

**UNDERSTANDING THE UNITED NATIONS GENERAL  
ASSEMBLY'S FAILURE TO "UNITE FOR PEACE" OVER THE  
SYRIAN CRISIS.**

By  
Ibrahim Yusuf Bangura

Submitted to  
Central European University  
Department of International Relations

In partial fulfilment of the requirements for the degree of Master of International  
Relations

Supervisor: Professor Xymena Kurowska  
Budapest, Hungary  
2020

## **DEDICATION**

In loving memory of my father, Sheik Gibril Bangura (1932 – 2017), who taught me many life lessons. The world is not the same without you, Daddy.

## **ACKNOWLEDGEMENTS**

To God be all the glory. This academic journey would not have been possible without His grace and guidance.

To my wife, thank you for all the love, support and encouragement and for making the sacrifice to be alone for an entire academic year as I pursue my academic dream. You truly are a gift from God and I could not have asked for a better life partner.

To my two mentors, **my mother** & my dear friend Abdul Tejan-Cole, thank you for constantly inspiring me and for setting targets that I can aspire to reach. I am happy to be following in your footsteps and it is my hope that I always make you proud.

To all those friends, colleagues and family members back home in Sierra Leone and spread across the world who in diverse ways played a part in ensuring that this academic journey went smoothly, and/or gave support in one way or the other, I remain eternally grateful and I am forever in your debt.

To my supervisor, Professor Xymena Kurowska, thank you for your tutelage, patience, encouragement and professionalism. I am grateful to have been able to tap from your knowledge and benefit from your expertise and experience both in class and during the writing of this thesis.

To the faculty and staff of the International Relations department at CEU, thank you for going over and beyond to ensure that as disruptive as this academic year was, we got a wholesome experience and go away with very amazing memories.

To those classmates who have now transitioned to being my friends, I am happy I got the privilege to embark on this journey with you guys. I look forward to breaking barriers with all of you, making a difference in our different communities and building a better world from our experiences at CEU.

Finally, to my “SLINFO fam”, my “MAGMAVILLE cores”, my “Nomination Lawyers” and my “Sunset Family” thank you for all the virtual love during the last nine months and for being a steady source of support and motivation. You guys made sure I never got too homesick by keeping me up to speed with happenings back home. I feel truly blessed to have had all of you by my side during this academic sojourn.

# **TABLE OF CONTENTS**

<b>DEDICATION .....</b>	<b>II</b>
<b>ACKNOWLEDGEMENTS .....</b>	<b>III</b>
<b>TABLE OF CONTENTS .....</b>	<b>IV</b>
<b>ABSTRACT .....</b>	<b>V</b>
<b>INTRODUCTION .....</b>	<b>1</b>
<b>PART I: THE UNITING FOR PEACE RESOLUTION .....</b>	<b>3</b>
1.1 RESOLUTION 377(V) IN USE.....	6
1.1.1 <i>The Security Council &amp; Resolution 377(V)</i> .....	7
1.1.2 <i>The General Assembly &amp; Resolution 377(V)</i> .....	9
<b>PART II: CRITICISMS AGAINST THE USE OF RESOLUTION 377(V) .....</b>	<b>12</b>
2.1 THE CONSTITUTIONALITY OF RESOLUTION 377(V).....	12
2.2 BIG POWER POLITICS & THE SECURITY COUNCIL VETO QUESTION .....	15
2.3 THE USEFULNESS OF RESOLUTION 377(V) .....	18
<b>PART III: THE SYRIAN CASE.....</b>	<b>20</b>
3.1 THE UNITED NATIONS' FAILURE TO END THE SYRIAN CONFLICT.....	21
3.2 THE SYRIAN CIVIL WAR & THE NON-USE OF RESOLUTION 377(V) .....	24
3.2.1 <i>Constitutionality</i> .....	25
3.2.2 <i>Great Power Politics</i> .....	27
3.2.3 <i>Usefulness of the Resolution</i> .....	27
CONCLUSION .....	28
<b>BIBLIOGRAPHY .....</b>	<b>30</b>

## **ABSTRACT**

As the Syrian civil war continues to rage on with no signs of an end in sight, the United Nations has once again come under criticism for its failure to pass those resolutions that would usher in a cessation of hostilities. Given that all but one of the permanent members are involved in the crisis, it is no surprise therefore that the Security Council remains paralyzed on the issue and has been unable to exercise its primary responsibility to maintain international peace and security. With the General Assembly failing to exercise its secondary responsibility through the use of the Uniting for Peace resolution to assist the Security Council, it becomes obvious that the criticisms that the Uniting for Peace resolution has faced since its adoption have established additional conditions that need to be satisfied outside of those preconditions established by Harry Reicher, before the resolution can be convoked. This research finds that in addition to Reicher's pre-conditions, for the resolution to be convoked, it must be in the interest of maintaining international peace and security to do so, it must be established that it does not run contrary to any of the provisions of the UN Charter, it does not threaten the interest(s) of the Permanent Members of the Security Council and the resolution itself is still very useful and has not been made redundant by some institutional or procedural mechanism within the United Nations architecture.

## **INTRODUCTION**

Amid growing concerns on its effectiveness to handle and resolve international crises, and its overall usefulness in today's highly charged geopolitical world, the ongoing Syrian war has yet again put the United Nations (UN) in the spotlight. Formed at the end of the second World War with the aim of preventing future wars and maintaining global peace,<sup>1</sup> the UN has failed to take substantive coercive action to bring an end to the Syrian conflict, which has been regarded as the second most deadly conflict of the 21<sup>st</sup> century.<sup>2</sup> Specifically, the Syrian crisis has once again highlighted the inability of the Security Council, which bears the primary responsibility<sup>3</sup> to maintain international peace and security, to unanimously agree on a way forward in situations that have the potential to undermine global peace. This has reawakened criticisms of the Security Council, especially the use of the veto by the five permanent members, and led to renewed calls for the reformation of the Council. Within the Syrian context, at the core of the Security Council's "embarrassing paralysis"<sup>4</sup> was the imposition of coercive measures on the Syrian government, after it launched a chemical attack on its citizens on August 21 2013. To date, there have been thirteen vetoes against proposed resolutions that aimed to approve coercive measures against the Syrian regime. Despite the Security Council's continued paralysis at the height of the Syrian civil war, there was very limited public discourse on the viability of the "Uniting for Peace" (UfP) resolution to surmount the Security Council stalemate. This paradox is my main research focus in so far as the possible reasons for this inertia. There is a huge lacuna in the literature on this topic generally, and specifically literature that examines this topic from a social science standpoint as opposed to an international law perspective. As such, it is my hope that this research goes some way to bridge that gap. The UfP resolution had proven effective in other times when the Security Council was deadlocked on the adoption of a resolution owing to one of the permanent members exercising

1 Article 1 of the United Nations (UN) Charter

2 Ray Michael, Encyclopedia Britannica

3 Article 24 & Chapters VI and VII of the UN Charter

4 UN Secretary General Ban Ki Moon at a press conference on Monday September 9, 2013

their veto. In total, it has been relied on twelve times to use the General Assembly to break a deadlock in the Security Council. In light of this reality, and recognizing that the Uniting for Peace resolution is an integral element of the UN system which has served as a reliable way of managing stalemates, it is important to consider the possible reasons why it so unavailable in the resolution of the Syrian conflict. Despite consistent advocacy by civil society and human right organizations for the Syrian crisis to be brought to end, the General Assembly has to date refused to intervene by relying on the Uniting for Peace resolution, to make recommendations for measures that would help to bring the crisis to an end. This research therefore aims to deconstruct the reasons why the UfP resolution has not been convoked by the General Assembly to date despite the Security Council's continued paralysis. In undertaking this research, capitalizing on my legal background, I have opted to conduct a historico-legal analysis of documents as most of the primary literature focus on the legal arguments relating to the UfP resolution, with a strong emphasis on the international law perspective. Notwithstanding, these primary sources do an exceptional job at highlighting the jurisprudence, giving a historical background and establishing the political discourse relating to the UfP resolution. Finally, because the United Nations operates through the use and adoption of resolutions, I have put more premium/focus in analyzing resolutions of the Security Council and the General Assembly in so far as they touch on the UfP resolution and the Syrian Civil War.

## PART I: THE UNITING FOR PEACE RESOLUTION

On November 3<sup>rd</sup> 1950, the United Nations General Assembly (UNGA) adopted Resolution 377(V). This resolution, more commonly referred to as the “Uniting for Peace” resolution was adopted in response to efforts by the Union of Soviet Socialist Republics (USSR) [now Russian Federation) to thwart plans by the United Nations Security Council (UNSC) to adopt measures to protect the Republic of Korea (South Korea) against military operations by the Democratic People’s republic of Korea (North Korea). Prior to the resolution being adopted, the USSR had vetoed three proposed resolutions in the UNSC to address the crisis. To surmount the impasse, six members of the Security Council requested the General Assembly, acting under the guidance of Article 11,<sup>5</sup> to consider the situation.<sup>6</sup> In making a case in front of the General Assembly, the United States, under the stewardship of Dean Acheson, its Foreign Secretary, persuaded the General Assembly that it possessed a subsidiary responsibility with regards to international peace and security as promulgated by Article 14 of the UN Charter. The most significant part of the resolution was section A which laid down when the resolution could be convoked. That all-important section states:

*“If the Security Council, because of the lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression, the General Assembly shall consider the matter immediately with a view to making appropriate recommendations to members for collective measures, including in the case of a breach of the peace or act of aggression the use of armed force when necessary, to maintain or restore international peace and security. If not in session at the time, the General Assembly shall therefore meet in emergency special*

<sup>5</sup> Article 11 empowers the General Assembly to consider matters of international peace and security and make recommendations to the Security Council or the Member States

<sup>6</sup> UN General Assembly Resolution A/1618 ( December 1950)



*session within twenty-four hours of the request. Such emergency special session may be called if requested by the Security Council on the vote of any seven members [nine since 1965],<sup>7</sup> or by a majority of the Members of the United Nations.”*

From a purposive reading of this citation, it is evident that for Resolution 377(V) to be convoked, there are pre-conditions that need to be satisfied. These pre-conditions were first examined by Harry Reicher in 1981.<sup>8</sup> Reicher identified three main preconditions to be satisfied before Resolution 377(V) could be convoked. Firstly, the Security Council must have failed in the exercise of its primary responsibility to maintain international peace and security. Secondly, it is important that this failure should have occurred as a result of the Security Council being unable to adopt a resolution not simply as a result of the failure to secure the required majority of nine “yes” votes, but primarily because a permanent member cast a negative vote to prevent the resolution from being adopted. Lastly, there must have occurred one of three things: a threat to the peace, a breach of the peace or an act of aggression. In any of these scenarios, the General Assembly would make an assessment to determine whether a situation appears to constitute any of the three situations which the Security Council must determine exists in order for it to operate within the ambit of Chapter VII<sup>9</sup> of the Charter. Within the context of the UfP resolution, as the Security Council has been paralyzed by a veto, the responsibility passes to the General Assembly to determine whether it “appears” that any one or all of the three situations highlighted above exist.<sup>10</sup> Based on this final precondition, and considering the application of Resolution 377(V) in the past, I believe in current day operations of the UN, an additional precondition would have to be satisfied for the Uniting for Peace resolution to be successfully convoked. It must be established that the vetoed

<sup>7</sup> Highlighted words are mine to reflect the current reading of the clause

<sup>8</sup> Reicher Harry, The Uniting for Peace Resolution on the Thirtieth Anniversary of its passage, Touro Law Centre, 20 Colum. J. Transnational L. 1 (1981)

<sup>9</sup> Article 39 of the UN Charter

<sup>10</sup> Andrassy Juraj, Uniting for Peace, The American Journal of International Law, Vol. 50, No. 3, (1956) 563-582, page 571

resolution(s) must have been geared towards maintaining international peace and security. This is a very high threshold to meet, as an argument can be made that issues that lack the propensity to undermine global peace, such as a civil war within a country's territorial borders, no matter how grave its consequences, will not warrant the convoking of the resolution.

In those instances when all three conditions initially highlighted above are satisfied, the General Assembly “shall” immediately consider the matter with an objective of making appropriate *recommendations to Members for collective measures* geared towards maintaining or restoring global peace and security. It should be noted, however, that pursuant to Article 18 of the UN Charter, Assembly recommendations on the maintenance of international peace and security are considered “important questions” requiring a majority of two-thirds members present and voting for adoption. Against that background therefore, acting under Resolution 377 (V), the General Assembly cannot purport to issue decisions or orders that are binding on any or all Member States that requires them to take collective measures. Member States reserve the right to follow the recommendations or not, as they are non-binding. The spirit of these recommendations is therefore for it to be a political position, not a legal one. At no point in time therefore can the General Assembly usurp the exclusive power of the Security Council to impose coercive measures on a State or States or to decide that Governments must take certain measures under Chapter VII. The adoption of Resolution 377(V) was a landmark moment in the operations of the United Nations, as it declared that member states were no longer willing to allow the permanent members of the Security Council by use of their veto powers to prevent the United Nations from taking any and all action necessary to maintain and restore global peace, in cases where the Security Council had seemingly failed to exercise its primary responsibility to do so. Interestingly, predominantly for this reason, the UfP resolution has come under immense criticism, especially with regards its constitutionality, its effect on the veto power of the permanent members of the Security Council

and its continued usefulness in light of the United Nations' continued growth and operational restructuring since the adoption of Resolution 377(V). Those criticisms will be examined in the next part of this research to examine what impact they might have had on the General Assembly's reluctance to convoke the UfP resolution in its duty to maintain international peace and security within the context of the Syrian crisis.

## **1.1 Resolution 377(V) in use**

Since its adoption, the Uniting for Peace resolution has been relied on to surmount a Security Council stalemate twelve times. The first case was the Korean case already highlighted in the previous section, which gave rise to the adoption of Resolution 377 (V). Most often however, official counts do not consider this case and the “sixth” case concerning Bangladesh which was discussed during the twenty-sixth regular session of the General Assembly. The rationale behind this is quite simple. Back in 1950 when the Uniting for Peace resolution was being adopted, because of the operational structure of the General Assembly, the resolution made provision for the General Assembly to be summoned to an Emergency Special Session (ESS) which could have been called based on either a procedural vote in the UNSC, or within twenty-four hours after the Secretary-General received a request by a majority of UN Members.

To date, there have been a total of ten (10) Emergency Special Sessions (ESS) as a result of the implementation of the Uniting for Peace resolution to address several issues that have had the capacity to undermine international peace and security, with the last one convened in 1997. Seven out of those ten sessions have been summoned to address matters arising in the Middle East, which is a further paradox when considering the Syrian case. The most exceptional Emergency Special Sessions to date remain the seventh and tenth sessions. Unlike most ESS which ran for a single session, the seventh and tenth ESS have been reconvened four and seventeen times respectively, adopting over three dozen resolutions in total. As a matter of fact, the tenth ESS still

stands adjourned as of 13<sup>th</sup> June 2018. It has been seen as a mechanism to continuously address the Middle East's most troubling crisis, the issue of Palestine. The issue of Palestine in UN circles refers to the Israeli-Palestinian conflict, that began in the mid-20th century due to Jewish immigration and sectarian conflict in Palestine between the Jews and the Arabs. As at the end of 2019, only partial success had been achieved to resolve the conflict as part of the Israeli-Palestinian peace process, despite various attempts at ensuring a peaceful attempt to the crisis. At the Security Council level, very much like the Syrian crisis, a more coercive approach has not been adopted because Israel's strong ally, the United States of America has vetoed every resolution aimed at adopting such a coercive approach.

#### 1.1.1 The Security Council & Resolution 377(V)

Quite ironically, the Security Council has been the organ most reliant on the use of the UfP resolution to overcome a deadlock by virtue of one of the permanent members of the Council exercising a negative vote against a proposed resolution. This move can be interpreted as an acceptance and recognition of the General Assembly's role in issues relating to the maintenance of international peace and security. This raises the very important question of under which mechanism the Security Council is able to pass on responsibility to the General Assembly, when the use of Resolution 377(V) has been necessitated by its very own actions. That fact notwithstanding, the Security Council retains the prerogative to refrain from acting on the matter at hand or discharging itself of it or referring it to the Assembly.<sup>11</sup> Additionally, the mere failure to act because of a veto falls within the terms of the resolution. In total, the Security Council has relied on the uniting for Peace resolution seven times, all but one of those cases (the Bangladesh case) resulting in the convening of an Emergency Special Session. Further, all but two of the Security Council requests were in response to vetoes by the USSR. The UNSC has however refrained from relying on the resolution since 1982. Despite no official explanation being given

<sup>11</sup> Articles 11, 12 & 20 of the UN Charter

for this position, I am inclined to believe that it may not be unconnected with criticisms of the resolution that allude to it being a mechanism for the General Assembly to surmount vetoes of the Security Council skillfully. For the purposes of this research, specific mention must be of the First, Third and Ninth ESS' as they, much like the Syrian crisis, were crisis brewing in the Middle East, a long-term hotspot for instability.

The first Emergency Special Session was requested by the Security Council after the United Kingdom and France vetoed resolutions<sup>12</sup> to address the Suez Crisis.<sup>13</sup> The request<sup>14</sup> was also voted by France and the United Kingdom. This first ESS adopted seven resolutions, including Resolution 1000 (ES-I) which gave the UN Emergency Force (UNEF) its mandate.<sup>15</sup> The third Emergency Special Session was necessitated after the USSR vetoed resolutions<sup>16</sup> to address the Lebanon Crisis.<sup>17</sup> The request<sup>18</sup> paved way for the General Assembly to adopt Resolution 1237 (ES-III) which called for early withdrawal of foreign troops from Jordan and Lebanon. The Ninth Emergency Special Session adopted Resolution ES-9/1 which declared Israel a non-peace-loving state and called on members to apply a number of measures on Israel. This was in response to the Israeli occupation of the Golan Heights. The ESS was requested<sup>19</sup> after the US exercised its veto to block a resolution<sup>20</sup> to address the crisis.

<sup>12</sup> Security Council Resolutions S/3710 & S/3713 (October 1956)

<sup>13</sup> The Suez Crisis, more commonly referred to as the Second Arab–Israeli war, was an invasion of Egypt by Israel in late 1956, with the United Kingdom and France towing the line

<sup>14</sup> Security Council Resolution 119 (October 1956)

<sup>15</sup> The first United Nations Emergency Force was created by the United Nations General Assembly to bring an end to the Suez Crisis through resolution 1001 on 7 November 1956

<sup>16</sup> Security Council Resolutions S/4050 & S/4055 (July 1958)

<sup>17</sup> The 1958 Lebanon crisis was a political crisis in Lebanon caused by religious and political tensions in the country that also included a military intervention by the United States military

<sup>18</sup> Security Council Resolution 129 (August 1958)

<sup>19</sup> Security Council Resolution 500 (January 1982)

<sup>20</sup> Security Council Resolution S/14832 (January 1982)

### 1.1.2 The General Assembly & Resolution 377(V)

As has been mentioned, the General Assembly's adoption and use of the Uniting for Peace resolution has been fraught with serious criticism. Those criticisms will be examined in detail in the next part of this research. What is seemingly apparent nonetheless is that whenever the Security Council is unable to perform its primary responsibility to maintain global peace, the buck passes to the General Assembly.

Collectively, the General Assembly has implemented Uniting for Peace five times. However, only four have necessitated the convening of an Emergency Special Session. The first official request from the General Assembly interestingly came from the USSR, a permanent member of the Security Council, who has been the most vehement critic of the Uniting for Peace Resolution. Important to note also is the fact that all UNGA requests have addressed situations that place one or more of the P3 (United States, United Kingdom, France) on the spot. Given the volatility of the Middle East region owing to the Arab-Israeli conflict,<sup>21</sup> three out of the four Emergency Special Sessions requested by the General Assembly have been to address issues in the Middle East. These are the Fifth, Seventh and Tenth Emergency Special Sessions. The first request of the General Assembly resulted in the Fifth Emergency Special Session to discuss the Six Day War.<sup>22</sup> The USSR had failed to secure the nine required votes for its draft resolution at the Security Council and so opted instead to make a General Assembly request for the issue to be discussed by the Assembly. The Emergency Special Session adopted six resolutions including Resolutions 2253 and 2254 (ES-V) which called on Israel to rescind unilateral measures in Jerusalem. The seventh

<sup>21</sup> The Arab-Israeli conflict refers to the ongoing political tension, military conflicts and disputes between Arab countries and Israel, which climaxed during the 20th century.

<sup>22</sup> The Six-Day War, known also as the June War, the 1967 Arab-Israeli War, or the Third Arab-Israeli War, was fought between June 5 and June 10, 1967 by Israel and its neighbors Syria, Jordan and Egypt. Relations between Israel and its neighbors have been frosty since the 1948 Arab-Israeli War

Emergency Special Session first convened in 1980,<sup>23</sup> was requested<sup>24</sup> by Senegal after the US vetoed a resolution<sup>25</sup> in the Security Council to address the Israeli-Palestinian Conflict. This Session adopted eight resolutions (ES-7/2 through ES-7/9) which called for Israel to unconditionally and totally withdraw from territories occupied since 1967. The final use of the Uniting for Peace Resolution by the General Assembly resulted in the convening of the Tenth Emergency Special Session in 1997 after the US vetoed two resolutions<sup>26</sup> to address issues surrounding the Israeli-Palestinian Conflict, especially issues to deal with East Jerusalem and Israeli-occupied territories. This Session which stands adjourned adopted inter alia Resolution ES-10/14 requesting an advisory opinion from the International Court of Justice.

The United Nations was set up at the end of the First World War to prevent future wars and maintain global peace and security within the framework of collective security. Even though the world has been at peace for seventy-five years now, the UN has nonetheless faced severe challenges and been the subject of heavy criticism in its handling of certain crises that have had the potential to undermine global peace. Key among those are the Rwandan genocide, the Middle East conflict and the current Syrian crisis. With regards the Middle East conflict, the United Nations has been handicapped by the actions of the permanent members at the Security Council, the organ tasked with the primary responsibility of maintaining international peace and security. Notwithstanding, the General Assembly has effectively relied on the use of Resolution 377(V) to make recommendations for implementation by member states. Whilst these recommendations fall short of coercive measures which the UNGA is not authorized to make, they have gone a long way in ensuring that the UNSC is not used as a platform for blocking action on the conflict. Since

<sup>23</sup> The Seventh emergency special session of the United Nations General Assembly centred on the Palestine issue. Held in 1980, it was convened by Senegal and was the only other ESS to have lasted for more than one sitting besides the Tenth, which considered the same issue

<sup>24</sup> General Assembly Resolution A/ES-8/1 (September 1981)

<sup>25</sup> Security Council Resolution S/13911 (April 1980)

<sup>26</sup> Security Council Resolutions S/1997/199 & S/1997/241 (March 1997)

its outbreak, the Israeli-Palestinian conflict has been a thorny issue for the UN and has continuously exposed the Security Council's inability to unanimously arrive at a decision that will guarantee long-lasting peace in the region.

More recently, a particular area of embarrassment for the UN has been the Syrian crisis. Since its outbreak in 2011, millions of lives have been lost and Syria completely ravaged by the war. Despite the availability of the UfP resolution and the effective use of it by the General Assembly in addressing the Middle East conflict and other issues since 1950, it has not really been considered as an option to surmount the current paralysis that exists in the Council over Syria. As the Syrian conflict takes a new dimension, this research is geared towards understanding why the Uniting for Peace Resolution has never been convoked by the General Assembly even when it became very clear that the Security Council was paralyzed in adopting resolutions that would meaningfully de-escalate fighting in the Syrian conflict, which had the potential to threaten and undermine international peace and security. The next part of this research will therefore focus on some of the criticisms the Uniting for Peace resolution has faced since its adoption, which would lay the foundation for establishing how those criticisms have played a very major role in the UNGA's reluctance to convoke the UfP resolution, even in the face of the second deadliest conflict in the 21<sup>st</sup> century.



## **PART II: CRITICISMS AGAINST THE USE OF RESOLUTION 377(V)**

Since its adoption in 1950, the Uniting for Peace resolution and its usage have been inundated with severe criticisms. These criticisms to a large extent can be credited for its very limited use between 1950 to 1997 and its non-usage since then. For the purposes of this research, I will categorize these criticisms into three main areas: legal, political and institutional. The legal criticisms focus on the constitutionality of the Uniting for Peace resolution in so far as its supposed contradictions with parts of the UN Charter. The political criticisms focus on the resolution's threat to the veto powers of the five permanent members. Admittedly, this criticism is a quasi-legal one as well. Finally, there are those scholars who believe that Resolution 377(V) has outlived its usefulness because the UN body has evolved and now has other mechanisms in place which have made the resolution redundant. This section of my research therefore focuses on these criticisms to be able to establish the important role they play in the decision to convoke or not convoke the resolution and to decipher how these criticisms contributed in the General Assembly refraining from making use of the Uniting for Peace resolution to come up with a lasting solution to the Syrian crisis. It must be highlighted however, that despite still being relevant within the context of this research, most of the arguments against Resolution 377(V) and its use have been countered and the Uniting for Peace resolution is still an available mechanism to the General Assembly in its secondary duty to maintain global peace.

### **2.1 The constitutionality of Resolution 377(V)**

The main legal argument against the Uniting for Peace resolution has been its usage by the General Assembly to address issues of international peace and security. As highlighted in the previous section, Juraj Andrassy (1956) and Harry Reicher (1981) indisputably established that this responsibility primarily lay in the hands of the Security Council. Before Resolution 377(V) was adopted therefore, it was argued by Member States especially the USSR that the resolution would

contravene Chapter VII of the UN Charter. Primarily, the resolution was perceived as an attempt by the General Assembly to arrogate to itself powers conferred on the Security Council under Chapter VII of the Charter, specifically the primary responsibility to deal with matters of international peace and security. This criticism however never gained traction. It was defeated by the chief architect of the Uniting for Peace resolution, Dean Acheson,<sup>27</sup> who has been credited with successfully persuading the General Assembly of its subsidiary responsibility when it comes to international peace and security, as enunciated by Article 14 of the UN Charter.<sup>28</sup> If the Charter itself contemplated a role for the General Assembly in the maintenance of peace and security, a resolution in furtherance of that role cannot be argued to be illegal or unconstitutional. This position convinced the general membership, who showed their acquiescence by voting overwhelming to adopt the resolution, 52 to 5, with 2 abstentions, that the Uniting for Peace resolution was in no way intended to usurp the Security Council's powers, but merely to complement it. As a matter of fact, the International Court of Justice (ICJ) has subsequently noted that pursuant to Article 11(2) of the Charter the Assembly may discuss any questions relating to the maintenance of international peace and security brought before it by various actors and, except as provided by Article 12, may make recommendations with regard to such questions. The ICJ considered that the only action which was exclusively within the domain of the Council was coercive or enforcement action.<sup>29</sup>

After the adoption of the resolution, rather than the argument against its constitutionality being abandoned, the conversation switched more to a procedural argument, still revolving around the international peace and security responsibility. Antagonists of the resolution within the United Nations argued that the resolution ran contrary to the provisions of Article 12 of the Charter. This

<sup>27</sup> Secretary of State, United States of America (January 21 1949 - January 20 1953)

<sup>28</sup> (United Nations Audiovisual Library of International Law. <http://legal.un.org/avl/ha/ufp/ufp.html>)

<sup>29</sup> ICJ, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, ICJ Reports 2004; <https://www.un.org/unispal/document/auto-insert-178825/>

argument has however been laid to rest by Andrassy<sup>30</sup> and Larry Johnson (2014). Johnson posits that Article 12 merely unequivocally establishes the Security Council's primacy with regard to all matters relating to international peace and security. Article 12 (1) of the UN Charter stipulates that while the Council is exercising its function in respect of any dispute or situation, “the General Assembly shall not make any recommendation with regard to that dispute or situation”. Procedurally therefore, this article was interpreted to mean that both organs of the UN could not deliberate on the same issue simultaneously. Johnson therefore observes that in a bid to overcome this hurdle in the early years, items were removed from the Security Council’s agenda to allow the Assembly to discuss them. With time however, he notes that this practice fell by the wayside.<sup>31</sup> This is indeed the case. Over the years, the Assembly has discussed items and adopted recommendations on items on the agendas of both organs. With time, this became the new practice and in 2004, the International Court of Justice (ICJ) noted and endorsed this practice in the “Wall Case”<sup>32</sup> as follows: “[T]he Court notes that there has been an increasing tendency over time for the General Assembly and the Security Council to deal in parallel with the same matter concerning the maintenance of international peace and security. . . . The Court considers that the accepted practice of the General Assembly, as it has evolved, is consistent with Article 12, paragraph 1, of the Charter.”<sup>33</sup> With this decision, the procedural argument against Resolution 377(V) was finally laid to rest. Perhaps the most important takeaway from the ruling however is that Uniting for Peace is no longer needed in order for the Assembly to discuss matters or adopt resolutions on items also on the agenda of the Council. The General Assembly can do so as a matter of established practice and international law. Notwithstanding, the fact remains that issues of constitutionality remain at the fore of the criticisms of the use of the UfP resolution.

<sup>30</sup> Andrassy Juraj, Uniting for Peace, *The American Journal of International Law*, Vol. 50, No. 3, (1956) 563-582.

<sup>31</sup> Johnson, Larry D, Uniting for Peace: Does It Still Serve Any Useful Purpose?” *AJIL Unbound* 108 (2014): 106–15. Page 109

<sup>32</sup> ICJ, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, ICJ Reports 2004, p. 136.

<sup>33</sup> ICJ Reports 2004 *ibid*

## **2.2 Big Power Politics & the Security Council Veto Question**

Perhaps the most prominent criticism of the Uniting for Peace resolution has been the threat it poses to and its effect on the powers of the permanent members to block a resolution through the exercise of their veto, which was enshrined in the Charter. With the adoption of the UfP resolution by the General Assembly, an argument was advanced that, the “power of veto” problem at the Security Council could be overcome. This question of the Security Council Veto has also been thoroughly examined by Larry Johnson.<sup>34</sup> Arguing against the use of the Uniting for Peace resolution and making a case that the use of the veto is sacrosanct, Johnson’s presumption is that “whenever a permanent member casts a veto it does so because it believes it must, in light of its own national interests and in defence of the purposes and principles of the Organization. It is simply exercising a right given to it under the Charter precisely to prevent the adoption of a proposal.”<sup>35</sup> He goes further to suggest that the Charter’s aims clearly excluded the casting of the veto to protect exclusive national foreign policy interests, much less the casting of a stream of such vetoes over time. These presumptions are quite misleading.

At the San Francisco Conference<sup>36</sup> in 1945, the definition and scope of veto authority as envisaged by the proposed Charter were intensely debated, including between small states and the powerful Permanent Member war victors who were adamant about the veto provision in the new Charter. As debated in Commission III<sup>37</sup> of the Conference, the smaller powers presciently feared that when one of the “Big Five” threatened the peace, the Security Council would be powerless to act, while the Big Five could act arbitrarily relative to a clash between two states not permanent

<sup>34</sup> Johnson, Larry D. “‘Uniting for Peace’: Does It Still Serve Any Useful Purpose?” *AJIL Unbound* 108 (2014): 106–15

<sup>35</sup> Johnson *ibid* page 107

<sup>36</sup> Formally United Nations Conference on International Organization – the international meeting of delegates from 50 Allied nations running from April 25–June 26, 1945 that established the United Nations.

<sup>37</sup> United Nations Conference on International Organizations, San Francisco, California, April 25–June 26, 1945, Commission III: Security Council, Vol. XI (1945).

members of the Council. The initial reason for the veto was to prevent the UN from acting against its founding members, and for the Council to act “swiftly and forcefully” to prevent another world war. The Commission stated that the Security Council should refrain from decisions that might affect the “territorial integrity” and “political independence” of Member States, and that the Council should act in accordance with both the purposes and principles of the Organization and with the UN Charter.

In the early days of the UN, the Soviet Union was the first to violate this intended and perceived limit of the veto vote in the course of the Korean War. With the adoption of Resolution 377(V), a declaration was made by over two-thirds of UN Member states that, pursuant to the UN Charter, the General Assembly decided that it could not and should not be prevented by the permanent members of the Security Council from taking all action necessary to restore global peace and security, in those cases where the Security Council had failed to exercise its 'primary responsibility' for maintaining peace. This interpretation of the Uniting for Peace resolution sees the “final responsibility” for matters of international peace and security being awarded to the General Assembly. It is within that framework that the resolution has therefore been regarded as providing a mechanism for the General Assembly to overrule Security Council vetoes by various official and semi-official UN reports.<sup>38</sup> The criticism of the Uniting for Peace resolution therefore stems from this interpretation of the resolution, and the mistaken argument that it was a mechanism to overturn a veto use by a permanent member. This was certainly not the case.

<sup>38</sup>United Nations General Assembly Session 52 Document 856. A/52/856; International Commission on Intervention and State Sovereignty. "The Responsibility to Protect Archived September 10, 2005, at the Wayback Machine", ICISS.ca, December 2001; "A/58/47 Report of the Open-ended Working Group on the Question of Representation on and Increase in the Membership of the Security Council", UN.org, 21 July 2004; Non-Aligned Movement. "Ministerial meeting of the coordinating bureau of the non-aligned movement" Archived April 11, 2008, at the Wayback Machine", UN.int, 27 May – 30 May 2006.

The resolution was merely an early response to the constitutive veto question. It was intended to respond to the Security Council's incapacity in the face of a clear threat to international peace and security. This paralysis was not something the drafters of the UN Charter had envisaged. In granting the permanent members a veto vote, they intended to limit that veto authority for use in good faith to uphold the welfare of the organization and its purposes and principles, to uphold the Charter (including the protection of Member States' territorial integrity and political independence), and to limit the use of the veto to instances in which it is needed to advance the purposes of the organization and not each permanent member's national foreign policies. Based on this bargain, the privilege of the Permanent Member veto was agreed on pursuant to the Big Five's demands. Henry Richardson, commenting on Johnson's article, submits that the anticipated original limits on the use of the privileged veto by the Permanent Members did not govern for many years beyond 1946.<sup>39</sup> Over time, as the Security Council continues to be handicapped by the use of the veto power by one or some of the permanent members, it is evident that the intention and spirit behind the granting of veto powers to the permanent members is no longer being served.

That notwithstanding, the General Assembly has deviated from the use of Resolution 377(V) perhaps owing to the confusion surrounding the intention of the Uniting for Peace resolution and/or the reluctance of the permanent members to see the effect of their veto vote diminished, after having insisted on its inclusion in San Francisco, and this has opened the floodgates which has led to the embarrassing paralysis over the Syrian crisis. The current veto practice of the Permanent Members' has been well-described by Kenneth Roth,<sup>40</sup> speaking with regard to events in Syria: "[o]ne frustrating element of the Security Council's structure is that it permits the Five Permanent Members . . . to use their vetoes to block action for any reason, partisan or parochial,

39 Richardson, Henry. "Comment on Larry Johnson, 'Uniting for Peace.'" *AJIL Unbound* 108 (2014): 135–40. Page 137

40 Kenneth Roth, Syria: What Chance to Stop the Slaughter? 60 *N.Y. REV. Books* 18 (Nov. 21, 2013).

even in the case of mass atrocities.” This summation gives a clear indication of the political power the permanent members wield within the UN and is necessary to keep in mind as we continue to explore the reasons behind the General Assembly’s reluctance to intervene in the Syrian question.

### **2.3 The usefulness of Resolution 377(V)**

A key feature of Resolution 377(V) was the ability for it to be used to convoke an Emergency Special Session. Since 1987 however, the General Assembly now meets in a regular session opening on the third Tuesday of September, and running right through to the following September. This shift in the operations of the General Assembly has opened the floodgates for the criticism of Resolution 377(V). It has been argued that with this new arrangement, as there was no longer a need to bring back Members from a recess, the Uniting for Peace resolution lost its essence. This argument is usually buttressed by the view that the General Assembly has always had the power and mandate to convene special sessions pursuant to Chapter IV, Article 20 of the Charter which reads: *"The General Assembly shall meet in regular annual sessions and in such special sessions as occasion may require. Special sessions shall be convoked by the Secretary-General at the request of the Security Council or of a majority of the Members of the United Nations."* This analogy is one that I disagree with primarily because I believe such a restrictive view of the significance of Resolution 377(V) takes away from the essence of the resolution, which is to guarantee that international peace and security is safeguarded even when the Security Council is paralyzed. More importantly, it is evident from the wording of Article 20 that special sessions can only be convoked during a regular session of the General Assembly and so this mechanism presented a challenge in those cases when the Assembly had proceeded on recess. That was the problem Resolution 377(V) was intended to remedy. Additionally, the continued use of the Uniting for Peace resolution after 1987 is sufficient proof that the Assembly considered it relevant devoid of the fact that those parts of the resolution that had to do with time were no longer applicable.

In understanding the General Assembly's decision to not "unite for peace" over the Syrian crisis, it is imperative to examine how the criticisms highlighted above have influenced that decision. In doing that, attention must be paid to the general rubric under which the criticisms fall as opposed to the specific criticism that have been highlighted above. To that end, certain questions need to be asked. Does convoking Resolution 377(V) in the Syrian case pose any constitutional challenge? Are there any political implications involved? Is the Uniting for Peace resolution still relevant within the context of addressing the Syrian stalemate in the Security Council? Without a shadow of a doubt, the Syrian Civil War and the Security Council's handling of it merits the intervention of the General Assembly. As this has not happened to date, I will in the next part of this research project illustrate which of the criticisms above hold true even in the face of the atrocities in Syria, which will to a large extent reinforce the criticisms of Resolution 377(V), and give an insight into its non-usage even in situations where it is seemingly the only available option left to the United Nations in its overall duty of maintaining international peace and security.



### PART III: THE SYRIAN CASE

In 2011, Syria erupted into conflict after the government tried to violently suppress protests calling for Bashar Al-Assad's removal as part of the Arab Spring revolution.<sup>41</sup> The conflict, which officially started on 5<sup>th</sup> March 2011,<sup>42</sup> is still ongoing and being fought by several factions with support from international allies at one point in time or the other. The government enjoys support from Russia, which has assisted in carrying out military airstrikes. Several opposition forces enjoy support from a US-led international coalition. To date, all but one of the permanent members of the United Nations Security Council have directly or indirectly taken part in the War.<sup>43</sup> Because of this foreign countries' involvement in the conflict, the war has been described as a proxy war.<sup>44</sup> According to the United Nations, by mid 2013, up to 100,000 people had been killed including 11,000 children.<sup>45</sup> By October 2017, that UN estimate had risen to 400,000 people.<sup>46</sup> The War has been ranked as the second deadliest conflict of the 21<sup>st</sup> century.<sup>47</sup> All parties to the conflict have been criticized by international organizations of committing severe human rights violations and massacres.<sup>48</sup> The conflict has also caused a major refugee crisis with a moderate estimate of five million<sup>49</sup> refugees who have crossed into the neighboring countries of Jordan, Iran, Lebanon and Turkey to avoid the fighting. As at 31<sup>st</sup> March 2020, the Syrian Armed Forces held 63.57% of the Syrian territories, the Syrian Democratic Forces held 25.57%, rebel forces and Turkey held 9.72% and the Islamic State (IS) held 1.14%.<sup>50</sup> Over the course of the war, a number of peace initiatives

41 See "Syria's war explained from the beginning" - <https://www.aljazeera.com/news/2016/05/syria-civil-war-explained-160505084119966.html>

42 The conflict began with major unrests in Damascus and Aleppo when hundreds of Syrians staged a rare protest calling for democratic reforms and the release of all political prisoners.

43 China is the only permanent member of the Security Council that has not been officially involved in the Syrian conflict.

44 Germany, SPIEGEL ONLINE, Hamburg (11 October 2016). "Battle for Aleppo: How Syria Became the New Global War". Der Spiegel.

45 The Guardian Newspaper. 13 June 2013.

46 Library, CNN. "Syrian Civil War Fast Facts"

47 "8 Deadliest Wars of the 21st Century". Encyclopedia Britannica. 26 May 2019.

48 Hubbard, Anne Barnard, Ben; Fisher, Ian (15 April 2017). "As Atrocities Mount in Syria, Justice Seems Out of Reach". The New York Times. 17 May 2017.

49 "United Nations High Commissioner for Refugees (UNHCR)". UNHCR Global Trends 2015. United Nations  
50 <https://twitter.com/Suriyakmaps/status/1245062624779350017>

have been launched, including the March 2017 Geneva peace talks on Syria led by the United Nations, but fighting has continued.<sup>51</sup> As the Syrian conflict takes a new dimension, and bearing in mind the preconditions necessary for the convocation of Resolution 377(V) as well as the criticisms that the said resolution has faced since its adoption, it is important to examine why the Uniting for Peace Resolution has never been convoked by the General Assembly even when it became very clear that the Security Council was paralyzed in adopting coercive resolutions that would meaningfully de-escalate fighting in the Syrian conflict and restore peace and security to Syria and by extension the troubled Middle East region.

### **3.1 The United Nations' failure to end the Syrian Conflict**

Despite the UN's strong criticism of the conflict in Syria, it has been unable to agree on and adopt coercive measures to bring about a cessation of the hostilities in Syria. As Syria continues to be another troubled hotspot in the Middle East, both the Security Council and the General Assembly which have the primary and secondary responsibility respectively for the maintenance of international peace and security, have come under immense criticism for failing to act decisively to stop one of the 21<sup>st</sup> century's greatest tragedies. Arguably, with the involvement of the permanent members in the war in Syria, it is a forgone conclusion that there will never be unanimity among them to enable the adoption of a coercive resolution at the Security Council to address the crisis in Syria. The deep rift in the Security Council<sup>52</sup> on Syria has been exposed by the actions, debates, and negotiations which has also exposed the stark differences between major

<sup>51</sup> Lundgren, Magnus (2016). "Mediation in Syria: Initiatives, strategies, and obstacles, 2011–2016". *Contemporary Security Policy*. 37 (2): 283–298

<sup>52</sup> The Russian Federation and the People's Republic of China vetoed a Security Council draft resolution in July of 2012 that would have extended the mandate of the United Nations Supervisions Mission in Syria and proposed further sanctions against the Syrian government. Russia argued that the resolution would open the path to external military involvement in Syrian domestic affairs. Through the Resolution, the Security Council would have expressed grave concern over the escalation of violence and the failure of the authorities in Syria to implement Joint Envoy Kofi Annan's six-point plan to end to violence, humanitarian and media access, the release of detainees, the start of an inclusive political dialogue. Additionally, it required that all parties, including all armed opposition groups, to work with the Envoy in implementing the June 30, 2012 guidelines of the Action Group on Syria for setting that plan in motion - Press Release, Security Council, Security Council Fails to Adopt Draft Resolution on Syria That Would Have Threatened Sanctions, Due to Negative Votes of China, Russian Federation, U.N. Doc. SC/10714 (19 July 2012)

world powers regarding how to handle serious human rights abuses.<sup>53</sup> The Permanent members are divided along geopolitical lines with the US, UK, France on the one hand and the Russian Federation and China on the other hand. The focus and primary concern of the western permanent members has been to hold the government to account for its actions against its citizens, whereas the permanent members in the east have put more primacy on ensuring that the Syrian government does not take all the blame thereby losing its legitimacy in the process. They regard the Syrian crisis as an internal crisis and as such must be dealt with internally with the government taking the lead. For them, Syria's sovereignty must be respected at all times and in all actions geared towards ending the conflict. The actions of the Security Council have also frustrated the U.N. General Assembly members who passed a resolution condemning the Security Council's failure to act<sup>54</sup> and reminding the Council of its role in the U.N. "to take measures to put an end to all serious violations of

<sup>53</sup> "The United States is disgusted that a couple of members of this Council continue to prevent us from fulfilling our sole purpose here, which is to address an ever-deepening crisis in Syria and a growing threat to regional peace and security. For months, this Council has been held hostage by a couple of members. Those members stand behind empty arguments and individual interests, while delaying and seeking to strip bare any text that would pressure Al-Assad to change his actions. That intransigence is even more shameful when we consider that at least one of those members continues to deliver weapons to Al-Assad." - Permanent Representative for the United States to the United Nations, Samantha Power, U.N. Doc S/PV.6711 (04 February 2014)

"It is with great sadness and concern that I note the exercise today of a double veto against a draft resolution on Syria that had been supported by all other members of the Council ... . We have been discussing Syria for 10 months, and all we have managed to adopt is a mere presidential statement on 3 August 2011 (S/PRST/2011/16) because of the exercise of the veto." - Permanent Representative of France to the United Nations Gerard Araud, U.N. Doc S/PV.6711 (04 February 2014).

"China maintains that under the current circumstances, to put undue emphasis on pressuring the Syrian Government for a prejudged result will not help resolve the Syrian issue. Instead, that may further complicate the situation." - Permanent Representative of the People's Republic of China to the United Nations Li Baodong, U.N. Doc S/PV.6711 (04 February 2014).

"The vote that just took place should not have taken place at all. The Russian delegation had very clearly and consistently explained that we simply cannot accept a document, under Chapter VII ... . That would open the way for the pressure of sanctions and later external military involvement in Syrian domestic affairs. The Western members of the Security Council denied such intentions, but for some reason refused to exclude military intervention." - Permanent Representative of the Russian Federation to the United Nations Vitaly Churkin, U.N. Doc S/PV.6810 (19 July 2012).

"The United Kingdom is appalled by the decision of Russia and China to veto the draft resolution... aimed at bringing an end to the bloodshed in Syria... This is the third time that Russia and China have blocked the efforts of the Council to address the crisis in Syria." - Permanent Representative of the United Kingdom to the United Nations Lyall Grant, U.N. Doc S/PV.6810 (1 July 2012).

<sup>54</sup> General Assembly Resolution 253; U.N. Doc 66/253 (03 August 2012).

international humanitarian law and all serious human rights law committed in the Syrian Republic.”<sup>55</sup>

During the course of the Syrian Civil War, there have been instances when certain alleged atrocities captured the attention of the whole world and condemnation over the crisis came from all corners of the globe. In those moments, it was hoped that the Security Council would listen to the pulse of the general membership and act, but this never happened. On 12 April 2017, Russia vetoed a Security Council draft resolution condemning the deadly chemical attack in Syria.<sup>56</sup> It was the eighth time since the beginning of Syria’s civil war that Moscow had used its veto power to block Security Council action in response to the ongoing conflict.<sup>57</sup> On 28 February 2017, for instance, Russia, along with China, vetoed a draft Security Council resolution that sought to impose sanctions against parties using chemical weapons in Syria during the civil war.<sup>58</sup> And, on 22 May 2014, Russia and China vetoed a draft resolution condemning ‘the widespread violations of human rights and international humanitarian law by the Syrian authorities and pro-government militias, as well as the human rights abuses and violations of international humanitarian law by non-State armed groups’ and referring the situation in Syria to the prosecutor of the International Criminal Court.<sup>59</sup> These are just three examples of Russia, along with China at times, blocking the Security Council from responding to the grave violations of humanitarian law and human rights law in the Syrian civil war with its use of the veto. As at December 2019, there were fourteen vetoed United

<sup>55</sup> General Assembly Resolution 182; U.N. Doc A RES/68/182 (30 January 2014).

<sup>56</sup> Security Council Resolution 315, UN Doc S/2017/315 (12 April 2017); see also Security Council meeting 7922, UN Doc S/PV.7922 (12 April 2017)

<sup>57</sup> Michelle Nichols, Russia Blocks U.N. Security Council Condemnation of Syria Attack (Reuters, 13 April 2017)

<sup>58</sup> Security Council Resolution 172, UN Doc S/2017/172 (28 February 2017); see also Russia, China Block Security Council Action on Use of Chemical Weapons in Syria (UN News Centre, 28 February 2017)

<sup>59</sup> Security Council Resolution 348, UN Doc S/2014/348 (22 May 2014); this resolution was supported by sixty-four member states of the United Nations

Nations Security Council resolutions regarding the Syrian Civil War, all blocked by Russia and sometimes China.

### **3.2 The Syrian Civil War & the non-use of Resolution 377(V)**

Against the background of the Security Council failing to arrive at a consensus with regards to coercive measures, it is important to examine why the General Assembly did not take up its secondary responsibility to intervene in the Syrian Crisis. Without a shadow of a doubt, the Syrian Crisis satisfies all the pre-existing conditions highlighted in the outset of this research as enunciated by Reicher. Additionally, it also satisfies the additional criteria with regards to the objective of the vetoed resolutions that I postulated in that same section. Ordinarily, therefore, the Syrian crisis is a perfect candidate for the use of the Uniting for Peace resolution. Regrettably, to date, the UN has failed to live up to its mandate of maintaining global peace and security as far as the Syrian crisis is concerned. To understand this failure, it is my position that we need not look much further than the criticisms levied against Resolution 377(V) and its usage. While the specific criticisms already highlighted in this research may not directly apply to the Syrian case, nonetheless the general themes of constitutionality, power politics and the usefulness of Resolution 377(V) are still quite relevant in assisting the General Assembly to determine whether to convoke the resolution or not, in those cases where the Security Council is unable to. To unpack the significance of these themes on the Syrian question, the first vetoed resolution<sup>60</sup> will be of great assistance. It sets the tone for future resolutions and gives a clear indication of how fragile the Syrian Civil War issue is. Proposed and drafted by France, Germany, Portugal and the United Kingdom the draft resolution had three key objectives: (1) It condemned the Syrian authorities continued grave and systematic human rights violations and the use of force against civilians, and expressed profound regret at the deaths of thousands of people including women and children; (2) it called for vigilance and the

<sup>60</sup> Security Council Resolution 612, UN Doc S/2011/612 (04 October 2011); see also Security Council meeting 6627, UN Doc S/PV.6627 (04 October 2011)

exercise of restraint by all States over the sale, supply, or transfer of arms and related material of all types directly or indirectly to Syria, including advice, financial resources or services, technical training or any other services or assistance; and (3) it expressed its intention to conduct a review of Syria's implementation of this resolution within a month and to consider its options, including measures under Article 41 of the United Nations Charter. There were 9 votes in favor (Bosnia and Herzegovina, Colombia, France, Gabon, Germany, Nigeria, Portugal, United Kingdom of Great Britain and Northern Ireland, United States of America), 2 votes against (China, Russian Federation) and 4 abstentions (Brazil, India, Lebanon, South Africa). The draft resolution failed to be adopted owing to the negative vote of China and the Russian Federation who are permanent members of the Security Council.

Bearing the above in mind, I now turn to the general themes of criticism highlighted in the previous part of this research and examine how they apply to the current case.

### 3.2.1 Constitutionality

For the General Assembly to convoke the Uniting for Peace Resolution, it is my belief that it must be satisfied that the application of the resolution and the adoption of recommendations in the present instance does not breach any of the articles of the UN Charter. During the deliberations on the first vetoed resolution at the Security Council, it became evident that there was a clash of fundamental norms especially the notion and/or understanding of sovereignty.<sup>61</sup> It is unnecessary

<sup>61</sup> “Of vital importance is the fact that at the heart of the Russian and Chinese draft was the logic of respect for the national sovereignty and territorial integrity of Syria as well as the principle of non-intervention, including military, in its affairs; the principle of the unity of the Syrian people; refraining from confrontation; and inviting all to an even-handed and comprehensive dialogue aimed at achieving civil peace and national agreement by reforming the socio-economic and political life of the country.” - Permanent Representative of the Russian Federation to the United Nations, Vitaly Churkin, UN Doc S/PV. 6627 (04 October 2011)

“The international community should provide constructive assistance to facilitate the achievement of the objectives I have mentioned. In the meantime, it should fully respect Syria’s sovereignty, independence and territorial integrity.” - Permanent Representative of the People's Republic of China to the United Nations Li Baodong, U.N. Doc S/PV.6627 (04 October 2011)

at this point to take a side in the argument. What remains important is the fact that the disagreement in the understanding of sovereignty between the permanent members in the West and the permanent members in the East would open up conversations surrounding the protection and respect of a member state's sovereignty as enshrined in Article 2(4) of the UN Charter.<sup>62</sup> The conversation therefore becomes how the General Assembly may be able to recommend measures to Member States that would not constitute a breach of the sovereignty of Syria, given Syria's insistence that the crisis is an internal affair and as such, its territorial integrity should be respected.<sup>63</sup> This controversy of what sovereignty means is at the heart of the debate over the resolution especially with the vetoing permanent members making constant references to Libya, Iraq and Afghanistan in relation to the R2P<sup>64</sup> doctrine and the regime change<sup>65</sup> policy of the US respectively. With sovereignty being so intrinsically linked to the constitutionality of any move to convoke Resolution 377(V) and the obvious cleavage over the understanding of sovereignty, I would submit that the odds of the General Assembly taking up the Syrian crisis have always been slim. It simply is too complex an issue it would seem.

"As it has stated many times before, Portugal remains fully committed to the sovereignty, independence, territorial integrity and national unity of Syria. We therefore once again call for an inclusive and credible Syrian-led political process aimed at effectively addressing the legitimate aspirations and concerns of Syria's population. Dialogue is the one and only way to ensure a peaceful outcome to the crisis in Syria. Violence and repression can never be the answer." - Permanent Representative of Portugal to the United Nations, Moraes Cabral, U.N Doc S/PV.6627 (04 October 2011)

"A holistic political solution must be found, one that will respect democracy, political reform, justice and human rights, as well as the socio-economic development needs of the people of Syria, in order to ensure long-term peace and stability. This solution must also preserve the unity, sovereignty and territorial integrity of Syria." - Permanent Representative of South Africa to the United Nations, Baso Sangqu, U.N Doc S/PV.6627 (04 October 2011)

<sup>62</sup> "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."

<sup>63</sup> "While the greedy schemes of our enemies inside and outside the Council may succeed elsewhere at the expense of the stability, security and safety of other countries, I can underscore that Syria will stand resolute against any plot that targets its sovereignty, national security, independence and stability, as well as its independent political decisions." - Permanent Representative of the Syrian Arab Republic to the United Nations, Bashar Ja'afari, U.N Doc S/PV.6627 (04 October 2011)

<sup>64</sup> The Responsibility to Protect – known as R2P – is an international norm endorsed at the 2005 World Summit by all member states of the United Nations which seeks to guarantee that the international community never again fails to halt war crimes, crimes against humanity, ethnic cleansing, genocide and all other mass atrocity crimes.

<sup>65</sup> The United States' policy of replacing one government regime with another by the use of military intervention. See Downes, A.B & Monten J. "Forced to be free? Why Foreign-Imposed Regime Change Rarely Leads to Democratization", *International Security*, Vol. 37, No. 4 (2013), 90–131

### 3.2.2 Great Power Politics

Against the backdrop of the Syrian Civil War now clearly regarded as a proxy war, alongside the clear and continued division among the permanent members, with Russia and China on the one side, and the US, UK and France on the other hand, the General Assembly now finds themselves between a rock and a hard place. This political conundrum might be even more precarious than the notion of trying to usurp the veto powers from the permanent members. Choosing to intervene, may be construed as support for the West by China and Russia and given the individual and separate relations between countries, that may not be a Pandora's box that Member States are willing to open. Most member states have independent bilateral relations with the permanent members and picking a side, on such a topical issue, may possibly affect those relations and have its own consequences.

### 3.2.3 Usefulness of the Resolution

With regards the continued usefulness of Resolution 377 and whether it can be utilized in the Syrian crisis stalemate, an argument can be made that given the United Nations' division of Member States into regional geopolitical groups with each regional group being represented on the Security Council, the Assembly based on the votes from the first vetoed resolution and subsequent vetoed resolutions, of the non-permanent members of the Security Council, would already have a sense of the pulse of the Assembly. Further, given the policy of bloc voting among members of the General Assembly, it becomes easier to assess whether the two-thirds vote required for the Uniting for Peace resolution to be convoked can be attained. Leaning into this and relying on the voting pattern of the non-permanent members of the Security Council especially on the first vetoed resolution, it was evident that the regional groups are as divided as the permanent members on the issue of the Syrian crisis. This can be inferred from the decision of the General Assembly to only go as far as adopting Resolution 253 which criticized the Security Council for its failure to act, which is something they unanimously agree on, but stopping short of



actually picking up the slack themselves, because it is evident that the required votes may not be available.

## **CONCLUSION**

The Syrian crisis has exposed the international community's inability to come together and adopt measures that would put an end to hostilities and a humanitarian crisis of this magnitude. Key to this inability is the United Nations Security Council's failure to adopt coercive measures geared towards ensuring that international peace and security is maintained in the Middle East given the importance of Syria in that region. This failure on the part of the Security Council is reminiscent of its lack of action that allowed gross human rights abuse in the Rwandan genocide in 1994.<sup>66</sup> Despite the Council's inability to adopt coercive measures in cases like Rwanda and Syria, the United Nations General Assembly has a mechanism through which it can exercise its secondary responsibility in matters of international peace and security. That mechanism is General Assembly Resolution 377(V), also known as the Uniting for Peace resolution, which even though quite effective, has nonetheless faced severe criticism over the years, since its adoption in 1950. To date, the Uniting for Peace resolution has not been convoked. This failure on the part of the General Assembly convinced me that apart from the pre-conditions already identified by other scholars, there is a myriad of additional conditions that need to be satisfied before Resolution 377(V) can be convoked in the interest of maintaining global peace and security. This research therefore teases out some of these conditions, using the criticisms as a foundation for the establishment of these further conditions. Naturally, the research is not without its limitations. A key challenge has been deconstructing the real reasoning behind some of the rhetoric during the Security Council deliberations. The unavailability of minutes of closed door and side meetings, has meant a lot of things have had to be inferred. Nonetheless, what also stands out from the research is that the big

<sup>66</sup> The United Nations Security Council has explicitly accepted responsibility for failing to prevent the 1994 genocide in Rwanda..." UN Admits Rwanda Genocide Failure, BBC News, Apr. 15, 2000

powers/permanent members are divided on the Syrian issue both at the UN level and in the ongoing fighting in Syria. Further research is therefore encouraged to discern if the disagreement over Syria is part of a much bigger ideological disagreement that anchors on the establishment of a new world order.

The crisis in Syria has in no small way exposed the United Nations' failure in the execution of its duty to maintain international peace and security especially in the face of a conflict of interest among the permanent members. This possibility has always been a concern as captured by the historical background on the formation of the United Nations and deliberations at the San Francisco conference and the findings in this research lend credence to that concern and further support the countless criticisms of the effectiveness of the United Nations in the preservation of global peace. While it would be a long stretch at this point to question the usefulness of the United Nations, it must however be recognized that there seemingly may be other more compelling factors that are responsible for keeping global peace and not solely the existence of an intergovernmental organization of nation states.

## BIBLIOGRAPHY

### JURISPRUDENCE

Andrassy, J. "Uniting for Peace", *American Journal of International Law*, vol. 50 (1956) 563-582.

Carswell, A. J. "Unblocking the UN Security Council: The Uniting for Peace Resolution." *Journal of Conflict and Security Law* 18, No. 3 (2013): 453–80

Downes, A.B & Monten J. "Forced to be free? Why Foreign-Imposed Regime Change Rarely Leads to Democratization", *International Security*, Vol. 37, No. 4 (2013), 90–131

Johnson, L. D. "'Uniting For Peace': Does It Still Serve Any Useful Purpose?" *AJIL Unbound* 108 (2014): 10.

Krasno, J and Das, M. "The Uniting for Peace Resolution and Other Ways of Circumventing the Authority of the Security Council", in: Cronin, B and Hurd, I. (eds.), *The UN Security Council and the Politics of International Authority*, London et al.: Routledge, 2008, 173-195.

Melling, G. and Dennett A. "The Security Council Veto and Syria: Responding to Mass Atrocities through the 'Uniting for Peace' Resolution." *Indian Journal of International Law* 57, no. 3–4 (December 2017): 285–307.

Petersen, K.S. "The Uses of the Uniting for Peace Resolution since 1950", *International Organization*, vol. 13 (1959) 219-232.

Reicher, H. "The Uniting for Peace Resolution on the Thirtieth Anniversary of its Passage", *Columbia Journal of Transnational Law*, vol. 20 (1982) 1-49.

Richardson, H. "Comment on Larry Johnson, 'Uniting for Peace.'" *AJIL Unbound* 108 (2014): 135–40.

Stein, E. and Morrissey, R. "Uniting for Peace Resolution", in: *Encyclopedia of Public International Law*, vol. 4, Amsterdam et al.: Elsevier, 2000, 1232-1235.

Tomuschat, C. "'Uniting for Peace': ein Rückblick nach 50 Jahren", *Die Friedens-Warte, Journal of International Peace and Organization*, vol. 76 (2001) 289-303.

Vallat, F.A. "The General Assembly and the Security Council of the United Nations," *British Year Book of International Law* 29 (1952): 63-104

Webb, P. "Deadlock or Restraint? The Security Council Veto and the Use of Force in Syria." *Journal of Conflict and Security Law*, Vol. 19, no. 3 (2014): 471-488

Zaum, D. "The Security Council, the General Assembly, and War: the Uniting for Peace Resolution", in: Vaughan, L. et al. (eds.), *The United Nations Security Council and War: the Evolution of Thought and Practice since 1945*, Oxford, Oxford University Press, 2008, 154-174.

## DOCUMENTS

United Nations Conference on International Organizations, San Francisco, California, April 25-June 26, 1945, Commission III: Security Council, Vol. XI (1945)

United Nations General Assembly Session 52 Document 856 (December 2001)

UN Doc S/2011/612 (04 October 2011)

UN Doc S/2011/612 (04 October 2011)

UN Doc S/PV.6627 (04 October 2011)

UN Doc S/PV.6627 (04 October 2011)

U.N. Doc S/PV.6810 (1 July 2012)

U.N. Doc S/PV.6810 (19 July 2012)

U.N. Doc. SC/10714 (19 July 2012)

U.N. Doc 66/253 (03 August 2012)

U.N. Doc S/PV.6711 (04 February 2014)

U.N. Doc S/PV.6711 (04 February 2014)

U.N. Doc S/PV.6711 (04 February 2014)

UN Doc S/2014/348 (22 May 2014)

UN Doc S/2014/348 (22 May 2014)

UN Doc S/2017/172 (28 February 2017)

UN Doc S/2017/172 (28 February 2017)

UN Doc S/2017/315 (12 April 2017)

UN Doc S/2017/315 (12 April 2017)

UN Doc S/PV.7922 (12 April 2017)

UN Doc S/PV.7922 (12 April 2017)

## REPORTS

ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004

Report of the Open-ended Working Group on the Question of Representation on and Increase in the Membership of the Security Council", UN.org, 21 July 2004

## RESOLUTIONS

General Assembly Resolution 377(V) (November 1950)  
General Assembly Resolution A/1618 (December 1950)  
Security Council Resolution S/3710 (October 1956)  
Security Council Resolution S/3713 (October 1956)  
Security Council Resolution 119 (October 1956)  
Security Council Resolution S/4050 (July 1958)  
Security Council Resolution S/4055 (July 1958)  
Security Council Resolution 129 (August 1958)  
General Assembly Resolution 253 (May 1968)  
Security Council Resolution S/13911 (April 1980)  
General Assembly Resolution A/ES-8/1 (September 1981)  
Security Council Resolution 500 (January 1982)  
Security Council Resolution S/14832 (January 1982)  
Security Council Resolution S/1997/199 (March 1997)  
Security Council Resolution S/1997/241 (March 1997)  
General Assembly Resolution A/52/856 (April 1998)  
Security Council Resolution 612 (October 2011)  
General Assembly Resolution 182 (30 January 2014)  
Security Council Resolution 172 (February 2017)  
Security Council Resolution 315 (April 2017)