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Can a veto undermine international peace and security?

A discussion on the legitimacy of veto decisions concerning the situation Syrian

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PREFACE

It is finally time to hand in my graduate thesis and the university chapter in my life that has been going on for almost six years is coming to an end. It has been an incredible journey which have created unforgettable memories.

Thank you Valentin Jeutner for being a supportive supervisor with your valuable thoughts, comments and remarks. Thank you for pushing me and this thesis to the finish line.

Thank you to my wonderful family for the unwavering support for all these years and making it possible for me to explore the possibilities of what a law degree could offer. You have been there for the tears, the celebrations and the different time zones. I could not have done this journey without you and for that I am eternally grateful.

To all my friends who have been there for the support and guidance when I have doubted myself. Thank you for the endless discussions and for making me a better person.

Lund, 24th May 2017.

Jenny Edstrand

SUMMARY

Since the start of the conflict in Syria, the determination of the conflict has changed and engaged the global community. There have been, and still are, several opinions from both organisations and the media, on the conflict in Syria as well on the United Nations Security Council. The primary responsibility for the Council is the maintenance of international peace and security. In the process, the permanent members of the Council have the right to veto resolutions. The fundamental purpose of the veto system is to prevent Security Council decisions to be taken against the will of one or more of the permanent members, as it might eventually lead to a confrontation between the permanent members or between the permanent member and the UN. In perspective to the situation in Syria, the Council have been criticised for several vetoed draft resolutions and therefore the question arises whether the veto system is still in the interest for international peace and security. The selected resolutions, draft and adopted, to be discussed in this thesis are concerning the conflict in Syria; thus, it is a contemporary example of a conflict where resolutions and vetoes from the Security Council have been debated.

This thesis proposes a legitimacy assessment of veto decisions from the Security Council. Previous research has discussed a legitimacy assessment of Security Council interventions and adopted resolution. Therefore, the aim of the discussion of legitimacy in this thesis is to assess whether veto decisions are taken in the interest of international peace and security. International relations and international law have become intertwined research fields, thus, when discussing the Security Council, the political intentions and arguments overshadows the legal arguments. Hence, the relationship between law and politics have been explored and during the legitimacy assessment the political factor becomes a part of the discussion. For the assessment, I suggest two indicators of legitimacy to be consulted and thus, establish if a veto decision is to be considered legitimate and if the decision undermines the purpose of international peace and security. The support and purpose for the suggested indicators are discussed together with the assessment. Arguments against the legitimacy assessment are brought forward and discussed, with focus on the possible risk of abuse, the possibility of sanctions and international principles which must be respected.

The conclusions from the legitimacy assessment indicates that some veto decisions are legitimate since the presented arguments are supported with international principles, one veto decision does not have legitimacy due the arguments presented by the permanent members are not sufficient compared to international peace and security and finally, one veto decision is in the grey zone due to the permanent member's coalition with Syria. The outcome of the assessment shows that the veto right is a topic which needs further research; however, it is my conclusion that the present veto right increase the political discussion and overshadows the legal arguments. Therefor there is an increasing risk for veto decisions to undermine international peace and security.

SAMMANFATTNING

Sen konflikten i Syrien inleddes, har konflikten utvecklats i flera faser och engagerat den globala politiken på olika plan. Kritik har riktats mot FN:s Säkerhetsråd från såväl media och internationella organisationer. Säkerhetsrådets primära ansvar är att upprätthålla internationell fred och säkerhet. Under denna process, har de permanenta medlemmarna i Säkerhetsrådet en vетorätt vid röstning av föreslagna resolutioner. Syftet med denna vетorätt är att hindra Säkerhetsrådet från att ta beslut emot en eller flera permanenta medlemmars vilja, eftersom det kan leda till konflikter mellan de permanenta medlemmarna eller mellan en av de permanenta medlemmarna och FN. Sett till konflikten i Syrien har Säkerhetsrådet kritiserats för flera veto beslut och frågan är då om vetosystemet fortfarande är i intresse för internationell fred och säkerhet. De resolutioner som kommer diskuteras, förslag och antagna, är gällande konflikten i Syrien. Detta eftersom konflikten är ett samtida exempel på när resolutioner och vетon från Säkerhetsrådet har debatterats mycket.

Denna uppsats förespråkar att införa ett legitimitetstests av vetobeslut från Säkerhetsrådet. Tidigare forskning gällande legitimitetstest har gjorts av antagna resolutioner och ingripanden från Säkerhetsrådet. Därav är syftet med denna uppsats att granska de vetobeslut som stoppade föreslagna resolutioner samt om dessa beslut var i intresse för internationell fred och säkerhet. Forskningen inom folkrätt och internationella relationer har blivit mer sammankopplade, därav när en diskuterar Säkerhetsrådet hamnar de juridiska argumenten i skuggan av de politiska intentionerna och politiska argumenten. Gällande legitimitetstestet, har jag föreslagit två indikatorer för bedömningen av ett vetobesluts legitimitet. Dessa indikationer kommer även vara till hjälp för att bedöma om vetobeslutet försvagar syftet med världsfred och avvärja hot mot den internationella säkerheten. Syftet med dessa indikatorer lyfts fram i samband med legitimitetstestet och argument emot ett legitimitetstest diskuteras med fokus på eventuellt missbruk av testet, möjligheten till sanktioner och internationella principer som måste respekteras.

Slutsatserna från legitimitetstestet visar att vissa vetobeslut är legitima eftersom de framförda argumenten för beslutet har stöd i enlighet med internationella principer, dock har ett vetobeslut inte legitimitet eftersom argumenten från de permanenta medlemmarna inte var tillräckliga i förhållande till internationell fred och säkerhet, samt bedöms ett vetobeslut vara i gräzonen, på grund av den permanenta medlemmens sammanslutning med Syrien. Resultatet från legitimitetstestet visar att vетorätten är ett ämne som det måste forskas vidare inom, dock är det enligt min uppfattning att den nuvarande vетorätten sätter de juridiska argumenten i skuggan av de politiska diskussionerna. Därför finns det en risk att ett vetobeslut underminerar internationell fred och säkerhet.

ABBREVIATIONS

GGI	Global Government Institution
ILC	International Law Commission
ISSG	International Syria Support Group
NGO	Non-Government Organisation
OPCW	Organisation for the Prohibition of Chemical Weapons
UN	United Nations
UN Charter	The Charter of the United Nations
UNGA	United Nations General Assembly
UNSC	United Nations Security Council

1 Introduction

1.1 Background

During the year of 2016, the ongoing conflict in Syria together with the United Nations Security Council¹ continued to be in the media spotlight. The start of events happening in Syria, leading up to the present situation, was in March 2011 and as of 2013 it has descended into a civil war.² Since then the conflict has changed and engaged the global community. There have been, and still are, several opinions from both organisations and the media, on the conflict in Syria as well on the Security Council.³ Since 2011 there have been seven draft resolutions concerning the civil war in Syria, that have not been passed by the Council. In 2016 Human Rights Watch, together with other Civil Society Organisation's,⁴ sent in a global civil appeal to the United Nations.⁵ This appeal was followed by the vetoed draft resolution on 8 October 2016.⁶ The actions, or lack of actions, concerning the question of Syria from the Security Council has been debated by the media, CSO's etc. Any decisions to act from the UN in a conflict are decided through the Council. The suggested actions are presented through draft resolutions and must be approved by an affirmative vote of nine members including all the permanent members. A veto right is given to all the permanent members and one veto "kills" the draft resolution. The veto will be further discussed in section 2.2.1.

The global community is not the same as it was back then when the Charter of the United Nations was written, as it is today 2017.⁷ After the advanced courses in Use of Force in International Law and International Legal Structure, my interest for the regulations and functions for the UN was intrigued during discussion about the veto system, as well as the matter of legitimacy in international law. Questions that lingered were in the line with: Is there a need to adapt or change the veto system? How is a veto legitimate in the interest of international peace and security? These are questions I want to engage the reader with; however, they are general but were kept in mind when writing this thesis, as well for inspiration for the research questions. In perspective to the mentioned question, the thesis will explore the discussion on legitimacy with the veto system and therefore, the UN Charter becomes a part of the discussion.

As a law student with an interest for international law, it is difficult to sometimes grasp the fact that political differences might be the reason for ongoing conflicts. The civil war in Syria is a contemporary example of a conflict where resolutions

¹ Hereinafter the Security Council or the Council.

² Rodgers, L., Gritten, D., Offer, J. & Asare, P 2016.

³ For example, references, Human Rights Watch, Uniting for Peace and BBC 2013.

⁴ Hereinafter CSO's.

⁵ Human Rights Watch, Uniting for Peace.

⁶ More about the UNSC Draft Res 846 (8 October 2016) UN Doc S/2016/846 in section 3.2.5.

⁷ Hereinafter the UN Charter.

and vetoes from the Security Council have been debated. The conclusions from this thesis might hopefully be applicable in the determination of future vetoes; however, since all conflicts are different in their own way and therefor maybe more applicable on a case-by-case basis. While writing this thesis, the conflict in Syria is still ongoing and the question of UN actions in the Syrian conflict is still unsettled.

1.2 Purpose and Research Questions

What will be discussed and examined in this thesis is specific vetoes in the light of Security Council resolutions, drafts and adopted, concerning the conflict in Syria. The purpose of this thesis is to examine if specific vetoes, in perspective to the mentioned resolutions, is a good mechanism for the present world, thus it is a mechanism adopted in 1945 and to do so, the main question for the thesis is: *Is the veto system for the permanent members of the United Nations Security Council still in the interest of international peace and security?*

To answer the main question, a few questions will act as guidelines for the thesis:

- Can a veto undermine the purpose of international peace and security? How is the validity of the veto then determined?
- If a veto is not in compliance with the purpose of the UN Charter, should the article concerning the veto be amended?
- If an amendment of the Charter of the United Nations is possible, how can an amendment be made?

The study in the thesis is based on specific resolutions, drafts and adopted, and the reasons for the selected resolutions is discussed in section 1.3. Through analysing the resolutions in the light of the UN Charter on the one hand, and the legal philosophical question of legitimacy on the other, the aim is to examine the legal status of the veto in the question of Syria. To answer the stated questions, the selected principles of the international legal system will be explored. The aim of the thesis is to connect the concept of legitimacy with veto decisions.

1.3 Delimitations

It is a challenge itself to write a new angle on the topic of the veto system in the Security Council. Therefor I have chosen to focus on the Syrian conflict. The conflict is still ongoing and in the last few months of 2016, two draft resolutions suggesting actions to be taken were declined due to a veto vote by permanent member of the Security Council. I will not discuss the history of the Syrian conflict in this thesis; however, I will acknowledge some of the events leading up to a given resolution. The focus will be on the content of the resolution and it will be considered if the use of the veto by one or several permanent members in the Security Council is in the interest of international peace and security.

I will not examine sanctions and interventions ordered by the Security Council, nor the discussion of responsibility to protect. I have decided not to include human rights in the examination of the veto system and the resolutions. Since the

discussion will focus on resolutions concerning Syria, it is not farfetched to include a discussion on human rights about the events taking place in Syria. However, the purpose of the thesis is to examine the veto decisions and its legitimacy, not its relation to human rights.

Since the chosen subject for the thesis has a political significance, one cannot deny those arguments. Therefor I have included a chapter with the focus on legitimacy in international law, as well as the relationship between law and politics. This is to give the analysis, as well as the arguments, more depth.

In this thesis, I suggest a legitimacy assessment of veto decision with the purpose to determine if a veto could not be legitimate. Due to the issue of length and scope of such an assessment, it is not to be developed further than the composition then the set of criteria; thus, not to be regarded as complete or exhaustive. The presented legitimacy assessment will not include an assessment on the legitimacy of governments nor the entire UN; however, since the veto system is integrated in one of the main functions of the Security Council, it is not avoidable to mention the UN. The concept of legitimacy for the UN will be briefly mentioned and not explored in depth.

1.4 Terminology

The main question of this graduate thesis mentions the term international peace and security; thus, it is of relevance to understand the purpose and meaning of the term. In article 1 of the UN Charter, the term 'international peace and security' is used when describing the fundamental purpose of the UN. Peace or universal peace can be found separately throughout the Charter; however, nowhere is international security to be found used alone. The Preamble together with articles 1, 2 and 3 indicates that peace is to be defined more than absence of war.⁸ The provisions in the Preamble and mentioned articles refers to an evolutionary development in a state of international relations, which is meant to lead to the weakening of issues likely to cause war. If one compares article 1 paragraph 2, which aims at strengthening peace through development of friendly relations among nations, to article 1 paragraph 3, which indicates that the function of the UN is to bring stabilisation of international relations to prevent the likelihood of war. There is a close relationship between international security and peace, even though the interpretation spectrum of peace is broad.⁹

The term international security consists of both a subjective and an objective element. The term implies the right of every state to take advantage of any relevant support system when in need, but at the same time implying the legal obligation for every state to support such systems.¹⁰ International security can be achieved and promoted through policies or various measures, two of which are mentioned in the first paragraph of article 1, namely measures of collective security and

⁸ Simma, B., Khan, D-E., Nolte, G. & Paulus, A., Vol. 1, 2012, p.110.

⁹ Simma, B., Khan, D-E., Nolte, G. & Paulus, A., Vol. 1, 2012, p.110.

¹⁰ Simma, B., Khan, D-E., Nolte, G. & Paulus, A., Vol. 1, 2012, p.111.

adjustment or settlement of international disputes.¹¹ The reference to international peace and security is to be understood as the overarching purpose of the UN, while the suppression of aggression only is referred as one objective to be achieved through measures of collective security. This entails that international peace and security may be endangered by not only act of aggressions, but also any other threat to peace. Further on does it mean that the Security Council may direct measures against a state being the victim of aggression if and to the extent that the measure effectively preserves international peace and security.¹²

When mentioning that the UN has political legitimacy in the thesis, my stand point is that an entity possesses political legitimacy if it is: “[...] morally justified in wielding political power, where to wield political power is to attempt to exercise supremacy, within a jurisdiction, in the making, application, and enforcement of laws.”¹³ To have political authority, an entity only has it if in addition to possessing political legitimacy, it has the right to be obeyed by those who are within the scope of its rules.¹⁴

1.5 Methodology

The legal dogmatic method is the most common methodology in law and the goal of the method is to interpret, and describe, the law in a systematic way in order to be able to reach an authoritative conclusion on what the law entails. The method's boundaries are set by the authoritative legal sources, such as law, case law and doctrine. The method applies the sources of law to solve the question or issue at hand, by investigating what is established through law and how law can be applicable.¹⁵

The legal dogmatic method is valuable when ascertaining what the law is for both domestic and international law; however, when using the method strictly the result is often a descriptive product.¹⁶ Criticism has been raised towards this method, stating that it fails to consider the social effects of law to the extent that it only examines what is deemed to be authoritative sources and does not consider how the law is applied. The method is often challenged by social science method, such as empirical method, as well as sociological methods where these methods try to interpret for example how the law works in practice.¹⁷

Since the subject of the thesis is in a legal area where politics are a related factor to the discussion and for that cannot be excluded for a classic legal analysis, even though the primary focus is the legal issues of the veto system. Therefor in an added research value, it is necessary to engage with normative questions, thus

¹¹ Simma, B., Khan, D-E., Nolte, G. & Paulus, A., Vol. 1, 2012, p.112.

¹² Simma, B., Khan, D-E., Nolte, G. & Paulus, A., Vol. 1, 2012, p.112.

¹³ Buchanan 2004, p.146.

¹⁴ Buchanan 2004, p.147.

¹⁵ Kleinman, J. 2013, p.21.

¹⁶ Kleinman, J. 2013, p.25.

¹⁷ Kleinman, J. 2013, p.28-29 & 40.

including a different perspective to the research. Regarding the research questions stated in section 1.2, there is in this sense a need for a discussion of what law ought to entail. It is assumed that such a normative discussion can be done within the legal dogmatic method, but then it is perhaps not as dogmatic research method as the name entails.¹⁸ Thus, in this thesis the legal dogmatic method is used, but the conclusion of the arguments relies on a theoretical basis.

1.6 Theory

Most international legal scholar are influenced by the positivist legal view and the legal positivism view rejects natural law hence it determines whether as rule is law not depending on some moral criteria; thus, rejecting the consideration that there is a natural morality which establishes what law is. Since positivism is a view on what law is and not what it ought to be, it is neutral to whether moral reasoning can determine how the law should be.¹⁹ The scholars of the inclusive positivism argues that morality does not have to, but could be, included in a test of validity; however, the exclusive positivists argues that a moral evaluation cannot be part of the determination of legal validity.

When exploring the possibility of what law ought to be, the sense of morality as an indicator in the determination is not farfetched. In order to adopt a theoretical approach including moral concerns, one must first define what the goal of international law is, in order to be able to suggest what the goal ought to be. International law, specifically when discussing it in the context of the UN, aims to maintain international peace and security. A normative legal theory with focus on the ought-questions would be best suited for the discussion on legitimacy of veto decisions in this thesis.

Since the thesis explores the definitions of legitimacy, as well as politics and law, a legal philosophical approach is included in selected chapters of the thesis in order to adapt legal critical studies.²⁰ Hence chapter three focuses on the legitimacy and politics, and chapter five explores the possibility of a legitimacy assessment. The critic towards the legal dogmatic method has been that it only focuses on the normative system as it is and not what the result of the system is.²¹ Therefor it is my opinion necessary to apply both a normative perspective on what the law ought to be, in combination with the legal philosopher scholar's different approaches on legitimacy.

1.7 Previous Research

Due to the delimitations of this thesis and the purpose of focusing on the veto decisions form the Security Council, previous research has been limited. The thesis is not analysing the interventions or sanctions ordered by the Security Council – it focuses on the decision making, therefor on one step earlier in the process.

¹⁸ Kleinman, J. 2013, p.26.

¹⁹ Buchanan 2004, p.20-21.

²⁰ Gräns, M. 2013, p.426

²¹ Kleinman, J. 2013, p.24.

The limitation of the thesis is concerning the presented draft resolutions that did not become adopted, thus previous critic and discussions on UN actions becomes more guiding material, but not perfect reference material. Both Buchanan²² and Klabbers and Piiparinen²³ explores the concept of legitimacy with references to interventions and sanctions performed by the UN; however, the discussion is limited concerning the vetoes. Therefor it is in my opinion that this thesis is a starting point for the continued discussion on the legitimacy of veto decisions from the Security Council.

1.8 Material

In accordance with the legal dogmatic method, the materials used for this thesis are the authoritative sources of law. However, sources of international law are harder to identify, since there is an absence of an international organ with legislative competence. Usually, the authoritative sources of international law are determined with reference to article 38 paragraph 1 of the Statute of the International Court of Justice.²⁴ The listed sources in the article are international conventions, international legal custom and general principles of law. In addition, subsidiary sources listed are judicial decisions and teachings by highly qualified publicists.

The material is foremost based upon official UN documents for the examination of the UN and the veto system. I have chosen to use the provided material online at the United Nations website. In addition to being up to date and easily accessed, the organisation's website is first hand source of protocols, resolutions and information about the Security Council. The fourth chapter is an examination of relevant draft and adopted resolutions within the scope of the thesis. To understand the resolutions, whether they were adopted or not, I have decided to include the meeting notes from the Security Council. This is to get an understanding of the reasoning from the members of the Security Council regarding the resolutions. However, it has been difficult to find material in addition to the meeting protocols on how and what the permanent member states argued concerning the resolutions.

In order to understand and outline the definition and discussion of legitimacy, as well as the relationship between politics and law, the subsidiary sources have been the main materials in addition to official UN documents. Hence, the discussion explores definitions and legal discussion in international law.

²² See Buchanan, A. 2004.

²³ See Klabbers, J. & Piiparinen, T. 2013.

²⁴ Hereinafter ICJ Statute.

1.9 Outline

This thesis is divided into six chapters. Chapter one is the introduction, chapter two is the UN chapter, chapter three is the legitimacy and politics discussion and chapter four is the resolutions chapter. Finally, chapter five presents the legitimacy assessment and chapter six provides my final remarks. Each chapter, except chapters five and six due to their analytical approach, ends with a summary. The purpose of each summary is to give the reader a quick reminder of what has been discussed and it becomes easier for the reader to get an overview of the chapter when reading the introduction together with the summary of each chapter.

Concerning the citation in the footnotes, the references are written as it states within the square brackets in the bibliography under each author. This makes it easier for the reader to find the correct reference in the bibliography chapter. However, when citing official UN documents, I have used the Oxford Standard for Citation of Legal Authorities method.²⁵ The purpose of using a different method is to avoid citation of the wrong document, as well facilitate the search for the document.

Chapter 2 outlines the relevant regulation from the UN concerning the Security Council and the veto system. In addition, the chapter examines the principles of the international legal system, hence their importance for the Security Council's work. The purpose of the chapter is to give the readers the tools regulated in the UN Charter.

Chapter 3 investigates on the different views on legitimacy, as well as the relationship between politics and international law. This chapter will set the foundation for the analysis. This chapter is of a more legal philosophical character, as it discusses different views on legitimacy and politics.

Chapter 4 is the main substantive chapter, as it presents the draft resolutions and the reasons for the permanent member's usage of veto. Due to the density of all information, the chapter is more descriptive. Furthermore, the chapter discusses resolutions concerning the question of Syria, which have been adopted. This chapter presents the facts that are further analysed and discussed in the final chapters.

Chapter 5 explores the legitimacy assessment. In connection to chapter 3 reflecting on legitimacy and politics, with the introduced information in chapter 4, this chapter will assess what a legitimacy assessment is, as well as how it ought to be conducted. The final part of the chapter presents a legitimacy assessment based on the resolutions from chapter 4. The structure of the chapter consists mainly of my observations and arguments.

Chapter 6 provides my concluding remarks and conclusions.

²⁵ In short, OSCOLA method.

2 UN Regulation

As presented in the first chapter, the purpose of this thesis is to examine the veto decisions in the Security Council and if they are regulated in the interest of international peace and security. To answer the main question, this chapter will focus on the Security Council and foremost the UN Charter.²⁶ The function of the chapter is to present the UN regulations the reader needs to understand before going deeper into legitimacy and to comprehend chapter four concerning the UN regulations, drafts and adopted.

The first purpose of this chapter is to give the reader a brief overview of the UN Charter with focus on the possibility of amending the Charter. An examination of amending the Charter is to broaden the discussion of the veto system and bring forward the aspect of should or should not the Charter be changed? In addition to examine the regulation for amendments, the second purpose is to describe the function of the Security Council and defining what is international peace and security. This definition will be of importance later in the thesis analysis. The third and final purpose of the chapter is to discuss the principles of the international legal system to understand the scope and limits of the UN Charter.

2.1 The UN Charter and amendments

The purpose and function of the United Nations is found in the UN Charter. The Charter is a multilateral treaty which outlines the rights and obligations of the member states, it is also the constitution of the UN, laying down its functions and prescribing limits.²⁷ In order for the UN and their member states, to act in accordance with the purpose in article 1 paragraph 1 of the UN Charter concerning international peace and security, the member states shall according to article 2 paragraph 2 of the UN Charter: "*[...] in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with the present Charter.*"²⁸ The design of article 1 of the Charter is to provide a guide for the conduct of the UN organs; however, the question remains if article 1 are meant to be legally binding? The place of the article in the Charter is in the line with being legally binding, although the wording of the article is more appropriate for the political objectivities of the UN, rather than for legally binding obligations. Nor does the article indicate how potential conflicts between the purposes should be resolved.²⁹

In addition, the UN may not intervene in matters essentially within the domestic jurisdiction of any state.³⁰ The UN system is based upon the sovereignty of states and the seven basic principles of international legal system helps one to interpret

²⁶ See section 1.2 Purpose and questions.

²⁷ Shaw, M.N. 2014, p.876.

²⁸ Article 2 paragraph 2, UN Charter.

²⁹ Simma, B., Khan, D-E., Nolte, G. & Paulus, A., Vol. 1, 2012, p.108-109.

³⁰ Article 2 paragraph 7, UN Charter.

the Charter.³¹ The principle sets out in a sense what the limits are of the Charter. This will be further examined in section 2.3. The mentioned information might seem repetitive, but it is worth mentioning as it is of importance to remember the limits and purposes of the UN when discussing the veto system further on in the thesis.

The focus will not be on the entire charter, instead it will zoom in on the articles concerning the purpose of the UN and the regulations concerning amendments. Upon studying the text, one cannot notice that there are difficulties to amend of the Charter.³² There have previously only been three amendments to the Charter and those were driven by the near doubling of memberships of the United Nations, due to several former colonies becoming independent.³³

The amendments of articles 23, 27 and 61 of the UN Charter came into force in 1965 and concerned enlargement of membership of the Security Council. The amended article 27 of the UN Charter provides that decision taken by the Security Council on procedural matters shall be made by an affirmative vote of nine members and on all other matters by an affirmative vote of nine members, including the concurring votes of the five permanent members.³⁴ The other amendments have been regarding article 61 and 109 of the UN Charter. The first of the two articles mentioned concerns the Economic and Social Council, whereas the second of the two articles concerned the General Assembly. Since this thesis focuses on the Security Council, there will not be any further details of latter amendments. However, one can make the conclusion of facts about the amendments, is that they have focused more on the membership of the UN and small changes for the Security Council's functions and powers. Thus, the veto system has not been changed since the UN was created. Hence the question – should the veto system be changed if it is not in the interest of international peace and security?

According to the articles 108 and 109 of the Charter, any amendment requires *inter alia* consent of all the permanent members.³⁵ The two articles sets out two different methods. Article 108 deals with ordinary amendment procedure aimed to change any single provision and does not require any special administrative arrangements.³⁶ Article 109 refers to a revision of the Charter, i.e. a project in a larger scale to be prepared by a conference of member states especially convened for the change.³⁷ Although the mechanisms in the stated articles are complicated in themselves, it becomes more difficult to amend changes of the UN Charter,

³¹ See section 2.3 Principles of the International Legal System.

³² Continues in section 2.1.2.

³³ Chesterman, S., Johnstone, I., Malone, D. & Franck, T.M. 2016, p.4.

³⁴ Charter of the United Nations, Introductory Note.

³⁵ Shaw, M.N. 2014, p.877.

³⁶ Simma, B., Khan, D-E., Nolte, G. & Paulus, A., Vol. 2, 2012, p.2202.

³⁷ Simma, B., Khan, D-E., Nolte, G. & Paulus, A., Vol. 2, 2012, p.2202.

due to the existence of the veto system.³⁸ Amendments of the Charter will become binding for all member states; however, they must have the consent of a qualified majority. In the first phase of an amendment, the proposed amendment must either consist of the adoption of a decision on an amendment by the General Assembly under article 108 or by a review conference under article 109. In the second phase, the proposed amendment must be ratified by two-thirds of the members of the Security Council. As it is not a procedural matter, all permanent members have their veto right and any proposed amendments can be blocked by a single permanent member.³⁹ The Charter does not provide any simplified procedure to deal with minor amendments: therefore, must the formal amendment procedures.⁴⁰ The obstacles to reform the UN Charter, can be listed by various interests: rivalries among developing countries, or should there be more or fewer permanent members? How should the UN reflect the global community truthfully?⁴¹

2.2 The United Nations Security Council

As the previous section of the chapter ended with hypothetical questions on the future of the UN, this part of the thesis will lay down the need-to-know knowledge about the Security Council and their functions, following by an examination on the veto system.

The intention for the operation of the Security Council, was for it to be an efficient executive organ with limited membership and function continuously.⁴² The Council consist of fifteen members of the United Nations, were five of them are permanent members. The permanent members are United States of America, United Kingdom, France, Russia and China. The other ten members are elected by the General Assembly on a two-year term⁴³ and: “[...] in the first instance to the contribution of Members if the United Nations to the maintenance of international peace and security and to the other purposes of the Organization, and also to equitable geographical distribution.”⁴⁴

The mandate of the Security Council is not of a legal nature, as its interpretive powers are restricted to the maintenance of international peace and security.⁴⁵ For the interpretation of the UN Charter, one must acknowledge article 31 of the Vienna Convention on the law of treaties.⁴⁶ Article 31 VCLT states that a treaty shall be interpreted in good faith and in the light of the object and purpose of the treaty. The function and powers of the Security Council are regulated through

³⁸ The veto system will be discussed in section 2.2.1.

³⁹ Simma, B., Khan, D-E., Nolte, G. & Paulus, A., Vol. 2, 2012, p.2203.

⁴⁰ Simma, B., Khan, D-E., Nolte, G. & Paulus, A., Vol. 2, 2012, p.2202.

⁴¹ Aust, A. 2010, p.204.

⁴² Shaw, M.N. 2014, p.877.

⁴³ Article 23 paragraph 2, UN Charter.

⁴⁴ Article 23 paragraph 1, UN Charter.

⁴⁵ Simma, B., Khan, D-E., Nolte, G. & Paulus, A., Vol. 1, 2012, p.93.

⁴⁶ Hereinafter VCLT.

articles 24, 25 and 28 of the UN Charter. Per article 24 paragraph 1 of the UN Charter, the Council has the primary responsibility for the maintenance of international peace and security, and are acting on behalf of the member states. The discharging of this duty, shall be carried out in accordance with the purposes and principles of the UN laid down in the UN Charter.⁴⁷ The Council is the only principal organ of the United Nations whose resolutions are binding for member states, meaning that states do not have the option of choosing which of the decisions from the Council they will or will not accept and implement.⁴⁸ In addition to resolutions, the Council makes pronouncements in statements by its president. These statements are better known as presidential statements and might have legal effects. The presidential statements are not provided for in the UN Charter or in the Council's Provisional Rules of Procedure.⁴⁹

In article 24 of the UN Charter, it is stated that the primary responsibility of the Security Council is to maintain international peace and security. Most resolutions from the Security Council contains recommendations and are referred to Chapter VI resolutions, thus Chapter VI of the UN Charter cannot impose legally binding measures.⁵⁰ Legally binding measures are those decisions taken in accordance with Chapter VII by the Council. Articles 25 and 48 of the UN Charter has the combined effect to place a legal obligation on all member states.⁵¹ However, before the Council can decide to impose a measure, article 39 of the UN Charter requires that there must first be determined if there is an existing threat to the peace, the breach of peace or act of aggression.⁵² The Council is not always consistent in the drafting of resolutions, since any expression of an article 39 determination or the mentioning of Chapter VII are not always included in the resolution texts. Usually this can be inferred from the rest of the resolution, by a presidential statement or from the circumstances that has determined the Council to act in accordance with Chapter VII.⁵³

By asserting the UN's responsibility to intervene, even in internal conflicts—where human rights and the humanitarian interests of populations are severely affected—Council decisions, arising from evolving interpretations of the Charter,

⁴⁷ Article 24 paragraph 2, UN Charter.

⁴⁸ Fasulo, L.M. 2015, p.55.

⁴⁹ Aust, A. 2010, p.194.

⁵⁰ Aust, A. 2010, p.195.

⁵¹ Article 25, UN Charter: The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.

Article 48, UN Charter: 1. The action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall be taken by all the Members of the United Nations or by some of them, as the Security Council may determine. 2. Such decisions shall be carried out by the Members of the United Nations directly and through their action in the appropriate international agencies of which they are members.

⁵² Article 39, UN Charter.

⁵³ Aust, A. 2010, p.196.

have deeply affected the meaning of sovereignty at the international level.⁵⁴

2.2.1 The veto system

Each member of the Security Council has one vote.⁵⁵ Depending on the matter, the permanent members of the Council has the right to use their veto. If the decision is regarding a procedural matter, then it must be made by an affirmative vote of nine members.⁵⁶ On all other matters, decisions must be made by an affirmative vote of nine members including the concurring votes of the permanent members. If decisions under Chapter VI of the UN Charter, and in accordance with article 52 of the UN Charter, a party abstained from voting.⁵⁷ The fundamental purpose of the veto system is to prevent Council decisions to be taken against the will of one or more of the permanent members, as it might eventually lead to a confrontation between the permanent members or between the permanent member and the UN.⁵⁸

The creators of the UN Charter, conceived that China, France, the United Kingdom, the United States of America and the Russian Federation, would continue to have important roles in the maintenance of international peace and security, due to their key roles in the establishment of the UN. “*They were granted the special status of Permanent Member States at the Security Council, along with a special voting power known as the “right to veto”.*⁵⁹ It was agreed by the drafters, that if any one of the five permanent members cast a negative vote in the Council, the resolution or decision would not be approved.⁶⁰ Although, if a permanent member does not fully agree with a proposed resolution, but does not wish to cast a veto, it may choose to abstain, thus allowing the resolution to be adopted if it obtains the required number of favourable votes.⁶¹

According to historical statistics, during the years 1946 to 1986, the number of resolutions adopted are 593; however, the veto was used 212 times. In the years between 1987 and 2005 there was an increase in adoption of resolutions (1010) and a decrease in the use of veto (38).⁶² “*The post-Cold War era has been marked by the Council’s disposition to tackle more numerous and diverse conflicts than it had been able to earlier, when it was stymied by the plethora of vetoes (cast and threatened) by the permanent members.*⁶³ Since 2006 until the end of 2016,

⁵⁴ Weiss, T.G. & Daws, S., 2009, p.133.

⁵⁵ Article 27 paragraph 1, UN Charter.

⁵⁶ Article 27 paragraph 2, UN Charter.

⁵⁷ Article 27 paragraph 3, UN Charter.

⁵⁸ Simma, B., Khan, D-E., Nolte, G. & Paulus, A., Vol. 1, 2012, p.913.

⁵⁹ UNSC, Voting System.

⁶⁰ UNSC, Voting System.

⁶¹ Article 27 paragraph 2, UN Charter.

⁶² Weiss, T.G. & Daws, S., 2009, p.121.

⁶³ Weiss, T.G. & Daws, S., 2009, p.121.

the veto has been used twenty-two times by the permanent member.⁶⁴

2.3 Principles of the International Legal System

This section of the chapter will focus on the principle of non-intervention, the duty to co-operate and the principle of good faith, thus they are of relevance with the discussion of legitimacy and the veto system. Why the principles are of importance for the thesis, is because they repeatedly occur as main arguments and stand points for permanent members of the Security Council when it concerns the question of Syria. Therefor it becomes of interest to the answer why a permanent member uses the veto and furthermore, if a veto is in the interest of international peace and security.

Furthermore, the principles are guidance for interpreting the UN Charter and interlinks the understanding the arguments of the permanent members with the Charter.⁶⁵ In addition, when interpreting the principles there is an interrelationship between the stated principles that must be mentioned. In the general part at the end of the declaration, it says: "*In their interpretation and application the above principles are interrelated and each principle should be construed in the context of other principles.*"⁶⁶ The interpretation of the principles should include one another, but have chosen to highlight those of most relevance to the topic of the thesis and the arguments presented by the permanent members.

The Declaration on Principles of International Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations, was adopted by the General Assembly in 1970.⁶⁷ The document is a statement of the fundamental principles which the international legal order is based on and sets out seven basic principles: the prohibition on the threat or use of force, the duty to settle disputes peacefully, the duty of non-intervention, the duty to co-operate, the principles of equal rights and self-determination of peoples, the principle of sovereign equality of states and the principle of good faith.⁶⁸ When discussing principles, it is of importance to distinguish principles and rules. A rule has an all-or-nothing character, whereas principles do not. Principles are reasons for reaching conclusion, factors weighing in favour or a decision.⁶⁹

*The duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter,*⁷⁰

The principle of non-intervention affirms the central right of each state to independence and to self-determination, hence the state's rights to freely choose its

⁶⁴ UN Veto List.

⁶⁵ Author's reflection.

⁶⁶ Lowe, V. 2007, p.118.

⁶⁷ UNGA Res 25/2625 (24 October 1970) UN Doc A/RES/25/2625.

⁶⁸ Lowe, V. 2007, p.100.

⁶⁹ Lowe, V. 2007, p.101.

⁷⁰ UNGA Res 25/2625 (24 October 1970) UN Doc A/RES/25/2625.

political, economic, social and cultural system.⁷¹ The principle also reinforces the principle of the non-use of force, as well as has the role as a guarantee of the integrity of each state. Non-intervention affirms the basic principle that states should not meddle in other states internal affairs, apart from allowing intervention in circumstances where essential interest of the intervening state is imperilled.⁷² But the question is, what circumstances allows the state to intervene? Some might argue it is a right to intervene with the purpose to assist the process of self-determination, to counteract intervention by another state or it is justified as exercise of self-defence by the intervening state.⁷³ “[...] the broad principle of non-intervention is tolerable as long as States feel that the expectations to it are broad enough, or narrow enough, to be reasonable.”⁷⁴ In the declaration on principles of the international legal order, it sets out that the principle on non-intervention prescribes that no state has the right, directly or indirectly, to intervene for any reason.⁷⁵ In addition to the General Assembly resolution, the principle is supports the purpose of the UN as an organisation based on the principle of sovereign equality.⁷⁶

The duty of States to co-operate with one another in accordance with the Charter,⁷⁷

The principle of duty for the states to co-operate with other states, irrespective of differences in their political, economic and social systems, to maintain international peace and security, as well as promote international economic stability and general welfare of nations.⁷⁸ In the adopted resolution by the General Assembly⁷⁹, the declaration sets out the scope and purpose of the principles. The member states of the UN have the responsibility and duty, according to the resolution, to take joint and separate actions in co-operation with the UN.⁸⁰ The principle of co-operation is expressed in article 1 paragraph 3 of the UN Charter and is a core value for the UN. The UN is constructed on political co-operation to protect and maintain international peace and security.⁸¹

The principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter,⁸²

The purpose of the good faith principle is to ensure that each state has the duty

⁷¹ Lowe, V. 2007, p.105.

⁷² Lowe, V. 2007, p.107.

⁷³ Lowe, V. 2007, p.108-109.

⁷⁴ Lowe, V. 2007, p.109.

⁷⁵ UNGA Res 25/2625 (24 October 1970) UN Doc A/RES/25/2625.

⁷⁶ Article 2 paragraph 1, UN Charter.

⁷⁷ UNGA Res 25/2625 (24 October 1970) UN Doc A/RES/25/2625.

⁷⁸ Lowe, V. 2007, p.110.

⁷⁹ UNGA Res 25/2625 (24 October 1970) UN Doc A/RES/25/2625.

⁸⁰ UNGA Res 25/2625 (24 October 1970) UN Doc A/RES/25/2625.

⁸¹ Article 1 paragraph 2, UN Charter.

⁸² UNGA Res 25/2625 (24 October 1970) UN Doc A/RES/25/2625.

to fulfil the obligations assumed by it in accordance with the UN Charter, as well the recognised principles and rules of international law.⁸³ The principle has two aspects, and the first purpose is to underscore that in international law: “[...] *literal interpretations and applications of legal instruments must not be allowed to defeat the evident intentions of those who made them.*”⁸⁴ The second purpose of the principle of good faith is to reinforce that states are bound by the law and by the treaty obligations that they assume.⁸⁵ This reflects article 31 VCLT, which states that a treaty shall be interpreted in good faith and also is the guiding article for interpretation of the UN Charter.

2.4 Summary

This chapter has discussed the relevant regulations of the UN Charter with focus on the veto system. The function and powers of the Security Council are regulated through articles 24, 25 and 28 of the UN Charter. Per article 24 paragraph 1 of the UN Charter, the Council has the primary responsibility for the maintenance of international peace and security, and are acting on behalf of the member states. However, before the Council can decide to impose a measure, article 39 of the UN Charter requires that there must first be determined if there is an existing threat to the peace, the breach of peace or act of aggression. Article 27 of the UN Charter gives the right of the veto to the permanent members. The fundamental purpose of the veto system is to prevent Council decisions to be taken against the will of one or more of the permanent members, as it might eventually lead to a confrontation between the permanent members or between the permanent member and the UN. Articles 108 and 109 of the Charter opens the possibilities for any amendments and it requires *inter alia* consent of all the permanent members. The two different methods according to the articles are further discussed in section 2.1.

In addition, the chapter has discussed the principles of the international legal system, thus they are of relevance with the discussion of legitimacy and veto decisions. The principles are of importance for the thesis, because they repeatedly occur as main arguments and stand points for permanent members of the Security Council when it concerns the question of Syria. Three of the principles were explored. The principle of non-intervention affirms the central right of each state to independence and to self-determination. The principle of duty for the states to co-operate with other states, irrespective of differences in their political systems, in order to maintain international peace and security. The purpose of the good faith principle is to ensure that each state has the duty to fulfil the obligations assumed by it in accordance with the UN Charter, as well the recognised principles and rules of international law. In conclusion, this chapter has fulfilled the purpose of outlining the legal framework for the thesis, thus, highlighted the important articles and principles to be familiar with before continuing the discussion on legitimacy and the veto decisions.

⁸³ UNGA Res 25/2625 (24 October 1970) UN Doc A/RES/25/2625.

⁸⁴ Lowe, V. 2007, p.117.

⁸⁵ Lowe, V. 2007, p.118.

3 Defining legitimacy and politics with law

Following from the previous chapter, where the UN Charter and the veto system were examined, this chapter focuses on the matter of legitimacy and the relationship between law and politics. The procedures within the UN is a dance between law and politics; however, to understand and question the veto system, the matter of legitimacy must be examined. This chapter will therefore be of a more legal philosophical angle, as the definition of legitimacy depends on which legal philosopher one reads. This will benefit the discussion further on in the thesis, as the main question is to examine if the veto is in interest of international peace and security. As indicated before, the politics of law cannot be excluded from the examination of international law. So why write a chapter focusing on legitimacy? *"Legitimacy matters in the real world because it affects power, and power matters because it creates the ability – on some views, is just the ability – to get things done."*⁸⁶

To include a brief discussion of politics in law will help to understand the discussion of Security Council regulations, adopted and drafted, in chapter four. To analyse if a veto decision is in the interest of international peace and security, one must question and discuss of the decision is legitimate. Thus, the purpose of this chapter of the thesis is to examine the relation between legitimacy and law, as well shed light on the issue of politics and international law. The first part of the chapter will discuss the matter of legitimacy and international law. The second part focuses on the relationship between international law and politics.

3.1 Legitimacy

When discussing legitimacy, one must distinguish between the descriptive and normative senses of the concept. As there are differences between scholars concerning legitimacy, it is of importance to be able to distinguish the differences between the descriptive and normative senses. The descriptive view of legitimacy is that a norm or international arrangement is legitimate, if it finds approval by the subjects of the norm. For a norm or arrangement, legitimacy is created if the subjects believe that the norm or international arrangement believes to be legitimate.⁸⁷ The normative view of legitimacy examines whether the belief is correct, i.e. if the norm or arrangement satisfies certain specified conditions. The normative sense of legitimacy refers to a set of standards by which a norm or international arrangement must fulfil to be considered legitimate.⁸⁸ In a normative sense, an institution is legitimate if it has the right to rule and it includes promulgating rules and attempts to secure compliance with them.⁸⁹ In accordance with the previously discussion on theory for this thesis, further discussion on legitimacy in

⁸⁶ Meyer, L.H. 2009, p.1-2.

⁸⁷ Meyer, L.H. 2009, p.2.

⁸⁸ Meyer, L.H. 2009, p.2.

⁸⁹ Meyer, L.H. 2009, p.29.

this section of the chapter will be in reflection to a normative theory.⁹⁰ To continue a discussion in line with the descriptive sense would potentially reflect the analysis of this thesis and have a descriptive outcome, as well as limit the discussion on what the law ought to be.

However, the definition and examination on legitimacy might differ depending on the author. According to the legal scholar Thomas Franck the definition of legitimacy is:

[...] a property of a rule or a rule-making institution which itself exerts a pull toward compliance on those addressed normatively because those addressed believe that the rule or institution has come into being and operates in accordance with generally accepted principles of right process.⁹¹

In his opinion for a rule to be legitimate, a rule must communicate what conduct is permitted and what is not permitted.⁹² In a positivist argument, legitimacy can be defined as norms that have been accepted through procedure, which have been justified on their own and these procedures accepted as whole by the community. According to Franck, one cannot assume international law is legitimate, based on the belief that international law is created by state consent. International law is a result of negotiations and politics; however, the assumption of consent is not far from the truth. From a legal philosophical point of view:

The creation of legal legitimacy is best explained as comprising three elements. First, states and other international actors must build up shared understandings of what they want to accomplish through law, and of specific candidate norms. Second, international actors must work to ensure that the specific criteria of legality are met. Third, shared understanding and rules that adhere to the criteria of legality must be reinforced through a continuing practice of legality.⁹³

Jutta Brunnée and Stephen J. Toope argues that legitimacy has a key role in explaining the influences of international law because legitimacy is a belief system for rules to be fair, it must be rooted in a framework of formal requirements. What defines the formal requirements are the inclusion of how rules are made, interpreted and applied in the framework.⁹⁴

If the legal rule is not grounded in shared understandings and if the criteria of legality are only weakly or imperfectly met,

⁹⁰ See section 1.6.

⁹¹ Franck, T. 1990, p.24.

⁹² Franck, T.M. 1988, p.716.

⁹³ Brunnée, J. & Toope, S.J. 2010, p.55.

⁹⁴ Brunnée, J. & Toope, S.J. 2010, p.52.

*the rule will not generate fidelity, and it will not be employed in the reasoning of states as to appropriate behaviour.*⁹⁵

A calibrated rule with the purpose to reflect complex considerations, embodying a textured system of regulatory and exculpatory principles, may suffer legitimacy because it invites disputes as to its applicability in any given situation or case.⁹⁶ According to Malcom N. Shaw, legitimacy can be understood in a broader way to the referring of the relationship with the international political system; thus, forming the link between power and the legal system. Hence, legitimacy links law and politics in a wider sense and depends upon the context it emerges. “*Legitimacy is important in that it constitutes a standard for the testing in the wider political environment of the relevance and acceptability of legal norms and practices.*”⁹⁷ For a moderate constructivist, legitimacy as a concept provides: “[...] *an avenue to explore the normative dimension of politics which also implies an inquiry into the role law could play for a normative progress.*”⁹⁸

3.1.1 The debate of consent

When discussing the different views on legitimacy, the tradition of consent must be mentioned. Often when reading or discussing legitimacy, the aspect of consent is mentioned; however, there are two different interpretations of consent. The basic idea is that: “[...] *the consent of persons within a state to the authority of the state that legitimates with respect to those persons.*”⁹⁹ The first interpretation of consent is hypothetical consent and the second interpretation is historical consent. Criticism has been raised concerning both interpretation and according to David Hume, there might have been historical parties where they in special circumstances gave their consent; however, it does not follow that present parties are bound by historical consent. In addition, Hume further have argued that the idea of hypothetical parties and have given their consent to certain rules, does not bind parties in actual positions.¹⁰⁰ Lukas H. Meyer argues that the tradition of consent can be unsatisfying when applied to an international context and especially when consent is considered as a sufficient condition for legitimacy.¹⁰¹

The debate on the tradition of consent might be seen as non-decisive, but the problem of consent is real when discussing problems facing international legitimacy. Consent have an important role when discussing legitimacy; however, it is one part of the puzzle. Allen Buchanan describes consent in a positivist view according to international law as following. State consent is necessary for a norm to be legally valid in the international legal system and only when, and if, a norm is legally valid in the international legal system is it legitimate. As a result, only

⁹⁵ Brunnée, J. & Toope, S.J. 2010, p.55.

⁹⁶ Franck, T.M. 1988, p.724.

⁹⁷ Shaw, M.N. 2014, p.44.

⁹⁸ Dos Reis, F. & Kessler, O. 2016, p.353.

⁹⁹ Meyer, L.H. 2009, p.3.

¹⁰⁰ Meyer, L.H. 2009, p.3.

¹⁰¹ Meyer, L.H. 2009, p.2.

when a norm enjoys state consent is it legitimate. Therefor a system of law is legitimate if the norms compromising the legal system are legitimate. The international legal system becomes legitimate only if the state consent norm is satisfied.¹⁰² Buchanan further explores why this line of argumentation is flawed since peremptory norms of international law applies to all states regardless to their consent to treaties or practices that contributed to their creation. In addition, customary norms apply to states that did not consent to them. Therefor international law would become not legally binding because it does not enjoy state consent and the premise that state consent is necessary for a norm to be legally valid in international law can only be rejected.¹⁰³

3.1.2 Legitimacy of a forum

When discussing the legitimacy of a forum, it can be tested in the same way as that of a rule: by reference to the determinacy of its charter, its pedigree, the coherence of its mandate and its adherence to the normative institutional hierarchy of international organisation.¹⁰⁴ Global governance institutions¹⁰⁵, such as the United Nations, are of importance as they create norms and information which enable member states, as well as other actors to coordinate behaviour in mutually beneficial ways.¹⁰⁶ An institution ability to perform their purpose and functions, may depends on to whom it addresses their rules and whether others within the institution does not interfere with its functioning. Therefor allows legitimacy actors to coordinate their support for institutions by appealing to their common capacity to be moved by moral reasons and not for purely strategic or exclusively self-interested reasons.¹⁰⁷

However, if an institution is based on reasons other than self-interest it might be considered more stable. Even though self-interest might change as circumstances changes, but moral commitments might be able to preserve the support for institutions. The question of legitimacy arises when there are moral disagreements on how the institution should be designed and function.¹⁰⁸ To be able to reach an agreement on legitimacy and the changes, there must be sufficient consent concerning the moral considerations that are relevant for the evaluation of alternative changes.¹⁰⁹ It is not sufficient that only the international actors are justified, but also to whom the institutions rules addresses and that they have content-independent reasons to comply with the rules, as well that the those within the institutions domain have content-dependent reasons to support the institution or at least not interfere with its function.¹¹⁰ To have content-independent reason to

¹⁰² Buchanan, A. 2004, p.307-308.

¹⁰³ Buchanan, A. 2004, p.308.

¹⁰⁴ Franck, T.M. 1988, p.725.

¹⁰⁵ Hereinafter GGI.

¹⁰⁶ Buchanan, A. & Keohane, R. O. 2009, p.31.

¹⁰⁷ Buchanan, A. & Keohane, R. O. 2009, p.33.

¹⁰⁸ Buchanan, A. & Keohane, R. O. 2009, p.33.

¹⁰⁹ Buchanan, A. & Keohane, R. O. 2009, p.33.

¹¹⁰ Buchanan, A. & Keohane, R. O. 2009, p.34.

comply with a rule is: “[...] if one has reasons to comply regardless of any positive assessment of the content of that rule.”¹¹¹

3.1.3 A final remark on legitimacy

The determination of what legitimacy is and how it correlates to international law is vastly debatable. If a practice seen as illegal but legitimate it is most likely to be the core of a new rule or practice.¹¹² Therefor it is important to include legitimacy in the discussion of the law that is and the law that ought to be. Klabbers and Piiparinen describes the element of legitimacy as adding something slippery to a discussion, since on one hand legitimacy cannot be traced to any given normative order but potentially encompass them all. On the other hand, legitimacy is sometimes posited as the overarching normative order. As indicated by Klabbers and Piiparinen, legitimacy can derive from various factors and sources. A legal rule might come into accordance with the right procedure, yet have illegitimate contents; thus, a behaviour of a legitimate entity may cause these entities to lose legitimacy.¹¹³

3.2 The relationship between law and politics

This part of the paper will briefly examine the relationship between law and politics. As the United Nations is an international institution where law and politics coexists closely to produce results, it is of importance to some extend explain the law and politics. However, the importance is not to discuss whether there is a right or wrong. The focus of this section is to give the reader an overview of the different approaches on how to grasp the relationship between law and politics. The research fields in international law and international relationships are becoming more intertwined, especially when it comes to the UN and it is therefore of importance how the different fields connect, as well as overlaps when examining the same topic. In addition, the different approaches to how to define and understand the relationship with law and politics, indicates that there might be different assumptions by the member states and therefor what the political function of the UN is.¹¹⁴ Hopefully this will give an understanding when discussing how the political aspect is intertwined in the legal discussion of the veto decisions.

I have decided to focus on three different approaches on the relationship between law and politics. The first approach is realism, which treats politics as a struggle for material power between states and law as either irrelevant or a reflection of the prevailing balance of power.¹¹⁵ World politics states considered as rational unitary actors who are principally concerned with the survival in an anarchic system. The states constant pursuit of power is considered central in explaining the

¹¹¹ Buchanan, A. & Keohane, R. O. 2009, p.34.

¹¹² Shaw, M.N. 2014, p.45.

¹¹³ Klabbers, J. & Piiparinen, T. 2013, p.29-33.

¹¹⁴ Author's reflection.

¹¹⁵ Reus-Smit, C. 2004, p.15.

behaviour of the states and the balance of power is regarded as a necessary condition for international law.¹¹⁶ Realism treats law and politics separate. Law is seen as a function to the state and to serve the political purposes of the state. “*By implication law is fundamentally political and in relations between states the content of international law is determined by dominant states and will not be upheld when it conflicts with their perceived political interests.*”¹¹⁷ Due to this perspective between law and politics, realists are sceptical about law providing a viable path to international order. This perspective address the existing of a growing body of law nor how law constrains stronger states or how weaker states uses law to shape outcomes. The realism only consider law for the interest of the powerful.¹¹⁸

The second approach is rationalism and finds expression in the writings of neoliberal institutionalists. Their approach defines politics as a strategic game, were egoistic states seek the possibility to maximise their interest within existing environmental constraints. When it comes to international law, the rationalist sees it as a set of functional rules promulgated to solve cooperation problems.¹¹⁹ However, they find that solutions for states interest are best found through cooperation and regards institutions as functional solutions for cooperation problems.¹²⁰ The rationalists image of states strategical negotiation functions only looks at one aspect of the international law and misses the part of how international law could be the focal point when discussing the struggles of legitimate political agencies and actions.¹²¹ The view that politics are strategic and utility-maximising actions and law is only a set of regulatory rules, do not account for the obligatory force if international law, since states accept legal rules as binding even in the absence of centralised enforcement mechanisms.¹²²

The third and final approach is constructivist. They view politics is as a socially constitutive form of action and law is a as central to normative structures that condition the politics of legitimate statehood and rightful action.¹²³ Constructivists view that structures shapes the behaviour of states and normative, as well as ideal structures are important as material structures. In addition, they argue that one need to understand a state social identity and how it conditions the states actions and interests.¹²⁴ “[...] actors are in a constant dialogue with the prevailing norms of legitimate agency that constitute role identities to define their senses of self.”¹²⁵ The focus point of the constructivist thought is the concern for reasons

¹¹⁶ Reus-Smit, C. 2004, p.16.

¹¹⁷ Reus-Smit, C. 2004, p.16.

¹¹⁸ Reus-Smit, C. 2004, p.17.

¹¹⁹ Reus-Smit, C. 2004, p.15.

¹²⁰ Reus-Smit, C. 2004, p.18-19.

¹²¹ Reus-Smit, C. 2004, p.19.

¹²² Reus-Smit, C. 2004, p.20.

¹²³ Reus-Smit, C. 2004, p.15.

¹²⁴ Reus-Smit, C. 2004, p.22.

¹²⁵ Reus-Smit, C. 2004, p.22.

for actions, i.e. a reason can be both individual or collective motive with a justificatory claim. Thus, the constructivists focus not only on the logic of appropriateness, but also the logic of argumentation in which the norms provide a communicative framework for actors to debate the issues of legitimacy, purposes etc. Within these ideas is the view that international politics are both a rule-governed and rule-constitutive form of reason and action.¹²⁶ However, their view on politics is not very articulated and unclear on how social and legal norms differ, as well as on how they see the international legal system should be conceived.¹²⁷

It is not difficult to see that law is continuously in danger of lapsing into an apology for politics. Critics of any prevailing law regularly accuse it of having done just this. This is natural because just like politics, law is understood to exist for the pursuit of social goals and there is constant disagreement about the correct goals. The same is true of international law [...].¹²⁸

As the quote above indicates that the two interests overlap more than one thinks, hence they are understood to pursue a goal. In the context of the UN, the relationship between law and politics seem even more closer since law from the organisation is a result of political dialogues. The different fields of international relations and international law have become intertwined and slowly ending the view of them as separate.¹²⁹ The international legal order shapes politics through the discourse of international autonomy, as well as language, practice and the multilateral legislation.¹³⁰

The discourse of politics is now replete with the language of law and legitimacy as much as realpolitik, lawyers are as central to military campaigns as strategists, legal rights is as much a power resource as guns and money, and juridical sovereignty, grounded in the legal norms of international society, is becoming a key determinant of state power.¹³¹

International law is a living cell which evolves through argumentative reasons about the form of rules, what the rules prescribe or proscribe, what their jurisdiction is, as well as how the new rules should relate to established rules and about whether a certain action or inaction is covered by a rule.¹³² Therefor it is not far reached that politics is a given factor in the line of reasoning of international law and the formation of rules.

¹²⁶ Reus-Smit, C. 2004, p.23.

¹²⁷ Reus-Smit, C. 2004, p.24.

¹²⁸ Koskenniemi, M. 1989, p.2.

¹²⁹ Biersteker, T.J., Spiro, P.J., Siriam, C.L. & Raffo, V. 2007, p.3.

¹³⁰ Reus-Smit, C. 2004, p.5.

¹³¹ Reus-Smit, C. 2004, p.2.

¹³² Reus-Smit, C. 2004, p.41.

In conclusion, the political factor is of importance when discussing the decisions taken by the Security Council, thus it becomes clear when reading the protocols from the meetings that the political arguments overshadows the legal reasoning. The legal document for the meetings is the proposed resolutions, but the argumentation concerning if the resolution was adopted or not is of a political nature. Therefor it is importance to reflect on the possibility that member states might have different opinions regarding the relationship on law and politics, depending on which of the reviewed approaches.

3.3 Summary

The character of this chapter is partly normative theory and partly with a legal philosophical approach. This is due to the discussions of the determination of legitimacy and, politics and law; thus, the chapter explores different approaches to the different terms. First, the chapter approaches legitimacy and one must distinguish the differences between the descriptive and normative senses. The descriptive view of legitimacy is that a norm or international arrangement is legitimate, if it finds approval by the subjects of the norm. The normative view of legitimacy examines whether the belief is correct, i.e. if the norm or arrangement satisfies certain specified conditions. In accordance with the theory of this thesis discussed in section 1.6, the approach to legitimacy for the thesis is mainly the normative approach; however, it is difficult to define legitimacy with a fixed set of rules. Klabbers and Piiparinens describes the element of legitimacy as adding something slippery to a discussion, since on one hand legitimacy cannot be traced to any given normative order but potentially encompass them all. According to Shaw, legitimacy can be understood in a broader way to the referring of the relationship with the international political system; thus, forming the link between power and the legal system.

The approach to state consent was briefly discussed. According to some scholars, state consent is necessary for a norm to be legally valid in the international legal system and only when, and if, a norm is legally valid in the international legal system is it legitimate. According to Buchanan, this line of argumentation is flawed since peremptory norms of international law applies to all states regardless to their consent to treaties or practices that contributed to their creation. As for legitimacy of GGI, it is not sufficient that only the international actors are justified, but also to whom the institutions rules address and that they have content-independent reasons to comply with the rules, as well that the those within the institutions domain have content-dependent reasons to support the institution or at least not interfere with its function.

Secondly, the chapter explores the different approaches on the relationship between politics and law. The different approaches on how to define and understand the relationship with law and politics, indicates that there might be different assumptions by the member states and therefor what the political function of the UN is. The first approach is realism, which treats politics as a struggle for mate-

rial power between states and law as either irrelevant or a reflection of the prevailing balance of power. Realism treats law and politics separate, where law is seen as a function to the state and to serve the political purposes of the state. The second approach is rationalism and finds expression in the writings of neoliberal institutionalists. Their approach defines politics as a strategic game, where egoistic states seek the possibility to maximise their interest within existing environmental constraints. When it comes to international law, the rationalist sees it as a set of functional rules promulgated to solve cooperation problems. The third and final approach, constructivist, view politics as a socially constitutive form of action and law is as central to normative structures that condition the politics of legitimate statehood and rightful action. The focus point of the constructivist thought is the concern for reasons for actions, i.e. a reason can be both individual or collective motive with a justificatory claim.

In conclusion, the chapter have discussed the different approached of legitimacy and hopefully, give the reader an understanding of the complicated debate of what legitimacy could and should be defined as. Adding legitimacy to the discussion opens the possibility to question the veto decisions whether they could undermine the purpose of international peace and security. This will be further explored in chapter five. The connection to the discussion on politics and law with legitimacy is not obviously clear; however, the discussion on politics brings a new nuance to the thesis. The differences on how to reflect on the relationship between politics and law, reflects the differences in the UN. It is of importance to have this in mind when exploring the differences of opinions from the permanent members and the political language overshadows the legal language.

4 The Resolutions

The previous two chapters have, among other things, examined the UN Charter, the veto system and discussed the matter of legitimacy, as well shed light on the different approaches between law and politics. These chapters have presented the legal tools needed for this thesis and this chapter will explore some of the decisions taken by the Security Council concerning Syria. Compared to the previous two chapters, where chapter two sets the legal framework and chapter three is written with a legal philosophical approach, this chapter is the densest part of the thesis. The chapter examines the different veto decisions and the arguments from the permanent members on why they used their veto right. Furthermore, the chapter presents a few selected adopted resolutions concerning the question on Syria. The arguments for why these resolutions, adopted and drafts, have been discussed in chapter one. The purpose of the chapter is to introduce the reader to the information that will be further assessed in chapter five.

The chapter begins with the draft resolutions and the structure of section 4.1 is divided by the main arguments, hence connecting different draft resolutions with the same argumentation from the permanent members and similar resolution character. The final section 4.2 presents the selected adopted resolutions concerning the question on Syria. This section follows the same theme as the previous and therefore divided into sections of resolutions with similar character. Compared to section 4.1 where all draft resolutions are discussed, only a few selected adopted resolutions are discussed in 4.2. It is in my opinion that they represent the common thread of resolutions from the Security Council and will be further discussed in chapter six.

4.1 When the veto is used

On 3 August 2011, the Security Council adopted a presidential statement condemning the Syrian authorities and called for an immediate end to all violence.¹³³ The presidential statement followed the massacre in Hama, Syria. On 4 October 2011, the first drafted resolution was submitted to the Security Council; however, during the voting one of the permanent members used their veto vote. Since 2011 the veto has been used for several draft resolutions concerning the conflict in Syria on various aspects. This part of the thesis is to examine the draft resolutions in the light of the Syrian conflict, where the veto of the permanent members to the Security Council have been used and the reasons why the veto was used.

4.1.1 International principles

Previously mentioned in the beginning of the chapter, the structure of the chapter will be according to the main arguments presented by the permanent members on why they used their veto. The principles of the international legal system were

¹³³ UNSC Presidential Statement 16 (2011) UN Doc S/PRST/2011/16.

examined in chapter two.¹³⁴ This section of the chapter examines the draft resolutions which had been vetoed based on international principles, but before presenting the arguments there will be a short presentation of the draft resolutions.

Draft resolutions

The first drafted resolution concerning the situation in Syria was discussed on 4 October 2011. The draft resolution was based on the presidential statement from 3 August 2011 and the draft had the purpose of being a unanimous response from the Council on the development in Syria.¹³⁵ The drafted resolution stated, among other things, demands for the Syrian authorities immediately refrain from using cease fire against civilians, that they cease violations of human rights and allow the full exercise of human rights and fundamental freedoms by its own population.¹³⁶ It also stressed:

" [...] that the only solution to the current crisis in Syria is through an inclusive and Syrian-led political process with the aim of effectively addressing the legitimate aspirations and concerns of the population which will allow the full exercise of fundamental freedoms for its entire population [...]. "¹³⁷

In addition, the drafted resolution condemns the attack on diplomatic personnel and calls upon all states to exercise vigilance and restraint over direct or indirect supply, sale or transfer to Syria of arms and relates material.¹³⁸ The Security Council's intention is to review Syria's implementation of the resolution and consider the option of including measures under article 41 of the UN Charter.¹³⁹

The second draft resolution to not be adopted by the Security Council, was discussed on the 4 February 2012. In addition to the continued condemnation of the violations of human rights and fundamental freedoms by the Syrian authorities, the draft resolution focused on the League of Arab States actions taken since October 2011. On 2 November 2011, the League of Arab States had decided on an action plan with the aim to achieve a peaceful resolution on the situation in Syria. This was welcomed by the Security Council in the draft resolution.¹⁴⁰ The drafted resolution demands the Syrian government:

[...] in accordance with the Plan of Action of the League of Arab States of 2 November 2011 and its decision of 22 January 2012, without delay: [...]

¹³⁴ See section 2.3.

¹³⁵ UNSC 6627th Meeting (4 October 2011) UN Doc S/PV.6627, p.3.

¹³⁶ UNSC Draft Res 616 (4 October 2011) UN Doc S/2011/616, paragraph 4 (a-d).

¹³⁷ UNSC Draft Res 616 (4 October 2011) UN Doc S/2011/616, p.1.

¹³⁸ UNSC Draft Res 616 (4 October 2011) UN Doc S/2011/616, paragraph 9.

¹³⁹ UNSC Draft Res 616 (4 October 2011) UN Doc S/2011/616, paragraph 11.

¹⁴⁰ UNSC Draft Res 77 (4 February 2012) UN Doc S/2012/77.

- (e) allow full and unhindered access and movement for all relevant League of Arab States' institutions and Arab and international media in all parts of Syria to determine the truth about the situation on the ground and monitor the incidents taking place; and
- (f) allow full and unhindered access to the League of Arab States' observer mission;¹⁴¹

The Security Council underscores their support to the League of Arab States in the draft resolution, stating the full support for the League of Arab States decision on 22 January 2012 to facilitate a Syrian-led political transition to a democratic, plural political system.¹⁴²

Veto arguments

Regarding the first draft resolution from October 2011, the Russian delegation argued that the rejected draft had the philosophy of confrontation and in the delegation opinion it is an unacceptable approach to threat of an ultimatum and sanctions against the Syrian authorities. An approach of that nature contravenes the principle of a peaceful settlement, as well as the respect of the principle of the unity of the Syrian people.¹⁴³ The Russian delegation continued to criticise the wording of the draft resolution since the proposed wording on non-acceptability for foreign military intervention were not considered.¹⁴⁴

In addition, the Russian delegation argued for their prepared draft resolution, together with the Chinese delegation, respected the international principles. Even though their resolution was not supported by the Council, but according to them, their focus was more on the respect for national sovereignty and territorial integrity, as well as the principle of non-intervention.¹⁴⁵ In their opinion, the purpose with a resolution concerning Syria should respect the principle of the unity of the Syrian people and to refrain from confrontation in addition to invite a comprehensive dialogue aimed at achieving civil peace and national agreement by reforming the socioeconomic and political life of the country.¹⁴⁶

The tone of the arguments presented by the Russian delegation tends to present the western politics as something negative, i.e. they structure arguments as us versus them. Although the Russian delegation do not entail what western politics are in their reference. According to the delegation, the basis of statements presented by western politicians: “[...] such an approach would could trigger a full-

¹⁴¹ UNSC Draft Res 77 (4 February 2012) UN Doc S/2012/77, paragraph 5 (e-f).

¹⁴² UNSC Draft Res 77 (4 February 2012) UN Doc S/2012/77, paragraph 7.

¹⁴³ UNSC 6627th Meeting (4 October 2011) UN Doc S/PV.6627, p.4.

¹⁴⁴ UNSC 6627th Meeting (4 October 2011) UN Doc S/PV.6627, p.4.

¹⁴⁵ UNSC 6627th Meeting (4 October 2011) UN Doc S/PV.6627, p.3.

¹⁴⁶ UNSC 6627th Meeting (4 October 2011) UN Doc S/PV.6627, p.3-4.

fledged conflict in Syria and destabilization in the region as whole".¹⁴⁷ Furthermore, the arguments from the delegation are structured as we-approach, i.e. what we will do and we convey our condolences. In addition to condemn the differences in politicians, the delegation continued by reminding the Security Council of the implemented resolutions concerning Libya.

*"For us, Members of the United Nations, including in terms of a precedent, it is very important to know how the resolution was implemented and how a Security Council resolution turned into its opposite. The demand for a quick ceasefire turned into a full-fledged civil war, the humanitarian, social, economic and military consequences of which transcend Libyan borders."*¹⁴⁸

According to the Russian delegation, the best way to end a crisis is to refuse to provoke a confrontation and to bring together all responsible members of the international community to induce the parties for launching an inclusive intra-Syrian political process.¹⁴⁹ The Russian's presented their continued work with discussions and political dialogues with the Syrian government in Damascus. However, dialogues with the opposition must be undertaken since they are concerned about their country and who have said that they do not want foreign interference in their internal affairs, as well as granting access to international media.¹⁵⁰

The Chinese delegation presented their arguments and it continued in line with the Russian, i.e. provide constructive assistance and respect Syria's sovereignty, independence and territorial integrity. The delegation underscored that any future actions taken by the Security Council must depend whether it complies with the UN Charter and the principle of non-interference in the internal affairs of states. The delegation believes that, under the current circumstances, sanctions or threat thereof does not help to resolve the question of Syria.¹⁵¹ Therefor China voted against the draft resolution.

In conclusion concerning the first draft resolution, an action taken by the Security Council must be done in respect to the principles and purposes of the Charter.¹⁵² Since this draft resolution was discussed in the beginning of the conflict and before the situation was categorised as a threat to international peace and security, the principles were valued much higher than implement measures under article 41 of the Charter.

Compared to the first draft resolution, the second draft resolution presented ar-

¹⁴⁷ UNSC 6627th Meeting (4 October 2011) UN Doc S/PV.6627, p.4.

¹⁴⁸ UNSC 6627th Meeting (4 October 2011) UN Doc S/PV.6627, p.4.

¹⁴⁹ UNSC 6627th Meeting (4 October 2011) UN Doc S/PV.6627, p.4.

¹⁵⁰ UNSC 6627th Meeting (4 October 2011) UN Doc S/PV.6627, p.4.

¹⁵¹ UNSC 6627th Meeting (4 October 2011) UN Doc S/PV.6627, p.5.

¹⁵² See Chapter 2.

gements for a unified support to the League of Arab States by the Security Council. Again, Russia and China were the two permanent members voting against the resolution. The Russian delegation argued that the sponsors of the draft resolution did not take into account the proposed amendments to the effect that the Syrian opposition must distance itself from extremist groups, as well calling on states and all those with any relevant opportunity to use their influence as an opposition to stop those groups committing acts of violence.¹⁵³ The delegation continued by stating that nor did the draft resolution take into account the withdrawal of Syrian armed forces from cities and there should be an end to attacks by armed groups on state institutions and neighbourhoods.¹⁵⁴ In addition, the delegation criticised that there should have been an included support to more flexibility for intermediary efforts of the League of Arab States, hence they would increase the chances for a successful inclusive Syrian political process.

The Chinese delegation defended their veto in the same line, as the draft resolution in 2011, thus continued to underscore the right to state sovereignty and the principles of international legal system. In their opinion it is reasonable for continued consultations; however, that the concerns brought forward by the Chinese representation were not considered in the draft resolution.¹⁵⁵

In conclusion, the Russian delegation argues that the gaps in the text concerning the extremist groups and flexibility for international efforts. However, Russia and China have been consistent with their stand point that the path to find a solution on the conflict is through political dialogues. The purpose of the support to the League of Arab States is to support their plan on finding a peaceful resolution to the conflict in Syria. Once more their support for the veto decisions are the principles of the international legal system and the respect to states sovereignty, independence and territorial integrity.

4.1.2 Chapter VII

What Chapter VII decisions entails have been briefly discussed in section 2.2. Since a decision supported by the chapter VII are binding for all member states, any resolution with the purpose to adopt such decisions becomes more difficult to get the full approval by the permanent members. At least when it comes to the question of Syria and the difference of opinions on the Security Council strategy for the conflict.

Draft resolutions

On 21 March 2012, the Security Council released a presidential statement following the 6736th meeting of the Security Council expressing grave concerns on the conflict in Syria. In addition, the Security council welcomed the appointment of Joint Special Envoy for the United Nations and the League of Arab States, Kofi Annan, followed by the General Assembly Resolution A/RES/66/253 of 16

¹⁵³ UNSC 6711th Meeting (4 February 2012) UN Doc S/PV.6711, p.9.

¹⁵⁴ UNSC 6711th Meeting (4 February 2012) UN Doc S/PV.6711, p.9.

¹⁵⁵ UNSC 6711th Meeting (4 February 2012) UN Doc S/PV.6711, p.9.

February 2012, as well as relevant resolutions of the League of Arab States.¹⁵⁶ The aim of the Joint Special Envoy is to bring an immediate end to all violence and human rights violations and facilitate a Syrian-led political transition to a democratic and plural political system.

The Security Council stated their support of the Joint Special Envoy's initial six-point proposal, which was outlined by the Joint Special Envoy to the Security Council on 16 March 2012.¹⁵⁷ The proposal included, among others, commitment to work with the Joint Special Envoy in an inclusive Syrian-led political process to address the legitimate aspirations and concerns of the Syrian people, ensure timely provisions of humanitarian assistance to all areas affected by the fighting, and to ensure freedom of movement throughout the country for journalists and a non-discriminatory vis policy for them.¹⁵⁸ On 5 April 2012, the Security Council released another presidential statement following the 6746th meeting of the Security Council. The Council noted that the Syrian government committed on 25 March 2012, to implement the Joint Special Envoy's six-point proposal.¹⁵⁹

In the light of the previous mentioned presidential statements by the Security Council, the submitted draft resolution on 19 July 2012 reaffirmed once more the strong commitment by the Council to the sovereignty, independence and territorial integrity of Syria, as well as to the purposes and principles of the Charter.¹⁶⁰ The draft resolution reaffirmed the support to the Joint Special Envoy for the United Nations and the League of Arab States. It determined that the situation in Syria constitutes a threat to international peace and security.¹⁶¹ In accordance with Chapter VII of the Charter, the Council decided to take several actions. For example, renew the mandate of the United Nations Supervision Mission in Syria¹⁶² and decided that the Syrian authorities shall implement verifiably their commitments as stipulated in resolutions 2042 (2012) and 2043 (2012).¹⁶³ If the Syrian authorities does not comply with the stipulated demands within ten days, the Council shall impose measures under article 41 of the UN Charter.¹⁶⁴

The second draft resolution to be examined was discussed on the Security Council meeting on 28 February 2017. The draft was written in accordance with actions under Chapter VII, as a reflection to the reports presented by the Organisation for the Prohibition of chemical Weapons¹⁶⁵ which identified actors involved

¹⁵⁶ UNSC Presidential Statement 21 (2012) UN Doc S/PRST/2012/6, p.1.

¹⁵⁷ UNSC Presidential Statement 21 (2012) UN Doc S/PRST/2012/6, p.1.

¹⁵⁸ UNSC Presidential Statement 21 (2012) UN Doc S/PRST/2012/6, p.1.

¹⁵⁹ UNSC Presidential Statement 10 (2012) UN Doc S/PRST/2012/10, p.1.

¹⁶⁰ UNSC Draft Res 538 (19 July 2012) UN Doc S/2012/538.

¹⁶¹ UNSC Draft Res 538 (19 July 2012) UN Doc S/2012/538, p.2.

¹⁶² Hereinafter UNSMIS.

¹⁶³ UNSC Draft Res 538 (19 July 2012) UN Doc S/2012/538, p.3.

¹⁶⁴ UNSC Draft Res 538 (19 July 2012) UN Doc S/2012/538, paragraph 14, p.4.

¹⁶⁵ Hereinafter OPCW.

in several cases of chemical weapons in Syria.¹⁶⁶ The purpose of the draft resolution was to act and respond on the findings by the OPCW concerning the use of chemical weapons. The submitted draft was annexed with a list which designated twenty-one Syrian individuals, companies and organisations that would have been subject to proposed measures in the draft resolutions.¹⁶⁷ The proposed sanctions included freezing of assets, bans on travel and embargoes on specific equipment and materials, such as chlorine and other components of chemical weapons.¹⁶⁸ In resolution 2118 (2013), the Security Council decided that the Syria and all parties in Syria shall cooperate with OPCW.¹⁶⁹ The draft resolution recalled that the decision taken by the Council in resolutions 2118 (2013) and 2209 (2015) that in the event of non-compliance with resolution 2118 (2013), measures under Chapter VII of the UN Charter should be imposed.¹⁷⁰

In addition, the draft resolution suggests the Council to establishes a committee with the purpose to designate other individuals, groups and entities to be subject to proposed measures, as well as establish guidelines as may be found necessary to facilitate the implementation of imposed measures in the draft resolution.¹⁷¹ The draft resolution also requested the Secretary-General to create a group of up to six experts with the purpose to assist the committee in the carrying out its mandate, in addition to gather, examine and analyse information regarding implementation of the sanction measures. The group of experts shall also make recommendations on actions that the Security Council, states or committee may consider taking to improve implementation of measures.¹⁷²

Veto arguments

Once more, the vote's against the draft resolutions was made by Russia and China. The Russian delegation argued that the draft resolution on 19 July 2012 did not stand a chance of being adopted. According to the delegation, they have been clear and consistently explaining that they cannot accept a document under Chapter VII of the UN Charter. In their opinion, a resolution under Chapter VII would open a way for the pressure of sanctions and further on for external military involvement in Syrian domestic affairs.¹⁷³ The delegation went further on by stating that the western members of the Security Council denied such intension, but refused to exclude military interventions in the draft text as well as the western members have been pushing their own geopolitical intentions, which does not have common interests with the Syrian people.¹⁷⁴ The delegation stressed that

¹⁶⁶ UNSC Draft Res 172 (28 February 2017) UN Doc S/2017/172, p.1.

¹⁶⁷ UNSC Draft Res 172 (28 February 2017) UN Doc S/2017/172, paragraph 15 and annex, p.5.

¹⁶⁸ UNSC Draft Res 172 (28 February 2017) UN Doc S/2017/172, paragraph 17-20., p.5.

¹⁶⁹ See section 4.2.2 OPCW.

¹⁷⁰ UNSC Draft Res 172 (28 February 2017) UN Doc S/2017/172, p.2.

¹⁷¹ UNSC Draft Res 172 (28 February 2017) UN Doc S/2017/172, paragraph 13, p.4.

¹⁷² UNSC Draft Res 172 (28 February 2017) UN Doc S/2017/172, paragraph 27, p.7.

¹⁷³ UNSC 6810th Meeting (19 July 2012) UN Doc S/PV.6810, p.8.

¹⁷⁴ UNSC 6810th Meeting (19 July 2012) UN Doc S/PV.6810, p.8.

the draft resolution did not represent the present state in Syria and that it runs counter to the spirit of the Geneva document.

The Chinese delegation argued that the text contradicts the aims of consensus among Security Council members. First, according to the delegation the draft resolution is flawed and unbalanced, as it seeks to put pressure on only one party.

It would not only further aggravate the turmoil, but also cause it to spread to other countries of the region, undermine regional peace and stability, and ultimately harm the interests of the people of Syria and other regional countries.¹⁷⁵

Secondly, the draft resolution would erode international trust and cooperation on the issue of Syria. The mediation done by the Joint Special Envoy is of importance and the realistic way to peruse. It is in the delegation opinion that the draft resolution undermines the Special Envoy's work and the consensus reached at the Geneva meeting.¹⁷⁶ Thirdly, the principles of sovereign equality and non-interference in internal affairs are the foundation of the Charter. This has consistently been one of the key point in the Chinese arguments concerning the question of Syria and that the fate of Syria should be decided independently by the Syrian people.¹⁷⁷ Fourthly, the draft resolution jeopardises the unity of the Security Council. According to the delegation, the discussion during the meeting concerning the draft resolution the supporting members of the resolution did not show any political will or cooperation and refusing to make any revisions or consultations.¹⁷⁸ For the mentioned reasons, China did not accept the draft resolution on 19 July 2012.

The discussed draft resolution confirmed that the situation in Syria constitutes a threat to international peace and security. Therefor the classification of the conflict would have increased if it would have been adopted. However, the draft included measures in accordance with Chapter VII and therefor lost the Russian vote. In their opinion would a Chapter VII resolution open the path for an uncertain future of the conflict, in addition to violate the international principles. The Chinese delegation stipulated that the resolution would undermine the ongoing political dialogues and solutions, such as the Special Envoy.

Continuing with the arguments for the draft resolution on 28 February 2017 concerning the Security Council's response to the OPCW reports, the Russian delegation motived their vote since the nature of the text is offensive, flawed and

¹⁷⁵ UNSC 6810th Meeting (19 July 2012) UN Doc S/PV.6810, p.13.

¹⁷⁶ UNSC 6810th Meeting (19 July 2012) UN Doc S/PV.6810, p.13.

¹⁷⁷ UNSC 6810th Meeting (19 July 2012) UN Doc S/PV.6810, p.13.

¹⁷⁸ UNSC 6810th Meeting (19 July 2012) UN Doc S/PV.6810, p.14.

unacceptable.¹⁷⁹ The delegation raised their scepticism concerning the conclusions drawn in the third and fourth reports¹⁸⁰ of the Joint Investigative Mechanism¹⁸¹ of the OPCW and the United Nations to investigate the use of chemical weapons in Syria. According to the Russian delegation, the conclusions from the reports were not based on convicting evidence, nor did the investigation consider the fact that besides Islamic State and the Levant, the widespread of toxic substances by the Al-Nusra Front and other opposition groups.¹⁸² The delegation claims that the problem is that the information the experts based their report on is provided by: “[...]armed opposition sympathetic international non-governmental organizations, the media and so called friends of Syria.”¹⁸³ The purpose of the JIM work is that it would be founded on a basis of impartiality and established facts. The delegation believes that the JIM activities will go beyond Syria to include the neighbouring countries and that the mandate will provide for real counter-terrorism measures. Based on the report, the Russian delegation claims that there is no justification to conclude that Syria has failed to comply with the Chemical Weapons Convention or resolution 2118 (2013).¹⁸⁴

In addition to the arguments concerning the report from the JIM and OPCW, the delegation raised their questions concerning the justification of sanctions in the draft resolution. In the delegation opinion, the JIM report brought forward at the meeting did not speak about any Syrian officials, scientific institutions or economic entities.¹⁸⁵ The delegation also argued that an embargo on exports to Syria could adversely affect the fulfilment of major agricultural and economic needs. The ban on the provisions of helicopters and spare parts could indeed be an attempt to undermine the counter terrorism efforts.¹⁸⁶ In conclusion, the Russian delegation claims that the draft resolution is an attempt to undermine political and diplomatic efforts. To impose unilateral and multilateral sanctions would only weaken the international counter-terrorism efforts.¹⁸⁷

The Chinese delegation followed their arguments in the same line as the conclusions from the Russian delegation. According to the Chinese delegation, a new round of Geneva peace talk is under way and there is an opportunity to find a political solution. Due to the information mentioned, it is the Chinese standpoint that the international community should remain committed to political solution.¹⁸⁸ Any actions or decisions that runs counter to the fundamental interests of the people of Syria, should not be allowed by the Council.¹⁸⁹ It is too early to

¹⁷⁹ UNSC 7893th Meeting (28 February 2017) UN Doc S/PV.7893, p.6.

¹⁸⁰ See S/2016/738/Rev.1 and S/2016/888.

¹⁸¹ Hereinafter JIM.

¹⁸² UNSC 7893th Meeting (28 February 2017) UN Doc S/PV.7893, p.7.

¹⁸³ UNSC 7893th Meeting (28 February 2017) UN Doc S/PV.7893, p.7.

¹⁸⁴ UNSC 7893th Meeting (28 February 2017) UN Doc S/PV.7893, p.7.

¹⁸⁵ UNSC 7893th Meeting (28 February 2017) UN Doc S/PV.7893, p.7

¹⁸⁶ UNSC 7893th Meeting (28 February 2017) UN Doc S/PV.7893, p.8.

¹⁸⁷ UNSC 7893th Meeting (28 February 2017) UN Doc S/PV.7893, p.8.

¹⁸⁸ UNSC 7893th Meeting (28 February 2017) UN Doc S/PV.7893, p.9.

¹⁸⁹ UNSC 7893th Meeting (28 February 2017) UN Doc S/PV.7893, p.9.

draw any final conclusions from the present investigations on the use of chemical weapons. The Council shall continue the support to the OPCW and JIM investigations to be based on objective and fair criteria in accordance with the mandate set out in resolution 2319 (2016). According to the Chinese delegation, there were differences between the members of the Council and in the delegation's opinion it is not the helpful way to find a solution to the issue of chemical weapons in Syria, nor to the peaceful talks in Geneva.¹⁹⁰

Resolution 2118 (2013) was adopted by the Security Council and underscored that a violation of the resolution would be followed by measures in accordance with Chapter VII. The OPCW is an international organisation with the purpose to ensure that the implementation of the Chemical Weapons Convention¹⁹¹ is achieved and that member states follows the convention.¹⁹² The OPCW received the Nobel Peace Prize in 2013¹⁹³ and to criticise their work raises scepticism. One could question the method of the information gathering by the organisation. It is one thing to say that the implement measures under Chapter VII is not the solution nor the path for the Security Council to take for the question on Syria. However, to call the OPCW an impartial actor raises scepticism about the delegations.¹⁹⁴ That a resolution of this character will have an impact is not deniable, but in the light of resolution 2118 (2013) that supported the work by the OPCW – it is interesting that the member states changes their opinion about the organisation. Unfortunately, it is a matter of rhetoric's that determines whether the decision could be a threat to international peace and security.¹⁹⁵

4.1.3 The ICC

In 2013, the situation in Syria had escalated with increasing numbers of refugees, as well as reported attacks of chemical weapons in Syria.¹⁹⁶ The statement released on 2 October 2013 following the 7039th meeting of the Security Council, and urged all parties, in particular the Syrian authorities, to take all necessary steps to facilitate the efforts of United Nations.¹⁹⁷ The statement condemned the increased terrorist attacks and stresses the magnitude of the humanitarian tragedy caused by the conflict, in addition to further urging the Syrian authorities to take immediate steps to facilitate the expansion of humanitarian relief operations.¹⁹⁸

As a response to the presidential statement above, the submitted draft resolution on the 7180th meeting of the Security Council noted the repeated encouragement by the UN High Commissioner for Human Rights for the Security Council to

¹⁹⁰ UNSC 7893th Meeting (28 February 2017) UN Doc S/PV.7893, p.9-10.

¹⁹¹ Hereinafter CWC.

¹⁹² OPCW, The structure of the OPCW.

¹⁹³ OPCW, Nobel Peace Prize.

¹⁹⁴ Author's reflection.

¹⁹⁵ Author's reflection.

¹⁹⁶ BBC October 2013.

¹⁹⁷ UNSC Presidential Statement 15 (2013) UN Doc S/PRST/2013/15, p.1.

¹⁹⁸ UNSC Presidential Statement 15 (2013) UN Doc S/PRST/2013/15.

refer the situation to the International Criminal Court in order to investigate violations of international and humanitarian law. The draft resolution states that the situation in Syria constitutes a threat to international peace and security.¹⁹⁹ As previous draft resolution 19 July 2012, this resolution listed new actions to be taken under Chapter VII of the UN Charter. For example:

*7. Decides that nationals, current or former officials or personnel from a State outside the Syrian Arab Republic which is not a party to the Rome Statute of the International Criminal Court shall be subject to the exclusive jurisdiction of that State for all alleged acts or omissions arising out of or related to operations in the Syrian Arab Republic established or authorized by the Council, unless such exclusive jurisdiction has been expressly waived by the State;*²⁰⁰

The Russian delegation called the draft resolution a blow to the permanent members unity and an attempt to create a pretext for armed intervention in the Syrian conflict.²⁰¹ As a result of the unity, the resolutions 2118 (2013) and 2139 (2014) were adopted.²⁰² According to the delegation the so called Caesar report²⁰³ was used for the introduction to the draft resolution; however, the delegation argues that the report was based on: “[...] unconfirmed information obtained from unverifiable sources and therefore cannot serve as a platform for taking such a serious decision.”²⁰⁴

Concerning the use of the International Criminal Court,²⁰⁵ the delegation argues it will further inflame political passion and lay the groundwork for eventual military intervention from the outside. The last time the Security Council referred a case to the ICC, it was the Libyan dossier through resolution 1970 (2011). It is the opinion of the Russian delegation that it did not help to resolve the crisis, but instead added more firewood to the flames of the conflict. The delegation further criticises the ICC by stating that the court’s decision did not contribute to a return of normalcy or justice in Libya and evaded the most pressing issues, i.e. the death of civilians due to the result of NATO bombardments. In addition to mention the practice from Security Council resolution, the delegation mentioned other permanent members view on the ICC. For example, the United States reluctance to

¹⁹⁹ UNSC Draft Res 348 (22 May 2014) UN Doc S/2014/348.

²⁰⁰ UNSC Draft Res 348 (22 May 2014) UN Doc S/2014/348, p.2.

²⁰¹ UNSC 7180th Meeting (22 May 2014) UN Doc S/PV.7180, p.12.

²⁰² More on the resolution in next part of the chapter.

²⁰³ UNSC (4 April 2014) UN Doc S/2014/244. Annexed in the letter is a report into the credibility of certain evidence with regard to torture and execution of persons incarcerated by the current Syrian regime. The name Caesar is the codename of the witness given by the inquiry. UNSC (4 April 2014) UN Doc S/2014/244, p.7

²⁰⁴ UNSC 7180th Meeting (22 May 2014) UN Doc S/PV.7180, p.13.

²⁰⁵ Hereinafter ICC. According to article 13 paragraph b of the Rome Statute, the ICC has jurisdiction if a case is referred by the Security Council acting under Chapter VII of the UN Charter.

accede to the Roman Statute and how the United Kingdom is for some reason unenthusiastic about the exploration by the ICC of crimes committed by British nationals during the Iraq war.²⁰⁶

The delegation's arguments continues with the military aspect and argued that pursuing a regime change by force in Syria will prolong the crisis and undermines the Geneva negotiations. The delegation continued that they proceed from the premise that the Geneva communiqué of 30 June 2012 is the core of efforts to settle the Syrian crisis.²⁰⁷ "*The communiqué interprets the principles of accountability and national reconciliation as interrelated, leaving the leading role in that process to the Syrians themselves.*"²⁰⁸

Compared to reasons and arguments presented by the Russian delegation, the Chinese delegation had a more structured approach. First, the delegation believed that any action to seek the recourse of the ICC should be conducted based on respect for the state judicial sovereignty and the principle of complementarity. Since China is not a state party to the Roman Statute, they will always have reservations concerning the referral by the Security Council to the ICC.²⁰⁹ Secondly, any efforts to seek a political settlement to the question of Syria will encounter difficulties. By refereeing the situation of Syria to the ICC is not conducive to build up trust among all parties in Syria or to an early resumption of the negotiations in Geneva.²¹⁰ Thirdly, the delegation believes that the Council should continue in the line with consultations in order to avoid undermining Council unity or obstruction and cooperation on questions such as Syria and other serious issues.²¹¹ Since the Chinese approach and opinions has not been taken into account, thus the delegation has voted against the resolution.²¹² China remains committed to seek a political settlement to the question of Syria.

The argument from the Russian delegation concerning mentioned Caesar report by needs further confirmation before it can be a sole determining factor of evidence of torture, is a valid point. A referral to the ICC might not be the solution if the parties want to find a diplomatic and political solution to the situation. However, the delegation mentions resolution 2118 (2013) as a reflection of unity from the Security Council, yet the delegation will not follow the information presented by the OPCW and implement measures under Chapter VII.²¹³

²⁰⁶ UNSC 7180th Meeting (22 May 2014) UN Doc S/PV.7180, p.13.

²⁰⁷ 66th Session (6 July 2012) UN Doc A/66/865-S/2012/522.

²⁰⁸ UNSC 7180th Meeting (22 May 2014) UN Doc S/PV.7180, p.13.

²⁰⁹ UNSC 7180th Meeting (22 May 2014) UN Doc S/PV.7180, p.13.

²¹⁰ UNSC 7180th Meeting (22 May 2014) UN Doc S/PV.7180, p.14.

²¹¹ UNSC 7180th Meeting (22 May 2014) UN Doc S/PV.7180, p.14.

²¹² UNSC 7180th Meeting (22 May 2014) UN Doc S/PV.7180, p.14.

²¹³ Author's reflection.

4.1.4 International Syrian Support Group²¹⁴

As previous examined draft resolutions from the Security Council in this thesis, the draft resolution on 8 October 2016 recalled relevant resolutions and condemned the events taking place in Syria; however, compared to previous drafts, this draft resolution has a stronger language as it states the Security Council as gravely distressed by the continued deterioration of the devastating humanitarian situation, expressing outrage at the alarming number of civilian casualties and strongly condemning the increased terrorist attacks.²¹⁵ In addition, the draft text states grave concern regarding the lack of effective implementation of Security Council resolutions 2139 (2014), 2165 (2014), 2191 (2014) and 2258 (2016).²¹⁶ The draft text recalled that member states are in accordance with article 25 of the UN Charter, obliged to accept and carry out Council's decisions.²¹⁷ Once more, the draft resolution that the situation in Syria continues to be a threat to international peace and security.²¹⁸ Furthermore, the draft resolution reiterates that the sustainable solution to the situation in Syria is an inclusive and Syrian-led political process with full implementation of the Geneva Communiqué and resolutions 2254 (2015) and 2268 (2016).²¹⁹

One of the reasons behind the changes of language in this draft resolution, are the events taking place in, and around, the city Aleppo in Syria. The city has played a key role in the conflict, as its location have been important and the city have been rebel-controlled since 2011. In September 2016, the Russian-Syrian coalition started a month-long aerial bombing of opposition-controlled territory in Aleppo. Regarding the bombings in Aleppo by Russian and Syrian forces, it is worth noting that Human Rights Watch condemns the month-long actions as war crime, due to the killing of civilians and affected hospitals.²²⁰

This is the fifth time Russia has blocked council action since the conflict began in 2011, but also the first time China brake ranks with Russia on a Syria veto and abstained.²²¹ The critics raised from the Russian delegation on the draft resolution

²¹⁴ Hereinafter ISSG.

Syria Institute, ISSG: The ISSG is a working group formed to find a diplomatic solution to the crisis in Syria and was established during the Vienna talks in the fall of 2015. The group is co-chaired by Russia and USA. Its initial efforts were to provide a set of common principles in line with the 2012 Geneva communiqué. In addition, the ISSG established a timeline in January 2016 for diplomatic negotiations between Syrian government and opposition, with the intention to start a political transition within six months and elections within eighteen months. This was endorsed by the Security Council in the adopted resolution 2254 (2015). See further about resolution 2254 (2015) in section 4.2.4.

²¹⁵ UNSC Draft Res 846 (8 October 2016) UN Doc S/2016/846.

²¹⁶ More about the Security Council resolutions in section 4.2.

²¹⁷ UNSC Draft Res 846 (8 October 2016) UN Doc S/2016/846, p.2.

²¹⁸ UNSC Draft Res 846 (8 October 2016) UN Doc S/2016/846, p.2.

²¹⁹ UNSC Draft Res 846 (8 October 2016) UN Doc S/2016/846, paragraph 9, p.3-4.

²²⁰ Human Rights Watch, Russia/Syria.

²²¹ Human Rights Watch, Russia/Syria.

focused mainly on the ban on all military flights over Aleppo in Syria. In their opinion the suggestion has not been thought through, since it's the eastern side of the city which have been under fire, while the western part is controlled by the Government.²²² According to the delegation, another main point is that the resolution would directly or indirectly predetermined the course of actions.²²³ However, the flaw of this argument is that the delegation does not provide any details on how a military flight ban would predetermine the course of actions in the Syrian conflict from a Security Council standpoint of view.²²⁴ Another problem with the draft resolution according to the Russian delegation is that the resolution proposes a duplicate plan of the function of the ISSG provided in Security Council resolution 2268 (2016).²²⁵

The Russian delegation drafted their own resolution in order to demonstrate that a reasonable course of collective actions can be a possible.²²⁶ The delegation argues that their resolution emphasises the importance of unconditional compliance with resolution 2254 (2015) – both political, humanitarian and counter-terrorism. It is in the delegation's opinion that work for progress should be made in all directions simultaneously.²²⁷ Their draft resolution had support from China, however, since this is the resolution were China did not veto a draft resolution at the same time as Russia, it is of interest to mention the Chinese delegation's opinion brought forward at the meeting.

The Chinese delegation continued to maintain their opinion that actions taken by the Security Council should be able to concretely improve the situation in Syria, for example help to push for cessation of hostilities, support and coordinate UN efforts for humanitarian assistance. The draft resolution contains several of important elements, such as call for a political solution, improvement of humanitarian situation, as well as enhanced efforts to combat terrorism.²²⁸ However, the Chinese delegation points out that some of the provisions of the draft resolution do not fully respect the sovereignty, independency and territorial integrity of Syria. In addition, the delegation states that constructive views of Security Council members were not incorporated. Thus, China abstained from voting of the draft resolution.²²⁹

One of the difficulties when examining the veto reasons from any permanent member, is that a permanent member does not need to elaborate their reason. Therefore, the political motives overshadow the legal aspect of the argument. In

²²² UNSC 7785th Meeting (8 October 2016) UN Doc S/PV.7785, p.5.

²²³ UNSC 7785th Meeting (8 October 2016) UN Doc S/PV.7785, p.5.

²²⁴ Author's reflections.

²²⁵ UNSC 7785th Meeting (8 October 2016) UN Doc S/PV.7785, p.5.

²²⁶ UNSC 7785th Meeting (8 October 2016) UN Doc S/PV.7785, p.5.

²²⁷ UNSC 7785th Meeting (8 October 2016) UN Doc S/PV.7785, p.5.

²²⁸ UNSC 7785th Meeting (8 October 2016) UN Doc S/PV.7785, p.5.

²²⁹ UNSC 7785th Meeting (8 October 2016) UN Doc S/PV.7785, p.5.

the Russian delegation opinion, the vetoed draft resolution needs further clarification on the matter of military flights and on the matter of how the resolution would impact the city. The Chinese delegation continue to support their argument with the international principles concerning that some actions and measures suggested in the draft resolution would conflict with the principles. However, it is in the delegation's opinions that the draft resolution would overstep and concur with the mandate of the ISSG. As previously mentioned by the delegations are the will to find a political solutions and initiate dialogues to solve the conflict, i.e. the ISSG trumps any suggestions of in line with the draft resolution.²³⁰

Furthermore, it is worth noting that in response to the vetoed draft resolution, a global coalition of 233 CSO's on 1 December 2016 called upon UN member states to request an Emergency Special Session of the UN General Assembly to: " [...] demand an end to all unlawful attacks in Aleppo and elsewhere in Syria, and immediate and unhindered humanitarian access so that life-saving aid can reach all those in need."²³¹

4.1.5 Security Council's Provisional Rules of Procedure

The draft resolution decided that all parties to the Syrian conflict shall cease fire, 24 hours after the adoption of the resolution. The purpose of the resolution is to allow urgent humanitarian needs to be addressed for a period of seven days.²³² In addition, the draft resolution demands all parties to the conflict to cease all collaboration with Islamic State in Iraq and the Levant, Al-Nusra Front, and other terrorist groups, as designated by the Council.²³³ Furthermore, the draft emphasises that the deteriorating humanitarian situation in Syria constitutes a threat to international peace and security.²³⁴

The Russian delegation initiated their statement by saying that the submitted draft resolution violates the Security Council's Rules of Procedure, since the draft resolution was submitted the same day as the meeting. According to the Russian delegation, there is a 24-hour rule once the draft resolution has been submitted, thus giving the other members of the Security Council a chance to comment on the draft resolution and reach a consensus on a draft resolution.²³⁵ Furthermore, the Russian delegation continues to prioritise political dialogues, including with other member states of the Council. The vetoed draft resolution refers to a cessation of hostilities and not concerning the withdrawal of fighters from eastern Aleppo. The stated motivations from the delegation has more of a political character, thus making it difficult to distinguish their legal arguments on why the veto was used. However, their strongest card for this draft resolution is the breach of the 24-hour rule.

²³⁰ Author's reflections.

²³¹ Human Rights Watch, Uniting for Peace.

²³² UNSC Draft Res 1026 (5 December 2016) UN Doc S/2016/1026, paragraph 1, p.1.

²³³ UNSC Draft Res 1026 (5 December 2016) UN Doc S/2016/1026, paragraph 7, p.2.

²³⁴ UNSC Draft Res 1026 (5 December 2016) UN Doc S/2016/1026, p.1.

²³⁵ UNSC 7825th Meeting (5 December 2016) UN Doc S/PV.7825, p.2.

Regarding the Chinese delegation's argument on vetoing the draft resolution, they continue to maintain their position that an action from the Security Council must be a consensus. The issue must be by seeking a solution through peaceful negotiations and dialogue.²³⁶ The opinion from the Chinese is that Security Council should maintain unity and speak as one voice, hence the work together must play a constructive role for a political settlement of the question of Syria.²³⁷ However, the short time between submitting the draft resolution and the meeting made the effort to seek consensus to short.

According to the General Assembly rule 78, a draft resolution must be circulated at least the day before a vote is taken. However, there is no such written request in the Security Council's Provisional Rules of Procedure. There do exist a de facto 24-hour rule in the practice of the Council and is often interpreted to mean an overnight wait for a draft resolution.²³⁸ A discussion has been raised if rule 26 of the Council's Provisional Rules of Procedure applies to draft resolution; hence it might be interpreted that the 24-hour rule suspends rule 26. The purpose of rule 26 is to ensure that the members of the Council have received all documents in sufficient time for them to define their position on the matter before consideration in the Council meeting.²³⁹ In reflection to the non-written rule in the Security Council on the de facto rule, one can conclude that it is a customary rule which have been established and approved by the member states. Thus, the arguments presented by Russia are not out of context.²⁴⁰

4.2 When a resolution is adopted

This section of the chapter will focus on selected adopted resolutions by the Security Council, concerning the conflict in Syria. All of them have been approved and adopted by members of the Security Council; however, why did they get approved by the permanent member states? The purpose of this part of the thesis is to provide counterarguments to section 4.1 and to analyse the reasons why these resolutions were adopted. The focus will be on the arguments provided by the permanent members of the Council, especially from Russia and China due to their veto decisions. However, it is worth noting that there have been difficulties to find separate arguments from each permanent member. Specifically, when the resolution was voted in favour by all permanent members.

4.2.1 Missions

On 21 April 2012, resolution 2043 (2012) was unanimously adopted by the Security Council with the purpose to establish the United Nations Supervision Mission in Syria.²⁴¹ The Council established UNSMIS for a 90-day period and up to

²³⁶ UNSC 7825th Meeting (5 December 2016) UN Doc S/PV.7825, p.7.

²³⁷ UNSC 7825th Meeting (5 December 2016) UN Doc S/PV.7825, p.8.

²³⁸ Sievers, L. & Daws, S. 2015, p.270.

²³⁹ Sievers, L. & Daws, S. 2015, p.270.

²⁴⁰ Author's reflections.

²⁴¹ Hereinafter UNSMIS.

300 unarmed military observers. Furthermore it: “[...] decides further that the Mission shall be deployed expeditiously subject to assessment by the Secretary-General of relevant developments on the ground, including the consolidation of the cessation of violence;”²⁴²

In addition, the resolution affirms the support to the Joint Special Envoy of the United Nations and the League of Arab States, as well as nothing the Syrian government’s commitment on 25 March 2012 to implement the six-pint proposal of the Envoy.²⁴³ Further on the resolution called upon the Syrian government to ensure the effective operation, as well the parties to guarantee the safety of the mission personnel. To ensure effective operation, the resolution lists several requested actions, for example facilitating the expeditious and unhindered deployment of its personnel and capabilities as required to fulfil its mandate.²⁴⁴

Turning to the arguments by the permanent members, the Russian delegation argued that the resolution established clear parameters of responsibility for all the Syrian parties on the cessation of violence, as well as on the need to cooperate with the UN observers and the Joint Special Envoy mission. “The resolution sends an important international legal signal, namely, that only the Security Council has the prerogative to take a decision regarding the settlement of a regional crisis, including the Syrian crisis.”²⁴⁵ Even though the French delegation agreed with the Russian delegation and other members regarding the positive outcome of the meeting, the French delegation raised their concern that the Syrian parties have not implemented measures they committed to do to the Joint Special Envoy.²⁴⁶ The Chinese delegation structured their argument in similar manners as previous meetings concerning draft resolution, i.e. the standpoint is on the respect the sovereignty, independence and territorial integrity of Syria.²⁴⁷

The Security Council unanimously adopted resolution 2268 (2016), endorsing the deal announced in the Joint Statement by the United States and the Russian Federation, co-chairs of the ISSG. The statement was made on 11 February 2016 and included the establishment of an ISSG humanitarian task force and an ISSG ceasefire task force.²⁴⁸ The resolution demanded that all parties to the agreement live up to its terms, and urged all member states to use their influence to ensure that parties to the conflict fulfil their commitments and create the conditions for a durable and lasting ceasefire. Furthermore, the Security Council demands full and immediate implementation of resolution 2254 (2015) to facilitate a Syrian-

²⁴² UNSC Res 2043 (21 April 2012) UN Doc S/RES/2043, paragraph 5, p.2.

²⁴³ UNSC Res 2043 (21 April 2012) UN Doc S/RES/2043, p.1.

²⁴⁴ UNSC Res 2043 (21 April 2012) UN Doc S/RES/2043, paragraphs 8-9, p.3.

²⁴⁵ UNSC 6756th Meeting (21 April 2012) UN Doc S/PV.6756, p.2.

²⁴⁶ UNSC 6756th Meeting (21 April 2012) UN Doc S/PV.6756, p.3.

²⁴⁷ UNSC 6756th Meeting (21 April 2012) UN Doc S/PV.6756, p.8.

²⁴⁸ UN Secretary-General Statement of the ISSG.

led and Syrian-owned political transition, in accordance with the Geneva Communiqué as set forth by the ISSG.²⁴⁹

In conclusion, the arguments presented by the permanent members of the Council for the two resolution, supports the actions of establishing missions for humanitarian reasons. UNSMIS was created in the early years of the conflict and therefore had a more fact-finding mission character. When it comes to the second resolution in this section of the thesis, it is the result of the ISSG work and as well as the continuously stand point from Russia and China, i.e. to find a path for political solutions.²⁵⁰ The comprehensive ceasefire gives the possibility to conduct political dialogues to find a political settlement of the Syrian issue.²⁵¹

4.2.2 OPCW

On 21 August 2013, the use of chemical weapons was made in attacks in the city of Damascus, Syria. The death toll was put at more than 1300 people and Medicins Sans Frontières said to the BBC that at least 3600 patients displayed neurotoxic symptoms.²⁵²

With resolution 2118 (2013) the Security Council reaffirms that the use of chemical weapons constitutes a threat to international peace and security. The resolution recalls that the Syrian Arab Republic in 1968, acceded to the Protocol for the Prohibition of the Use in War Asphyxiating, Poisonous or Other Gases and of Bacterial Methods of Warfare, signed in Geneva 1925. As a response to the attacks in Damascus, the Secretary-General established a United Nations Mission to Investigate Allegations of the Use of Chemical Weapons in the Syrian Arab Republic.²⁵³ The Mission had the function as a fact-finding mission and according to the Missions report of 16 September 2013, it affirmed the use of chemical weapons is a serious violation of international law. In addition, the report condemned the killing of the civilian and as a result from the attacks in Damascus, as well underscored the need for the Mission to fulfil its mandate.²⁵⁴

Resolution 2118 also recalls the obligation for all states under Security Council resolution 1540 (2004) to: “[...] refrain from providing any form of support to non-State actors that attempt to develop, acquire, manufacture, possess, transport, transfer or use weapons of mass destruction, including chemical weapons, and their means of delivery.”²⁵⁵ The Council decides in resolution 2118 (2013), to welcome the decision of the Executive Council of the OPCW of 27 September 2013 to establish special procedures for expeditious destruction of the

²⁴⁹ UNSC Res 2268 (31 December 2016) UN Doc S/RES/2268, paragraph 2, p.1. See section 4.2.4 for resolution 2254 (2015).

²⁵⁰ Author's reflections.

²⁵¹ UNSC 7855th Meeting (31 December 2016) UN Doc S/PV.7855, p.6.

²⁵² BBC September 2013.

²⁵³ Referenced to as the Mission in the resolution and hereinafter.

²⁵⁴ 67th Session (16 September 2013) UN Doc A/67/997-S/2013/553, p.8.

²⁵⁵ UNSC Res 2118 (27 September 2013) UN Doc S/RES/2118.

Syrian Arab Republic's chemical weapons program.²⁵⁶ The resolution contains twenty-two decisions taken by the Council; however, it does not clearly entail if they are in accordance with Chapter VI or VII. A few of the decisions concerns the OPCW and decides that the Syrian Arab Republic shall cooperate fully with the OPCW and the UN, as well as authorises an advanced team of UN personnel to provide assistance to the OPCW activities in Syria.²⁵⁷ Most importantly, the resolution affirms that any use of chemical weapons constitutes a threat to international peace and security.²⁵⁸

The Russian delegation believed that the resolution would make it possible to solve the problem of chemical weapons in Syria, but also: “*[...] give us impetus in connection with a decision on the creation in the Middle East of a zone free of weapons of mass destruction and their means of delivery, in accordance with the decisions taken by the international community.*”²⁵⁹ According to the delegation, the importance with the resolution is that it sets out a framework for political and diplomatic settlement of the Syrian crisis. In addition, the resolution adopts the Geneva communiqué from 30 June 2012 (S/2012/253, annex) as a platform.²⁶⁰ The delegation emphasised that the resolution was not passed under Chapter VII of the UN Charter; however, violations of the requirements and the use of chemical weapons by anyone must be investigated. Furthermore, the delegation mentions that in the event of non-compliance, the Council will impose measures under Chapter VII of the UN Charter.²⁶¹ Similar conclusions were drawn by the other permanent members of the Council. From the meeting, there is a sense of unity between the members in their reasoning of the OPCW and the United Nations Mission. In addition, China continued to maintain that political solution and the destruction of chemical weapons must go side by side.²⁶²

By a vote of fourteen in favour and one abstention from Venezuela, the Security Council adopted resolution 2209 (2015), expressing deep concern that toxic chemicals had been used as a weapon in Syria, as concluded by the OPCW fact-finding mission. The Security Council decided that in the event of non-compliance with resolution 2118 (2013),²⁶³ the Council would impose measures under Chapter VII of the United Nations Charter. Toxic chemicals used as a weapon would violate resolution 2118 (2013) and the CWC.²⁶⁴

Furthermore, the Council recalled its decision in resolution 2209 that Syria should: “[...] not use, develop, produce, otherwise acquire, stockpile or retain

²⁵⁶ UNSC Res 2118 (27 September 2013) UN Doc S/RES/2118, p.2.

²⁵⁷ UNSC Res 2118 (27 September 2013) UN Doc S/RES/2118, paragraph 6-12, p.2-3.

²⁵⁸ UNSC Res 2118 (27 September 2013) UN Doc S/RES/2118, p.2.

²⁵⁹ UNSC 7038th Meeting (27 September 2013) UN Doc S/PV.7038, p.4.

²⁶⁰ UNSC 7038th Meeting (27 September 2013) UN Doc S/PV.7038, p.4.

²⁶¹ UNSC 7038th Meeting (27 September 2013) UN Doc S/PV.7038, p.5.

²⁶² UNSC 7038th Meeting (27 September 2013) UN Doc S/PV.7038, p.10.

²⁶³ See section 4.2.2 UNSC Resolution 27 September 2013.

²⁶⁴ UNSC Res 2209 (6 March 2015) UN Doc S/RES/2209, paragraph 7, p.2.

chemical weapons, or transfer them directly or indirectly, chemical weapons to other States or non-State actors [...]”²⁶⁵ The resolution reiterated that no party in the country should act as such. The Council expressed their continued support to the work of the OPCW Fact-Finding Mission in the resolution, especially in particular to study all available information relating to allegations of use of chemical weapons in Syria.²⁶⁶ In addition to confirming the work of the fact-finding mission, the resolution constitutes that the use of chlorine gas as a weapon of war in conflict is a breach of the Chemical Weapons Convention.²⁶⁷ However, there are differences of opinions whether it is the government of Syria that uses chemical weapons – it depends on how the member state analyses the report from the OPCW and their political opinion.²⁶⁸ Even though the resolution was voted in favour by all the permanent members of the Council and all had the same opinion concerning chlorine gas, the Russian delegation underscored that they will not accept any actions under Chapter VII of the Charter without an attempt to confirm the allegations based on proof.²⁶⁹

The argumentation and differences of opinions concerning the OPCW and the Joint Mission by the UN, does not end here. The draft resolution of February 2017 was vetoed by Russia and China. Some of the arguments stated by the Russian delegation at the meeting concerning resolution 2209, correlates with the arguments of why the draft resolution was vetoed in February 2017. The actions by the two permanent members contradicts the purpose of the adopted resolution and their veto concerning the draft resolution in February 2017. In their opinion the conclusions from the reports from the OPCW are not enough to justify measures under Chapter VII; however, the organisation was given the unanimous support from the Council with the adopted resolution. Concern is raised if their arguments for a veto of the OPCW reports are justified.²⁷⁰

4.2.3 Humanitarian assistance

The Security Council unanimously adopted the resolution 2139 (2014) and demanded that all parties allowed delivery of humanitarian assistance, cease the depriving civilians of food and medicine.²⁷¹ The resolution further demanded the parties to respect the principle of medical neutrality, as well facilitate free passage to all areas for medical personnel, equipment and transport. The Security Council strongly condemns the increased terrorist attacks carried out by organisations and individuals associated with Al-Qaeda, its affiliates and other terrorist groups.²⁷² The resolution text urges opposition groups to maintain the rejection of groups and individuals which are responsible for violations of international

²⁶⁵ UNSC Res 2209 (6 March 2015) UN Doc S/RES/2209, p.1.

²⁶⁶ UNSC Res 2209 (6 March 2015) UN Doc S/RES/2209, paragraph 5, p.2.

²⁶⁷ UNSC 7401th Meeting (6 March 2015) UN Doc S/PV.7401, p.4-5.

²⁶⁸ UNSC 7401th Meeting (6 March 2015) UN Doc S/PV.7401, p.5-7.

²⁶⁹ UNSC 7401th Meeting (6 March 2015) UN Doc S/PV.7401, p.3.

²⁷⁰ Author’s reflection.

²⁷¹ UNSC Res 2139 (22 February 2014) UN Doc S/RES/2139.

²⁷² UNSC Res 2139 (22 February 2014) UN Doc S/RES/2139, paragraph 14, p.4.

humanitarian law. In addition, the resolution:

*[...] calls upon the Syrian authorities and opposition groups to commit to combating and defeating organizations and individuals associated with Al-Qaeda, its affiliates and other terrorist groups, demands that all foreign fighters immediately withdraw from Syria, and reaffirms that terrorism in all its forms and manifestations constitutes one of the most serious threats to international peace and security [...].*²⁷³

The resolution also demanded that all parties, particularly the Syrian authorities, fully implement the provisions of the 2 October 2013 Statement by the President of the Security Council.²⁷⁴ The provisions included facilitating the expansion of humanitarian relief operations, in accordance with applicable provisions of international humanitarian law and the United Nations guiding principles of humanitarian emergency assistance.²⁷⁵

The consensus among the members in the Council are clear when reading the meeting record and the focus is on the humanitarian aspect of the conflict. Even though there are differences of opinions between the member states, this resolution is an example of when humanitarian crisis is put first. The resolution considers the part of terrorists, as well as organisations and individuals associated with Al-Qaeda, have in the conflict in Syria: however, the focus and main purpose with this resolution is to find a solution to the humanitarian crisis.

4.2.4 Political dialogues

Resolution 2254 (2015) was unanimously adopted by the Security Council and therefore reconfirmed its endorsement of the Geneva Communiqué. The resolution commends the diplomatic efforts of the ISSG and the outcome of the multi-lateral talks on Syria in Vienna on 30 October 2015,²⁷⁶ as well as the statement of the ISSG of 14 November 2015 which stated the purpose if ensuring a Syrian-led and Syrian-owned political transition based on the Geneva Communiqué.²⁷⁷ The resolution demanded that all parties immediately cease any attacks against civilians and civilian objects, in addition to reiterates:

[...] its call in resolution 2249 (2015) for Member States to prevent and suppress terrorist acts committed specifically by Islamic State in Iraq and the Levant (ISIL, also known as Da'esh), Al-Nusra Front (ANF), and all other individuals, groups, undertakings, and entities associated with Al Qaeda

²⁷³ UNSC Res 2139 (22 February 2014) UN Doc S/RES/2139, paragraph 14, p.4.

²⁷⁴ See section 4.1.4 Draft Resolution 22 May 2014.

²⁷⁵ UNSC Presidential Statement 15 (2013) UN Doc S/PRST/2013/15.

²⁷⁶ Known as the Vienna Statements in the resolution.

²⁷⁷ UNSC Res 2254 (18 December 2015) UN Doc S/RES/2254, p.2.

*or ISIL, and other terrorist groups, as designated by the Security Council, and as may further be agreed by the ISSG and determined by the Security Council, [...]*²⁷⁸

Furthermore, the resolution approved the ISSG statements of 30 October and 14 November 2015, as a step forward to implement the Geneva communiqué of 30 July 2012.²⁷⁹ The resolution establishes that the three mentioned documents constitutes the platform for resolving the crisis in Syria.²⁸⁰ Since the ISSG have been discussed on several occasions in this thesis, this section of the chapter might seem repetitive. However, it shows a valid point that the permanent members who have vetoed resolution concerning the question on Syria, does have a preference of supporting resolutions where political dialogues are in the focus.²⁸¹

4.3 Summary

This chapter have been of a descriptive character. I have included a short reflection paragraph at the end of each section with the purpose to make the chapter less dense, as well start the discussion of all resolutions. Chapter five and six of the thesis are the analytical chapters, and will discuss the veto decisions in more detail in relation to legitimacy. Thus, this summary will be more brief regarding the veto decisions. The main common themes for the discussion of the veto decisions are the international principles and Chapter VII. The stand point for the Chinese delegation is to find a political solution to the question of Syria, thus their arguments for each veto decision seems repetitive. Compared to the Chinese delegation, the arguments from the Russian delegation varied more depending on the draft resolution even though they always mentioned the international principles.

First, the chapter have presented the veto decisions from permanent members on the question of Syria. Section 4.1 is divided in to five sections with focus on different draft resolutions and the arguments for the veto decisions. Section 4.1.1 discusses the international principles as arguments for veto decisions, although the permanent members includes the solution of political dialogues as one of the purposes for the veto decisions. Section 4.1.2 discusses the arguments where Chapter VII have been the main character for the arguments, thus the language of the draft resolutions has been more discussed compared to previous draft resolutions. Due to that Russia have taken on the role of a diplomatic shield for Syria and promised the protection of Chapter VII measures from the Security Council, the question of legitimacy for the draft resolutions will be further discussed in chapter five.²⁸² Section 4.1.3 focuses on the proposed draft resolution concerning the ICC. The main argument from the permanent members are the reluctance

²⁷⁸ UNSC Res 2254 (18 December 2015) UN Doc S/RES/2254, paragraph 8, p.3.

²⁷⁹ For more about the Geneva commuiqué, read 66th Session (6 July 2012) UN Doc A/66/865-S/2012/522.

²⁸⁰ UNSC 7588th Meeting (18 December 2015) UN Doc S/PV.7588, p.5.

²⁸¹ Author's reflections.

²⁸² Allison, R. 2013, p.798.

towards the ICC from other permanent members concerning both the Rome Statute and exploration by the ICC of crimes during the Iraq war. Section 4.1.4 discusses the arguments of the ISSG as a veto argument in order to find a political solution to the conflict in Syria. Due to the bombing in Aleppo at the time, this draft resolution was criticised by CSO's as the veto decision stopped a UN reaction. Section 4.1.5 discusses the draft resolution that was vetoed due to the de facto 24-hour rule which is often interpreted as an overnight wait for a draft resolution.

Second, the chapter have discussed a few selected adopted resolutions and the reasons for the selected resolutions have been discussed in section 1.2. Due to the prominent role of China and Russia for the veto decisions, the focus have more been towards their arguments. However, it is difficult to find unique separate arguments from each permanent member. All the resolutions could be collected under a common theme – initiatives. Section 4.2.1 discusses the resolutions adopting UNSMIS and ISSG. The UNSMIS is an observation mission to evaluate the situation in Syria, whereas ISSG is an initiative for political dialogues. Section 4.2.2 presents the mandate and support for the OPCW by the Security Council. The purpose of the resolution is to support the fact-finding investigation by the OPCW on the use of chemical weapons in the conflict in Syria. Section 4.2.4 focuses on the initiatives of Geneva Communiqué and connects the resolution to the ISSG, as well as the arguments for political dialogues.

In conclusion, this chapter have provided a lot of information to consider for the next chapters. However, it is necessary to examine the material thoroughly in order to take the next step for a legitimacy assessment. One need to have all the cards on the table to be able to assess the situations correctly.

5 Legitimacy assessment

The purpose of exploring a legitimacy assessment for this thesis is to establish indicators which would indicate a potential shortage of legitimacy for veto decisions. Since the thesis focuses on specific vetoed draft resolutions, there is a possibility for the assessment I suggest to not be applicable for other situations. However, the aim is to create an assessment that works on other similar questions or situations. Furthermore, as the focus is on the vetoes, the following discussion will be on the reasons for using the veto concerning the question of Syria; thus, other perspectives on legitimacy will not be discussed. With this reflection, the previous exploration on the relationship between law and politics becomes of relevance, as the reasons and arguments presented by the permanent members has some weight in the discussion.²⁸³

The outline of this chapter is to first present what a legitimacy assessment ought to entail, including the parameters identified to use in such an assessment. Secondly, a discussion on who should conduct such a legitimacy assessment and thirdly, arguments against a legitimacy assessment. Finally, a legitimacy assessment on the presented veto decisions in chapter four which will discuss whether the decisions lacked legitimacy.

5.1 What ought a legitimacy assessment entail?

Presented in the short introduction in this chapter, in order to determine if and how the vetoes discussed in chapter four are in line with the purpose of international peace and security, one has to determine whether the veto decisions have legitimacy.

The structure of the legitimacy assessment, would be in my opinion, similar with an intervention of the permanent members conduct regarding veto decisions. Depending on the draft resolution which have been brought to a vote at a Security Council meeting, the decision of initiating a legitimacy assessment would be on a case-by-case basis and examined in accordance with the, soon to be discussed, parameters. Since the decision of an assessment would be initiated after the meeting and the outcome of the votes, the dimension on whom would, and could, report to the responsible subsidiary organ must be further explored.²⁸⁴ Should the right to report one or more permanent members be given only to the all fifteen members of the Security Council, since they have attended the meeting and know what was said or should the right extend to all members of the UN? One could argue that the assessment is only a question that matters for the proceedings in the Security Council, thus, all the members of the Security Council ought to have the right to report to the responsible subsidiary body. Since the General Assembly has a possibility to act on matters when the Security Council fails to exercise their

²⁸³ See Chapter 3.

²⁸⁴ The discussion on who ought to conduct the assessment will be further discussed in section 5.2.

primarily responsibility, in accordance with the Uniting for Peace Resolution²⁸⁵, it is in my opinion that the primarily right to report a veto decision should be given to all the members of the Security Council.

5.1.1 Indicators

After determining the purpose of an assessment of legitimacy, the next step is to explore the possible indicators for such an assessment. In perspective to the purpose of the questions for my thesis, the indicators must be helpful towards analysing a veto decision, as well reflect upon the function and purpose of the Security Council. Hence the voting process is one of the main pillars, therefor the veto decision is at the core of the Council. Due to the political nuance of the Security Council, it has become a challenge to identify indicators that are objective to the legal purpose of legitimacy. The two indicators I have identified for the purpose to initiate a legitimacy assessment, as well be used during the assessment are explored in the following to sections.

5.1.1.1 International peace and security

The definition of the term international peace and security was discussed in section 1.4. Before exploring the term as an indicator for legitimacy, the term will be briefly presented again. Article 1 of the UN Charter uses the term 'international peace and security' when describing the fundamental purpose of the UN. Peace or universal peace can be found separately throughout the Charter; however, nowhere is international security to be found used alone. The Preamble together with articles 1, 2 and 3 indicates that peace is to be defined more than absence of war.²⁸⁶ Connecting article 1 paragraph 2, which aims at strengthening peace through development of friendly relations among nations, to article 1 paragraph 3, which indicates that the function of the UN is to bring stabilisation of international relations, shows there is a close relationship between international security and peace, even though the interpretation spectrum of peace is broad.²⁸⁷

The term international security consists of both a subjective and an objective element. It implies the right of every state to take advantage of any relevant support system when in need, but at the same time implying the legal obligation for every state to support such systems.²⁸⁸ The reference to international peace and security is to be understood as the overarching purpose of the UN, while the suppression of aggression only is referred as one objective to be achieved through measures of collective security. This entails that international peace and security may be endangered by not only act of aggressions, but also any other threat of to peace. Further on does it mean that the Security Council may direct measures against a state being the victim of aggression if and to the extent that the measure effectively preserves international peace and security.²⁸⁹

²⁸⁵ UNGA Res 377[V] (3 November 1950) UN Doc A/1775.

²⁸⁶ Simma, B., Khan, D-E., Nolte, G. & Paulus, A., Vol. 1, 2012, p.110.

²⁸⁷ Simma, B., Khan, D-E., Nolte, G. & Paulus, A., Vol. 1, 2012, p.110.

²⁸⁸ Simma, B., Khan, D-E., Nolte, G. & Paulus, A., Vol. 1, 2012, p.111.

²⁸⁹ Simma, B., Khan, D-E., Nolte, G. & Paulus, A., Vol. 1, 2012, p.112.

Why this is one of my chosen indicators, is because the purpose of the Security Council is rooted in the term and therefor one needs to evaluate if a veto decision is in the interest of international peace and security. The present situation for a permanent member to use their right of veto, does not entail a need to explain or elaborate their reasons. In my opinion this should be a requirement to use the veto, thus it effects not only the politics at the UN, but also in a sense the international peace and security. As politics and law in the UN are interconnected, this indicator for an assessment would entail whether the veto has a legal standing on its own or if the permanent member's own politics overshadows the function of the Security Council. Adding the legitimacy aspect to the indicator, connects the political aspects to the discussion. The political contestation around legitimacy is an indicator itself that legitimization is never complete and never unanimous; hence it is inevitably subject to the discussion of controversy, undermining, and competitive reinterpretation.²⁹⁰ The question to be answered with this indicator is how can a veto undermine international peace and security, since it does not constitute any ordinary threat? Hence, the discussion concerning threat on international peace and security usually is in the context on use of force.

5.1.1.2 Respect for international conventions, customary rules and principles

The second indicator is a bit more fluid to describe. The idea behind it is to create an indicator adaptable to a case-by-case basis. Depending on the draft resolution, the discussion on policy, treaties, sanctions etc. might differ. However, it is in my opinion an important factor for the discussion on resolutions. Another important guiding information for the legitimacy is, if there has been any previous adopted resolution on the same question, or similar and could be considered to be an important guiding resolution. The question to be answered by this indicator is whether the veto decision works against any convention, rule or principle.

In the delimitation section in the first chapter, I wrote that human rights will not be a part of the thesis. However, for this indicator there is the option to include different fields of international law when determining the legitimacy of veto decisions. In addition, other fields of international law could indicate if there is a lack of legitimacy in the veto decision or that there is a breach or threat to international peace and security. This indicator will become clearer in section 5.4, when assessing the legitimacy of the discussed vetoes in this thesis.

5.2 Who should conduct a legitimacy assessment?

Upon discussion on the international law and the UN, the most authoritative actor is the Security Council. The Security Council performs duties related to the classification conflicts as threats or breach of peace, in addition to being able to authorise peacekeeping missions and fact-finding missions.²⁹¹ The Council would therefor normally be the actor to suggest for a legitimacy assessment; however,

²⁹⁰ Hurd, I. 2007, p.191.

²⁹¹ See Chapter 7 the UN Charter.

since the assessment is of the conduct by the permanent members there might be a conflict of interest. In addition, the political division in the Council, depending on the question, might have an additional negative influence and therefore, would the Security Council not be competent to decide for such an assessment. Furthermore, it is not uncommon that a permanent member in the Council has a political stake in an international conflict, thus, it is a risk that a permanent member might veto the assessment for political reasons. This is if the legitimacy assessment is not to be included as a procedural matter. For example, have Russia vowed to prevent any chapter VII resolutions on the crisis in Syria and therefore has a political stake in the conflict.²⁹² Thus, one option would be for the Security Council to create a subsidiary organ with the mandate to conduct the legitimacy assessment. In my opinion, this solution would keep the potential conflict within the Council and not affect the entire UN. The mandate of the organ would include the conduct proceedings of a legitimacy assessment of veto decisions, as well as include the assessment of decisions for adopted resolutions. The reason to include the assessment of adopted resolution would be to consider the legitimacy, for example resolutions for sanctions, interventions etc. from the Security Council. Including the assessment for draft and adopted resolutions would create an expert subsidiary organ which examines the Security Council. However, this thesis focuses on the legitimacy of the veto decisions and therefore, the legitimacy assessment of adopted resolutions will not be further explored.²⁹³

A recommendation would be to use the experts on international law working at the UN; thus, utilising the expertise from existing organs in the organisations. My recommendation would be to turn to the International Law Commission,²⁹⁴ as their purpose of promoting progressive development of international law and their work include to issue reports and studies, as well as formulated documents such as the Principles of International Law.²⁹⁵ The members of the ILC remain in office for five years and my suggestion is that the subsidiary organ to conduct the legitimacy assessment ought to be consisting of experts from the ILC. A suggestion might be to appoint previous members of the ILC, thus avoiding the problem of having a member on two posts and minimise the risk conflict of interests.

The Security Council only represents a few member states of the UN and therefore risks of being accused of having a democratic deficiency; however, since the focus of the legitimacy assessment would only effect the five permanent members of the Security Council and that the members of the Council are elected, such an accusation would be diminished. Although, to separate the assessment mandate from the Security Council would be possible if the General Assembly was given the mandate. The problem with the General Assembly is that their recommendations are non-binding, thus there might be a need to amend the articles concerning

²⁹² Allison, R. 2013, p.798.

²⁹³ For more reading on legitimacy assessment on adopted resolutions see Klabbers, J. and Piiparinen, T. 2013.

²⁹⁴ Hereinafter ILC.

²⁹⁵ Shaw, M.N. 2014, p.85.

the General Assembly and making their invitation to a legitimacy assessment binding upon member states.

In conclusion, my recommendation is to create a subsidiary organ with the specific mandate to conduct these assessments.²⁹⁶ Since the focus of the assessment is concerning the permanent member, it is most logical that the group is created by the Security Council and that the elected members of the organ are from the international law experts working already within the UN.

5.3 Arguments against a legitimacy assessment

Arguments presented against a legitimacy assessment are partly drawn from the arguments presented by some of the permanent members for the veto decisions, and own conclusions. I will first discuss arguments concerning international principles, secondly the possibility of risk of abuse and finally arguments concerning the possibility of sanctions.

5.3.1 International principles

In chapter two the principles of the international legal system were discussed and they are of relevance when it comes to the arguments against a legitimacy assessment. The relevance of these principles are their functions; hence they interlink the arguments from the permanent members on why they vetoed with the interpretation of the Charter. In addition to being the core of some of the arguments from the permanent members, the principles can also be seen as critic against a legitimacy assessment. The presumption of a veto decision is that it is in line with the international principles and therefor, could the questioning of the veto right conflict with the principles.

One ought to assume that a permanent member decides to veto a resolution in good faith, thus it is expected from all member states in the Security Council. If a member states recommends an initiation of a legitimacy assessment, the question could also be asked if that member states is acting in good faith or has political means for its decision? One could hope that such a decision is done in the interest of international peace and security and to question the good faith aspect of a decision can become vague, due to the presumption of the principle.

The principle of non-intervention affirms the central right of each state to independence and to self-determination, hence the state's rights to freely choose its political system for example.²⁹⁷ Non-intervention affirms the basic principle that states should not meddle in other states internal affairs. The question is if the legitimacy assessment could be regarded as intervening in states decision? To introduce a possible intervention on veto decisions could be concerned as an intervention on states interests in the conflict; however, since the decisions from the Security Council ought to be in the interest of international peace and security

²⁹⁶ Article 29 of the UN Charter.

²⁹⁷ Lowe, V. 2007, p.105.

and not only the permanent members own state interest, it is my opinion debatable whether the principle of non-intervention is of concern. The principle is one of the main arguments used by the permanent members for their vetoes, and in my opinion it could be applicable for raising concerns towards the assessment of vetoes. It could possibility be extended to include the right for permanent members to independently decide their veto right.

From my perspective, the veto system could be a good balance system when the Council is deciding on draft resolutions concerning difficult situations. The principle of co-operations between states has the purpose to maintain international peace and security, thus applicable for the purpose of the Security Council. To invoke a legitimacy assessment could intimidate the principle and possible have the outcome of making states less co-operative with each other. The purpose of the assessment of vetoes is to see if the decisions have legitimacy, but could such a system have the opposite effect? It is a possibility, although the aim is to make the permanent members more transparent in their decision making.

5.3.2 The risk of abuse

There are rightful concerns to be raised whether an assessment of legitimacy is in risk of undermining the objectivity of the veto system of the Security Council, hence such an assessment might affect political motives and consensus among the permanent members. As discussed in section 3.2, the relationship between law and politics differs depending on the approach might have a different outlook on what the politics and law ought to be for the UN. Therefor there is a risk for different approaches on how to regard the legitimacy assessment. Without a clear presentation and guidelines for how the legitimacy assessment ought to be conducted, there is a risk of abuse for political means from the members of the Security Council.

The question is if a legitimacy assessment of a veto decision has the risk of becoming an obstacle for international peace and security? In my opinion, this is the Achilles-heel-question which points out the weakness of an assessment of the veto decision. Hence the objective purpose of the veto system is to protect international peace and security. Therefor the legitimacy assessment itself could be seen as potential undermining of all the Council decisions. From my point of view, one could argue that the veto system is a safety net from interventions and sanctions from the Council with the aim to protect the international rights and principles. In perspective to the veto decisions discussed in chapter four, it can be seen from its inception as a political pact among the great powers to keep peace among themselves in the Council.²⁹⁸ The Chinese delegation argued for their veto decision with the purpose to keep the unity of the Council, hence the focus of the draft resolution becomes on the peace among the permanent members and not the draft resolution itself.²⁹⁹ Thus, the present veto system is undermining international peace and security by blockading actions from the Council

²⁹⁸ Hurd, I. 2007, p.191.

²⁹⁹ See section 4.1.2.2.

itself. The adopted resolutions concerning Syria, are initiatives to create forums for political discussions and create missions to assess the situation in Syria; however, when the presented draft resolutions are suggestions on reactions from the initiative, they are vetoed. This will be further discussed in the legitimacy assessment in section 5.4.

5.3.3 Can there be sanctions?

As previously mentioned, the legitimacy assessment would be in the character of an intervention, but if there should be any sanctions is yet to be determined. Since the assessment is about the veto decisions, i.e. a right given to the permanent members, the question arises how can a sanction be delivered concerning a procedural right in the Security Council? Should it be in a similar conduct as the Universal Periodic Review, where the result will be a report from the mandated organ and the sanction would become the remarks from the report and nothing more? Thus, giving the permanent member state a chance to improve and in the future, be more considerate with their arguments for using the veto.

Adding the requirement of presenting their arguments for the veto, it would increase the transparency of the decision making from the Security Council. However, could any sanctions towards a permanent member be effective? I believe that transparency is a key factor for the discussion on legitimacy, but the problem is if a veto decision does not have legitimacy, then how should that effect the permanent member? To remove the permanent member their right of veto, the Charter must be amended. Due to the amendment process being complicated, it is not a solution in my opinion to remove the veto right.³⁰⁰ At the present stage, a review report from the subsidiary organ would be the solution.

5.4 A legitimacy assessment of the vetoes

For the legitimacy assessment, not all vetoes will be discussed. It is in the interest of the thesis that all the vetoes are representing and shows the differences of the draft resolutions and although they all interesting in their own character, considering the legitimacy assessment not all of them qualify. First, the veto in section 4.1.5 regarding the Security Council's Provisional Rules of Procedures, fall shorts for an assessment due to the 24-hour rule for draft resolutions. The draft resolution mentions the threat to international peace and security: however, the arguments for the veto decisions presented by China and Russia, focuses on the 24-hour rule. Thus, an assessment on the first indicator cannot be satisfactorily performed and the question on how the veto is taken in the interest of international peace and security cannot be analysed. In addition, concerning the second indicator, the de facto-rule is accepted as a customary rule for Council procedures, since it has been established and approved; thus, these veto decisions are legitimate in my opinion.

³⁰⁰ The regulations for amendment of the Charter was explored in section 2.1.

Nor will the second draft resolution in section 4.1.1. Draft resolution 77 focuses on the support towards the League of Arab States. The question on international peace and security is not raised in the draft text, nor in the veto decision arguments. Although, the draft resolution is condemning the situation in Syria, as well as the evolution of the situation; it is in my opinion, that the presented arguments by the permanent members for their vetoes are due to the stand point of finding a political settlement to the conflict. The veto undermines the potential support and future collaborations between the UN and the League of Arab States on the question of Syria, but it is in my opinion not of concern for in the sense of international peace and security. According to Russia and China, the language of the draft resolution is not to their satisfactory for supporting a political solution. Thus, it is in my opinion that international peace and security is not jeopardised, nor is the resolution in conflict with any rules or principles. Therefor is draft resolution 77 not applicable for a legitimacy assessment.

It is in my opinion that the vetoes in sections 4.1.2 and 4.1.3 are of more interest as these draft resolutions concerns more concrete actions from the Security Council, such as Chapter VII decisions and the ICC. The first draft resolution in section 4.1.1 will also be assessed, since the draft resolution brings forward the implementation of measures in accordance with article 41 of the Charter and the veto decisions in section 4.1.4 will be further discussed.

5.4.1 International peace and security

In section 5.1.1.1 the purpose of the first indicator for a legitimacy assessment was presented. Since the question to be answered by the indicator is, if a veto decision was taken in the interest of international peace and security and therefor is to be considered legitimate. In perspective to the stated question, the burden of proof must first be explored. In my opinion, the permanent member has a burden of reasoning for their veto decision. For example, if a draft resolution describes a situation as a threat to international peace and security, it is in my opinion that the permanent member who vetoed the draft must argue for why the draft resolution is not compatible. The member state that have presented the draft resolution at have the burden of proof concerning the purpose of why the situation can be determined as a threat to international peace and security; however, there is also a responsibility for the permanent member to reason for the opposite if that is in the interest for the situation. This will be further explored as the veto decisions for this thesis will be assessed.

Beginning with the draft resolutions in section 4.1.1, draft resolution 616 had the purpose of being a unanimous response from the Council on the violation of human rights and the attack on diplomatic personnel. Furthermore, draft resolution 616 determined that the continued situation in Syria as a threat to international peace and security.³⁰¹ The Russian and Chinese delegation argued for their vetoes due to the approach of confrontation in the draft resolution. The approach would contravene, among others, the principle of peaceful settlement; however, this will

³⁰¹ See section 4.1.2.1. See UNSC Draft Res 616 (4 October 2011) UN Doc S/2011/616.

be further discussed in section 5.4.2. Draft resolution 616 includes a possibility to impose measures in accordance with article 41 and due to the promise of a diplomatic shield by Russia to Syria concerning Chapter VII measures, the veto is undermined because of this political measure and therefor challenges the purpose of international peace and security.³⁰² The Chinese delegation present their arguments with the support of international principles, which becomes more interesting in the second step of the assessment; however, their argument in response to article 41 is that sanctions would not under the current circumstances resolve the situation in Syria. The problem with this argument is that it needs further explanation and as presented in the beginning of this section, a permanent member needs to argue why it is not in the interest for the situation. Thus, the veto decisions in accordance with the first step in the assessment does not have legitimacy.

Draft resolution 538 in section 4.1.2, had the purpose of reaffirming the support of the Joint Special Envoy, League of Arab States and UNSMIS.³⁰³ In addition compared to draft resolution 616, this draft text lists several deciding actions including for the Syrian authority to implement adopted resolutions 2042 (2012) and 2043 (2012) with the possibility to impose measures in accordance with article 41. Due to the previous discussed political shield from Russia, the veto is once more politically compromised and undermined. Furthermore, both Russia and China argues towards a political solution and that the draft text runs counter with the Geneva documents. However, the draft resolution has the purpose to support political initiatives, but with a firm standing towards Syrian authorities and the implementation of adopted resolutions. The Chinese delegation does not present any strong arguments concerning the draft resolution in context to international peace and security, hence the focus is on the political solutions and international principles. The veto decisions at this stage in the assessment does not defend their reasons to vote against a draft resolution which condemns the situation as a threat to international peace and security, therefor the decisions do not have legitimacy at this stage, but will be further exanimated in section 5.4.2.

The second draft resolution in section 4.1.2 is the latest veto from the Security Council and draft resolution 172 itself was a result of the presented reports from the investigations done by the OPCW in Syria³⁰⁴ The organisation had the mandate and support from the Security Council to investigate the potential use of chemical weapons in Syria, hence the support was affirmed in resolution 2118 (2013).³⁰⁵ The support and mandate to the OPCW will be further discussed in section 5.4.2; however, the conclusions form the OPCW presented evidence where chemical weapons have been used and therefor constitutes as a treat of international peace and security in accordance with resolution 2118 (2013). The permanent member build their veto argument based on that the reports from the

³⁰² See citation 292.

³⁰³ See UNSC Draft Res 538 (19 July 2012) UN Doc S/2012/538.

³⁰⁴ See UNSC Draft Res 172 (28 February 2017) UN Doc S/2017/172.

³⁰⁵ See 4.2.2 and UNSC Res 2118 (27 September 2013) UN Doc S/RES/2118.

OPCW was not reliable conclusions due to the method for information gathering. As I will further argue in the next section 5.4.2, the reputation of the quality of work from the OPCW carries some weight for the presented reports on the use of chemical weapons. The principle of good faith is not only applicable for the member states, but also for the work of the OPCW. Both Russia, China and Syria are member states of the OPCW, hence all states are aware of the procedure and regulations for the organisation.³⁰⁶ It is in my opinion, that the mentioning of the term threat to international peace and security in combination, is enough for the permanent members to take a veto decision. The presented draft resolution would be a result of the adopted resolution 2118 (2013) and a response to the sever allegations on the use of chemical weapons. However, due to Russia has an out-spoken promise of no Chapter VII measures towards Syria, it becomes more important in my opinion for a permanent member to present sufficient and legal arguments for the cause not to adopt a resolution.

The draft resolution in section 4.1.3, referred to the recommendation by the UN High Commissioner for Human Rights for the Security Council to refer the situation of Syria to the ICC.³⁰⁷ The purpose of draft resolution 348 was for the prosecutor of the ICC to investigate acclaimed violations of international and humanitarian law, as well once more determining the situation as a threat to international peace and security. The permanent members who vetoed the draft resolution argued that to adopt such a resolution would inflame the political situation and that the information from the Caesar report is not confirmed. However, the purpose of the draft resolution was to initiate the investigation of crimes against international law. Even though the recommendation is from the UN High Commissioner for Human Rights, the permanent members brought forward valid arguments on why not to adopt the draft resolution. According to the Russian and Chinese delegation, the ICC itself is a problem, due to the practice set by other permanent members. The focus for draft resolution 348 is not as much on the purpose of international peace and security, it is more concerning the relationship with the ICC. One of the arguments is the reluctance from other permanent members, as well as other member states of the UN, reluctance to accede to the Rome Statute. If permanent members of the Security Council do not cooperate with the ICC, then why ought any other member state do it? Another argument is the previous referral to the ICC concerning the situation in Libya and how that solution did not bring any solution. However, the strongest argument in my opinion is the one reflecting on permanent member's actions and relations with the ICC.

Unfortunately, the previous does not build a strong argument for Russia and China to vote for the adoption of a resolution which other permanent members would probably not honour themselves. The arguments from the delegations are valid in the quest to protect international peace and security, and for finding a solution to the question of Syria. Even though the ICC was not brought in through this draft resolution, it is in my opinion that the Security Council should close the

³⁰⁶ OPCW Member States.

³⁰⁷ See UNSC Draft Res 348 (22 May 2014) UN Doc S/2014/348.

door on the option to get the court involved when the conflict in Syria ends. The veto decisions do not challenge the purpose of international peace and security, although the political shield from Russia is still valid. Therefor the veto decisions have legitimacy and does not to be further assessed.

Draft resolution 846 in section 4.1.4, was a response to the bombing in Aleppo and the evolvement of the situation in Syria concerning the deterioration of the devastating humanitarian situation and civilian casualties. The draft resolution reaffirmed once more that the continued situation in Syria still constitutes a threat to international peace and security. Compared to events, Russia was a part of the coalition with Syria for the bombings of Aleppo. Thus, Russia have intervened in the conflict and supported military actions. The standpoint for Russia and China in the Security Council have been towards finding a political solution, without any Chapter VII measures. However, Russian actions contradicts their own arguments in the Council for the solutions on the question of Syria. China abstained their vote for this draft resolution. The Russian delegation argued that the presented military suggestions in the draft was not thought trough, thus the possibility of a direct or indirect predetermined course of actions is a valid possibility. The question is if the participation of Russia in Syria effects their veto decision? One can only make assumptions and therefore must make the assessment based on the presented arguments at the meeting. However, the Human Rights Watch condemned the actions as a possible war crime. The purpose of draft resolution 846 was to demand a ceasefire and stop all bombings over Aleppo, hence there are no determination of any Chapter VII measures. The continuing bombing is a threat to international peace and security, and Russia contributes to the situation by provide military efforts. Thus, the outcome from the first indicator is in unclear whether the veto decision has legitimacy and must be further examined before determining legitimacy.

When a draft resolution includes the determining of a threat to international peace and security, it is in my opinion that a permanent member needs to justify their veto decision even more than the present status quo. The next step is to assess whether the veto decisions in perspective to the international rules, principles and conventions.

5.4.2 Respect for international conventions, customary rules and principles

The Chinese delegation have maintained the path of political dialogues and solutions as their stand point for every veto they have made concerning Syria. In their opinion the international principles protected by international law and the UN Charter are sufficient reasons. Even though the purpose of the Security Council is to maintain international peace and security, the actions from the Chinese delegation have been in a sense that the principles must be in grave danger to be violated for the Council to take measures under Chapter VII. Some of the vetoes have been argued that it was in the interest of political dialogues and the draft resolution would have a negative effect on the ongoing or future political and

diplomatic discussions. However, can the principles be considered as a grey zone for international law and be used when wanted or are the principles black and white as China portrays them, i.e. the principles are set in stone and has a one-way interpretation? Furthermore, can the principles always be a legitimate argument? These questions will be discussed more in depth in relation to the draft resolutions.

When examining the arguments concerning the draft resolution 616 in section 4.1.1,³⁰⁸ the principle of non-intervention is argued for strongly and regarding previous similar decision taken by the Security Council concerning Libya, is brought forward as an example. The arguments are collective and unified, thus presenting a good case on not to proceed with measures under Chapter VII. Due to the non-requirement for permanent members to present their arguments more precise concerning the right to veto, it is difficult to suggest whether the arguments are sufficient for this stage in the assessment. However, the demand from Russia for the draft resolution to be more precise in how the resolution ought to be implemented is a relevant question before initiating Chapter VII measures. Maybe there is a need for draft resolutions to be more precise and include more details concerning implementation, than what the draft resolution 616 does. As for draft resolution 538 in section 4.1.2, the arguments focused more on what a Chapter VII would entail for the conflict in Syria and argued that it would erode international trust, as well as erode the cooperation on the issue of Syria. The permanent members anchor their argument that the resolution would work against the Special Envoy mission, thus undermining the work the Envoy has done. It is a valid point that a draft resolution with a Chapter VII character has the possibility to drastically change the political efforts done by different member states and mission, but how much patience can one have for a political settlement? It is my opinion that the last stated argument is of a legitimate character to support the Special Envoy and give the work time. In perspective to the close dates between the presidential statements and the proposed draft resolution, there is not much room for the Envoy to carry out their work sufficiently.

According to the reports from the OPCW presented in the draft resolution 172,³⁰⁹ the use of chemical weapons constitutes a violation and therefore a threat to international peace, as well a violation of international law. When the OPCW presented their reports with supporting facts of a violation, the process of how this information was gathered and analysed was criticised by some of the permanent member states. The raised critic was vaguely presented by the permanent members and maybe the main concern is not how the information for the OPCW reports were gathered, maybe it is solely the fact that it would initiate measures under Chapter VII. But the question remains – towards whom shall the measures be taken? The question is a legitimate argument hence it must be further examined. Similar to the ICC draft resolution in the previous paragraph, this draft res-

³⁰⁸ See section 4.1.1.

³⁰⁹ See section 4.1.2.

olution was a result from experts and their conclusions. The OPCW have presented their conclusions on the situation and identified responsible actors. According to resolution 2118 (2013) the OPCW had the approval and mandate of the Security Council to conduct special procedures in Syria.³¹⁰ Although the issue of justification for measures was raised since findings from the OPCW might lead up to measures under Chapter VII. The concerned states said that the evidence must be convincing to initiate such measures.

One has the right to raise critical opinions concerning the reports presented by the OPCW, but at the same time one must consider what the organisation represents and their known quality of work. In addition, both Syria, Russia and China are member states of the OPCW and therefore are aware of the organisations work. Breaking down to the arguments for using the veto, it is in my opinion that the veto decisions against draft resolution 172 conflicts with the interest of international peace and security, as well that the decision lacks legitimacy in perspective to the arguments. In my opinion, the adopted draft resolutions are initiatives on finding and stating the fact; however, when a draft resolution presents the results some of the permanent members vetoes the draft resolution due to the unsatisfactory outcome. That a resolution of this character will have an impact is undeniable, but it is in my opinion that the arguments presented by the permanent members are more directed towards the organisation itself and that the path for solution is a political solution. The OPCW have concluded that there are violations of the use of chemical weapons, therefor the solution might not be a political solution for this situation. Therefore, the veto decisions undermine the draft resolution and the respect towards resolution 2118 (2013), as well the CWC.

The draft resolution 846 in section 4.1.4, had the purpose of ending the bombings in Aleppo with a ceasefire, due to the humanitarian violation and the civilian casualties. Because of the involvement of Russia in the coalition with Syria, it is difficult to assess the veto decisions objectively. The standpoint for Russia, together with China, have been to follow the path of finding a sustainable political solution. Thus, the Russian actions contradicts this purpose. Even though these actions are controversial, the assessment must be done in accordance with the information provided at the meeting for the draft resolution.³¹¹ Russia argues that the draft text is unspecified on how it will predetermine the course of actions for the conflict. I agree that the any actions affecting the war, such as ceasefire, must be thought through. However, the purpose of draft resolution 846 was to demand a stop all bombings over Aleppo and there is no determination of any Chapter VII measures. Thus, the draft resolution is a suggestion with actions towards international peace and security. Even though the Russian arguments for a more detailed document with clear strategical purposes, the involvement of the state in the bombing makes the political reasons overshadow the legal arguments. The draft resolution reiterates the path of finding a sustainable political solution, with the implementation of Geneva Communiqué and resolutions 2254 (2015) and

³¹⁰ See section 4.2.2.

³¹¹ See section 4.1.4.

2268 (2016). There are similarities to the mandate for the ISSG, but the draft text only repeats and affirms the need for a sustainable solution. Even though it is not clear from the draft text, the reference to the political solution could be seen as an indication of the support to the ISSG and not the purpose to recreate something new.

A clear and precise text is always the best for a clear vision and path for the Security Council. Since the purpose of the draft is to start a ceasefire and reiterate the path for a political solution, the draft is for the purpose of international peace and security. Due to the involvement of Russia in the bombing of Aleppo, the legitimacy of their arguments becomes more difficult to determine. I would determine this as a grey zone, where the arguments are for and against the veto decision, hence the opinions from the experts in the subsidiary organ would become helpful. To initiate a ceasefire and military flights ban over Aleppo would be in the interest for the humanitarian violations and civilian casualties. To determine that the presented ban and ceasefire in the draft resolution would be the wrong move, I need more knowledge on how to determine such a decision and its legitimacy. However, for the interest of international peace and security it is in my opinion that the veto undermines the purpose and work of the Security Council.

5.4.3 Conclusions

From one point of view, the veto can work negatively, in permitting powerful states, i.e. the permanent members, to kill resolutions with which they disagree, which means that it biases the council in the direction of inaction. One could say that the veto ensures that no collective action can be taken against the wishes of a permanent member, and therefore guarantees that the council will be paralysed at precisely those moments of greatest tension between the permanent members.³¹² In reflection to the discussed veto decisions, it is not easy to determine their legitimacy. In section 1.7 the present research situation was discussed and in my conclusion, a legitimacy assessment of the veto decision has not been done before. Previous assessment has been performed concerning adopted resolutions from the UN; however, since the assessment for this thesis is different, the indicators for legitimacy are different. The chosen indicators for the presented legitimacy assessment in this thesis could be described as broad and vague, but in my opinion they need to cast a bigger net due to that there is no requirement for permanent members to present their reasons for voting a veto.

At the first stage of the legitimacy assessment, one of the vetoed passed the legitimacy requirement. The arguments for the veto decisions for draft resolution 348 were in my opinion legitimate, due to one of the permanent member states is not a party of the Rome Statute and the practice stated by other permanent members of the Council, thus questioning the legitimacy of the ICC. If permanent members of the Security Council do not cooperate with the ICC, then why ought any other member state do it? The strongest argument in my opinion is the one

³¹² Hurd, I. 2007, p.191.

reflecting on permanent member's actions and relations with the ICC. Even though arguments might lack the support of international principles and regulations, the precedents of actions from previous situations and the practice from other permanent members are valued reasons. Thus, the veto decision has legitimacy due to the valid concerns of the ICC.

Concerning the other assessed veto decisions, it is in my opinion that when a draft resolution determines a situation as a threat to international peace and security, the permanent members needs to present their arguments for a veto in more detail, i.e. there is a responsibility of reasoning for the permanent members. In addition, independent CSO's and the media have shown evidence of these violations through articles and reports.³¹³ In my opinion, the principle of non-intervention and principle of state sovereignty are the strongest principles against any Chapter VII actions. However, the suggested measures in the draft resolutions are not of military character, thus the references are to article 41 of the Charter and not article 42. The critic referred raised from the permanent members is that a potential adoption of a resolution with measures in accordance with article 41 are the first step on the path towards military measures. In order to determine the legitimacy of the veto decisions, the first indicator is not enough for the remaining veto decisions, as it only can determine the aspect of international peace and security and not if the veto decision against article 41 is legitimate. However, when examining the veto decision for draft resolution 846, a problematic factor was that Russia had been a part of the coalition with Syria at the time of the bombing of Aleppo. Thus, the permanent member who vetoed the draft resolution was a part of the situation the draft resolution aimed to react on. To determine the legitimacy of this veto decision, the second indicator is needed.

The second stage of the legitimacy assessment, the veto decisions were discussed in the context of the international regulations brought forward in the draft resolutions, as well as the legal arguments presented by the permanent members. As for draft resolution 616, the referral to previous actions form the Council in the Libyan conflict builds up a strong case for the veto decision. In combination with the principles of state sovereignty and territorial integrity, the veto has substantial legitimacy support. The arguments for draft resolution 538 were anchored on the support for the Special Envoy and that the draft resolution would undermine the work the Envoy. It is a valid point that a draft resolution with a Chapter VII character has the possibility to drastically change the political efforts done by different member states and mission. It is my opinion the argument is of a legitimate character in order to support the Special Envoy and give the work time. In perspective to the close dates between the presidential statements and the proposed draft resolution, there is not much room for the Envoy to carry out their work sufficiently.

³¹³ See BBC, Human Rights Watch etc.

Draft resolution 172,³¹⁴ the use of chemical weapons constitutes a violation and therefore a threat to international peace, as well a violation of international law. As previously mentioned the raised critic was vaguely presented by the permanent members. This draft resolution was a result from experts and their conclusions and maybe the concern is more directed toward the possible Chapter VII measures, than the results from the report. According to the permanent members who vetoed the draft resolution was more concerned on keeping a political promise of no Chapter VII measures towards Syria; however, according to resolution 2118 (2013) the OPCW had the approval and mandate of the Security Council to conduct special procedures in Syria.³¹⁵ The concerned states said at the time that the evidence must be convincing to initiate such measures. One has the right to raise critical opinions concerning the reports presented by the OPCW, but one must at the same time consider what the organisation represents and their known quality of work. It is in my opinion that the veto decisions against draft resolution 172 conflicts with the interest of international peace and security. The veto decision lacks legitimacy in perspective to the arguments, due to the vague arguments of a political nature towards the OPCW.

Finally, draft resolution 846. As previously mentioned the coalition with Russia and Syria makes the assessment of legitimacy more difficult. The Russian delegation has a valid point concerning the ban and ceasefire in the draft text, hence it could be more precise regarding the possible predetermination of the course of actions. Even though, the delegation argued for the overlapping mandate of the ISSG with the mentioned political solution in the draft, it is in my opinion that reiterating a purpose for a sustainable political path in the draft, does not challenge the mandate of the ISSG. The purpose of the draft is to stop initiate a ceasefire and hopefully continue with the political solution. Due to the political shield that Russia have towards Syria, in addition with the coalition, it is in my opinion that the political measures from Russia undermines the purpose of international peace and security. The arguments concerning the military flight ban and the unclear course of actions are valid arguments. In conclusion, this veto decision is in the grey zone and unclear whether it has legitimacy.

³¹⁴ See section 4.1.2.

³¹⁵ See section 4.2.2.

6 Concluding Remarks

In this thesis, I have aimed to propose a legitimacy assessment of veto decisions concerning the question of Syria. The purpose of this assessment is to determine whether veto decisions can undermine the purpose of international peace and security. The assessment of the veto decisions has been a challenging task. How does one answer a question of this character without getting political? Hopefully this has been achieved, but as previously mentioned the research fields of international law and international relations are intertwined. Adding the discussion of legitimacy for the thesis have been a challenge. As Klabbers says – it is to add something slippery to the discussion. The flexibility of defining legitimacy have been a positive addition to the discussions, thus it fulfils the purpose of how one can examine what the law ought to be and what the present legal status quo is. Depending on how one approaches legitimacy, the outcome might differ. The same conclusion can be drawn when discussing the relationship between law and politics. Therefore, the two approaches, legitimacy and politics with law, becomes interesting dimensions to the discussion.

The legitimacy of a forum was briefly discussed in section 3.1.2 and in my opinion, the United Nations qualifies as an organisation which has political legitimacy in a normative sense, hence it has the power to rule, as well as the recognition and approval of its members. Upon becoming a member of the UN, a state agrees to the existing framework and rules. For example, one state cannot negotiate out of the UN Charter to become a member. A rule is considered legitimate if it communicates what is and what is not permitted. However, rules can be considered as norms that have been accepted through procedure and these procedures have been accepted by a whole community. If one put the article 50 of the Charter in the same equation, the article is a legitimate rule, thus it has been accepted by the UN community. The rules for the veto right are very brief in their description, as they focus on who has the veto right and on what matter it cannot be used. The practice of the veto rule has been accepted by the Security Council, but still criticised when used by the permanent members of the Council. But is the veto right still in the interest of international peace and security? Mentioned in section 5.3.2, the veto can be considered a safety net and still fulfil the purpose of the Security Council. Discussed in the legitimacy assessment of the veto decisions, a veto decision can conflict with international peace and security and the decision still be considered as legitimate. The determination of validity for the veto decisions has been discussed throughout the legitimacy assessment and especially at the second stage of the assessment. When assessing veto decisions, the political language and purpose form the permanent members overshadows the legal language, thus making an objective assessment challenging. The arguments concerning the purpose of international peace and security sometimes disappears in the discussion of international principles.

There have been attempts in the draft resolutions to define the conflict in Syria as a threat to international peace and security, but this phrase has not been able

to win over the veto and become adopted. I have identified a pattern of which resolutions that have been adopted by the Security Council. All of them can be summarised in one word. Initiatives. The common theme on the resolution that have been adopted and its either initiation of mission, such as UNSMIS, or political dialogues, for example Joint Special Envoy and ISSG. Thus, the adopted resolutions are the start of fact-finding missions and investigations with the purpose to understand and gather information in order to make executive decisions. Resolutions have also been adopted with a humanitarian interest to support with aid for different situations, as well to support the initiative to political dialogues and find a solution from Syrian parties. However, when these initiatives or missions present their results and state that the situation is a threat to international peace and security, for example the OPCW and the bombing of Aleppo, the tone of the Security Council changes and the political arguments becomes more important than the legal reasons. In addition, the political shield by Russia for Syria creates not only a protection from Chapter VII for Syria, but also creates a limited path for the Security Council to act upon if Chapter VII resolutions will not become adopted. Therefore, this kind of political action undermines the purpose of international peace and security.

In reflection to the conclusion of the possibility for veto decisions to undermine international peace and security in chapter five, one of my research questions aimed to answer if the veto articles ought to be amended. In my opinion, the veto right article itself ought not to be amended; however, the veto right should have more added requirements. As have been argued on several occasions in the thesis, the non-existing requirement on presenting the reasons for a veto decision is a problem. This requirement in my opinion would increase transparency and the legal arguments for a veto decision. Therefore, the suggestion would be to either add new articles in the Charter and follow the procedures according to articles 108 and 109, or the ILC could conduct a procedural document specifically focusing on new requirements for the veto right, as well include the regulations for the new subsidiary organ. The procedural document would become the guiding document for the subsidiary organ on how to conduct the assessment and outline the mandate for the organ. The new suggested articles would be written with the same purpose as the procedural document; however, it is in my opinion that a procedural document might be easier to implement instead of amending the UN Charter.

The proposed legitimacy assessment is of course not unconventional, but this assessment is a proposition to start a discussion on how to change the legal status quo and if the veto right is still relevant. Some would argue that such assessment would undermine the procedural purpose of the Security Council. Nevertheless, it is difficult to present a conclusive solution for how the veto decisions ought to be assessed without becoming political in the discussion. After studying the different draft resolution, as well as the adopted resolution, the connection between law and politics become clearer, yet more confusing. Including the section on law and politics was necessary for the thesis, in order to understand the political

approach to law. The repetitiveness with the arguments and resolution texts cannot be denied; however, one must remember that the conflict in Syria have been going on since 2011 and there is a will among the member states to solve the conflict. Furthermore, it is significant to reflect on the possibility that member states might have different opinions regarding the relationship on law and politics, depending on which of the reviewed approaches they agree with. There are differences of opinions among the permanent member for the sustainable solution on the question of Syria and which path to choose is yet to be determined.

Undeniably, it is challenging to assess ongoing conflicts and how any decisions would directly or indirectly predetermine the course of action. Although there are difficulties to foresee an effect and assess retrospectively how the legitimacy assessment could have been of value during the different veto discussion. Nevertheless, the question on vetoes legitimacy must be raised and even though the issue is difficult, it is not irrelevant. The approach of the legitimacy assessment challenges how veto decisions ought to be considered and why the veto decisions are to be assessed. The assessment itself is not exhaustive or complete, but it is a beginning of a discussion. Since the suggested assessment is regarding a permanent member's veto decision, the political factor becomes indirectly a part of the discussion. The present veto system ensures that no collective action can be taken against the wishes of a permanent member, thus the Security Council becomes unable act due to the disagreement of one permanent member. In reflection to the different approaches on how to define and understand the relationship with law and politics, the approaches indicate that there might be different assumptions by the member states on what the political function of the UN is. Therefore, the proposed legitimacy assessment reflects on the political arguments for a veto decision overrules the legal argument and the purpose for the Security Council to maintain international peace and security. In perspective to the conflict in Syria, which becomes more severe every day it continues, the international community stands almost idly by because of the veto decisions.

If a legitimacy assessment were to be adopted and implemented for the Security Council, it would be crucial that the aim is to increase the transparency of Council decisions and not to fulfil political motivations of the member states. It ought to be used as a safeguard for international peace and security. Conclusions from the legitimacy assessment indicates that some veto decisions are legitimate since the presented arguments are supported with international principles, one veto decision does not have legitimacy due the arguments presented by the permanent members are not sufficient compared to international peace and security and finally, one veto decision is in the grey zone due to the permanent member's coalition with Syria. The outcome of the assessment shows that the veto right is a topic which needs further research; however, it is my conclusion that the present veto right increase the political discussion and overshadows the legal arguments. Therefor there is an increasing risk for veto decisions to undermine international peace and security.

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