

## The Populist Challenge and the Future of the United Nations Security Council

Jeremy Farrall

Follow this and additional works at: <https://digitalcommons.law.umaryland.edu/mjil>



Part of the [International Law Commons](#)

---

### Recommended Citation

Jeremy Farrall, *The Populist Challenge and the Future of the United Nations Security Council*, 35 Md. J. Int'l L. 73 (2021).

Available at: <https://digitalcommons.law.umaryland.edu/mjil/vol35/iss1/8>

This Article is brought to you for free and open access by the Academic Journals at DigitalCommons@UM Carey Law. It has been accepted for inclusion in Maryland Journal of International Law by an authorized editor of DigitalCommons@UM Carey Law. For more information, please contact [smccarty@law.umaryland.edu](mailto:smccarty@law.umaryland.edu).

# The Populist Challenge and the Future of the United Nations Security Council

JEREMY FARRALL<sup>†</sup>

---

## ABSTRACT

*This article examines the potential impact of the populist challenge to international law on the United Nations Security Council. The Security Council is often criticized as ineffective, unprincipled, and an anachronistic mechanism that reflects a power balance from the past, rather than the realities of today. The article argues that the rise of populism is likely to further erode the Security Council's legitimacy and efficacy. At the same time, however, it emphasizes the need for greater nuance in the way that both the phenomenon of populism, as well as the relationship between national and international concerns, are understood and framed. Taking these complexities into account, the Article explores three scenarios that could result from an escalating crisis of Security Council legitimacy. The first involves reform and renewal. The second comprises retreat and realignment. The third encompasses reimagining the international peace and security architecture and creating something new.*

---

© 2020 Jeremy Farrall.

<sup>†</sup> Associate Professor, ANU School of Law, Australian National University.

## INTRODUCTION

The UN Charter bestows upon the United Nations Security Council primary responsibility for the maintenance of international peace and security.<sup>1</sup> Yet the Council is often criticized as ineffective, unprincipled, or an anachronistic mechanism that reflects a power balance from the past, rather than the realities of today.<sup>2</sup> Criticism of the Security Council's composition and the permanent member veto power originated before the Council even existed, as delegates at the 1945 San Francisco Conference debated the merits of establishing a body that would elevate five member states above the rest, thus opening the door to a system of might makes right.<sup>3</sup> Ultimately, the UN Charter endowed the five permanent members with the ability to place their national interests above the collective international interest by vetoing prospective Council action to maintain or restore international peace and security.<sup>4</sup>

This article examines the potential impact of the populist challenge to International Law on the United Nations Security Council. It argues that the rise of populism is likely to further erode the Security Council's legitimacy and efficacy. At the same time, however, the populist challenge might also create opportunities for constructive change by opening up new avenues to reinforce, recalibrate, or revamp the norms and institutions that the twenty-first century requires to maintain global peace and security. For this to occur, there is a need for greater nuance in the way that both the phenomenon of populism, as well as the relationship between national and international concerns, are understood and framed. Taking these complexities into account, the Article explores three different scenarios that could result from an escalating crisis of Security Council legitimacy.

The article proceeds in three sections. Section I recalls the composition and powers of the Security Council for the maintenance of international peace and security. Section II discusses the

---

1. U.N. Charter art. 24, ¶ 1.

2. *See, e.g.*, RAMESH THAKUR, *THE UNITED NATIONS, PEACE AND SECURITY* 339-42 (2d ed. 2017).

3. Some states were against the very idea, with Mexico and the Netherlands arguing that the UN system would be fundamentally flawed and unjust if one country were able to prevent the Security Council from taking urgent action to maintain the peace. *See Documents of the United Nations Conference on International Organization*, Volume XI, Commission III, Security Council at 163-4 (Netherlands) and 333 (Mexico). U.N. Docs. 1150/III/12 (June 22, 1945) and 459/III/1/22 (May 21, 1945).

4. U.N. Charter art. 27.

## 2020] THE POPULIST CHALLENGE AND FUTURE OF UN SEC. COUNCIL 75

phenomenon of populism and its potential impact on the UN Security Council. Section III then examines three different scenarios that could result from a populist-driven crisis of Security Council legitimacy. The first scenario involves reinforcing the Security Council as the primary body responsible for the maintenance of international peace and security, through reform and renewal. The second scenario would see UN member states employing a retreat and realign strategy, thus disengaging, whether formally or informally, from the UN Charter framework and investing their energy in existing or new peace and security coalitions at the regional or bilateral level. The third scenario, reimagining and recreating, would envisage the end of the UN peace and security system and the creation of something completely new.

#### I. THE COMPOSITION AND POWERS OF THE UN SECURITY COUNCIL

At the San Francisco Conference on International Organization in 1945, the founders of the United Nations were motivated by the need to secure active participation of the most powerful states, thus creating an international organization that ‘would not stand idly by in the face of threats to international peace and security’.<sup>5</sup> The UN Charter created an international peace and security system with unprecedented reach and ambition. While the system has never fulfilled its prefatory aspirational objective of ridding the world of the ‘scourge of conflict’,<sup>6</sup> it has proven remarkably resilient. Unlike its predecessor, the League of Nations, which failed to attract all key players into its membership, then lost existing key members when international friction escalated through the 1930s, the UN system has attracted and retained great and small powers alike, achieving practically universal membership.<sup>7</sup>

The UN Charter created the Security Council as not just one of the six principal UN organs, but as the organ tasked with taking action to maintain international peace and security. Chapter V of the Charter sets out the composition, functions and procedures of the Council. Article 23 thus lists the five permanent members of the United Nations, namely China, France, Russia, the United Kingdom and the United States, and notes that the United Nations General

---

5. JEREMY M. FARRALL, UNITED NATIONS SANCTIONS AND THE RULE OF LAW 58 (2007).

6. U.N. Charter preface.

7. On the League of Nations and its shortcomings, *See* PAUL KENNEDY, THE PARLIAMENT OF MAN: THE PAST, PRESENT, AND FUTURE OF THE UNITED NATIONS 8-24 (2006).

Assembly (“UNGA”) shall elect the ten remaining non-permanent members that round out the Council’s current membership of fifteen.<sup>8</sup> Article 24 bestows upon the Council primary responsibility for the maintenance of international peace and security.<sup>9</sup> Article 25 then reinforces the power of the Security Council to take decisive and meaningful action by specifying that the Council’s decisions are binding on all UN member states.<sup>10</sup> Chapter V is also significant for the way in which it shapes the Security Council’s decision-making dynamics by granting the permanent members under Article 27 the power to veto any prospective substantive decision.<sup>11</sup>

The Council’s substantive powers are laid out in Chapters VI, VII & VIII of the Charter. Chapter VI sets out the Council’s peaceful settlement powers, including the ability to call on member states to resolve their disputes peacefully through a range of dispute resolution mechanisms such as negotiation, enquiry, mediation, arbitration, conciliation and judicial settlement.<sup>12</sup> Chapter VII provides that the Council shall determine the existence of threats to the peace, breaches of the peace and acts of aggression,<sup>13</sup> and take action accordingly to maintain or restore international peace and security, including applying sanctions short of force,<sup>14</sup> or authorizing the use of force itself.<sup>15</sup> Chapter VIII of the Charter encourages the Council to make use of regional arrangements or agencies in meeting its responsibilities and exercising its powers under Chapters VI and VII.<sup>16</sup>

## II. HOW DOES THE POPULIST CHALLENGE IMPACT THE UN SECURITY COUNCIL?

The other articles in this symposium document the nature and scale of the populist challenge to international law. As Mark Graber explains, populist movements are primarily motivated by a desire to ensure that ordinary people can exercise some degree of agency over the exercise of public decision-making power.<sup>17</sup> Populists tend to be

---

8. U.N. Charter art. 23.

9. U.N. Charter art. 24, ¶ 1.

10. *Id.* art. 25.

11. *Id.* art. 27, ¶ 3.

12. *Id.* art. 33.

13. *Id.* art. 39.

14. *Id.* art. 41.

15. *Id.* art. 42.

16. *Id.* arts. 52-54.

17. *See The Populist Challenge to the International Legal Order* (Symposium),

## 2020] THE POPULIST CHALLENGE AND FUTURE OF UN SEC. COUNCIL 77

distrustful of the elites and experts who dominate public decision-making, viewing these elites as removed from ordinary people and their everyday lives and thus unable to appreciate their needs, interests and fears. Populists are thus deeply skeptical of official institutions, including the legislature, executive and judiciary, which they consider to represent and serve primarily the interests of the ruling elite, rather than of the people in general. They support more direct, more proximate public decision-making that reflects and promotes their interests.

There is a tendency in the contemporary literature to equate populism with a form of right wing politics that seeks to decrease the scale and reach of the government and the public institutions that support it. The logical extension of equating populism with this politics is the assumption that populism axiomatically leads to nationalism, meaning that all populists would prefer their countries to retreat from international norms and institutions that place international causes above national needs. However, as Graber shows, the commitment of populism to increasing the democratic representation of ordinary people, improving the transparency and accountability of government, and ensuring that elite-decision-making is grounded in the experiences of everyday people in the real world, does not necessarily lead to politics or activism that is isolationist and/or nationalist. It can also lead to politics or activism that is communitarian and/or internationalist.

A case-in-point is the debate that is currently raging in Australia, where increasing temperatures throughout 2019 caused severe drought, which left the Australian bush tinder-dry, leading to the most widespread and destructive Australian bushfire season on record. There is increasing frustration among ordinary people throughout the South-Eastern sections of Australia ravaged by fires and exposed to months of hazardous smoky air, that the nation's politicians, from both the left and the right, have failed to take meaningful action to transform the Australian fossil-fuel-dependent economy and decrease Australia's carbon emissions to slow climate change. In this context, the populist perspective despairs at the inability of elite politicians of both left and right to take seriously the threat of climate change and to place local *and* global existential environmental needs above their traditional carbon-based-economy-driven politics and policies. Thus Australia, at the beginning of 2020,

might be witnessing the early stages of a populist-based movement that could force elites to embrace carbon-neutral economic planning that elevates environmental concerns above the interests of fossil-fuel industries.

*A. The purported binary antagonism between national and international interests*

The tendency to equate populism with nationalism is often accompanied by the inclination to present national and international interests as inherently antagonistic. This approach was dramatically employed by US President Donald Trump in his address to the United Nations General Assembly in New York in September 2019, when he proclaimed:

The future does not belong to globalists. The future belongs to patriots. The future belongs to sovereign and independent nations who protect their citizens, respect their neighbors, and honor the differences that make each country special and unique.<sup>18</sup>

The assumption underpinning this statement is, to channel the President's typical vernacular, that nationalism is good, whereas internationalism is 'very, very bad'. This approach was echoed weeks later by Australia's Prime Minister, Scott Morrison, in a speech to a prominent think-tank on international affairs:

The world works best when the character and distinctiveness of independent nations is preserved within a framework of mutual respect. This includes respecting electoral mandates of their constituencies. ... We should avoid any reflex towards a negative globalism that coercively seeks to impose a mandate from an often ill defined borderless global community. And worse still, an unaccountable internationalist bureaucracy.<sup>19</sup>

Both of these statements are underpinned by a reduction of the world into simplistic, binary stereotypes. So you are either a *patriot*

---

18. U.S. President Donald Trump, Remarks to the 74<sup>th</sup> Session of the UN General Assembly (Sept. 24, 2019), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-74th-session-united-nations-general-assembly/>.

19. Australian Prime Minister Scott Morrison, In our Interest, Lecture at the Lowy Institute (Oct. 4, 2019), <http://www.lowyinstitute.org/publications/2019-lowy-lecture-prime-minister-scott-morrison>.

or you are a *globalist*. In this mindset, it is impossible to be both. You either respect national sovereignty or you are part of an ‘ill defined, borderless global community’. In this mindset, it is inconceivable that you could believe in global community and still respect national sovereignty.

The portrayal of the national and international interests as inherently opposed ignores the origins and nature of international law and institutions. For the creation of international law and institutions has always been grounded in the belief that national sovereignty and national consent are sacrosanct. Put another way, international law was created to preserve the national interests of states. It is for this reason that critical scholars decry the way that traditional international law elevates the concerns of the state over the concerns of individuals and that it protects and perpetuates a world-view that prioritizes the needs and interests of powerful, largely western states, such as the United States and Australia. Indeed, the primary reason why the leaders of both states invested so heavily in the norms and institutions of the United Nations and the post-World War II liberal international order was to preserve and promote their core national interests, including democracy, human rights and the rule of law. It is thus both ironic and counter-productive for the leaders of the United States and Australia to be framing international cooperation as contrary to their national interest. Why has it suddenly become impossible for patriots and globalists to share a commitment to international law and institutions that promote *both* international peace and security *and* national prosperity and stability? The next section explores the impact of the populist challenge on the activities of the UN Security Council.

*B. How does the populist challenge impact the UN Security Council?*

As the introduction to this article notes, the Security Council is frequently criticized for being ineffective or unprincipled or both. To what extent does the populist challenge amplify or supplement these criticisms? The previous section notes that populism is primarily concerned with empowering the ordinary person to exercise agency over the public decisions that affect them. One might therefore expect populists to be deeply skeptical of an international institution like the UN Security Council, which is effectively an elitist and undemocratic entity within an elitist, unrepresentative organization of states.

In order to anticipate the likely populist critique of the UN

Security Council, it is useful to begin with the likely populist critique of the United Nations more generally. Of course, the question of what constitutes the UN can invite many different answers.<sup>20</sup> Does the term refer primarily to the collection of 193 UN member states? Does it refer to the key decision-making bodies in which those member states participate, such as the UN General Assembly? Does it refer to the UN Secretariat and its international civil service, which supports the decisions and policy agendas of those decision-making bodies? Does it refer to the dozens of UN programs, agencies and subsidiary organs created by UN member states and/or those bodies? Or is it some combination of the above?

The specific implications of the populist critique will likely differ depending on which of these incarnations of the UN the observer has in mind. For present purposes, a useful starting point is the UN General Assembly, as it purports to represent the nations of the world. What might populists make of the UNGA? One interpretation of the UNGA is that as there are 193 UN member states, the UNGA provides a forum in which the views of all of the peoples of the world, including the ordinary people within all of the peoples of the world, can be aired, shared and taken into account. But the problem with this rosy take on the diversity of views on show in the UNGA is that the representatives of these countries are often even more removed from the ordinary people within their countries than their governments and public institutions are. This is because they sit in New York as the representatives of those governments. Thus, rather than bringing decision-making closer to the ordinary person, the UNGA arguably extends the distance between decision-making body and ordinary people, in both a figurative and a literal sense. Populists are thus likely to be suspicious of the UNGA, viewing it as even more elitist than their own governments.

Turning to the Security Council, then, one might expect populists to be even more critical, as the Council adds another layer of elitist decision-making over and above the already unconscionably elitist layer of the UNGA. This is because the Council contains a small proportion of the 193 member states, with just fifteen Council members. Moreover, the division of Council members into two categories, namely permanent and non-permanent, further exacerbates both the Council's elitism and its level of removal from ordinary people.

---

20. Kennedy, *supra* note 7, at xvi (stating that "there are in practice many United Nations").

## 2020] THE POPULIST CHALLENGE AND FUTURE OF UN SEC. COUNCIL 81

At face value, one could therefore expect the populist challenge to heighten calls for the Security Council to become more democratic and more accountable to ordinary people in the ordinary countries throughout the world. Yet this is where tensions arise between the populist ‘push’ against elitism and its variants that ‘pull’ towards nationalism. For those populists whose country is a permanent member, such as those who are United States citizens, that permanent membership guarantees that the national interest, at least as it is interpreted and framed by the incumbent US administration, will be promoted and preserved on and through the UN Security Council. Thus, while populists might prefer that ordinary people exercised greater agency over their country’s representation on the Council, they may nevertheless derive reassurance from the fact that the veto power guarantees that the Security Council will not take a decision that undermines the core national interests of their country.

It is worth recalling that the founders of the United Nations, including in particular the prospective permanent members, designed the Security Council as a body that would preserve the core national interests of the permanent members. Thus the agency of those countries in Council decision-making was guaranteed. For this reason, the relationship of populism with the Security Council is more nuanced. On the one hand, the populist aversion to elite decision-making invites a negative reaction to the Council, which is an elitist institution par excellence. But on the other, the preservation of the great powers’ national interests, in the form of the veto power, suggests that at least those populists from countries that possess permanent membership might be less antagonistic towards the Council due to the manner in which the Council preserves their countries’ national interests. The corollary of this, however, is that populists from non-permanent member states are likely to be more skeptical and critical of the Council than those from permanent member states.

### III. THREE FUTURE RESPONSE SCENARIOS

The following three sections each explore a different scenario in terms of the potential impact of the populist challenge for international law and institutions.<sup>21</sup> The first scenario involves

---

<sup>21</sup> For an exploration of how these scenarios might unfold in relation to the backlash against global law and institutions pertaining to the environment, human rights, international peace and security, and trade and finance, *see* Peter G. Danchin, Jeremy Farrall, Jolyon Ford, Shruti Rana, Imogen Saunders and Daan

reform and renewal. The second involves retreat and realignment. The third involves reimagining and recreating.

*A. Reform and Renewal*

The first scenario would involve reform and renewal of the Security Council, in order to make it less elitist and more proximate to the ordinary person. There is, of course, a long tradition of efforts to reform the structure of the Security Council. As noted above, when the United Nations was created, the total number of foundational UN member states was fifty-one and the Security Council initially had eleven members, with the five permanent members and six non-permanent members serving two-year terms. This meant that more than twenty percent of UN members were Security Council members. By 1965, when the number of Council members was expanded to fifteen, there were one hundred and thirteen UN members. This meant that more than twelve percent of UN members were Council members. Today there are 193 UN member states.

Proposals to reform the Security Council have been on the UNGA agenda since 1979. In recent decades these efforts have tended to focus on expanding membership to provide greater geographic representation of the full UN membership. Perhaps the most sophisticated Security Council reform proposal was advanced by then UN Secretary-General Kofi Annan, in his report entitled 'In Larger Freedom', which endorsed a number of recommendations by the 2004 High-level Panel on Threats, Challenges and Change. The proposal was that the Council should be expanded to 24 members, with more equitable regional distribution so that 6 seats would be allocated to each of Africa, Asia/Pacific, Europe and the Americas.

Beyond these basic parameters, the Secretary-General requested UN member states to choose between two models. According to the first model ('Model A'), there would be six new permanent seats without veto and three new two-year seats, divided among the major regions. According to the second model ('Model B'), there would be eight four-year renewable seats and one new two-year, non-renewable seat. Ultimately neither option was endorsed by the 2005 World Summit. As Langmore and Thakur have noted, the fact that the Secretary-General advanced two models rather than one, as well as that neither secured the necessary support to be adopted at the

## 2020] THE POPULIST CHALLENGE AND FUTURE OF UN SEC. COUNCIL 83

World Summit, indicate that while most UN members can agree in the abstract that reform should take place, they are not inclined to agree when it becomes clear precisely how concrete proposals will not benefit them.<sup>22</sup>

Since the World Summit in 2005 a variety of state groupings have pushed different and often conflicting structural reform agendas. The *Group of Four* (G4) contains major powers and prospective permanent members Germany, India, Brazil and Japan. Its preferred model is expanding the Council to 25 members, with the additional ten slots including six new permanent members, namely the G4 themselves and two additional African states, as well as four new elected seats.

The *African Group* contains all fifty-four African Union member states. Its preferred model would expand the Council to twenty-six members, including the addition of seven African seats, two of which would be permanent.

The *Uniting for Consensus Group* was created by countries who are united largely by their opposition to the agenda of the G4. Its membership includes Argentina, Canada, Colombia, Costa Rica, Italy, Malta, Mexico, Pakistan, Republic of Korea, San Marino, Spain and Turkey. The preferred UFCG model would expand the Council to twenty-five members, with ten new rotating non-permanent seats.

The *L69 Group* comprises more than forty developing states, who sponsored a draft resolution on Security Council reform entitled 'L69'.<sup>23</sup> The L69's preferred model would expand the Council to twenty-seven members, with the twelve new seats divided geographically as follows: four seats (two permanent and two non-permanent) to Africa; three seats to Asia (two permanent and one non-permanent); two seats to the Latin America (one permanent and one non-permanent); one additional permanent Western Europe and Other seat; one non-permanent seat to Small Island Developing States; and one additional Eastern European non-permanent seat.

This short summary of these various reform groupings and proposals neatly illustrates the considerable challenge of getting UN member states to agree on a game-plan to move forward with meaningful reform and renewal of the Security Council. Moreover,

---

22. John Langmore & Ramesh Thakur, *The Elected but Neglected Security Council Members*, 39 THE WASH. Q. 99, 103 (2016).

23. Agenda Item 111 for the Sixty-First Session of the U.N. General Assembly, U.N. Security Council Reform Process, U.N. Doc. A/61/L69 (Sept. 11, 2007).

even if a single model were to achieve widespread support from the general membership, any formal proposal to reform the Council would require a formal amendment to the UN Charter. This means that it would be subject to the veto of the permanent members, in any event. This decreases the prospects of success for any formal reform and renew process. Recognizing this, a number of largely smaller states have joined together in a grouping called Accountability, Coherence and Transparency' (ACT), which seeks to promote procedural modifications that improve the Council's accountability to the general UN membership. This push for greater accountability and transparency might resonate with populist concerns, even though it is driven by the same types of expert diplomatic representatives who have been identified above as increasing the distance between ordinary people and decision-makers.

*B. Retreat and Realignment*

The second scenario would involve states responding to populist dissatisfaction with the UN Security Council by disengaging from the Security Council and the UN Charter collective security framework it serves. According to this scenario, states might retreat and realign with like-minded and/or regional neighbor states to cooperate, or at least reach a mutual understanding about the parameters of, more proximate frameworks of principles to manage the risk of future violent conflict within and between such states. There are a number of examples of regional or sub-regional security arrangements, including the Organization for Security and Cooperation in Europe, the North Atlantic Treaty Organization, and the Association of South-East Asian Nations Regional Forum. These arrangements are traditionally viewed as falling within and complementing the UN Charter framework for security. But it is likely that these arrangements would form the first port of call for states who become disenchanted with the Security Council.

It is unclear to what extent these existing security arrangements could combine to create both reliable and sustainable alliances and networks to maintain global peace and security. Moreover, if existing arrangements prove incapable of promoting and protecting international security, what additional regulatory measures would be necessary to deter behavior by states and non-state actors that threatens the territorial integrity and political independence of other states? With the retreat from the UN collective security system, would states revert to pre-United Nations principles of classic international law? Or would they need to develop new principles?

2020] THE POPULIST CHALLENGE AND FUTURE OF UN SEC. COUNCIL 85

What types of new rules and institutions might emerge in this new balance of powers era?

It is also interesting to speculate as to how populists of different stripes and nationalities might respond to this second scenario. To what extent would populist enthusiasm for disengagement from the UN Security Council and the collective security framework align with the relative benefits that their country gains from the status quo? It is conceivable that populists in states with little opportunity to participate on, or exercise influence over, the Security Council might see retreat as an attractive option, as they have never sat on the Council and have thus had little input into its decision-making and strategic policy directions.

By contrast, populists from permanent members, or even non-permanent members who frequently sit on the Council, might be more reluctant to embrace the retreat option if the consequence is to diminish rather than enhance the influence of their state over global affairs. Here it is interesting to contrast, for example, the position of the United States in relation to the central global peace and security institution, the Security Council, with its position on the central human rights institution, the Human Rights Council, or indeed the central global trade institution, the World Trade Organization and its appellate body. Presumably most populists would have supported the Trump administration's walkout from the HRC and its steps to shut down the World Trade Organization's Appellate Body, whereas they would be less enthusiastic if Trump were to propose abandoning the Security Council.

A final point is that it is perfectly conceivable that states might engage in both of the strategies implied in the two first scenarios at the same time. Thus, to channel a wise Muslim saying, a state might trust in Allah (i.e. supporting and engaging in UN reform proposals), while nevertheless tying up its camel (i.e. creating complementary regional alliances and networks, which could take on greater significance if/when the Security Council's days become numbered).

### *C. Reimagine and Recreate*

The third scenario is both the most fascinating and the most challenging to flesh out. If the global community were to start from scratch with the mission of creating a new, fit-for-purpose framework of norms and institutions for maintaining global peace and security, what would they look like? Who would sit at the most important decision-making tables, for how long, and with what powers? How

would their legitimacy be reinforced and regenerated? What structures, mechanisms, norms and resources would be required to guarantee the responsiveness, credibility and resourcefulness of the new system?

It is beyond the scope of this brief article to speculate in any meaningful way on the likely substance of the new norms and institutions that would have to be developed to maintain global peace and security throughout and beyond the twenty-first century. But it is possible to contemplate the type of process that might be required to deliver such norms and institutions. As a starting-point, in order to create a new framework that resonates with and attracts the loyalty and commitment of people around the world, the process would need to reach beyond the traditional international law and United Nations paradigm that views states as the primary actor of international law and international relations. While the Charter begins with the phrase ‘We, the peoples of the United Nations’, thus creating the impression that the United Nations exists for all people, the United Nations system is founded on the understanding that states, rather than people, are the primary decision-making actors. Only ‘peace-loving’ *states* can be members of the United Nations and the benefits and obligations of UN membership accrue to *states* as members. The Charter further elevates the status of states as the primary actor by recognizing the principles of sovereign equality and of non-interference in the domestic affairs of other states.<sup>24</sup>

As a product of the mid-twentieth century, it was to be expected that the UN Charter would recognize the role of states as the primary subjects of international law and thus as the foundational members of the new United Nations organization. But international law and international relations have moved on substantially in the seventy-five years since the San Francisco Conference. The obligations of states under international law now extend beyond those owed to other states to include those owed to individuals and groups of individuals, both within and beyond their own state jurisdictions. Moreover, despite the fact that international law-making processes continue to prioritize the primary role and prerogatives of states, other actors are exerting increasing influence over the formation, modification, monitoring and enforcement of international norms. These actors include non-governmental organizations and private sector corporations. It is thus not such a radical thought to imagine a new model of international organization that empowers actors other than

---

24. U.N. Charter art. 2, ¶ 4, 7.

## 2020] THE POPULIST CHALLENGE AND FUTURE OF UN SEC. COUNCIL 87

states to contribute to the decision-making processes that shape the new norms and institutions that are necessary to maintenance of international peace and security in and beyond the twenty-first century. The new world organization would thus need to be not just for ‘the peoples of the United Nations’, but for *all people*.

What process would be required to determine who the members of the new world organization should be? A helpful starting-point would be the lessons derived from previous efforts by the UN itself to facilitate constitution-making at the national level. For a serious process of reimagining and recreating a global system of norms and institutions that are fit-for-purpose in the twenty-first century would effectively represent, just as the San Francisco Conference did, an effort to develop a new constitution for the international community.

The UN Guidance for Effective Mediation identifies a set of seven mediation fundamentals, which combine to deliver an effective (mediated) peacemaking process.<sup>25</sup> Of particular importance to the development of an effective consultative process is the fundamental of *inclusivity*. In a peacemaking context, the concept of *inclusivity* refers to the need to consider not just the views of the parties to the recently concluded conflict, who are typically the former government and any opposition or rebel groups, but critically also to take into account the perspectives of other stakeholders in the post-conflict society.<sup>26</sup> These stakeholders might be women’s groups, religious communities, civil society organizations, or private sector corporations.

While it would be demanding the impossible to expect a peace process to account for the views of all individuals from that society in formal peace negotiations, it is possible to create consultative mechanisms in such a way that they draw the widest possible diversity of perspectives into the process. The UN Guidance suggests a number of strategies to promote inclusivity, including developing mechanisms to broaden participation and engage different perspectives throughout the various phases of a peacemaking process, as well as using social media and opinion polls, to inform and engage a wide range of participants.<sup>27</sup> Adapting these lessons to the context of global constitution-making, it should be possible in an increasingly

---

25. Report of the U.N. Secretary General, Strengthening the Role of Mediation in the Peaceful Settlement of Disputes, Conflict Prevention and Resolution, Annex I, ¶ 16-52, U.N. Doc. A/66/811 (June 25, 2012).

26. *Id.* at ¶ 29.

27. *Id.* at ¶ 34.

interconnected world to devise a consultative process that provides an opportunity for not just ‘all the Peoples of the United Nations’, but all people in the world to feel included in the new process and therefore to hold a sense of ownership over and commitment to the new rules and institutions that emerge from the global constitution-making process.

#### CONCLUSION

As the articles in this Symposium attest, the populist challenge threatens to unpick global institutions and norms across a range of fields, including human rights, trade and the environment. In the field of international peace and security, however, the global architecture seems less precarious. The most obvious explanation for this is that the architecture itself was built on the premise that the most powerful states would place national interest above the international interest as a matter of course. This meant that the system was structured in such a way as to fuse the international interest with the national interests of the most powerful states. So what we have in the United Nations Security Council is an institution that already delivers a type of populist vision. The big question is at what point the mid-twentieth century pragmatic internationalist populist vision, which deftly intertwined the nationalist and internationalist impulses in service of a global community, will become so out of sync with the contemporary populist and international visions, that it becomes vulnerable to decay, disengagement or destruction.

The challenge in the field of international peace and security continues to be how to maintain the commitment of the world’s key constituent parts to engaging with the rest of the world in a way that eschews violence and promotes friendly relations. The UN Charter system, for all its flaws and failures, has somehow managed to deliver a remarkably stable period in international relations, ensuring that the great powers of its age have not resorted to full-scale global warfare to achieve their objectives. This is no small feat.

This article echoes calls elsewhere in this symposium for the introduction of increased nuance in how the concept of populism and the challenges it poses for international law are understood. It also argues that the relationship between the national interest and international concerns is more symbiotic than antagonistic. For these reasons, the impact on the UN Security Council of the populist challenge to international law is less easy to identify or predict than

## 2020] THE POPULIST CHALLENGE AND FUTURE OF UN SEC. COUNCIL 89

one might expect. The article has explored three potential scenarios for how states and other actors might respond to the populist challenge. Time will tell whether one, or more, or none of these scenarios come to pass. But whatever the consequences of the populist challenge might be, this author is convinced, like the UN founders once were, that the future will belong to both patriots and globalists.