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## Vetoing Syria

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*A problematization of the Syrian crisis through the right of veto*

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## **Abstract**

The humanitarian crisis in Syria is worse than ever. The late efforts by the UN Security Council have not improved the situation on the ground. The Syrian regime continues to violently suppress its people and the opposition responds in a similar manner. Effects of the brutality can be seen in Turkey where thousands of Syrian citizens seek refuge and the Security Council has determined that the crisis violates international peace and security. The case study in this essay shows how central the right of veto is to the crisis and how it has affected the efforts of the Security Council. From a critical perspective, the veto seems to only do harm. It had direct impact for millions of Syrians when it hindered any action in the Security Council. Moreover, it seems to be a threat to the primary responsibility of the Council. Reformation of the veto has throughout the history of the UN failed and little has changed since then. In this essay, the right of veto is the centre of attention in the pursuit to answer the question of issue.

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## Abbreviations

GA	General Assembly
HRW	Human Rights Watch
JSE	Joint Special Envoy
NATO	North Atlantic Treaty Organization
NGO	Non-Government Organization
OHCHR	Office for the High Commissioner for Human Rights
UN	United Nations
UNSC	United Nations Security Council
UNSMIS	United Nations Supervision Mission in Syria

# **1 Introduction**

The UN Security Council is the primary forum for matters regarding international peace and security. As one of the main pillars of the UN, the Security Council consists of 15 member states and deals with delicate situations every year. Depending on its permanent members, also known as “P-5”, the decisions of the “P-5” (or sometimes) inability to make decisions affect millions of people around the world. The core of the UN Security Council (UNSC) is the decision-making process. Central to the decision-making process is the right of veto, a right granted to the five permanent members of the Council to hinder unfavourable resolutions. The right of veto is vastly debated and has been since the drafting of the UN Charter. One of the most recent examples of when the use of the veto has been questioned is during the on-going humanitarian crisis in Syria. More than once have permanent members exercised their veto on draft resolutions regarding the crisis, which has affected the work of the Council and its response to secure international peace and security.

## **1.1 Purpose and Question of Issue**

The purpose of this essay is to evaluate the impact of the right of veto on the UNSC’s ability to secure international peace and security. As the UNSC has the primary responsibility to maintain international peace and security its workings are of uttermost importance to the development in a country where peace and security is threatened. However to become the saviour that in many cases is desperately needed, the Council first needs to decide on a resolution. Due to the right of the veto the permanent members always have the final say on these decisions and the right of veto hence becomes a highly important aspect of how the council works. This essay seeks to evaluate the impact of the right of veto on the councils ability to maintain international peace and security.

To evaluate the right of the veto I have chosen to perform a case study on the ongoing humanitarian crisis in Syria. As one of the latest examples of the use of the veto in the

Council the Syrian crisis serves as a showcase on the effects and consequences the use of veto might bring. To reach a conclusion on my overall purpose, this essay seeks to answer the following question of issue:

*Is the right of veto a threat to the primary responsibility of the UN, to ensure international peace and security?*

Using the case example of the Syrian crisis the three additional sub questions are analysed in detail;

- *Did the Right of Veto Delay UNSC Actions in Syria?*
- *Are Totalitarian Regimes, if Supported by a Permanent Member, Allowed to Operate Undisturbed due to the Right of Veto?*
- *Does the Right of Veto Cause the Adopted Resolutions to be Diluted?*

## **1.2 Delimitations**

This essay is focused on three specific subjects that are necessary to answer my question of issue; The UNSC, the right of veto, and the crisis in Syria. The UNSC is only one part of the whole UN and its workings overlap with that of the GA, the Human Rights Council and many more organs within the organization. It is thus crucial to limit the work and procedure of the UNSC to what is relevant for the purpose of this essay. The whole work of the UNSC is too comprehensive to cover for an essay of this size. I have therefore chosen to limit the scope to those parts that are highly relevant for the right of veto and its effects in Syria. Given that the UNSC is the primary international body for UN decisions on the Syrian crisis, I have not included any other part of the UN that is working with the crisis such as the GA or the Human Rights Council. They contribute to resolve the crisis through their own procedure and are therefore not necessarily relevant for the question of issue. The crisis in Syria is complex in all its forms. It can be described from different perspectives with focus on aspects such as religious fractions, inequality or political

beliefs. The opposition in Syria is composed of a number of minor groups and two major groups with a variety of interests, most of them unknown. Since the majority of them fight the government outside the scope of the media, they are not publicly known. I have actively chosen to not describe the different domestic parties in the conflict due to its complex nature and lack of information. Instead, the crisis described and discussed in this essay is centred on the conflict itself rather than the parties engaged in it. The right of veto, which is the main aspect of the UNSC, deserves an essay of its own to be fully recited but has been limited to the absolute veto in the UNSC. I chose to put in context with state sovereignty to describe one of many principles that seems to contradict to the veto, especially as stated in the UN Charter. The goal was to problematize the right of veto and to show how two seemingly incompatible objects can be interpreted.

### 1.3 Theoretical Approach

The importance of the UNSC to the maintenance of international peace and security has been widely debated ever since its inception. So has also the question of the way the council should be organized. In the last decades this topic has been raised increasingly more often both within and outside the organization. As an outside observer professor, Bardo Fassbender writes in his book “U.N. Security Council Reform and the right of the veto: a constitutional perspective” from 1998:

*Most governments, interested non-governmental organizations and academic observers agree that in the last decades the international state system, and more generally, conditions of international relations have experienced a change so profound that the status quo established in 1945 cannot be maintained without running the risk of relegating the [U.N.] to the backseats of international life.”<sup>1</sup>*

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<sup>1</sup> Fassbender, Bardo, UN Security Council reform and the right of veto: a constitutional perspective, Kluwer Law

How to reform the organisation is however subject to disputing views. Recently a panel led by the UN-secretary general recommended enlarging the membership of the council. The report produced by the panel suggested two possible ways of reform. The first would add six new permanent members to the council without veto power. The second would create no new permanent seats but would establish a “new category of eight four-year renewable seats”.<sup>2</sup>

Some like Thomas G Weiss argues that a reform of the council will be difficult, if not impossible to conduct.<sup>3</sup> Professor Weiss highlights three specific challenges to a reform; the right of the veto, political paralysis regarding the potential suggestion of Council enlargement and that the US have significantly larger influence in the council than any other nation. Professor Edward C Luck at the Columbia University highlights terrorism and humanitarian crises as two main challenges for the Council

On the topic of whether or not the veto power negatively affect the council’s ability to maintain peace and security, no earlier research have been identified. Therefore the ongoing crisis in Syria has been used as a case study.

#### **1.4 Method & Material**

The essay is divided in two parts. The first part gives the reader background information on the right of veto and the tools that are needed to understand it. Later on, the politics and practice behind the veto is introduced to problematize the procedure in the UNSC. This part ends in a discussion about a main issue in the Council, the two seemingly incomparable subjects State sovereignty and the right of veto. Finally, the current debate on the future of the Council describes the upcoming challenges and the possibilities for change. In the second part, three questions are introduced and answered through a case study on the Syrian crisis. Key to this part is

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<sup>2</sup> Luck, Edward C., *UN Security Council: practice and promise*, Routledge, New York, N.Y., 2006. P. 117.

<sup>3</sup> Weiss, Thomas G., “The Illusion of Security Council Reform” 26:4 *The Washington Quarterly* (2003) pp. 147-161.



the UN efforts in Syria and how they are affected by the use of veto. The final conclusion will summarize the essay and answer my question of issue.

A range of empirical and theoretical materials has been used in this essay. The empirical material is primarily based on reports by Human Rights Watch (HRW). HRW is a non-governmental organization that is dedicated to protecting human rights. They have throughout the Syrian crisis interviewed citizens who have been victims to armed force, arbitrary arrest, suppression or other forms of degrading treatment. Their reports during the crisis have been unambiguous on the use of force and the level of suppression carried out by the Syrian regime and partly fractions of the opposition. However, the reports have focused on different stories and this has contributed to a clear overall picture of the perpetrated actions. The first report “We’ve Never Seen Such Horror” focuses on violations by security forces in the Daraa governorate and is primarily based on interviews with residents. The second report “We Live as in War” focuses on violations by security forces in Homs and is primarily based on interviews with residents. The third report “In Cold Blood” focuses on executions and is based on witness reports. I chose reports from HRW because of its recognized status and weight as an NGO but also based on personal experience of its reports. For instance, it only publishes interviews that can be verified by another source, which heightens the credibility.

The theoretical material is divided into four parts, UN documents, books, papers and interview. The UN documents consists of the verbatim records, draft resolutions, resolutions from the UNSC regarding the Syrian. Here is also the UN Charter included. The second part is books, written by known authors in their field. Sydney D Bailey and Sam Daws, writers of the updated version of “The Procedure of the UN Security Council” offers the full explanation of how the Council operates, including statistics on a number of subjects. Bardo Fassbender, Professor of International Law and writer of the book “UN Security Council Reform and the Right of veto: A Constitutional Perspective” gives another perspective on the veto and the UNSC. Third, I have used and chosen papers to get an updated view on the right of veto and the future of the Council. Thomas G Weiss and Karen E Young offers that in their

paper “Security Council Reform?” Fourth, the complexity of the situation in Syria required a source with first-hand information about the country and its political environment. This could not be found in any book but I interviewed the former Swedish diplomat Ingmar Karlsson who served as chargé d’affaires from 1979-83 and continued to work in the Swedish Ministry of Foreign Affairs until 2008. His gathered knowledge contributed to my understanding of Syria. Finally, one may note the use of quotes in this essay. I have intentionally used them to bring out a certain message in a specific wording that was important to me for the circumstances in which they are placed. The essay consists of two parts which overlap and intersect. The first part starts with an introduction of the UNSC and the right of veto and is later problematized with the principle on state sovereignty and is finished with a mapping of the future. The second part is focused on Syria and the work of the UNSC with a steady presence of the veto. I have used the Toulmin model of argument in that section to determine whether a discussion between two parties with originally conflicting opinions can lead to consensus that enables actions.

## **2 The Right of Veto**

The UN Security Council is the primary body for matters concerning international peace and security. When dealing with such matters, the Council have rules and procedures that have to be followed. Those are stated in the Provisional Rules of Procedure and the UN Charter. Generally, a proposal put before the Council may be submitted by any representative of the Council, but can also be submitted by a non-member of the UN if a member of the Council requests a vote on the matter.<sup>4</sup> The member who submits the proposal is known as the sponsor and if more members have worked with it, they are co-sponsors. Matters put before the Council that requires a vote are usually called “draft resolution” and that is also what they will be called further on in this essay. The word “proposal” may also be used in the same context if there are uncertainties regarding the nature of the matter or if many matters are

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<sup>4</sup> Bailey, Sydney D. & Daws, Sam, *The procedure of the UN Security Council*, 3. ed., Clarendon, Oxford, 1998, p. 221.

considered together. Before a draft resolution is publically discussed and voted on, members of the UNSC often engage in informal consultations to “feel the pulse of the draft resolution”.<sup>5</sup> In these consultations, the permanent members can clarify their standpoint on certain issues without the need to make public decisions. For the purpose of clarification and elimination of misunderstanding in this essay, one must note the difference between procedural and non-procedural matters. Procedural matters only requires an affirmative vote of nine members and the permanent members do not have a right of veto in these matters as described in the UN Charter article 27 (2).<sup>6</sup> Non-procedural matters on the other hand requires a affirmative vote of nine members including the concurring votes of the five permanent members, adding that in decisions under article 52 (2) a party to a dispute shell abstain from voting.<sup>7</sup> This is also called the *nemo iudex causa sua* principle.

## 2.1 What is the Right of Veto?

The right of veto is best understood from a contemporary perspective in 1945. After the Second World War, the four major Allies (the United States, the Soviet Union, United Kingdom and China) needed an agreement on certain subjects, such as the post-war treatment of Germany.<sup>8</sup> Therefore, they agreed that they would establish a world organization in which they would also play a dominant part. With the establishment of a Council and an Assembly, ideas from the League of Nations they aimed at reinforcing their prominent role in the organization. By drawing on earlier notions, the four Allied powers focused on the procedure of the Council and its role as the only body in capacity of making binding decisions on matters regarding

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<sup>5</sup> Bailey, Sydney D. & Daws, Sam, *The procedure of the UN Security Council*, 3. ed., Clarendon, Oxford, 1998, p. 61.

<sup>6</sup> United Nations, Charter of the United Nations, 24 October 1945, 1 U.N.T.S XVI, art. 27 (2).

<sup>7</sup> Ibid, art. 27 (3).

<sup>8</sup> Fassbender, Bardo, UN Security Council reform and the right of veto: a constitutional perspective, Kluwer Law International, The Hague, 1998, p. 163.

international peace and security, and most importantly the voting procedure.<sup>9</sup> Because the four Allied powers (and soon France) shouldered the heavy task of leading the organization combined with the size of their population, economic and military power, they attributed the right of veto to their role as permanent members in the Council.

The right of veto can be defined as the inability of the Council to adopt a resolution due to the negative vote of one or more permanent members.<sup>10</sup> The negative vote in this case means the use of the right of veto by a permanent member, thus hindering the decision of a draft resolution. A member who wishes to neither vote for or against a proposal may abstain from voting.<sup>11</sup> That is called voluntary abstention. According to Bardo Fassbender, the right of veto has four main sides. First, it can be described as a last resort for the P-5 to exercise external sovereignty.<sup>12</sup> Second, the veto allows each of the permanent members to decide when and where the UN can or cannot intervene.<sup>13</sup> Their capability to prevent UN actions against any state that they support or protect gives the permanent members additional power. A permanent member may even cast their veto if they are party to the dispute, unless the decision regards peaceful settlement as the member shall abstain from voting.<sup>14</sup> Thirdly, the veto itself carries a certain weight that gives a permanent member a heightened status in the decision-making process in the Council.<sup>15</sup> This is particularly clear when the UNSC discuss non-procedural proposals. Not only does the veto include the power to say no,

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<sup>9</sup> Fassbender, Bardo, UN Security Council reform and the right of veto: a constitutional perspective, Kluwer Law International, The Hague, 1998, p. 163-164.

<sup>10</sup> Bailey, Sydney D. & Daws, Sam, *The procedure of the UN Security Council*, 3. ed., Clarendon, Oxford, 1998, p. 228.

<sup>11</sup> Ibid, p. 250.

<sup>12</sup> Fassbender, Bardo, UN Security Council reform and the right of veto: a constitutional perspective, Kluwer Law International, The Hague, 1998, p. 277.

<sup>13</sup> Ibid, p. 280.

<sup>14</sup> United Nations, Charter of the United Nations, 24 October 1945, 1 U.N.T.S XVI, art. 52 (2).

<sup>15</sup> Fassbender, Bardo, UN Security Council reform and the right of veto: a constitutional perspective, Kluwer Law International, The Hague, 1998, p. 281.

it is also an opportunity for a permanent member to influence the outcome of a certain situation without necessarily casting a formal negative vote. Fourth, the right of veto gives it's holder the right to prevent or pass amendments to the UN Charter as prescribed in article 108 and 109.<sup>16</sup> This is a peculiar right granted the permanent members. It entails their decisive say about future modifications in the Charter.

The right of veto is regulated in Article 27 (3) in the UN Charter and has never been changed although attempts have been made. Starting at the San Francisco conference, many states tried to ban the veto but quickly realized that there would be no UN organization without the veto possibility for permanent members. Later on, a limitation of the right of veto was attempted to only include decisions of threats to peace, breaches of peace and acts of aggression (commonly called Chapter VII decisions) but failed.<sup>17</sup> A similar ambitious proposal was made by a working group of the General Assembly in the 1990s but equally failed. The permanent members remained united in their efforts to make sure that the right of veto entailed both the pacific settlement of disputes and Chapter 7 decisions. Although some attempts to limit and ban the right of veto has failed, the balance of the right of veto has in fact changed since 1945. In 1965 there was a significant change in the voting procedure of the UNSC when the number of member states in the Council was changed from 11 to 15.<sup>18</sup> The reason for this was to “achieve equitable geographical distribution” while avoiding an enlargement that could hinder the work in the Council. This change meant that voting in the UNSC hence required the affirmative votes of nine members instead of seven.

The right of veto can be used in more than one way. A proposal submitted to the UNSC may be either procedural or non-procedural and when disagreements arise on

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<sup>16</sup> United Nations, Charter of the United Nations, 24 October 1945, 1 U.N.T.S XVI, art. 108, 109.

<sup>17</sup> Bailey, Sydney D. & Daws, Sam, *The procedure of the UN Security Council*, 3. ed., Clarendon, Oxford, 1998, p. 227.

<sup>18</sup> *Ibid*, p. 152.

the nature of the proposal, it can be up for vote.<sup>19</sup> If such a proposal is voted upon, any member can cast a negative vote to try preventing it from becoming non-procedural. If the proposal reaches its sufficient two-third majority it becomes non-procedural and thereby possible to veto by a permanent member. A permanent member who has casted a negative vote in the first voting, but not successfully prevented the proposal from becoming non-procedural, can the second time use its right of veto to prevent decisions upon the proposal. This is known as a double veto. There is another way in which a permanent member can prevent UNSC decisions on non-procedural matters without casting a veto. If a permanent member is able to persuade enough non-permanent members to vote against or voluntary abstain from voting on a non-procedural matter, it will not secure enough affirmative votes and therefore no decision can be made.<sup>20</sup> This is called the hidden veto. The right of veto is one aspect of politics and tactics in the UNSC. In the following section, more aspects of Council politics will be explained.

## **2.2 Politics and Practice of the Council**

The overwhelming majority of the Councils procedure is regulated and where there is not a specified rule, there is room for politics. One can be sure of the existence of the rules of procedure in the Council but equally sure that these rules can and will be interpreted differently depending on the situation. For instance, such a minor matter as convening a meeting can be debated vastly in the Council. The general rule regarding meetings is that it the Council shall be able to function continuously and therefore each member of the Council must be represented at all times at the headquarter.<sup>21</sup> The president of the Council calls on a meeting when he deems

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<sup>19</sup> Liang, Yuen-li, "The So-Called Double Veto" 43:1 *American Journal of International Law* (1949) pp. 134-144.

<sup>20</sup> Bailey, Sydney D. & Daws, Sam, *The procedure of the UN Security Council*, 3. ed., Clarendon, Oxford, 1998, p. 249.

<sup>21</sup> United Nations, Charter of the United Nations, 24 October 1945, 1 U.N.T.S XVI, art. 28 (1).

necessary, but the meetings shall be no less often than 14 in between.<sup>22</sup> Further, the president shall call for a meeting at the request of any member of the Council, or if the General Assembly (GA) refers a matter, or if the Secretary-General brings the attention of any matter threatening the international peace and security. One occasion where convening a meeting proved to be tough was during the 1601<sup>st</sup> meeting of the Council in New York, 1971. The Council had completed the tasks on the agenda when the representative of the United Kingdom asked the Council's president for a meeting with the Council the following day at 11:30.<sup>23</sup> This request triggered lengthy discussions about the proposed time for the meeting, mostly because the representative of the Soviet Union stated that meetings at the Council usually starts at 10:30.<sup>24</sup> The representative of Somalia, Mr. Farah concluded the discussion by saying *"I doubt whether the Security Council has ever met on time since it was established...So for that reason I would suggest that we maintain our traditions of the past 25 years, schedule the meeting for 10:30, and begin at 11:30"*.<sup>25</sup> Discussions about technicalities such as this one seems like a waste of time, but can be of importance in the diplomatic politics at the Council. Sometimes it's about making a statement, other times it's about setting customs for similar discussions in the future.

Between 1946 and 1<sup>st</sup> of August 1997 202 proposals have been vetoed by 242 actual vetoes (more than one veto can be casted on the same proposal).<sup>26</sup> Of all vetoes Russia/Soviet Union casted 116, United States casted 72, United Kingdom casted 30, France casted 18 and China casted 4.<sup>27</sup> The decade during which most of them were casted was between 1946-1955 when a total of 79 vetoes were casted. In that period of time the Soviet Union casted 75, France two, China one and one "anonymously"

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<sup>22</sup> UN Doc. S/96/Rev. 7, 21 December 1982, Provisional Rules of Procedure of the Security Council, rule. 1-3.

<sup>23</sup> UN Doc. S/PV.1601, 24 November 1971, para. 67.

<sup>24</sup> Ibid, para. 123-127.

<sup>25</sup> Ibid, para. 128.

<sup>26</sup> Bailey, Sydney D. & Daws, Sam, *The procedure of the UN Security Council*, 3. ed., Clarendon, Oxford, 1998, p. 230.

<sup>27</sup> Ibid, p. 239.

during a private meeting. During the first 52 years, almost a third of all vetoes were casted in the first decade. There are a variety of possible explanations for this decrease in vetoes in later years. First, it would seem as if the permanent members agree more. The decrease in vetoes in later years could be a side effect of a similar view on world politics by the P-5. On the other hand between 1976-1985 a total of 60 vetoes were casted, which would indicate otherwise.<sup>28</sup> Second, in later years the permanent members are often engaged in informal consultations before a proposal is publically voted on, and the permanent members can take this opportunity to indicate their intentions on the issue at hand. The decrease in vetoes in modern time could be due to withdrawn proposals after one or more permanent members indicated their negative standpoint in informal consultations.<sup>29</sup> This is of course difficult to verify due to the lack of official records from informal consultations. Third, statistics from the vetoed proposals show that 46 of 78 vetoed resolutions in the first decade were applications for membership.<sup>30</sup> Only a few applications for memberships were submitted to the Council in the following 42 years.<sup>31</sup> Based on the statistics, one can presume that this contributed to the decrease of vetoes. Drawing on that conclusion, the decrease in vetoes after the first decade could have been due to a change of action or policy in the UN. Support for that assumption can be found in a GA resolution where it was expressed that the right for member states to declare themselves candidates for a seat in the UNSC is henceforth controlled by decisions in the GA.<sup>32</sup>

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<sup>28</sup> Bailey, Sydney D. & Daws, Sam, *The procedure of the UN Security Council*, 3. ed., Clarendon, Oxford, 1998, p. 239.

<sup>29</sup> *Ibid*, p. 228.

<sup>30</sup> See Appendix 1

<sup>31</sup> Bailey, Sydney D. & Daws, Sam, *The procedure of the UN Security Council*, 3. ed., Clarendon, Oxford, 1998, p. 232-237.

<sup>32</sup> UN Doc. A/PV. 1285, 17 Dec. 1963, p. 22.



### 2.3 State Sovereignty vs. the Right of Veto

“Non-pigs are almost as equal as pigs”<sup>33</sup>

The principle of State sovereignty is attractive to most states in their own back yard. Non-interference in others domestic affairs is also a cornerstone of a global community wherein states and countries shall coexist in a friendly and peaceful manner to promote prosperity. But when states fail to respect, protect and fulfil it's citizen's most basic human rights and instead exercise it's position of power in a violent manner, non-interference loses some of its weight. Equally, when the primary body responsible for international peace and security faces an ill willed government suppressing the citizens within it's territory, State sovereignty is of no comfort.

The UN Charter article 2(1) declares that all it's members are sovereign and equal.<sup>34</sup> But the same charter also declares that permanent members have the right of veto. How can these two opposite rules be understood? It is true that the charter recognizes both its member's sovereign and equal status and at the same time allow the permanent members the right of veto, thereby granting them the decisive say in non-procedural matters. It is important to clarify that all members in the UN has ratified the Charter by signing it, thus accepting the subordinate status to the P-5 and the Council. Therefore, all members are not equal.<sup>35</sup> Could it really be that simple? Bardo Fassbender, author of the book *UN Security Council Reform and the Right of Veto; A Constitutional Perspective* expresses a different view. He states, “*A reading of any legal text (...) must aim at reconciling seemingly contradictory statements*”.<sup>36</sup> From

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<sup>33</sup> Bailey, Sydney D. & Daws, Sam, *The procedure of the UN Security Council*, 3. ed., Clarendon, Oxford, 1998, p. 141.

<sup>34</sup> United Nations, Charter of the United Nations, 24 October 1945, 1 U.N.T.S XVI, art. 2 (1).

<sup>35</sup> Bailey, Sydney D. & Daws, Sam, *The procedure of the UN Security Council*, 3. ed., Clarendon, Oxford, 1998, p. 141.

<sup>36</sup> Fassbender, Bardo, *UN Security Council reform and the right of veto: a constitutional perspective*, Kluwer Law International, The Hague, 1998, p. 289.

an interpretation of that expressed view, it would seem as if focus shouldn't be on the literal content of a legal text. Moreover, flexibility in the interpretation is needed in order to reconcile the contradictory parts of the Charter. The sovereign and equal status of all member states is a constructed principle, possibly needed to maintain and ensure peace. After World War II, the UN was created to promote transparency, peace and security between states. By declaring all its members' sovereign and equal status, the UN found a way to emphasize the importance to not engage in war. At the time, some of the founding members created a body with the main task to ensure that no state would threaten other states. They feared that could start another great war. Those same members shouldered the additional responsibility of maintaining international peace and security by becoming permanent members. For that reason, they thought they should be given special privileges, namely the right of veto on non-procedural matters.

The discussion whether state sovereignty is in conflict with the right of veto can be made endless. Some say they are contradictory, but others have a more diplomatic approach. Regardless of that is the case or not, this section only intends to reflect on the subject and recognize that the discussion exists, rather than attempting to present a definitive answer. This is more about a more general subject, whether the UN and the Charter should be reformed. It is important that we discuss these issues for the development and continued functioning of the organization. The challenges that faced the founders more than 60 years ago are not the same the UN faces today. The UN Charter, which recognizes both the veto and state sovereignty, should be reformed to meet new demands from their members in a constant developing world.

#### **2.4 Charting the Future of the Council**

Since 1945 there have been little change in the UNSC. The adding of four extra seats in the Council for non-permanent members in 1965 is the most notable. While the Council tried to achieve a more equitable geographic representation, the number of

UN members had increased from 51 to 114 in 18 years mostly due to the wave of decolonization.<sup>37</sup> At the beginning of the UN, there were only six members from Africa and Asia but 20 years later they constituted more than half of all UN members. All of a sudden, they sought a better reflection of their group in the UNSC. These newly decolonized members represented the imbalance between all countries in the world and the number of available seats for each region at the Council's table. Later on in 1993, the GA assembled a working group to explore the possibility of enlarging the Council further as well as addressing the right of veto.<sup>38</sup> This group, the Open-Ended Working Group on the Question of Equitable Representation and Increase in the Membership of the Security Council and Other Matters Related to the Security Council, does not only hold a record in the lengthiest name but is also risking the same in regard to its actions since it has not yet fulfilled its purpose. The general concern at the time was that the additional increasing of the Council could not be isolated from other issues.<sup>39</sup> The industrialized states were generally not interested in adding more members to the Council whereas the developing states wanted to broaden the debate. The working group concluded that the discussions were formed into two parts.<sup>40</sup> The first was focused on the equitable representation and increase in membership and the second on other matters concerning the Council's transparency and working methods. The permanent members opposed any additional permanent members and were hesitant to the idea of adding non-permanent members. The non-permanent members on the other hand, agreed that additional seats for them were needed but couldn't agree on the specific number of total seats. The same problem exists with the permanent members. Over the years, there have been suggestions of possible permanent members to be added such as Germany, Japan and India. However, the P-5 remains reluctant to an enlargement of members in the Council,

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<sup>37</sup> Weiss, Thomas G., "The Illusion of Security Council Reform" 26:4 *The Washington Quarterly* (2003) pp. 147-161.

<sup>38</sup> Ibid, pp. 147-161.

<sup>39</sup> Fassbender, Bardo, UN Security Council reform and the right of veto: a constitutional perspective, Kluwer Law International, The Hague, 1998, p. 226.

<sup>40</sup> Ibid, p. 229.

especially new permanent members. Given the fact that not even other states can unite in their suggestions of possible new members, there seems to be no solution available but to continue as before. In 2004, a questionnaire was circulated to 70 individuals that worked with or at the UN in some aspect.<sup>41</sup> They were asked to answer web-based questions anonymously wherein one of the questions was regarding the possibility of reform the Security Council membership and the veto anytime soon. When they answered about the veto, almost everyone said that no change would happen in the near future, not even if new members were added to the UNSC. To back their answer, two reasons were given. The five permanent members would not allow it, and states in the global South are unlikely to agree themselves.<sup>42</sup> Summarily, attempts of changing the Council's rules and procedure throughout the years have failed. The discourse on the UNSC nowadays is focused to the membership in the council and the right of veto. Clearly, there is no united view amongst members of the UN on how, which and when members can be admitted and the general opinion from people who work closely to the UN is that the veto won't be changed or removed anytime soon. Amongst those members in favour, there is no one opinion on which members that should be let in. Each region promotes itself in the struggle for power and the effect of that are more fractions within the organization. Thomas G Weiss and Karen E Young wrote in a report "*the best hope for meaningful change in the Security Council in the next decade lies in reinforcing pragmatic adaptations in working methods and in exploring new ones*".<sup>43</sup> They maintain that changes cannot be implemented through modifications of the Charter because of the permanent states reluctance to allow it. Therefore only practical changes can be made. Mr Weiss concludes that the veto continues to hinder any real change in the Council because of the permanent state's interests in preserving power<sup>44</sup>. No one of the P-5 will give up

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<sup>41</sup> Weiss, Thomas G, Young, Karen E., "Compromise and Credibility: Security Council Reform?" 36:2 *Security Dialogue* (2005) pp. 131-154.

<sup>42</sup> Ibid, pp. 131-154.

<sup>43</sup> Ibid, pp. 131-154.

<sup>44</sup> Weiss, Thomas G., "The Illusion of Security Council Reform" 26:4 *The Washington Quarterly* (2003) pp. 147-161.

their veto easily, especially not the “smaller” superpowers. The U.S is perhaps the only superpower in our world, given its military capacities and impact. They spend more on their military than the rest of the states together<sup>45</sup>. Its military abilities are highly relevant for the UN and its capabilities to maintain international peace and security. Thomas G Weiss recognizes that the UN does not have a military power of its own; the soldiers fighting under UN flag are always lent to the organization by other states<sup>46</sup>. Since the U.S is the main contributor to the UN, it is unrealistically that any enforcement decisions would be decided without the full support from Washington. Mr Weiss envisions that the future UN challenge is to decide when the Council will act as a multiplier for U.S and its power, and to persuade it that acting transnationally will be in their interest.

The three main challenges facing reform of the Council; the right of veto, enlargement of the Council and U.S hegemony cannot be solved quickly. The high-level panel on Threats, Challenges and Change (HLP), was assembled by Kofi Annan in 2004 to tackle the first two of these challenges.<sup>47</sup> Although they made some attempts for change, they could not agree of the best way to do it. Therefore, it is unlikely that this essay will solve some of the most discussed issues since the creation of the UN.

### **3 The Crisis in Syria**

During the last 15 months a humanitarian crisis and increasingly violent uprising have unfolded in Syria. Ever since the early days of the crisis it has been closely monitored by the UNSC but it took more than 1 year for the UNSC to agree on a resolution and proper measures. The main reason for this being the veto power of the five permanent members of the UNSC. The Syrian crisis is the latest in a number of veto-related standoffs in the UN and serve as a good target for a case study due to the size of the crisis, the parties involved and its big impact in the region. To successfully address

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<sup>45</sup> Weiss, Thomas G., “The Illusion of Security Council Reform” 26:4 *The Washington Quarterly* (2003) pp. 147-161.

<sup>46</sup> Ibid, pp. 147-161.

<sup>47</sup> Luck, Edward C., *UN Security Council: practice and promise*, Routledge, New York, N.Y., 2006. P. 117.

the main question of issue, three separate questions have been formed for the case study. Did the right of the veto delay the UN action in Syria? Are totalitarian regimes, if supported by a permanent member, allowed to operate undisturbed due to the right of veto? Does the right of veto cause the adopted resolutions to be diluted? The following sections will deal with each question separately and the results are further discussed in the conclusion

### **3.1 Background on the crisis in Syria**

On the 18<sup>th</sup> of March 2011 protests broke out after the arrest and torture of 15 schoolchildren in the Daraa governorate, Syria.<sup>48</sup> Protests had occurred earlier but were repressed and outnumbered by various security- and police forces. In response to the new protests and demonstrations in mid-March, Syrian security forces opened fire and killed four protesters whereupon the protests spread and rose in numbers. Once again security forces used brutality to meet the protesters while the government controlled media denied government involvement. Instead it blamed the killings on “armed gangs” and “foreign elements” resulting in new and more protests.<sup>49</sup> Security forces continued to use brutality in order to gain control over the protests, resulting in new deaths, extensive arrests and torture. This pattern was repeated throughout the spring with increasing death tolls, arrests and torture as described by the HRW report “We’ve never seen such horror”.<sup>50</sup> When HRW released the report “We live as in war” in November 2011, they declared that the Syrian security forces had killed 3,100 protesters and bystanders since mid-March the same year.<sup>51</sup> The atrocities had continued without stopping, including killing of protesters, arbitrary detentions, torture and enforced disappearances. At the same time, HRW criticised Russia and China for their protection and shielding of the Syrian government in the Council. The critique was based on the vetoes of Russia and China in October when the UNSC

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<sup>48</sup> “We’ve Never Seen Such Horror” Report/*Human Rights Watch*, 1 June 2011 p. 8.

<sup>49</sup> Ibid, p. 8-9.

<sup>50</sup> Ibid, p. 9-12.

<sup>51</sup> “We Live as in War” Report/*Human Rights Watch*, 11 November 2011 p. 3.

tried to adopt a resolution on pacific measures against the regime.<sup>52</sup> In April 2012, HRW released a new report that focused on extrajudicial killings by Syrian security forces.<sup>53</sup> The report was composed of 30 interviews with witnesses and declared that hundreds of people had died in artillery attacks, sniper fire and denial of medical assistance.

### 3.2 The work of UNSC on the Syrian issue

In the first Council meeting on the crisis, the Under Secretary-General Mr. Pascoe raised awareness of the ongoing violence in Syria. His briefing in the council the 27<sup>th</sup> of April 2011, based on a number of different reports from various sources, concluded that more than 300 civilians had died so far, and that Syrian authorities used heavy weaponry against civilians, medical personnel and disrupted Internet and telephone communications etcetera.<sup>54</sup> Similar critique came from the United States and France in the Council, the 4<sup>th</sup> of February 2012 when the Council failed to adopt a draft resolution on Syria condemning the killings and demanding its end.<sup>55</sup> Ms. Rice said that the United States is “*disgusted by that a couple of members... continue to prevent us from fulfilling our sole purpose here...*” and Sir Lycall Grant stated that “*There is nothing in here that should have triggered a veto. We removed every possible excuse*”.<sup>56</sup> Mr. Araud expressed his opinion about the negative votes from Russia and China in the same fashion. Clearly three of the permanent members were frustrated over the continuous filibustering of Russia and China, which had led to four vetoes at two times on the same situation, and the never-ending changing of the draft resolutions. Mr. Churkin, representative of Russia defended himself by ensuring that Russia has “*...undertaken active diplomatic efforts...*” and claimed that some members of the Council had undermined possibilities of a political settlement and

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<sup>52</sup> UN Doc. S/2011/612, 4 October 2011, p. 3.

<sup>53</sup> “In Cold Blood” Report/*Human Rights Watch*, 9 April 2012 p. 2.

<sup>54</sup> UN Doc. S/PV.6524, 27 April 2011, p. 2-3.

<sup>55</sup> UN Doc. S/2012/77, 4 February 2012, p. 2.

<sup>56</sup> UN Doc. S/PV.6711, 4 February 2012, p. 4-7.

also accused some States for “...*encouraging the opposition towards power... and nurturing the armed struggle*”.<sup>57</sup> The dialogue ended with the representative of China, Mr. Li Boadong’s more diplomatic presentation, in which he sought to “...*provide constructive assistance...*” and called for a mutual stop of violence in Syria.<sup>58</sup> The debate over the situation in Syria switched focus between the fall of 2011 and the spring of 2012 from the violence and killing of civilians and who’s responsible, to concerns for a military intervention. The Chinese representative in the Council expressed that “...*the sovereignty, independence and the territorial integrity of Syria should be fully respected*”.<sup>59</sup> The former diplomat Ingmar Karlsson connects the Chinese statement with the “accidental” authorization of the use of force in Libya, when NATO forces established a no-fly zone over the country<sup>60</sup>. In addition to that, NATO forces also destroyed tactical targets belonging to the Libyan regime and army. At that time, the Council adopted a resolution that later was interpreted as authorization to use force by the international community, but this authorization was rejected by China and Russia who claimed betrayal. On the 21<sup>st</sup> of April 2012, the Council unanimously adopted the second resolution and implemented the JSE’s six-point peace plan and second, to establish the UNSMIS mission in Syria with unarmed observers.<sup>61</sup> At the same meeting, the death toll had risen to more than 11,000 since the protests started the year before.

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<sup>57</sup> UN Doc. S/PV.6711, 4 February 2012, p. 9.

<sup>58</sup> Ibid, p. 9.

<sup>59</sup> Ibid, p. 9.

<sup>60</sup> Karlsson, Ingmar; Ambassador/Senior Fellow at the Center for Middle Eastern, Lund University. Interview 3 May 2012.

<sup>61</sup> UN Doc. S/PV.6756, 21 April 2012, p. 2-3.



### 3.3 Did the Right of Veto Delay UNSC Actions in Syria?

In many situations faced by the UNSC a quick response is vital to successfully solve the issue. In October of 2011, the UNSC met to discuss and vote on the Syrian crisis. At that meeting, nine members voted in favor, four abstained from voting and two members, both permanent voted against.<sup>62</sup> The same two permanent members voted against the resolution on Syria six months later, although at that meeting all other members voted in favor. It would take another ten days before all members of the UNSC voted in favor of a much more attenuated resolution.<sup>63</sup> In between the two vetoes, the League of Arab states decided to act when the Council failed. From December of 2011 to January of 2012, they launched a civilian observing mission in Syria, the first of its kind.<sup>64</sup> They specifically asked for the support of the UNSC, but it would take the Council another three months before a Council supported mission was sent.<sup>65</sup> For six months, the right of veto effectively paralyzed the UNSC in their efforts to contribute to the solution of the Syrian crisis. With two permanent members effectively blocking the question from being discussed the UNSC could do nothing more than to stand beside and watch.

The League of Arab States on the other hand, acted more quickly with their civilian observing mission. In their report they described many difficulties that faced the observers on the ground including resistance from the Syrian government. Because of the lack of support and the difficulties faced on the ground the observing mission had to be abandoned in January of 2012. If a resolution had been passed at that time in the Council the added political might have made it possible to save the mission.

The League of Arab States acted quickly on the Syrian crisis and showed what should

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<sup>62</sup> S/PV.6627 p 2.

<sup>63</sup> S/PV.6751 p 2.

<sup>64</sup> S/2012/71 p 7.

<sup>65</sup> S/RES/2042 p 1

have been possible also for the Security Council. One could argue that a longer timespan would let the Council plan a more thorough and proper response. However as will be described in the following sections the UNSMIS mission has not yet reached its intended size of 300 unarmed observers and the six-point plan led by JSE Kofi Annan has not induced the parties to stop the killings of civilians.

### **3.4 Are Totalitarian Regimes, if Supported by a Permanent Member, Allowed to Operate Undisturbed due to the Right of Veto?**

The right of the veto give the permanent members disproportionate powers in the Security Council. This power can of course be used to serve the nation's own interests but also the interest of its close allies. An example exhibited by the United States' use of the veto. In the last decades they have become the most frequent user of the veto and in the majority of the cases they have been used to veto resolutions criticizing Israel and its role in the Israeli-Palestinian conflict.

In Syria it was instead Russia and China that vetoed the resolutions and thereby held the Syrian regime under their arms. Mr. Karlsson concludes three possible reasons for their support.<sup>66</sup> First, Russia has its only military base in the whole Mediterranean Sea located in the Syrian town of Tartus. Given the current situation in which the Syrian opposition is shattered, the outcome of the crisis could mean that Russia would lose its only stronghold in the region. Second, They are sending a message to the UN and U.S that they cannot act without the support of Russia's permanent status in the Council. Third, An agreement to intervene in any manner can be seen as an authorization to interfere in Chechnya and Tibet; two matters that Russia and China consider their domestic affairs. These matters are particularly sensitive and any interference would, from a Russian and Chinese perspective, be unacceptable.

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<sup>66</sup> Karlsson, Ingmar; Ambassador/Senior Fellow at the Center for Middle Eastern, Lund University. Interview 3 May 2012.

The right of the veto not only provides the “P5” but also its allies with a powerful tool to avoid being the subject of a resolution in the Security Council. This can be highly problematic if the state in question currently violates international peace and security and continues to do so due to the continued protection from members of the Council. Without the right of veto, a connection to one of the permanent members would be less powerful and the nation would not be able to take advantage of only a few good relations.

### **3.5 Does the Right of Veto Cause the Adopted Resolutions to be Diluted?**

In the previous section I have explained that the use of the right of veto led to delays in the UNSC. The delays can be derived from the right of veto because the use of it hindered the Council in implementing resolutions on Syria. I have also determined that totalitarian regimes with support from a permanent member can operate undisturbed as long as they benefit that support. What I haven’t yet explained is how the right of veto affected the following draft resolutions. When looking at the different draft resolutions they seem similar. All of them have the same structure and are generally the same length. But when you read them chronologically, especially a few on the same question whereof some have been vetoed, you will notice different use of words and deleted sections as the draft resolutions develop to achieve consensus among members of the Council. In this part I will show how the right of veto made adopted resolutions diluted. To fulfil that, I will compare the first vetoed draft resolution on Syria (October 4<sup>th</sup>) and the first adopted draft resolution on Syria (April 14<sup>th</sup> of 2012). I will also use the model of argumentation seen in previous sections.

In advance of the UNSC meeting on Syria in October, members of the Council had engaged in negotiations regarding the draft resolution S/2012/612.<sup>67</sup> This was necessary to avoid the casting of negative votes. Therefore, some of the original text

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<sup>67</sup> UN Doc. S/PV.6627, 4 October 2011, p. 7.

was deleted or modified in order to reach consensus. Two paragraphs in the submitted draft resolution stood out, paragraph nine and eleven. Paragraph nine called for the vigilance and restraint over the sales or transfer of arms and related materials to Syria and paragraph eleven considered measures under article 41 of the UN Charter if the Syrian government failed to implement appropriate steps toward peace.<sup>68</sup> Basically, article 41 states that the UN is allowed to implement certain sanctions or measures without military intervention.<sup>69</sup> However, this draft resolution was vetoed and the drafters had to modify the resolution. After the second draft resolution was vetoed in February, another attempt was made in April. This time, the text did not contain those paragraphs, which could be interpreted as if they were decisive. Ms Rice expressed it in a similar way when speaking about the nature of the draft resolution. She said “... *This is not about military intervention; this is not about Libya. That is a cheap ruse by those who would rather sell arms to the Syrian regime than stand with the Syrian people*”.<sup>70</sup> I believe this statement reflects my earlier presumption about the importance of those two paragraphs. The concerns about another Libya combined with the Russian unwillingness to stop selling military products to Syria were possibly one of the reasons for the veto. The drafters were forced to reconsider and modify the draft resolution into a peace plan and an observing mission. Because the use of the right of veto prevented the UNSC from acting further, there was simply no other choice but to comply and modify the draft resolution. Therefore, the draft resolution in April was diluted in its expressions and use of words. Hence, the right of veto that enabled two permanent members to vote against two resolutions on Syria also forced the other members to modify the resolution, which diluted it. Presumably, if the right of veto hadn't had been invoked, the draft resolution in October would have been adopted.

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<sup>68</sup> UN Doc. S/2011/612, 4 October 2011, p. 3.

<sup>69</sup> United Nations, Charter of the United Nations, 24 October 1945, 1 U.N.T.S XVI, art. 41.

<sup>70</sup> UN Doc. S/PV.6627, 4 October 2011, p. 8.

Russia and China vetoed the two first draft resolutions on Syria. Since a vetoed resolution must be modified in order to increase the chance of adoption, there was a change of wording and withdrawal of two paragraphs in the next draft resolution. On account of that modification, which attenuated the following draft resolutions, I can determine that the right of veto caused the adopted resolutions to be diluted. One can only hope that those efforts implemented by the UN will suffice in helping the Syrian people to receive their rights and establish peace in the region.

### **3.6 Conclusion**

The right of veto delays UN action where it is needed and allows support from permanent members to hinder actions against totalitarian regimes while it causes resolutions to become diluted. I therefore conclude that the exercise of the right of veto prevents the UNSC from fulfilling its purpose. On the Syrian question, the right of veto delayed the progress of the UN due to the use of veto by two permanent members. When they finally decided to vote in favour for a resolution, the change of words diluted the actions. Unless the right of veto is reformed or removed, it will continue to prevent the UN from maintaining international peace and security. The right of veto is obsolete, granted some members because of their supposedly heavy responsibility as primary maintainers of international peace and security. The right of veto was created to face the contemporary threats of the late 1940's but the world has changed. The UN has changed, from being an organization with 50 member states to becoming a worldwide organization quadrupled in size. The charter of the organization has to change with the course of development. My personal opinion is that the right of veto must be removed and replaced by voting on all matters where a two-third majority would lead to decisions. It would be a more democratic process, which would reflect the UN's strive for worldwide democracies and universal human rights. However, I recognize the fact that my wishes will not be answered anytime soon. Moreover, the reform of the right of veto has been debated ever since the UN was created. In the 1990's the General Assembly appointed a special group for this purpose. That group is still working has not presented any changes that have been made, which could be a sign of the difficulties and split opinions about the voting

procedure and the UNSC. Some states prefer it, others don't. The right of veto is indeed a threat to the primary responsibility of the UN, to maintain international peace and security. This does not necessarily mean that the organization is in any immediate danger, but this question is important and should therefore be treated as such.

The continuing violence in Syria deepens the crisis every day. It is first and foremost the Syrian government's responsibility to respect the non-use of violence expressed in various resolutions but the opposition must refrain from counter-attacks on government officials. The demands for freedom and human rights expressed by the citizens of Syria are to be respected and must not be met with any violence or repression. The UNSMIS mission has so-far failed to eliminate the use of violence and its observing of the "peace" has sometimes been about documenting new victims of lethal force. Clearly, the current situation in Syria is highly unstable and the UNSC will have to find new ways to effectively prevent more deaths. This crisis has gone so far that state sovereignty should not be a hinder for the UN to appropriately ensure peace and tolerance in the country. My opinion is that state sovereignty should cease to exist as a principle, when the state is unable or unwilling to do the best for its people. The Syrian regime has gone well past that stage in its determination to suppress its citizens with armed force. The veto hinders the organization and the Council as a collective due to individualists who can, and will put their interests before others. The implications of which remains to be seen.

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### 4.3 Appendix 1

Use of the Right of veto from 1946-1955	
Subject by Character	Number of vetoes by subject of Character
Applications for membership	46
Complaints	4
Incidents	6
Questions	15
Requests	2
Disarmament or atomic energy	4
Total	78

This chart shows all vetoes casted by permanent members in the UN Security Council between 1946-1955