the United States has provided adversarial parties with its good offices and tried to broker resolutions to long-festering conflicts.”).

153. See *Id.* at 77–84 (discussing U.S. mediation of conflicts in the Middle East, Eastern Europe, Northern Ireland, Greece & Macedonia, the Korean Peninsula, and the Caribbean).

154. See Roger MacGinty, *American Influences on the Northern Ireland Peace Process*, 17 J. CONFLICT STUD. 31–33 (1997), <https://perma.cc/GU6G-YLGV> (describing the Clinton Administration’s shift towards involvement in Northern Ireland); CTR. FORWARD, *US INVOLVEMENT IN THE NORTHERN IRISH PEACE PROCESS AND THE GOOD FRIDAY AGREEMENT* (2019), <https://perma.cc/C5JN-LETN> (noting the resistance from the British government to Clinton’s more active approach).

155. See Kali Robinson, *What is U.S. Policy on the Israeli-Palestinian Conflict?*, COUNCIL ON FOREIGN RELS. (Apr. 12, 2021), <https://perma.cc/JW2F-472K> (describing the history of the Israeli-Palestinian conflict and the United States’ role as mediator).

ation Organization.¹⁵⁶ While U.S. mediation of the Northern Ireland Troubles and the Israeli-Palestinian conflict can be linked to domestic constituencies pushing for intervention,¹⁵⁷ U.S. mediation of the India/Pakistani conflict demonstrate that this is not a necessary prerequisite.¹⁵⁸

The process leading up the Helsinki Accords can also teach an important lesson regarding the benefits of U.S. participation in large, multilateral, institutionally structured conflict resolution, as the Helsinki Final Act was seen as a significant step toward ending the Cold War¹⁵⁹ and establishing the world's largest regional security organization—the Organization for Security and Co-operation in Europe.¹⁶⁰

In contrast to the historically positive outcomes resulting from instances where the United States chose to act as mediator, there is a demonstrated history of failure when the United States chose to take sides in a global conflict. One example is “Operation Cyclone.” During the Cold War, President Carter and the CIA funded and armed the Afghani Mujahideen—jihadist, anti-Soviet militants—with the ultimate goal of forcing Soviet withdrawal from Afghanistan.¹⁶¹ Years later, Operation

156. Office of the Historian, *The Oslo Accords and the Arab-Israeli Peace Process*, U.S. DEP'T OF STATE, <https://perma.cc/447D-8WAX> (last visited Aug. 18, 2021).

157. See MacGinty, *supra* note 154, at 33 (discussing the Irish American lobby's influence on the conflict); Zack Beauchamp, *Why the US Has the Most Pro-Israel Foreign Policy in the World*, VOX (July 24, 2014), <https://www.vox.com/2014/7/24/5929705/us-israel-friends> (discussing how foreign policy interests related to Israel are driven by domestic politics and American voters).

158. See Kishala Srivastava, *The Future of India-Pakistan Relations: The Declining Role of Mediation Between These Rival States*, 34 OHIO STATE J. DISP. RESOL. 221, 235 (2019) (“Throughout history, the United States has played an active role in Indo-Pakistani relations; however, the United States has not consistently supported the same state, which has led to relative distrust by both India and Pakistan regarding the United States’ role as an unbiased mediator.”).

159. Conference on Security and Co-Operation in Europe, *Helsinki Final Act* (Aug. 1, 1975), <https://perma.cc/HZZ4-MUMQ>.

160. *Who We Are*, ORG. FOR SEC. & COOP. IN EUR., <https://perma.cc/9ND7-ACYH> (last visited Aug. 18, 2021) (“With 57 participating States in North America, Europe and Asia, the OSCE—the Organization for Security and Co-operation in Europe—is the world’s largest regional security organization.”).

161. See Memorandum from Zbigniew Brzezinski, U.S. Nat’l Sec. Advisor, to U.S. Sec’y of State, on Presidential Decisions on Pakistan, Afghanistan and

Cyclone is said to have “[sowed] the wind” for the 9/11 terrorist attacks, committed by the same Afghan recipients of U.S. funding (with help from the Saudis).¹⁶² Operation Cyclone is also said to have led to the eventual nuclear armament of Pakistan.¹⁶³ Additionally, the U.S. support of brutal dictatorships in South and Central America throughout the Cold War, in an effort to counteract Soviet-backed communist regimes, paved the way for ensuing chaos. These choices resulted in gross human rights violations and the mass murder of innocent civilians in countries like Chile, Guatemala, and Nicaragua.¹⁶⁴ The Reagan Administration even violated domestic law when it sold arms to the Iranian government in order to raise funds for its interventionist policies in Nicaragua.¹⁶⁵

B. *Regional Geopolitical Implications*

While history enjoys the benefit of hindsight bias, there are significant historical parallels to the current conflict in the Gulf. During the Cold War, the U.S. policy of Containment prioritized funding and supporting oppressive regimes regardless of their human rights records, simply because they were unfriendly to the Soviet Union.¹⁶⁶ Today, again, the United States supports regimes across the Middle East not because their interests align with those of the United States but simply because those regimes oppose Iran.¹⁶⁷

India (Jan. 2, 1980), <https://perma.cc/LH2J-MB6J> (describing President Carter’s ultimate goal and next steps for the region); Todd Greentree, *Afghanistan: Remembering the Long, Long War We Would Rather Forget*, WAR ON THE ROCKS (Feb. 5, 2019), <https://perma.cc/P25K-Q547> (providing an overview of Operation Cyclone).

162. See Greentree, *supra* note 161 (detailing Operation Cyclone’s residual impacts in Afghanistan).

163. See *id.* (connecting Pakistan’s acquisition of nuclear weapons to Carter’s Afghanistan operation).

164. See Adam Bensaid, *The Secret History of US Interventions in Latin America*, TRTWORLD (Jan. 24, 2019), <https://perma.cc/8UDB-VRR7> (discussing US intervention leading to atrocities in Chile, Guatemala, and Nicaragua).

165. See *Iran-Contra Affair*, Encyclopedia Britannica, <https://perma.cc/H4LJ-Q8TH> (last updated Sept. 10, 2020) (documenting prosecutions of administration officials in the wake of an independent counsel report).

166. See Bensaid, *supra* note 164 (identifying Argentina as one U.S.-endorsed dictatorship responsible for human rights violations).

167. See Charles Faddis, *The Enemy of My Enemy is My Friend – an Alliance That May Save the Middle East*, THEHILL (Aug. 23, 2019), <https://perma.cc/>

The U.S.-Saudi Special Relationship that has existed for much of the twentieth and twenty-first centuries is especially reflective of this moral paradigm.¹⁶⁸ The United States, before and during the Trump Administration, provided unrelenting support to the ultraconservative Islamic, absolute monarchy, despite its faulty human rights track record.¹⁶⁹ The royal family has been accused of the extrajudicial murder of journalists;¹⁷⁰ excessive use of the death penalty in violation of international law;¹⁷¹ state sanctioned racism; violent incitement against religious minorities;¹⁷² and state sponsorship of terrorism, including the 9/11 attacks.¹⁷³ In 2018, Saudi Arabia was named the worst country in the world to be an atheist, surpassing Iran.¹⁷⁴ The House of Saud has done little to show that it stands on higher moral ground than Iran.

In addition, while the United States' overall energy independence has been subject to debate,¹⁷⁵ it is undebatable that,

UCJ6-27YH (detailing the dynamics behind the strategic alliance between the US, Israel, and Saudi Arabia).

168. See Bureau of Near Eastern Affairs, *U.S. Relations with Saudi Arabia*, U.S. DEP'T OF STATE (Dec. 15, 2020), <https://perma.cc/948C-XRGT> (providing a historical account of U.S.-Saudi relations); Emad Mekay, *A Very Special Relationship: the US and Saudi*, INT'L BAR ASSOC. (Apr. 10, 2019), <https://perma.cc/T9YA-TRYQ> (discussing the U.S.-Saudi Arabia relationship amidst 9/11 attacks, the murder of Jamal Khashoggi, and the war in Yemen).

169. See *Saudi Arabia: Events of 2019*, HUM. RTS. WATCH (2019), <https://perma.cc/AY72-GGR3> (reporting on human rights violations committed in Saudi Arabia).

170. Julian E. Barnes & David E. Sanger, *Saudi Crown Prince is Held Responsible for Kashoggi Killing in U.S. Report*, N.Y. TIMES (Feb. 26, 2021), <https://perma.cc/YT38-8BWB>.

171. *The Death Penalty in Saudi Arabia: Facts and Figures*, AMNESTY INT'L (Aug. 25, 2015), <https://perma.cc/6XRD-GEBE> (highlighting Saudi Arabia as "one of the most prolific executioners in the world").

172. See Adam Coogole, "*They Are Not Our Brothers*": *Hate Speech by Saudi Officials*, HUM. RTS. WATCH (Sept. 26, 2017), <https://perma.cc/2N6D-BNLR> (describing the demonization of Shia Muslims and others by government clerics).

173. See Daniel L. Byman, *Confronting Passive Sponsors of Terrorism*, BROOKINGS (Feb. 1, 2005), <https://perma.cc/K6VF-N7JY> (providing examples of Saudi Arabia's passive support for terrorism).

174. *Saudi Arabia is Worst Country to be an Atheist, Report Says*, NAT'L SECULAR SOC'Y (Oct. 29, 2018), <https://perma.cc/8VLS-43SL>.

175. See Julian Lee, *Don't Believe the U.S. Energy Independence Hype*, BLOOMBERG (Feb. 28, 2021), <https://perma.cc/BHE7-P4Z3> (arguing that the US is not meaningfully energy independent).

for the first time since 1952, the United States has become a net total energy exporter.¹⁷⁶ This lack of energy reliance fundamentally shifts the U.S.-Saudi relationship. The United States no longer needs to strategically appease Riyadh in order to secure its primary energy source and Riyadh may see less reason to trust the United States now that they are no longer reliant on Saudi oil.¹⁷⁷ U.S. crude oil and energy markets, which are much more stable and secure due to decreasing Saudi reliance, indicate further how ripe the current global climate is for the implementation of a collective security Concept.¹⁷⁸

As demonstrated by Operation Cyclone, the devastating consequences of unsound foreign policy often take generations to fully manifest. The Biden Administration has both an opportunity and a duty under international law to cease its arming and funding of the oppressive Saudi regime, solely because it opposes Iran.

C. *Global Geopolitical Implications*

Allowing Russia's Concept to move forward, without U.S. participation could have a devastating impact on U.S. foreign policy. U.S. absenteeism could allow Russia and China to gain a stronger foothold in the region and further build their spheres of influence, both geopolitically, and in the oil and gas sector.¹⁷⁹ On the other hand, critically engaging with Russia's

176. *U.S. Energy Facts Explained*, U.S. ENERGY INFO. ADMIN., <https://perma.cc/YA6S-PJDL> (last updated May 17, 2021).

177. See Andrew P. Miller & Dafna H. Rand, *Between Retreat and Overinvestment in the Middle East and North Africa*, in *RE-ENGAGING THE MIDDLE EAST: A NEW VISION FOR U.S. POLICY* 1, 7 (Dafna H. Rand & Andrew P. Miller eds., 2020) ("The major risk Middle Eastern oil presents to the United States is no longer that a country like Saudi Arabia would deliberately reduce oil production to punish us—such action would ultimately hurt the Saudis much more than it would hurt the United States.").

178. See David Blackmon, *The Key Distinction Between U.S. Energy Independence and Energy Security*, *FORBES* (Jan. 7, 2020), <https://perma.cc/K3HW-6CLU> ("At the end of the day, as we have seen in the modest crude price responses to recent major conflict escalations in the Middle East, all of these factors combine to create a much more stable situation for global crude markets than existed in the recent past.").

179. See CAMILLE LONS, JONATHAN FULTON, DEGANG SUN & NASER AL-TAMIMI, *CHINA'S GREAT GAME IN THE MIDDLE EAST* 1 (2019), <https://perma.cc/KA92-7BNZ> ("China has significantly increased its economic, po-

Concept, which specifically invites the participation of the United States, the European Union, India, and other interested stakeholders,¹⁸⁰ has a host of geopolitical and national security benefits.

China is already attempting to assert its influence in the Middle East.¹⁸¹ Aside from military intervention, the only way the United States can avoid its total replacement as a global superpower is to accept its seat at the table in order to build consensus with China in one of the few areas it can do so.¹⁸² China has unequivocally asserted itself as a world superpower for the foreseeable future,¹⁸³ and often the two nations have little to agree on.¹⁸⁴ Uniquely, in this case (the nuclear disarmament of Iran and the Gulf), the United States agrees with both China and Russia.¹⁸⁵ This can serve as a building block

litical, and – to a lesser extent – security footprint in the Middle East in the past decade, becoming the biggest trade partner and external investor for many countries in the region.”); Eugene Rumer, *Russia in the Middle East: Jack of All Trades, Master of None*, CARNEGIE ENDOWMENT FOR INT’L PEACE (Oct. 31, 2019), <https://perma.cc/L7NT-EXMU> (discussing Russia’s return to the Middle East as a major power player).

180. *Russia’s Security Concept*, *supra* note 2.

181. *See* LONS ET AL., *supra* note 179, at 1 (“China has significantly increased its economic, political, and – to a lesser extent – security footprint in the Middle East in the past decade, becoming the biggest trade partner and external investor for many countries in the region.”).

182. *See* Feigenbaum, *supra* note 147 (arguing that even though China and the US are adversaries that cannot agree on much, countries don’t need to be friends to get meaningful things done, and instead can focus on limited areas of cooperation).

183. *See* Kira Goldring, *Is China the Next Superpower?*, THE PERSPECTIVE, <https://perma.cc/JS37-ZL5T> (last visited Aug. 18, 2021) (listing arguments that China is the next world superpower, China (1) embraces globalization, (2) has substantial economic growth that western nations want to be a part of, (3) has a growing middle class, (4) is technologically dominant).

184. *See* Feigenbaum, *supra* note 147 (“In the 48 years since [Nixon’s famous visit to Beijing] Chinese communism and American constitutionalism have repeatedly clashed and collided.”); *A Hostile Meeting Sets the Tone for US-China Relations*, *supra* note 146 (noting that both countries wanted the first meeting of the Biden Administration to go badly).

185. *See* Catherine Wong, *Where Does China Stand on the Iran Nuclear Deal*, S. CHINA MORNING POST (Feb. 23, 2021), <https://perma.cc/SFP8-RC9B> (“China has been broadly willing to limit its cooperation with Iran and supported the US-led campaign to force Tehran to curb its nuclear weapons programme.”); Seth J. Frantzman, *China and Russia Will Keep Iran from Building a Bomb*, THE HILL (Apr. 21, 2021), <https://perma.cc/DLN2-Y78L> (Both China and Russia don’t want a nuclear-armed Iran.”).

for further international cooperation. In this way, the United States can simultaneously 1) pursue collective security and de-escalation, and 2) improve its cooperation with China and Russia through its presence in a security regime. Additionally, critics of President Obama's Joint Comprehensive Plan of Action (JCPOA),¹⁸⁶ who expressed concern about the Biden Administration's intention to immediately rejoin the agreement,¹⁸⁷ need not worry just yet. Russia announced that it opposes linking the nuclear deal to the collective security Concept,¹⁸⁸ and Iran indicated its intention to separate the nuclear deal from any security regime.¹⁸⁹

Perhaps most importantly, the United States must learn from its mistakes with North Korea. The United States' maximum pressure campaign against North Korea resulted in the North Korean government's increased desire to produce nuclear weapons, the very thing it sought to dissuade.¹⁹⁰ Similarly, employing a maximum pressure campaign geared towards isolating Iran in the global theater is likely incompatible with the goal of nuclear disarmament, and consequently, collective security. The Iranian leadership, facing global isolation and a failed economy due to crippling sanctions, will see nuclear weapons as the only way to achieve both effective diplomacy and leadership legitimacy in the eyes of its domestic con-

186. Joint Comprehensive Plan of Action, July 14, 2015, <https://perma.cc/MK2L-6U8D>.

187. See, e.g., Daniel Flatley & Tony Czuczka, *Don't Rejoin Iran Nuclear Deal, GOP Lawmakers Tell Biden*, BLOOMBERG (Feb. 28, 2021), <https://perma.cc/4CN8-VZD3> (reporting on Republican senators' concern about the JCPOA).

188. See *Russia Opposes Attempts to Link Iran Nuclear Deal to Situation in Persian Gulf*, TASS RUSS. NEWS AGENCY (Jan. 26, 2021), <https://perma.cc/7WP8-7MFZ> ("Moscow does not support attempts to link progress in ensuring security in the Persian Gulf region to the preservation of the Joint Comprehensive Plan of Action.").

189. See Karen DeYoung, *Iran Rejects Early Talks on Nuclear Deal with the United States and European Union*, WASH. POST (Feb. 28, 2021), <https://perma.cc/7S5C-GE7V> (discussing how Iran's private response rejecting the invitation from the EU/US to discuss the JCPOA was more nuanced than an outright refusal, instead, Iran "sought assurances that the talks would be limited to the nuclear deal" and not about other issues).

190. See Bruce Klingler, *Why Does North Korea Want Nukes?*, HERITAGE FOUND. (Aug. 13, 2018), <https://perma.cc/U43K-PNVH> (discussing North Korea's view that nuclear weapons protect "against the U.S. 'hostile policy' of intimidation, military attacks, and regime change against authoritarian regimes").

stituency.¹⁹¹ Increasing one-sided pressure against Iran, instead of utilizing neutral multilateral conflict resolution, will only hurt the global collective security order by increasing the likelihood of a nuclear Iran. This irreparable harm will further destabilize the region and increase the egregiousness of the United States' legal violation.

D. *Regional Objectors*

It is important to note that while many world powers and regional stakeholders have expressed support for a Gulf Security Concept, certain regional actors may play a spoiler role in any future, collective security agreement. Israel has already vowed to sabotage any nuclear agreement with Iran,¹⁹² while Iran has indicated that it will *never* openly negotiate with Israel.¹⁹³ Israel's buy-in is especially important considering the majority of global powers confirmed that a just resolution to the Israeli-Palestinian conflict is crucial to any collective security Concept.¹⁹⁴ However, this is not dispositive, because Iran has already signaled that it can engage in multilateral nuclear negotiations despite ongoing Israeli attacks,¹⁹⁵ and Israel can nonetheless benefit from a collective security Concept orches-

191. Similarly, due to the failed economic situation in North Korea, Kim Jong-Un needs a nuclear program to obtain leadership legitimacy and personal prestige in the eyes of a population lacking basic living necessities. Furthermore, due to global isolation, North Korea feels nuclear weapons are integral to any diplomatic strategy, and the only way to prevent international interference and potential regime change. *See id.*

192. *See* Lahav Harkov, *Netanyahu on New Iran Deal: Nuclear Agreement is Worthless*, JERUSALEM POST (Feb. 24, 2021), <https://www.jpost.com/breaking-news/netanyahu-after-iran-strategy-meeting-nuclear-agreement-is-worthless-659897> (quoting Prime Minister Netanyahu as stating "with or without an agreement, we will do everything so Iran isn't armed with nuclear weapons.").

193. Andrei Baklanov, *Russia and Iran: New Mechanisms for Regional Security and Cooperation*, VALDAI CLUB (Aug. 4, 2021), <https://perma.cc/3VB5-H83M> ("The authors came to the conclusion, that the Russian idea of connecting all regional countries to the future security system contradicts Tehran's approach, which will 'never' agree to jointly discuss any issues with Israel.").

194. *See Security Council Press Release, supra* note 4 (listing the countries that stated that any collective security concept requires a just resolution to the Israeli/Palestinian conflict).

195. Nahal Toosi & Natasha Bertrand, *Iran, U.S. Signal Nuclear Talks Will Resume Despite Alleged Israeli Attack*, POLITICO (Apr. 12, 2021), <https://perma.cc/GX44-URY6>.

trated by Russia (which has shown a repeated willingness to strategically associate itself with Israeli goals)¹⁹⁶ and other, now allied, regional partners.¹⁹⁷

Turkey's growing emergence as an active party in multiple, regional conflicts, may also present a potential spoiler to any collective security agreement.¹⁹⁸ Turkey, under the Erdogan regime, has played a bad-actor role in multiple regional conflicts.¹⁹⁹ However, Turkey has a personal stake in quickly settling the Gulf conflict—resolving its refugee crisis. Turkey now hosts the largest refugee population in the world because of the Syrian Civil War.²⁰⁰

Turkey and Israel both demonstrate that while any Gulf Collective Security Concept would not be without its fair share of regional objectors, it is far more strategic for them to cooperate in order to push their own geopolitical interests, rather than abstain and risk not having their positions advocated.

196. See Scott B. Lasensky & Vera Michlin-Shapir, *Avoiding Zero-Sum: Israel and Russia in an Evolving Middle East*, in *MENA REGION: A GREAT POWER COMPETITION* 141, 141 (Karim Mezran & Arturo Varvelli eds., 2019), <https://perma.cc/3KV8-WNVH> (“Jerusalem and Moscow now maintain a cooperative, politically effective, and even friendly relationship that compartmentalizes points of friction and avoids crossing red-lines . . . Even in Syria, where conditions have been ripe for a clash, Israel and Russia have worked out an arrangement that allows them to coordinate their actions while pursuing their differing vital interests.”).

197. See *The Abraham Accords*, U.S. DEP'T OF STATE, <https://perma.cc/F9DB-HJQZ> (last visited Oct. 27, 2021) (documenting the establishment of diplomatic coordination between Israel, Morocco, UAE, Bahrain, and Sudan).

198. See Ekaterina Stepanova, *Russia's Foreign and Security Policy in the Middle East: Entering the 2020s*, 20 *ISTITUTO AFFARI INTERNAZIONALI PAPERS*, June 16, 2020, at 4, <https://perma.cc/K8JD-KHSM> (“Growing assertiveness of regional actors has added fuel to old regional controversies . . . and generated new crises initiated by or involving Middle Eastern Powers. One case in point has been Turkey's new regional activism in Syria, Libya and beyond.”).

199. See *id.* at 6–7 (discussing Turkey's role in the Astana ceasefire/de-escalation where for months it fulfilled none of the conditions it agreed to and cared more about the Kurdish issue than disarming militants).

200. *Turkey's Response to the Syrian Refugee Crisis and the Road Ahead*, THE WORLD BANK, <https://perma.cc/3C2B-LJWS> (citing Turkish government estimates that the total number of registered Syrians under Temporary Protection is 2,225,147).

V. LEGAL TOOLS

The United States has multiple tools at its disposal under both international and domestic law that would allow it to assist in the implementation of an international Gulf Collective Security Concept without resorting to military force.

A. *Domestic Law*

Multiple tools exist across the legislative and executive branches, utilizing both international development and strategic trade, that could allow the United States to implement a collective security regime. It is important to note that the domestic legal tools mentioned in this section are “retorsions,” which are categorically not violations of international law, even if deemed “unfriendly.”²⁰¹

1. *Promotion of International Development*

Russia’s Security Concept for the Gulf Area correctly highlights that a primary focus of any collective security Concept must include a “long-term programme of action aimed at normalizing the situation, improving stability and security” and “identifying key benchmarks and parameters for a future post-crisis architecture.”²⁰² It is crucial to rebuild war-torn and failed states like Syria,²⁰³ Yemen,²⁰⁴ and Lebanon,²⁰⁵ because shattered societies are fertile ground for extremism and terror-

201. See Thomas Giegerich, *Retorsion*, in MAX PLANCK ENCYCLOPEDIAS OF INT’L L. ¶ 1 (2020) (“[W]hereas measures of retorsion, being internationally lawful acts, do not require any prior violation of international law.”); *Id.* ¶ 2 (“Measures of retorsion amount to unfriendly acts at most, i.e. acts which are wrongful not in the legal but only in the political or moral sense, or a simple discourtesy.”); *Id.* ¶ 10 (providing examples of retorsions, including economic sanctions, arms embargoes, and terminating the payment of development aid).

202. *Russia’s Security Concept*, *supra* note 2.

203. See Al Jazeera English, *Syria: A Failed State After 10 Years of War*, YOUTUBE (Mar. 17, 2021), <https://perma.cc/TM6G-RDMN> (explaining how terrorist organizations and non-State actors have thrived in Syria).

204. See *Chaotic Yemen: The Deconstruction of a Failed State and Regional Interferences*, ALJAZEERA CTR. FOR STUD. (Apr. 11, 2018), <https://perma.cc/7NXH-NYWE> (noting that jihadis, Daesh, and other extremists have been the beneficiaries of the conflict in Yemen).

205. See Callum Maclean, *On the Brink of State Failure: Lebanon’s Continuing Crisis*, GLOB. RISK INSIGHTS (Nov. 11, 2020), <https://perma.cc/9TNU-KAFY> (commenting that the situation in Lebanon is particularly dangerous as

ism.²⁰⁶ Pursuing regime change through military deployment has proven disastrous in cases like Libya,²⁰⁷ and years of conflict have proven that Bashar al-Assad's regime will likely maintain its grip on Syria for the foreseeable future.²⁰⁸ The most cost-effective way to bring about long term stability is to focus on rebuilding war-torn societies, with the burdens of institution-building shared by a large coalition of international stakeholders.²⁰⁹ The United States has multiple tools under domestic law²¹⁰ that enable it to further explore the Russian Concept, or other likeminded proposals for Gulf Collective Security.²¹¹

"non-state actors such as IS" are able to expand their operations due to internal instability).

206. *Russia's Security Concept*, *supra* note 2 ("Consolidating, in a single counter-terrorism coalition, all stakeholders interested in eliminating the hotbed of extremism and terrorism in the Middle East and ensuring sustainable political settlement in Syria, Yemen, other countries of the region, is a priority.").

207. *See President Obama: Libya Aftermath 'Worst Mistake' of Presidency*, BBC-NEWS (Apr. 11, 2016), <https://perma.cc/56ML-DC5F> ("But after the former Libyan leader was killed, Libya plunged into chaos with militias taking over and two rival parliaments and governments forming.").

208. *See* David Alpher, *Why Can't America Just Take Out Assad?*, THE CONVERSATION (Apr. 9, 2017), <https://perma.cc/X7EN-7SN20> (arguing that "recent history suggests that removing Assad in a hurry would be an even bigger mistake."); *see also* Ruth Sherlock, *Syrian Election Shows the Extent of Assad's Power*, NPR (May 27, 2021), <https://perma.cc/MV2V-TDMM> (discussing the "resilience" of Assad's regime); *see also* Patrick Wintour, *Assad Will Remain in Power 'For a While', Says Jeremy Hunt*, GUARDIAN (Jan. 3, 2019), <https://www.theguardian.com/world/2019/jan/03/syria-president-assad-will-remain-in-power-for-a-while-says-jeremy-hunt> (discussing British Foreign Secretary's prediction that Assad "will remain in power for some time.").

209. *See Russia's Security Concept*, *supra* note 2 ("The central long-term objective is the creation of a security and cooperation organization in the Persian Gulf . . . that would include, in addition to the Gulf countries, Russia, China, the USA, the EU, India and other stakeholders as observers or associated members."). This is consistent with the Department of States Policy. U.S. DEP'T OF STATE, *supra* note 151, at 2 ("The United States cannot and should not pursue these efforts alone. Accordingly, this Strategy outlines a commitment to forge new partnerships with civil society, the private sector, regional partners, and bilateral and multilateral contributors who can provide expertise and share the financial burden.").

210. *E.g.*, Global Fragility Act of 2019, 22 U.S.C.A. §§ 9801–9810 (2019).

211. For examples of such proposals, *see* INTERNATIONAL CRISIS GROUP, *supra* note 7 (discussing potential collective security proposals in the Gulf) and Permanent Rep. of the Islamic Republic of Iran to the U.N., *supra* note 70 (proposing the Hormuz Peace Endeavor Initiative).

In 2019, Congress passed the “Global Fragility Act,” which established a \$200,000,000 Stabilization and Prevention Fund, meant to “support stabilization of conflict-affected areas and to mitigate fragility.”²¹² The Act allows congress to “support transparent and accountable multilateral funds, initiatives, and strategies to enhance and better coordinate both private and public efforts to stabilize conflict-affected areas.”²¹³ The Act also calls for the United States to partner with “governments of such countries, international development organizations, relevant international donors, multilateral organizations, and the private sector.”²¹⁴ The Department of State (DoS) subsequently published a ten-year strategy with instructions for implementing the Act, which calls for the United States to promote financial “burden-sharing” with international partners to create long-term, regional stability.²¹⁵

Russia’s Collective Security Concept, whose “central long-term objective is the creation of a security and cooperation organization in the Persian Gulf . . . that would include, in addition to the Gulf countries, Russia, China, the USA, the EU, India and other stakeholders as observers or associated members,”²¹⁶ fits the U.S. strategy of “burden-sharing.”²¹⁷ The DoS plan even specifically calls for investment in “preventative diplomatic efforts that promote dialogue, mediation, reconciliation, respect for human rights, and conflict resolution.”²¹⁸ These practices mirror much of the Russian plan.²¹⁹ The DoS

212. 22 U.S.C.A. § 9808(a)(1).

213. 22 U.S.C.A. § 9809(a)(3).

214. 22 U.S.C.A. § 9805.

215. See U.S. DEP’T OF STATE, *supra* note 151, at 1 (“The United States will promote burden-sharing and encourage and work with partners to create conditions for long-term regional stability and foster private sector-led growth.”).

216. *Russia’s Security Concept*, *supra* note 2.

217. See U.S. DEP’T OF STATE, *supra* note 151, at 1–9 (making frequent mention of the terms “burden-sharing” and “cost-effective” outcomes).

218. See *id.* at 16.

219. See *Russia’s Security Concept*, *supra* note 2 (“The security system in the Gulf area should be universal and comprehensive; it should be based on respect for the interests of all regional and other parties involved, in all spheres of security, including its military, economic and energy dimensions. It should take full account of the necessity to provide humanitarian assistance to countries and peoples of the region that are in need, with a view to addressing conflict situations and stabilizing societies.”).

plan, consistent with the Foreign Assistance Act of 1961,²²⁰ states that the “United States will continue to restrict assistance to foreign security forces that engage in gross violations of human rights,”²²¹ which is certainly antithetical to the United States’ current unilateral support of the Saudi Kingdom given the Kingdom’s history of human rights violations.²²²

The DoS plan explicitly calls for “active United States diplomatic engagement, including on the UN Security Council.”²²³ And finally, the DoS plan makes repeated references to the need to both “maximize” and make “judicious” use of taxpayer dollars.²²⁴ Given the consensus that the Tehran/Riyadh Cold War is the root cause of multiple conflicts in the region,²²⁵ isolating and addressing the root cause could be the most cost effective method of promoting regional peace and prosperity, instead of viewing each conflict within a vacuum. Furthermore, a long-term, self-governing collective security regime can alleviate the need for future U.S. involvement in the Middle East, potentially maximizing cost efficiency for future generations.²²⁶ The 2019–2020 *Effective Justice and Security Sector Assistance in Conflict-Affected Areas* guidelines also acknowledges the principle of resolving underlying political tension instead of blindly funding temporary ceasefires.²²⁷

220. 22 U.S.C. § 2378d (“No assistance shall be furnished under this chapter . . . to any unit of the security forces of a foreign country if the Secretary of State has credible information that such unit has committed a gross violation of human rights.”).

221. U.S. DEP’T OF STATE, *supra* note 151, at 18.

222. See *Saudi Arabia, Events of 2019*, HUM. RTS. WATCH, (2019), <https://perma.cc/AY72-GGR3> (documenting abuses of human rights).

223. U.S. DEP’T OF STATE, *supra* note 151, at 19.

224. *Id.* at 1, 3, 21.

225. See INTERNATIONAL CRISIS GROUP, *supra* note 7, at 1 (recommending collective security action to address the context of Riyadh and Tehran tensions and to avoid rising escalations in the region); Fisher, *supra* note 42 (discussing various regional proxy wars); *Crisis in Yemen: Iran and Saudi Arabia’s Proxy Conflict*, PAC. COUNCIL ON INT’L POL’Y (July 26, 2017), <https://perma.cc/WC4L-F7R6> (highlighting the proxy conflict in Yemen).

226. Russia’s Security Concept proposes the establishment of a long-term security architecture dedicated to resolving multiple conflicts with interrelated root causes. See *Russia’s Security Concept*, *supra* note 2 (using terms “long-term programme,” “future post-crisis architecture,” and “interrelation of regional problems.”).

227. See DEP’T OF STATE, *EFFECTIVE JUSTICE & SECURITY SECTOR ASSISTANCE IN CONFLICT-AFFECTED AREAS: GUIDELINES FOR U.S. GOVERNMENT ASSISTANCE*

The Russian Collective Security Concept concisely fits foreign policy goals as dictated by domestic law under both the executive²²⁸ and legislative branches.²²⁹ Although the Trump Administration publicly rejected the proposal in October of 2020,²³⁰ the Biden Administration can deploy existing domestic law to further explore Russia's plan.²³¹

2. *Economic Sanctions*

To have any effectiveness, a comprehensive collective security regime would require buy-in from Iran, Saudi Arabia, and other potential regional objectors. There are additional tools available that the Biden Administration can use to enforce compliance with collective security measures. The Export Control Reform Act of 2018 authorizes the president to control the export and transfer of certain commodities, software, and technology in order to protect national security and promote foreign policy.²³² In more extreme circumstances, the International Emergency Economic Powers Act provides the president broader powers to regulate international commerce in response to “unusual and extraordinary threat[s]” to “national security, foreign policy, or economy of the United States”²³³ Sanctions of this nature are under

PLANNING, DESIGN, AND IMPLEMENTATION, 2019–2020, at 3–4, <https://perma.cc/JQE2-7GWL> (“Donors must resist the temptation to approach stabilization as a wholly technical endeavor of supporting and rebuilding institutions and should approach assistance through the lens of establishing legitimacy and reducing polarization. . . . International assistance to military and law enforcement forces runs a particular risk of promoting responses to conflict that provide too much focus on security enforcement while downplaying worthwhile political solutions.”).

228. See, e.g., *id.* at 9 (calling for collaboration with international partners); U.S. DEP’T OF STATE, *supra* note 151 (outlining vision to promote regional stability through partnerships).

229. See, e.g., Global Fragility Act of 2019, 22 U.S.C.A. §§ 9801–9810 (2019); 22 U.S.C. § 2378d.

230. See Craft, *supra* note 5 (disagreeing with the Russian solution for Gulf security and arguing that such a mechanism is unnecessary).

231. See, e.g., Global Fragility Act of 2019, 22 U.S.C.A. §§ 9801–9810 (2019); 22 U.S.C. § 2378d; U.S. DEP’T OF STATE, *supra* note 227; U.S. DEP’T OF STATE, *supra* note 151, at 3 (listing various acts of Congress on which the 2020 Strategy builds).

232. Export Control Reform Act of 2018, 50 U.S.C. §§ 4811–4826.

233. International Emergency Economic Powers Act, 50 U.S.C. §§ 1701–1702.

the sole authority of the executive branch, enacted through executive order and carried out by the Office of Foreign Assets and Control.²³⁴ These sanctions have been used in response to direct attacks against U.S. interests,²³⁵ and violations not directly targeting the United States, like human rights violations and the support of international terrorism.²³⁶

Outside of the executive branch, Congress has enacted legislation imposing sanctions on human rights violators, which have been somewhat successful in curbing the continued violations of human rights in places like South Africa.²³⁷ While economic sanctions against Iran may not have deterred all of its undesirable behavior, economic sanctions at least partially contributed to Iran's entry into the 2015 Nuclear Agreement.²³⁸

The Biden Administration has already employed sanctions against Saudi Arabia, under the Global Magnitsky Human Rights Accountability Act, for human rights violations like the extrajudicial murder of journalist Jamal Kashoggi,²³⁹

234. *Office of Foreign Assets Control – Sanctions Program and Information*, U.S. DEP'T OF THE TREASURY, <https://perma.cc/JG54-ZT8V> (last visited Oct. 27, 2021).

235. *See, e.g.*, Exec. Order No. 12,170, 44 Fed. Reg. 65,729 (Nov. 14, 1979) (announcing sanctions on Iranian government property in response to Iranian hostage crisis).

236. *See, e.g.*, Exec. Order No. 13,067, 62 Fed. Reg. 59,989 (Nov. 5, 1997) (imposing sanctions on Sudanese government property in response to, among other things, such government's human rights violations).

237. *See, e.g.*, The Comprehensive Anti-Apartheid Act of 1986, 22 U.S.C. §§ 5001–5002 (repealed 1993) (aiming to end Apartheid in South Africa and demanding the release of Nelson Mandela). After Nelson Mandela was released and apartheid practices terminated, the sanctions were lifted. Bill Keller, *South Africa Sanctions May Have Worked, at a Price*, N.Y. TIMES (Sept. 12, 1993), <https://perma.cc/LSB7-2Q3N>. It has been subject to debate whether the sanctions caused the end of Apartheid. *See* Philip Levy, *Sanctions on South Africa: What Did They Do?* 2 (Yale U. Econ. Growth Ctr., Center Discussion Paper No. 796, 1999) (“On the face of it, South African sanctions appear to have been successful. . . . This paper will also present an alternative view.”).

238. KENNETH KATZMAN, CONG. RESEARCH SERV., RS20871, IRAN SANCTIONS (2021) (“US sanctions on Iran . . . have arguably not, to date, altered Iran's pursuit of core strategic objectives including its support for regional armed factions and its development of missiles. Sanctions did contribute to Iran's decision to enter into a 2015 agreement that puts limits on its nuclear program – the Joint Comprehensive Plan of Action (JCPOA).”).

239. Tal Axelrod, *Treasury Announces Sanctions on Saudi Officials Following Kashoggi Report*, THE HILL (Feb. 26, 2021), <https://perma.cc/845R-KRP2>.

This Act “authorizes the President to impose economic sanctions and deny entry into the United States to any foreign person identified as engaging in human rights abuse or corruption.”²⁴⁰ Saudi Arabia has indicated its willingness to accede to the Biden Administration’s demand that it improves its human rights record. For example, the Saudi government acted, in what many labeled an “overture to Biden,” when it released imprisoned women’s rights activists.²⁴¹ Notably, Saudi Arabia also restored ties with Qatar at the behest of the Trump Administration, showing its willingness even to reconcile with geopolitical adversaries in response to U.S. pressure.²⁴² Iran, in its desperation to end crushing economic sanctions, has also expressed interest in returning to the 2015 Nuclear Agreement.²⁴³ Secondary Sanctions, or the lifting thereof, can also be used to encourage burden-sharing with non-regional actors—like the European Union—who have proven extremely vulnerable to the United States’ use of secondary sanctions.²⁴⁴

The use of economic sanctions by both the legislative and executive branch have achieved mixed results.²⁴⁵ But, the cru-

240. CONG. RESEARCH SERV., THE GLOBAL MAGNITSKY HUMAN RIGHTS ACCOUNTABILITY ACT (Oct. 28, 2020).

241. Martin Chulov, *Saudi Arabia’s release of Loujain al-Hathloul an Overture to Biden*, GUARDIAN (Feb. 11, 2021), <https://www.theguardian.com/world/2021/feb/11/saudi-arabias-release-of-loujain-al-hathloul-an-overture-to-biden>.

242. Vivian Nereim & Farah Elbahrawy, *Gulf Arab States Agree to Restore Qatar Ties in U.S.-Backed Deal*, BLOOMBERG (Jan. 4, 2021), <https://perma.cc/BC4V-SQ3P>.

243. See David E. Sanger, Steven Erlanger & Farnaz Fassihi, *U.S. and Iran Agree to Indirect Talks on Returning to Nuclear Deal*, N.Y. TIMES (Apr. 2, 2021), <https://perma.cc/6Z62-4A9D> (“The delay seemed to reflect infighting in Iran between elements of the government that are desperate to end the crushing sanctions . . .”).

244. See Steven Erlanger, *Europe Struggles to Defend Itself Against a Weaponized Dollar*, N.Y. TIMES (Mar. 12, 2021), <https://perma.cc/6HW5-E9SR> (discussing the use of secondary sanctions against Europe in order to punish Iran and Russia, showing that the “weaponization of the American dollar and the Treasury is a marked vulnerability for Europe, which depends on open markets”); DIRECTORATE-GENERAL FOR EXTERNAL POLICIES, EUROPEAN PARLIAMENT, STUDY: EXTRATERRITORIAL SANCTIONS ON TRADE AND INVESTMENTS AND EUROPEAN RESPONSES 2 (2020) (“Recent US measures directed against Iran, Cuba and Russia (North Stream 2) have become indirectly a critical challenge for the European Union as well.”) <https://perma.cc/3U3K-2K6Z>.

245. See Joshua Keating, *Why Did International Sanctions Work on South Africa but Not Other Dictatorships?*, SLATE (Dec. 6, 2013), <https://perma.cc/8UNK->

cial point is that, unlike previous foreign policy strategies, sanctions would not be the sole tool meant to deter bad actors from committing violations of international law. Instead, sanctions would be a supplementary tool in a large, comprehensive, multilateral collective security regime, used to encourage parties to meet certain base-line conditions.

3. *Arms Sales*

Regulation of arms and weapons sales can also be an effective deterrent to bring about compliance with any collective security regime. From 2015-2019, the United States was the largest exporter of major arms, representing around thirty-five percent of the world's arms exports.²⁴⁶ Notably, Saudi Arabia was the United States' largest customer.²⁴⁷ This coalesces with a central focus of the Trump Administration's foreign policy—prioritizing the economic, competitive, and job promotion aspect of arms sales.²⁴⁸ The Biden Administration has indicated that it would reverse course from the Trump Administration's commercial priority and focus on both national security and humanitarian interests.²⁴⁹ President Biden announced that the United States would end all “‘relevant arms sales’ that sup-

ZNRA (exploring why sanctions were effective against South Africa but have not been as effective in other situations); Levy, *supra* note 237 (advancing arguments for and against the proposition that sanctions had a major impact on South Africa's behavior).

246. Chiara Vercelo, *Who Were the Largest Major Arms Exporters in the Last 5 Years?*, DEF. NEWS (Mar. 9, 2020), <https://perma.cc/VGZ2-DLUE>.

247. *Id.*

248. See William Hartung, *Trump Policy and Trends in U.S. Arms Sales*, TUFTS WORLD PEACE FOUND. (June 21, 2019), <https://perma.cc/83C7-G6LZ> (“Increasing U.S. arms sales – and bragging about their economic benefits in the United States – has been a central focus of the Trump administration's foreign policy.”).

249. *Candidates Answer CFR's Questions: Joe Biden*, COUNCIL ON FOREIGN RELS. (Aug. 1, 2019), <https://perma.cc/SF4M-FMH4> (“We will make clear that America will never again check its principles at the door just to buy oil or sell weapons.”); see also Connor O'Brien, *Biden Administration Pauses Trump's Foreign Weapons Sales*, POLITICO (Jan. 28, 2021), <https://perma.cc/S2KC-HF4E> (quoting Secretary of State Antony Blinken's comments regarding the review of pending arms sales as “mak[ing] sure that what is being considered is something that advances our strategic objectives and advances our foreign policy.”).

port offensive operations in the war in Yemen.”²⁵⁰ Despite this, the Biden Administration proceeded with a \$23 billion dollar weapon sale to the UAE, even though the UAE has been criticized for its involvement in the war in Yemen.²⁵¹

The regulation of arms sales is bifurcated into two legal regimes²⁵² and governed by the Arms Export Control Act (AECA).²⁵³ The AECA gives the president authority to control the export of defense articles, with the ultimate goal of ensuring the world be “free from the scourge of war and the dangers and burdens of armaments.”²⁵⁴ First, Foreign Military Sales, or government-to-government weapons transactions,²⁵⁵ are administered by the Defense Security Cooperation Agency within the DoS.²⁵⁶ Second, Direct Commercial Sales allow sales from a U.S. company to a foreign government, but are still heavily regulated through the State Department under the Directorate of Defense Trade Controls.²⁵⁷ While both types of sales require congressional notification, congressional authority to modify arms sales is quite limited.²⁵⁸ Therefore, the

250. Ethan Kapstein & Jonathan Caverley, *Biden Must Base Arms Sales on U.S. Interests—Not U.S. Jobs*, FOREIGN POL’Y (Feb. 25, 2021), <https://perma.cc/NF99-G22L> (“In the first major foreign-policy address of his administration, U.S. President Joe Biden stated the U.S. government will end all ‘relevant arms sales’ that support offense operations in the war in Yemen.”)

251. Patricia Zengerle, *Biden Administration Proceeding with \$23 Billion Weapon Sales to UAE*, REUTERS (Apr. 14, 2021), <https://www.reuters.com/business/aerospace-defense/exclusive-biden-administration-proceeding-with-23-billion-weapon-sales-uae-2021-04-13/> (“Some U.S. lawmakers have criticized the UAE for its involvement in the war in Yemen, a conflict considered one of the world’s worst humanitarian disasters, and worried that the weapons transfer might violate U.S. guarantees that Israel will retain a military advantage in the region.”).

252. See generally *Foreign Military Sales vs. Direct Commercial Sales*, NAT’L DEF. INDUS. ASSOC., <https://perma.cc/3A3G-ZW9R> (last visited Oct. 27, 2021) (providing an overview of U.S. aerospace and defense exports).

253. 22 U.S.C. §§ 2751–2756.

254. *Id.* § 2751.

255. See generally Bureau of Political-Military Affairs, *U.S. Arms Sales and Defense Trade*, U.S. DEP’T OF STATE (Jan. 20, 2021), <https://perma.cc/EVM8-A9N6> (providing an overview of U.S. arms sales).

256. *Mission, Vision, Values*, DEF. SEC. COOP. AGENCY, <https://perma.cc/8WE4-2KEV> (last visited Oct. 27, 2021).

257. U.S. DEP’T OF STATE, *supra* note 255.

258. See PAUL K. KERR, CONG. RESEARCH SERV., RL31675, ARMS SALES: CONGRESSIONAL REVIEW PROCESS (2021) (“In general, the executive branch, after

Biden Administration will have broad authority to formulate an arms sale program that fits the strategic objectives of a collective security regime.²⁵⁹

In order to effectively implement this collective security regime, the Biden Administration should treat arms sales as a supplementary tool to enforce compliance, while terminating arms sales with any buyer currently deploying those weapons in de-stabilizing proxy wars.²⁶⁰ The best way to accomplish this objective is to introduce conditionality into the arms sale's program by conditioning weapons assistance on the pursuit of national security and humanitarian goals.²⁶¹ Bilateral pressure on Saudi Arabia, by itself, will not accomplish this goal.²⁶² International pressure, however, based on a large, global coal-

complying with the terms of applicable U.S. law, principally contained in the AECA, is free to proceed with an arms sales proposal unless Congress passes legislation prohibiting or modifying the proposed sale. Under current law Congress faces two fundamental obstacles to block or modify a presidential sale of military equipment: it must pass legislation expressing its will on the sale, and it must be capable of overriding a presumptive presidential veto of such legislation.”).

259. *But see id.* (“Congress, however, is free to pass legislation to block or modify an arms sale *at any time* up to the point of delivery of the items involved.”).

260. For more background on the connection between arms sales and human rights violations, see Patrick Wintour, *UK, US and France May Be Complicit in Yemen War Crimes- UN Report*, *GUARDIAN* (Sept. 3, 2019), <https://perma.cc/TZM3-T8AT> (“Britain, the US and France may be complicit in war crimes in Yemen by arming and providing support to a Saudi-led coalition that starves civilians as a war tactic, a United Nations report has said.”); RAY ACHESON, *WOMEN’S INT’L LEAGUE FOR PEACE & FREEDOM, TRADING ARMS, BOMBING TOWNS* (2015) https://www.un.org/disarmament/wp-content/uploads/2018/07/Publication_Trading-arms-bombing-towns.pdf (exploring “the lethal connection between the international arms trade and the use of explosive weapons in populated areas.”).

261. See Andy Fitch, *A More Nuanced, More Conditional Approach: Talking to Dafna Rand and Andrew Miller*, *BLARB* (Oct. 2, 2021), <https://perma.cc/CL7H-ZFK2> (“For our military assistance (whether selling arms, or providing financing) we should start by thinking through carefully what we hope to achieve from a security perspective—not which weapons our partners want. . . . The Gulf really is a great example of this whole failure to introduce conditionality into our arms sales and security assistance.”).

262. See Michael Igoe, *USAID Tried – and Failed – To Convince Saudi Arabia Not to Strike Civilian Targets in Yemen*, *DEVEX* (Mar. 7, 2019), <https://perma.cc/4BYG-BE3P> (noting the failure of U.S. pressure on Saudi Arabia due to lack of political will from the Saudi’s to prevent civilian casualties).

tion that utilizes both conditional arms sales and economic sanctions, will.

B. *International Law*

1. *UN Resolutions*

There are also multiple tools under international law—which the Biden Administration can employ with minimal maneuvering—that can help facilitate a collective security regime. For example, the Biden Administration can utilize U.N. Security Council Resolution 598, used to broker a cease-fire in the Iran/Iraq War, as a basis for de-escalation in the Gulf.²⁶³ Under Resolution 598, the Security Council “[f]urther requests the Secretary-General to examine, in consultation with Iran and Iraq and with other States of the region; measures to enhance the security and stability of the region.”²⁶⁴ The object and purpose of Russia’s proposed security Concept fits the requirements of Resolution 598.²⁶⁵

Additionally, under the previously stated *erga omnes* analysis, U.N. law authorizes third-party states to invoke the laws of state responsibility for violations of international human rights law.²⁶⁶ While only an injured state such as Yemen or Syria can invoke remedial countermeasures,²⁶⁷ the international community, in response to a *jus cogens* violation, can claim the “cessation of the internationally wrongful act, and assurances and guarantees of non-repetition”²⁶⁸ The international community can also invoke “performance of the obligation of reparation” in response to a *jus cogens* violation.²⁶⁹ A collective security institution, such as Russia’s Concept, will have the authority under international law to make numerous claims

263. Barbara Slavin, *De-escalating the Iran Crisis Via a 31-Year Old UN Resolution*, ATL. COUNCIL (Sept. 23, 2019), <https://perma.cc/8L8J-R8U6>.

264. S.C. Res. 598, ¶ 8 (July 20, 1987).

265. *Russia’s Security Concept*, *supra* note 2 (“It implies a long-term programme of action aimed at normalizing the situation, improving stability and security, resolving conflicts, identifying key benchmarks and parameters for a future post-crisis architecture, as well as ways to fulfill the related tasks.”).

266. *See supra* text accompanying notes 114–15.

267. *See* G.A. res. 56/83, *supra* note 108, at 11 (limiting countermeasures to injured states).

268. *Id.*

269. *Id.*

against Iran and Saudi Arabia that can set baseline conditions for a successful mediation.²⁷⁰

2. *Human Rights Law*

International Human Rights Law can also be used to de-escalate the conflict. Multiple proxy wars throughout the conflict are fought via the instigation of repressed Shia/Sunni minority populations in the Middle East.²⁷¹ Jeffrey Feltman of the Brookings Institute offered a stark warning about the intersection of Sunni/Shia relations and instability:

[L]eaders of Bahrain, Saudi Arabia, and the supporters of Yemen's recognized government need to consider whether they are creating the very conditions by which a portion of their own citizenry, whose political and professional aspirations seem constantly thwarted, will at some point give up on their own national leaders in frustration and see no alternative to the offers of help that Iran will be willing to extend.²⁷²

Existing human rights law, as part of an established collective security regime, can be used to improve the conditions of religious minorities throughout the Middle East, in order to reduce the need for foreign meddling. Article 27 of the International Covenant on Civil and Political Rights (ICCPR) states that "those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their own group, to enjoy their own culture, to profess and practice their own religion, or to use their own language."²⁷³ Similar texts already recognized as customary international law,²⁷⁴ such as the Convention on the Rights of the Child²⁷⁵

270. See *Russia's Security Concept*, *supra* note 2 ("All parties should adhere to international law to the UN Charter and UN Security Council resolutions in the first place.").

271. See Feltman, *supra* note 19, at 153 ("The utter neglect, for decades, of Lebanon's Shia population by the Sunni-Maronite elite and the Shia feudal families . . . prepared the land for the seeds Iran then planted and nurtured."); Mabon & Wastnidge, *supra* note 19 (highlighting Iran's "support for groups across the Middle East, notably Hizballah, and the Islamic Front for the Liberation of Bahrain").

272. Feltman, *supra* note 19, at 153.

273. G.A. Res. 2200A (XXI), International Covenant on Civil and Political Rights art. 27 (Dec. 16, 1966).

274. See *supra* text accompanying notes 114–15.

and the U.N. General Assembly Resolution 47/135 on the Rights of Minorities,²⁷⁶ express similar commitments.

While the religious divide predates the current geopolitical conflict,²⁷⁷ there are signs throughout the Middle East that the sectarian divide between the groups is ebbing. For example, in Iraq, Sunni and Shiite politicians have committed to running for office as allies.²⁷⁸ The Russian Collective Security Concept can utilize an extensive body of international human rights law to build a long-term infrastructure that prioritizes minority rights.²⁷⁹ Once these minority groups are guaranteed the minimum standard of human rights stated under both treaty law and customary international law, they will see less incentive to accept foreign meddling by Iran and Saudi Arabia.

VI. CONCLUSION: THE TIMING IS RIPE

The current Cold War between Iran and Saudi Arabia has generated proxy wars, humanitarian crises, and failed states throughout the Middle East and North Africa.²⁸⁰ Now, more than ever, the timing is ripe for an international coalition to lead a Gulf Collective Security Regime similar to Russia's proposed Concept. This is not simply wishful thinking, the facts on the ground make this moment incredibly ripe for collective action.

The United States is the least energy dependent it has been in decades.²⁸¹ It has a domestic electorate that abhors

275. G.A. Res. 44/25, Convention on the Rights of the Child art. 30 (Nov. 20, 1989).

276. G.A. Res. 47/135, art. 1, ¶ 1, art. 2 ¶ 1 (Dec. 18, 1992).

277. *The Sunni-Shia Divide*, COUNCIL ON FOREIGN RELS., <https://perma.cc/2S2D-KJFK> (last visited Oct. 27, 2021) (“An ancient religious divide is helping fuel a resurgence of conflicts in the Middle East.”).

278. See Isabel Coles & Ali Nabhan, *Iraq's Shiite-Sunni Divide Eases*, WALL ST. J. (May 1, 2018), <https://perma.cc/SNU5-58L3> (describing how the “[g]rim outcome of Islamic State's sectarian violence prompts Sunni politicians to ally with former Shiite foes”).

279. See *Russia's Security Concept*, *supra* note 2 (“All parties should adhere to international law to the UN Charter and UN Security Council resolutions in the first place.”).

280. See *supra* Section II(B).

281. See *supra* Section IV(B).

participation in endless wars,²⁸² an administration in desperate need for areas to cooperate with China²⁸³ and Russia,²⁸⁴ and a State Department that is experienced, ready, and able to negotiate with Iran.²⁸⁵ Not only is the timing ripe, but it is imperative to prioritize a security plan. Given the impermanence of executive actions, the Biden Administration may only have four years to implement a collective security regime.²⁸⁶

The timing is also ideal from a global perspective: multiple global and regional actors including China, Russia, and the European Union have all expressed support for a nuclear-free Iran and a resolution to the Gulf conflict.²⁸⁷ Iran and Saudi Arabia have both expressed interest in multilateral security plans, and Saudi Arabia's recent restoration of ties with Iranian-backed Qatar increases the number of backchannels between the feuding states.²⁸⁸ The bargaining chips further demonstrate a strategic vantage point: sanctions are crippling

282. See Matthew Petti, *Poll: Voters Care More About Ending Endless Wars Than Confronting Enemies*, RESPONSIBLE STATECRAFT (June 3, 2021), <https://perma.cc/7L3U-DKLX> (discussing survey results that show Americans "prioritize getting out of Middle Eastern wars over confronting Middle Eastern adversaries").

283. *A Hostile Meeting Sets the Tone for US-China Relations*, *supra* note 146 (listing actions that have led to worsening relations between China and the United States).

284. See Troianovski, *supra* note 11 (noting reduced likelihood for a productive relationship in common areas of interest); Kramer, *supra* note 145 (explaining the expulsion of American diplomats from Russia); Sanger & Kramer, *supra* note 145 (documenting US sanctions on Russia in 2021).

285. See Matthew Lee, *Biden Presses Iran Diplomacy as New Special Envoy Tapped*, APNEWS (Jan. 29, 2021), <https://apnews.com/article/joe-biden-donald-trump-biden-cabinet-antony-blinken-iran-7abac9eafa91c9250f42a228bff38fe0> (detailing Rob Malley's recent appointment as the U.S. envoy for Iran and his prior successes negotiating with Iran); Howard LaFranchi, *How Biden's Pick of Wendy Sherman Elevates His Iran Diplomacy*, CHRISTIAN SCI. MONITOR (Jan. 28, 2021), <https://perma.cc/5ZGH-HWYQ> (explaining that the appointment of Wendy Sherman as deputy secretary of state signals President Biden's commitment to addressing Iran policy issues).

286. See Landler, *supra* note 150 (describing President Trump's withdrawal from the Iran nuclear deal which was achieved by his predecessor, President Obama).

287. See *supra* Section II(D).

288. See Frank Gardner, *Qatar Crisis: Saudi Arabia and Allies Restore Diplomatic Ties with Emirate*, BBC NEWS (Jan. 5, 2021), <https://perma.cc/4WKR-2MXC> (describing the restoration of diplomatic relations between Qatar and four Arab states).

Iran's economy, and Saudi Arabia's role as a global oil provider is diminishing.²⁸⁹ While Israel and Turkey may present potential obstacles, Israel can be persuaded due to its stronger security position stemming from increased regional alliances, and Turkey has much to gain from a reduced refugee crisis.²⁹⁰ All said and done, the building blocks are now ready to build an international coalition prepared to remedy the destabilization in the Gulf.

Furthermore, Russia's Collective Security Concept, or one of similar caliber, is based on sound principles of international law. It is consistent with the object and purpose of the United Nations and the historical role that the United States was intended to play in the Security Council.²⁹¹ Measures taken by the Gulf Collective Security Concept will also have the support of multiple principles enshrined in international treaty law, international customary law, and U.S. domestic law and policy.²⁹² Some interpretations of international law even impose an affirmative obligation on both Security Council member States and the larger international community to constructively engage with a Gulf Collective Security Concept.²⁹³ While it is unlikely that the United States would face actual liability for an abrogation of its duty under the mandates of the U.N. Security Council, practical implications surrounding U.S. soft power should incentivize U.S. involvement.²⁹⁴ Therefore, all told, the Biden Administration should take immediate steps to constructively engage with Russia's Collective Security Concept.

289. *See supra* Section IV(B).

290. *See supra* Section IV(D).

291. *See supra* Section II(C).

292. *See supra* Section III and IV.

293. *See supra* Section III.

294. *See supra* Section III(D).