

# The Erosion of the Prohibition on the Use of Force in the Face of United Nations Security Council Inaction: How Can the United Nations General Assembly Maintain International Peace?

Nadia Ahmad\*

## Abstract

*Countries, either unilaterally or multilaterally, have used coercive measures for humanitarian purposes a number of times in the last two decades alone. These interventions are cloaked under the guise of self-defense, United Nations Security Council authorization, or the consent of the host state. In the face of Russia's invasion of Ukraine, this Article looks at how the United Nations Security Council's inaction has created conditions for illegal armed interventions and aggressions, from Kuwait to Syria. The use of the Uniting for Peace Resolution in the Ukrainian conflict should represent a shift in international law, paving the way for other United Nations organs to lead the charge in maintaining international peace and security. This Article looks at how the Uniting for Peace Resolution could have mitigated the suffering in Syria, and how it can be used effectively in future conflicts.*

---

\* I want to thank my professors at the Case Western Reserve University School of Law. I am grateful to Michael P. Scharf, Dean of the School of Law, and Jonathon Gordon, Director of the S.J.D. Program, for their expert guidance and encouragement. I also want to thank the Fineman and Pappas Law Libraries of the Boston University School of Law, especially Director Ronald E. Wheeler, for continued support and mentorship.

## Table of Contents

I. Introduction .....	82
II. Military Interventions.....	84
A. Kuwait.....	84
B. Kosovo.....	86
C. Georgia.....	88
D. Libya .....	90
E. Mount Sinjar .....	91
F. 2017 Airstrikes in Syria.....	92
G. 2018 Airstrikes in Syria.....	92
III. Using the Uniting for Peace Resolution in the Face of Humanitarian Crises .....	93
A. Legality of the Uniting for Peace Resolution.....	94
B. Can the UNGA Recommend the Use of Force?.....	95
C. What Could the UNGA Do in Syria?.....	96
D. What Can the UNGA Do in Russia?.....	97
IV. Conclusion.....	98

## I. INTRODUCTION

The international community was rocked by Russia's illegal invasion of Ukraine on February 24, 2022. Russian President Vladimir Putin cloaked the invasion in legalese, even as his actions violated the United Nations (U.N.) Charter's prohibitions on the use of force and inviolability of territorial sovereignty.<sup>1</sup>

Putin justified Russia's use of force in two ways: firstly as self-defense, and secondly as a response to a call for help from the citizens of two breakaway republics of Ukraine.<sup>2</sup> However, no country other than Russia has acknowledged the statehood of these two regions, and the right to collective self-defense under Article 51 of the U.N. Charter only exists with regards to a member of the U.N., not for individuals within a region.<sup>3</sup> Armed humanitarian intervention to protect the nations of a third state has not attained legal status in international law, despite countries using it as a ruse to use military force in a third country.

As the United Nations Security Council (UNSC) once again remains deadlocked in the face of international law violations, this Article analyzes the role the United Nations General Assembly (UNGA) can have in promoting international peace and security. This Article begins by analyzing how the inconsistent UNSC response to humanitarian crises has paved the way for illegal and selective armed interventions. This Article sets up the more diplomatic UNGA as the body for addressing international insecurity legitimately and uniformly. It concludes by recommending some ways the UNGA could have dealt with the Syrian conflict and what it should do going forward with regards to Russian aggression in Ukraine.

Since the inception of the U.N., no other state except Iraq has forcibly entered a fellow state and taken control of its territory.<sup>4</sup> While Iraq's invasion was met with a swift and forceful armed international response authorized by the UNSC, the same could not be said about many other infractions of international law, including Russia's annexation of Crimea in 2014, which could be considered a precursor for the current invasion.<sup>5</sup> In fact, the UNSC resolution condemning

---

<sup>1</sup> See *Full text: Putin's Declaration of War on Ukraine*, SPECTATOR (Feb. 24, 2022), <https://perma.cc/3S8N-U7MS> [hereinafter *Putin's Declaration of War on Ukraine*].

<sup>2</sup> See *id.*

<sup>3</sup> Elizabeth Wilmschurst, *Ukraine: Debunking Russia's Legal Justifications*, CHATHAM HOUSE (Feb. 24, 2022), <https://perma.cc/9E4C-WDLL>. Article 51 of the U.N. Charter provides:

Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.

<sup>4</sup> See Thomas Grant, *Russia's Invasion of Ukraine: What does International Law Have to Say?*, LAWFARE (Aug. 25, 2015), <https://perma.cc/UHR9-XMDX>.

<sup>5</sup> See *id.*

Crimea's annexation was vetoed by Russia in 2014.<sup>6</sup> A lack of collective action and a growing nuclear arsenal may have bolstered Russia's confidence, as it even now threatens countries that assist in Ukraine's self-defense.<sup>7</sup>

It is out of the question that the UNSC would take action on the current invasion, be it through calling on states to resolve their disputes through Chapter VI of the U.N. Charter or by authorizing forcible and nonforcible measures through Chapter VII of the U.N. Charter.<sup>8</sup> On February 25, 2022, a UNSC Resolution condemning Russia's aggression in Ukraine was vetoed by Russia.<sup>9</sup> While Article 27(3) of the U.N. Charter calls on parties involved in a dispute to abstain from a vote on it, most UNSC Permanent Members do not comply with this provision.<sup>10</sup>

Consequently, the UNSC voted to convene the UNGA to give the latter the authority to "take up matters of international peace and security."<sup>11</sup> Under the Uniting for Peace Resolution, if there is a lack of unanimity between the five permanent members of the UNSC facing a breach of peace or act of aggression, the UNGA can make recommendations to maintain or restore international peace.<sup>12</sup> In the rare emergency session, 141 U.N. member states voted in favor of the resolution demanding "Russia immediately, completely and unconditionally withdraw all of its military forces from the territory of Ukraine within its internationally recognized borders."<sup>13</sup> While UNGA resolutions are not binding, they do carry significant political weight and demonstrate that the global community can unite and condemn violations of international law.

States have violated international prohibitions on the use of force in recent years, as global conflict has given way to internal conflict. The next Section of this Article analyzes the armed interventions President Putin mentioned in his

---

<sup>6</sup> See John Chappell & Emma Svoboda, *Must Russia Abstain on Security Council Votes Regarding the Ukraine Crisis?*, LAWFARE (Feb. 11, 2022), <https://perma.cc/7KN3-JECF>.

<sup>7</sup> See *Putin's Declaration of War on Ukraine*, *supra* note 1.

<sup>8</sup> See Chappell & Svoboda, *supra* note 6.

<sup>9</sup> See *Security Council Vote Sets up Emergency UN General Assembly Session on Ukraine Crisis*, U.N. NEWS (Feb. 27, 2022), <https://perma.cc/GE7T-FMTR> [hereinafter *UNSC Emergency Vote on Ukraine*].

<sup>10</sup> See Chappell & Svoboda, *supra* note 6. Art. 27(3) of the U.N. Charter provides:

Decisions of the Security Council on all other matters shall be made by an affirmative vote of nine members including the concurring votes of the permanent members; provided that, in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting.

<sup>11</sup> *UNSC Emergency Vote on Ukraine*, *supra* note 9. Russia pointed to the humanitarian interventions conducted by the U.S. and its allies in Syria, Libya, Iraq, and Kosovo, as precedent-setting for its military invasion of Ukraine.

<sup>12</sup> See Christian Tomuschat, *Uniting for Peace Resolution* (Oct. 2008), <https://perma.cc/LQ8A-PZKG>.

<sup>13</sup> *General Assembly Resolution Demands End to Russian Offensive in Ukraine*, U.N. NEWS (Mar. 3, 2022), <https://perma.cc/NN4E-6KV3> [hereinafter *General Assembly Resolution on Ukraine*].

speech.<sup>14</sup> However well-intentioned these armed interventions were, they weakened sacrosanct international norms and highlighted structural weaknesses in the UNSC.

## II. MILITARY INTERVENTIONS

### A. Kuwait

The Gulf War was considered a major event in international law, as it was one of the rare occasions where the use of force against a third country was justified under international law.<sup>15</sup> It was also the first time a U.N. Member State tried to use military force to destroy another member state's sovereignty.<sup>16</sup> Rather than resort to modern international law tools to peacefully resolve its dispute, Iraq turned to pre-U.N. techniques, such as war, to alter legal boundaries. Given the international community's lack of interest in protecting a member's state sovereignty, Iraq assumed its actions in Kuwait would be overlooked, as was its invasion of Iran.<sup>17</sup> This time, however, the political interests of major players aligned. The conflict threatened oil interests, and Russia and China had their own troubles, including their relationship with the West. As a result, the UNSC members did not use their veto powers to protect a prior client state.<sup>18</sup> This convergence of factors brought about international cooperation at levels that are unlikely to be reached again. In fact, interstate violence between 1991 and 2001 did not give rise to any such international cooperation.<sup>19</sup>

The events that led up to the Gulf War are outside the scope of this Article but describing the UNSC enforcement mechanisms at work in its aftermath can demonstrate how the system was envisaged to work and its shortcomings.

Using the powers given to it in the U.N. Charter Chapter VII, the UNSC not only placed sanctions on Iraq, but also authorized military action against it after Iraq invaded Kuwait in 1990. The resulting Operation Desert Storm was a legal enforcement of the U.N. Charter and the prohibition against the use of force. It marked a change from states taking matters into their own hands and acting unilaterally.<sup>20</sup>

---

<sup>14</sup> See *Putin's Declaration of War on Ukraine*, *supra* note 1.

<sup>15</sup> See Paul W. Kahn, *Lessons for International Law from the Gulf War*, 45 STAN. L. REV. 425, 425 (1993).

<sup>16</sup> See *id.* at 427.

<sup>17</sup> See *id.* at 428.

<sup>18</sup> See *id.* at 433.

<sup>19</sup> See Christine Gray, *From Unity to Polarization: International Law and the Use of Force against Iraq*, 13 EUR. J. INT'L LAW 1, 2 (2002).

<sup>20</sup> See Mary Ellen O'Connell, *Enforcing the Prohibition on the Use of Force: The U.N.'s Response to Iraq's Invasion of Kuwait*, 15 S. ILL. U. L.J. 453, 481 (1991).

As precedent setting as the UNSC's binding resolutions were, there were also concerns that the U.N. did not retain enough control over the operation and its conduct. Others argued that the U.N. had an unclear mandate and did not proscribe a limit on coalition action.<sup>21</sup>

Consequently, the United States (U.S), United Kingdom (U.K.), and France (the major states in the Gulf War Coalition) claimed implied authorization from resolutions passed after the Iraqi conflict to impose no-fly zones over Iraq in 1991.<sup>22</sup> However, these justifications did not comport with international law and were not met with international support.<sup>23</sup> Firstly, one of the resolutions was not passed under Chapter VII of the U.N. Charter, which meant it could not justify the use of force, but this did not prevent the Gulf War Coalition from claiming no-fly zones were a way to implement the resolution.<sup>24</sup> Secondly, the no-fly zones created by the Gulf Coalition were either geographically separate or asynchronous from the events that caused the cease-fire agreement in the resolutions in question.<sup>25</sup>

Using Resolution 688 as cover again, the U.S. and U.K. struck six Iraqi targets in 2001 after Iraq increased its activities in the no-fly zones.<sup>26</sup> This time, however, the U.N. Secretary General did not accept their unilateral actions.<sup>27</sup> By leaving the legality of no-fly zones in the UNSC's hands and calling upon it to declare a no-fly zone illegal, it created a situation where no offending permanent member's actions could be subject to veto.<sup>28</sup> International support for the no-fly zones was not forthcoming and the two countries were isolated in their actions. France, Russia, and China rejected the illegal actions of the U.K. and the U.S., but the UNSC remained deadlocked.<sup>29</sup>

The no-fly zones imposed by the Gulf War Coalition saved countless lives, eased humanitarian suffering, and restored international peace.<sup>30</sup> However,

---

<sup>21</sup> See Gray, *supra* note 19, at 9.

<sup>22</sup> See Timothy P. McIlmail, *No-Fly Zones: The Imposition and Enforcement of Air Exclusion Regimes over Bosnia and Iraq*, 17 LOY. L. A. INT'L & COMP. L.J. 35, 49 (1994). For a detailed analysis of the legality of the no-fly zones created over Iraq, see *id.* at 48–59. Briefly, the justifications ranged from Resolution 688, which appealed to member states to provide humanitarian aid to civilians, to Resolution 678, which authorized the use of “force to restore international peace,” and to Resolutions 686 and 687, which set forth a formal ceasefire and its conditions.

<sup>23</sup> See *id.* at 49.

<sup>24</sup> See Gray, *supra* note 19, at 9.

<sup>25</sup> See McIlmail, *supra* note 22 at 55.

<sup>26</sup> See Gray, *supra* note 19, at 9.

<sup>27</sup> See *id.*

<sup>28</sup> See McIlmail, *supra* note 22, at 58.

<sup>29</sup> See Gray, *supra* note 19, at 10.

<sup>30</sup> See McIlmail, *supra* note 22, at 65.

without U.N. authorization, these no-fly zones violated Article 2(4) of the U.N. Charter.<sup>31</sup>

On the whole, the legality of no-fly zones is still controversial under international law, and the rule of non-intervention remains strong. Accordingly, NATO did not refer to the no-fly zones over Iraq as precedent when it was justifying its campaign in Kosovo in 1999.<sup>32</sup>

## B. Kosovo

The nineties brought about an increasing disregard for international law and the inability of international organizations to respond to new challenges. The latter was highlighted again as the situation in Kosovo deteriorated in 1999. Experts agree that the resulting 1999 NATO air campaign hailed a new era in international law, potentially paving the way for states to intervene in another's affairs for strictly humanitarian purposes.

As Serbians began to step up their attacks against the Albanian population in Kosovo in 1999, the UNSC passed resolutions declaring that Serbia's actions were a threat to peace.<sup>33</sup> But once again, the UNSC was unable to decide upon a course of action.<sup>34</sup> In fact, Russia and China made it clear on separate occasions that the resolutions that they had agreed to did not authorize force, even as they recognized that the Kosovo situation caused threats to security in the region.<sup>35</sup> As negotiations failed, human suffering continued, and the U.N. remained paralyzed. Subsequently, NATO launched a military attack in Kosovo on humanitarian grounds.<sup>36</sup>

NATO Member States articulated that their campaign was predicated on humanitarian reasons.<sup>37</sup> A draft resolution condemning NATO's actions was introduced in the UNSC, but was defeated with a vote of twelve countries for and only three against.<sup>38</sup> There was also widespread support for the action outside of the UNSC, from the European Union (E.U.), Organization of Islamic States, Organization of American States, and important states in the region, such as Romania, Bulgaria, and Slovenia even provided their air space for the action.<sup>39</sup>

---

<sup>31</sup> *See id.*

<sup>32</sup> *See* Gray, *supra* note 19, at 15.

<sup>33</sup> *See* Michael P. Scharf, *Striking a Grotian Moment: How the Syria Airstrikes Changed International Law Relating to Humanitarian Intervention*, 19 CHI. J. INT'L L. 586, 597 (2019).

<sup>34</sup> *See id.*

<sup>35</sup> *See* Gray, *supra* note 19, at 14.

<sup>36</sup> *See id.*

<sup>37</sup> *See* Scharf, *supra* note 33, at 597.

<sup>38</sup> *See* MICHAEL P. SCHARF, MILENA STERIO & PAUL WILLIAMS, THE SYRIAN CONFLICT'S IMPACT ON INTERNATIONAL LAW 68–69 (2020).

<sup>39</sup> *See id.* at 69.

Other than China, India, Iraq, and Russia, there was little objection to NATO's campaign.<sup>40</sup> UNSC Resolution 1244, passed at the cessation of hostilities, is considered an after-the-fact ratification of NATO's operation.<sup>41</sup>

That NATO's actions did not align with the U.N. Charter, especially Article 2(4), is seldom disputed.<sup>42</sup> However, it was a turning point in international law on armed interventions, though its precedential value is contested.

One of the main reasons the NATO campaign was not a step forward in establishing a custom of humanitarian intervention without UNSC authorization was because of the lack of *opinio juris*. NATO countries were hesitant to offer humanitarian intervention as the justification for their actions, as they were not yet ready for their unilateral bombing campaign to create or amend customary international law.<sup>43</sup> Doing so would mean chipping away at the UNSC's sole authority to lawfully use force in situations other than self-defense, creating "competing claims of 'rights' to intervene."<sup>44</sup> NATO countries were worried about alliances being forged against them, while other countries were concerned that NATO would not have many misgivings in using force at the behest of member states.<sup>45</sup> Consequently, the U.K. and the U.S., along with other NATO countries, specifically claimed NATO's actions should be considered *sui generis*.<sup>46</sup> It was clear then, that even NATO states did not want NATO's actions to become the norm and for a return to the pre-U.N. Charter era with unfettered resorts to use of force,<sup>47</sup> even though international support in this specific instance was widespread.<sup>48</sup>

The general consensus, as far as the Kosovo conflict goes, was that this was a singular event where NATO acted without the UNSC's authorization, but did so to alleviate human suffering while trying to stay as close to the law as possible

---

<sup>40</sup> See *id.*

<sup>41</sup> See *id.*

<sup>42</sup> See W. Michael Reisman, *Kosovo's Antinomies*, 93 AM. J. INT'L L. 860, 860 (1999).

<sup>43</sup> See SCHARF, STERIO & WILLIAMS, *supra* note 38, at 73.

<sup>44</sup> Bruno Simma, *NATO, the UN and the Use of Force: Legal Aspects*, 10 EUR. J. INT'L L. 1, 20 (1999). Bruno Simma served as a judge at the International Court of Justice from 2003–2012.

<sup>45</sup> See *id.*

<sup>46</sup> See Scharf, *supra* note 33, at 598.

<sup>47</sup> See Thomas M. Franck, *Lessons of Kosovo*, 93 AM. J. INT'L L. 857, 859 (1999).

<sup>48</sup> See generally Simon Chesterman, *Legality Versus Legitimacy: Humanitarian Intervention, the Security Council, and the Rule of Law*, 33 SECURITY DIALOGUE 293 (2002). Even though there was international support, a legal justification from the intervening states was absent. It was not only states that could not agree on a justification. Two independent commissions also gave differing conclusions. On one hand, Richard Gladstone's Kosovo Commission claimed it was "illegal but legitimate." On the other hand, Gareth Evans and Mohamed Sahnoun's International Commission on Intervention and State Sovereignty questioned whether bypassing the Security Council or remaining silent in the face of human suffering was the greater evil. See *id.* at 294.



after exhausting all available options.<sup>49</sup> However, most states held on to the option of resorting to unsanctioned use of force once again if similar mass atrocities took place and the UNSC did not respond.<sup>50</sup>

### C. Georgia

The U.S. and a group of “willing states”<sup>51</sup> attacked Iraq in 2003, partly to prevent atrocities against segments of the Iraqi population and partly to stop Iraq from using weapons of mass destruction. This invasion did not receive popular support.<sup>52</sup> Proponents of the invasion of Iraq used Kosovo as precedent, alleging it too was illegal but legitimate as a means to achieve humanitarian ends.<sup>53</sup> It was against this backdrop that the responsibility to protect (R2P) doctrine developed and its invocation to prevent mass atrocities against civilians eventually became tied to UNSC authorization.<sup>54</sup>

Russia’s use of the veto power during the Kosovo crisis was one of the main reasons the UNSC was not able to authorize collective security action under Chapter VII of the U.N. Charter. Russia also staunchly objected to the NATO intervention.<sup>55</sup> However, it intervened in the Georgian region of Ossetia in 2008 over a similar premise: protecting the Russian population present in Georgia.<sup>56</sup> Then-Russian President Dmitry Medvedev provided humanitarian grounds as the

---

<sup>49</sup> See Simma, *supra* note 44, at 14. See Reisman, *supra* note 42, for a detailed analysis of the Kosovo situation contending that the human rights violations warranted action instead of inaction like in Rwanda. Reisman argues that since Security Council authorization could not be procured and all other peaceful resolutions had failed, an air campaign was the best option, as it caused the least collateral damage. Reisman recognizes NATO’s actions do not fall under Article 2(4) of the United Nations Charter but does not believe it set a bad precedent. See Gregory Hafkin, *The Russo-Georgian War of 2008: Developing the Law of Unauthorized Humanitarian Intervention After Kosovo*, 28 B.U. INT’L L.J. 219, 232 (2010) (“While many Western powers readily admitted that NATO’s 1999 strike was patently inconsistent with the United Nations Charter, they took great pains to demonstrate that the intervention was anything but unilateral, and that Kosovo was a special situation calling for drastic measures.”). See also Antonio Cassese, *A Follow-up: Forcible Humanitarian Countermeasures and Opinio Necessitatis*, 10 EUR. J. INT’L L. 791, 797 (1999) (“Plainly, the matter is too delicate and controversial to warrant the contention that the evolution of international law in this area may result from a single episode.”).

<sup>50</sup> See Simma, *supra* note 44, at 14.

<sup>51</sup> SCHARF, STERIO & WILLIAMS, *supra* note 38, at 75.

<sup>52</sup> See *id.*

<sup>53</sup> See Ramesh Thakur, *Law, Legitimacy and United Nations*, 11 MELB. J. INT’L L. 1, 12 (2010).

<sup>54</sup> See Gareth Evans, *From Humanitarian Intervention to the Responsibility to Protect*, 24 WIS. INT’L L.J. 703 (2006). The author describes the development of the R2P doctrine, its evolution, and its challenges.

<sup>55</sup> See Hafkin, *supra* note 49, at 221.

<sup>56</sup> See SCHARF, STERIO & WILLIAMS, *supra* note 38, at 77.

primary justification for its unsanctioned intervention, claiming Russia's actions fell within the ambit of international law and the U.N. Charter.<sup>57</sup>

Though most countries considered Russia's actions illegal under international law, the international response was weakened because of the widespread acceptance of NATO's intervention in Kosovo.<sup>58</sup> The major differences between the two interventions are outlined below, but the result was that the U.N. Charter prohibited them both.

In Kosovo, there was strong evidence of mass ethnic cleansing and human rights violations.<sup>59</sup> The UNSC itself had passed a number of resolutions on the Kosovo conflict, compared to none on South Ossetia.<sup>60</sup> Additionally, instead of a single country arguably acting to protect its own national interests under the guise of humanitarian intervention, the NATO intervention in Kosovo was collective in that it was carried out by a responsible organization with no material interests.<sup>61</sup> However, to claim that NATO's actions are legitimate solely because they are multilateral ignores the political reality. Russia did not join the organization when most of its former members did after the Cold War. A lack of alliances meant that Russian military action would most likely be unilateral if it was without the UNSC's authorization.<sup>62</sup> However, another reality is that the U.N. and the UNSC's role in maintaining and restoring peace was weakening in the face of unauthorized interventions. Countries were more willing to step outside the organization to find ways to defend the U.N. Charter's values.<sup>63</sup>

Russia also cited the (R2P) as the basis for its intervention in Georgia.<sup>64</sup> However, as the then-President of the International Crisis Group and co-chair of the International Commission on Intervention and State Sovereignty pointed out, the (R2P) doctrine, as envisaged through the 2005 General Assembly Outcome Document, did not support such a military intervention.<sup>65</sup> Two key aspects were missing from the Russian campaign: (1) UNSC authorization and (2) the need to protect Russian citizens within state borders. States could forcibly intervene to

---

<sup>57</sup> See Hafkin, *supra* note 49, at 226.

<sup>58</sup> See *id.* at 238.

<sup>59</sup> See *id.* at 227.

<sup>60</sup> See *id.* at 220.

<sup>61</sup> See Louis Henkin, *NATO's Kosovo Intervention Kosovo and the Law of "Humanitarian Intervention,"* 93 AM. J. INT'L L. 824, 825 (1999).

<sup>62</sup> See Hafkin, *supra* note 49, at 238.

<sup>63</sup> See *id.* at 239.

<sup>64</sup> See Gareth Evans, *Russia, Georgia and the Responsibility to Protect*, 1 AMSTERDAM L.F. 25, 25 (2009).

<sup>65</sup> See *id.*

protect citizens being oppressed in another country only through the UNSC.<sup>66</sup> States seeking to protect their own citizens in another country could better justify their actions under Article 51 of the U.N. Charter, which also did not apply in this situation.<sup>67</sup>

#### D. Libya

The first test for the R2P principle came from Libya in 2011, where the government was retaliating against protestors and Muammar Gaddafi was unwilling to stop them. In fact, he encouraged his supporters to “attack the ‘cockroaches’ demonstrating against his rule.”<sup>68</sup> With reports of protestors being shot, the UNSC “called for an ‘immediate end’ to the violence.”<sup>69</sup> The deteriorating situation was a textbook one for the R2P and the UNSC acted swiftly to authorize military action under Chapter VII of the U.N. Charter.<sup>70</sup> This was the first time the UNSC authorized coercive action under the R2P.<sup>71</sup> Within a month, NATO established no-kill zones and halted civilian repression, proving that it was possible for the international community to work together and remove threats to the peace in order to protect innocent victims.<sup>72</sup> U.N. Resolution 1973 was passed with ten countries voting in favor and five countries abstaining. Unlike in resolutions passed in response to Iraq’s invasion of Kuwait, Resolution 1973 had a specific objective and authorized narrow means to achieve it.<sup>73</sup> It seemed like a blueprint scenario for the success of R2P, but Resolution 1973 ended up hurting the cause more than helping it.

The debate surrounding Resolution 1973 was whether military force could achieve the objective of saving lives without worsening ground realities.<sup>74</sup> Despite their qualms, Russia, China, India, Germany, and Brazil abstained and the permanent members did not veto the resolution, avoiding another humanitarian disaster. However, their concerns seemed well founded when NATO overstepped

---

<sup>66</sup> See generally Evans, *supra* note 64. The author analyzes whether Russia’s justification of its military campaign in Georgia meets the requirements of the R2P doctrine. On page 28, Evans concludes that the R2P doctrine cannot be used as grounds to justify the Russian intervention. Instead, Russia used it as a cover for “vigilante justice across borders.” *Id.*

<sup>67</sup> See *id.* at 26.

<sup>68</sup> Press Release, BBC NEWS, Libya Protests: Defiant Gaddafi Refuses to Quit (Feb. 22, 2011), <https://perma.cc/XD3H-KCGC>.

<sup>69</sup> *Id.*

<sup>70</sup> See Thakur, *supra* note 53, at 69.

<sup>71</sup> See Spencer Zifcak, *The Responsibility to Protect After Libya and Syria*, 13 MELB. J. INT’L L. 59, 71 (2012).

<sup>72</sup> See Thakur, *supra* note 53, at 69.

<sup>73</sup> See *id.* at 70.

<sup>74</sup> See U.N. SCOR, 65th Sess., 6498 mtg. at U.N. Doc. S/PV.6498 (Mar. 17, 2011) . Abstaining countries worried about the way the resolution would be implemented and that their questions regarding the issues were not being answered.

Resolution 1973's mandate, participated in changing the nation's regime, and provided arms to the rebels, rather than focusing solely on protecting innocent civilians.<sup>75</sup> Whether it was possible to protect the population while Gaddafi was in power was doubtful, but NATO's insistence that it stayed within the confines of Resolution 1973 lacked credibility.<sup>76</sup> The abstaining countries later vehemently protested NATO's efforts at regime change.<sup>77</sup>

Most international law theorists agree that Resolution 1973's mandate was stretched to the point where the coalition's actions most likely no longer conformed to the U.N. Charter.<sup>78</sup> Syria paid the price for the fear that coercive measures may not remain confined to the mandate and countries that previously abstained from voting in Libya vetoed resolutions that would have authorized military force in Syria.<sup>79</sup>

### E. Mount Sinjar

In 2014, "the Security Council in Resolution 2170 'condemn[ed] in the strongest terms the terrorist acts of ISIL and its violent extremist ideology, and its continued gross, systematic and widespread abuses of human rights and violations of international humanitarian law . . .'"<sup>80</sup> By then, ISIL was engaged in mass indiscriminate murders of civilians and other gross human rights violations in Iraq and Syria, where it controlled large portions of the countries.<sup>81</sup> Resolution 2170 was passed after ISIL captured an Iraqi town, Sinjar, and cornered around 40,000 Yazidis on Mount Sinjar, warning them to either convert their religion or die.<sup>82</sup> Trapped without any resources, a humanitarian disaster was on the horizon.

President Barack Obama ordered an airstrike on the mountain in order to save the Yazidis, but did so without UNSC authorization or Iraq's permission.<sup>83</sup> While, initially, the U.S. justified its actions on humanitarian intervention, it later claimed self-defense as the basis for its airstrike.<sup>84</sup> Given the intervention saved

---

<sup>75</sup> See Thakur, *supra* note 53, at 70.

<sup>76</sup> See *id.*

<sup>77</sup> See *id.*

<sup>78</sup> See Zifcak, *supra* note 71, at 70. The author provides a detailed analysis on the lessons learned from the Libyan intervention and its implications on the Responsibility to Protect doctrine. See *id.* at 71–72.

<sup>79</sup> See Petra Perisic, *Implications of the Conflicts in Libya and Syria for the Responsibility to Protect Doctrine*, 67 ZBORNIK PFZ 783, 796 (2017).

<sup>80</sup> Peter Tzeng, *Humanitarian Intervention at the Margins: An Examination of Recent Incidents*, 50 VAND. J. TRANSNAT'L L. 415, 450 (2017).

<sup>81</sup> See *id.*

<sup>82</sup> *Id.* at 451.

<sup>83</sup> See SCHARF, STERIO & WILLIAMS, *supra* note 38, at 79.

<sup>84</sup> See *id.*

thousands of lives, there was little objection to U.S.'s actions at the time,<sup>85</sup> but without a consistent legal justification there was no *opinio juris* supporting a right of humanitarian intervention.

#### F. 2017 Airstrikes in Syria

On April 4, 2017, Syria used chemical weapons against civilians, killing at least ninety people.<sup>86</sup> Subsequently, President Donald Trump ordered the firing of fifty-nine missiles at a Syrian airfield where the chemical weapons used in the civilian attack were stored.<sup>87</sup> The attack was a unilateral one, with President Trump claiming he acted to protect “America’s ‘vital national security interest’ to prevent the use of chemical weapons.”<sup>88</sup> Other than this, there was no other justification for the airstrikes and they were largely considered *sui generis*, another exception to international law that held no precedential value.<sup>89</sup>

A lack of legal justification did not prevent the international community from defending the airstrikes as a valid response to chemical weapon usage.<sup>90</sup> The U.K., the E.U., and many Middle Eastern countries offered statements of support, with only Syria, Russia, Bolivia, and Iran objecting to the airstrikes.<sup>91</sup> But again, without a legal rationale, the case could not contribute to a new norm.

#### G. 2018 Airstrikes in Syria

Nearly a year later, on April 7, 2018, the Syrian government was once again suspected to have launched another chemical attack on civilians in Douma, Syria.<sup>92</sup> The UNSC remained deadlocked on the course of action to take. The U.S., U.K., and France launched a military strike on Syria on April 14, 2018, hitting three chemical weapons facilities.<sup>93</sup>

Not only were the 2018 airstrikes different from the 2017 airstrikes in that the U.S. did not act alone, the striking countries claimed their actions were valid

---

<sup>85</sup> See *id.* at 71.

<sup>86</sup> Alaa Al-Faqir, *Syria: Events of 2018*, HUM. RTS. WATCH (2018), <https://perma.cc/7G98-UPFE>.

<sup>87</sup> *Syria War: US Launches Missile Strikes in Response to “Chemical Attack,”* BBC NEWS (Apr. 7, 2017), <https://perma.cc/VHH6-2WPQ>.

<sup>88</sup> *Id.*

<sup>89</sup> See SCHARF, STERIO & WILLIAMS, *supra* note 38, at 80.

<sup>90</sup> See Scharf, *supra* note 33, at 6.

<sup>91</sup> See *id.* at 7.

<sup>92</sup> See Julian Borger & Patrick Wintour, *Syria Chemical Attack: US and Russia Fail to Reach UN Agreement as Tensions Rise*, GUARDIAN (Apr. 10, 2018), <https://perma.cc/FF8G-9DAC>.

<sup>93</sup> *U.S. Airstrikes on Syria: What We Know*, USA TODAY (Apr. 14, 2018), <https://perma.cc/ZVN8-YR8Y>.

under international law.<sup>94</sup> France stated its actions were consistent with the values espoused in the U.N. Charter, the U.S. claimed it responded proportionately and legitimately to the use of chemical weapons and crimes against humanity taking place in Syria, and the U.K. cited humanitarian intervention to stop the use of chemical weapons in the country.<sup>95</sup> For the first time, the U.K. tied its views on humanitarian intervention to actual forcible measures.<sup>96</sup> Though the U.S. did not explicitly justify its actions through humanitarian intervention, it did claim it was in agreement with the U.K., which would make it the first time it recognized humanitarian intervention in international law.<sup>97</sup> In the UNSC, only three countries voted for a resolution condemning the 2018 coalition airstrikes.<sup>98</sup>

### III. USING THE UNITING FOR PEACE RESOLUTION IN THE FACE OF HUMANITARIAN CRISES

As the discussion above demonstrates, the UNSC is blocking its own way with regards to maintaining international peace and security, and countries are growing increasingly frustrated. In 2021, at the Seventy-fifth Annual Session of the UNGA, countries lamented UNSC inaction in mass atrocity situations and asked for UNSC veto restraint when facing them.<sup>99</sup>

One way to overcome UNSC paralysis is through the UNGA Uniting for Peace Resolution. Adopted in 1950, with a vote of 52 for and 5 against,<sup>100</sup> the Uniting for Peace Resolution permits the referral of matters of international peace and security to the more representative UNGA.<sup>101</sup> The Uniting for Peace Resolution is an attempt to close the gap left behind when the UNSC is deadlocked.

---

<sup>94</sup> See SCHARF, STERIO & WILLIAMS, *supra* note 38, at 80.

<sup>95</sup> See *id.* at 80–82. The authors detail each country's justification for the 2018 airstrikes in Syria.

<sup>96</sup> See *id.* at 83. The U.K.'s justifications for humanitarian intervention were as follows:

- (1) There is convincing evidence, generally accepted by the international community as a whole, of extreme humanitarian distress on a large-scale, requiring immediate and urgent relief.
- (2) It must be objectively clear that there is no practicable alternative to the use of force if lives are to be saved; and
- (3) The proposed use of force must be necessary and proportionate to the aim of relief of humanitarian suffering and must be strictly limited in time and in scope to this aim (i.e., the minimum necessary to achieve that end and for no other purpose.

<sup>97</sup> See *id.*

<sup>98</sup> See *id.* at 85.

<sup>99</sup> See *Summary of the 2021 UN General Assembly Plenary Meeting on the Responsibility to Protect*, GLOB. CTR. RESP. PROTECT (June 8, 2021), <https://perma.cc/Y2CD-88GD>.

<sup>100</sup> See Yasmine Nahlawi, *Overcoming Russian and Chinese Vetoes on Syria through Uniting for Peace*, 24 J. CONFLICT & SECURITY L. 111, 112 (2019).

<sup>101</sup> See *id.* at 113.

## A. Legality of the Uniting for Peace Resolution

When one or two permanent members of the UNSC exercise their veto to block a resolution from passing, the matter can be referred to the UNGA, either through a UNSC procedural vote or simple majority vote through the UNGA.<sup>102</sup> There is no right to veto a UNSC procedural vote.<sup>103</sup> After a matter is referred to the UNGA, it needs a two-thirds majority to give recommendations for collective measures, including the use of force.<sup>104</sup> Though a matter originally could not be referred to the UNGA if the UNSC was actively considering it,<sup>105</sup> the UNGA's role has evolved to the extent that it now regularly makes recommendations on issues the UNSC is seized with.<sup>106</sup>

The Uniting for Peace Resolution's strength comes from the fact that it highlights powers the UNGA already has under the U.N. Charter, as opposed to introducing new norms.<sup>107</sup> For instance: special sessions can be called by either the UNSC or a majority of the UNGA under Article 20 of the U.N. Charter.<sup>108</sup> The processes of deciding procedural matters and non-procedural matters are outlined in Articles 27(2) and 27(3) of the U.N. Charter.<sup>109</sup> The procedure through which the UNGA can make recommendations on how to respond to breaches of peace and acts of aggression are found in Article 18(2) of the U.N. Charter. Article 18(2) also qualifies such matters as important ones and gives a two-thirds majority of the UNGA the power to make decisions these matters.<sup>110</sup>

---

<sup>102</sup> See *id.*

<sup>103</sup> See *id.*

<sup>104</sup> See *id.*

<sup>105</sup> See *id.* at 116.

Article 11(2) of the UN Charter is also instructive regarding the UNGA's authority to recommend measures in situations affecting international peace and security when the UNSC is paralyzed. This Article states that the UNGA 'may make recommendations' on 'questions relating to the maintenance of international peace and security . . . except as provided in Article 12.' Article 12 states that 'the General Assembly shall not make any recommendation with regard to [a] dispute or situation' if the UNSC is 'exercising in respect of [this] dispute or situation the functions assigned to it in the present Charter . . . unless the Security Council so requests.' Essentially, 'these two Articles allow the UNGA to make recommendations on issues pertaining to international peace and security if the UNSC is not actively seized of these issues or if the UNSC otherwise requests such a recommendation from the UNGA.'

<sup>106</sup> See *id.* at 117.

<sup>107</sup> See *id.* at 113; see also Ved P. Nanda, *The Security Council Veto in the Context of Atrocity Crimes, Uniting for Peace and the Responsibility to Protect*, 52 CASE W. RES. J. INT'L L. 119, 136 (2020).

<sup>108</sup> See Nanda, *supra* note 107, at 136.

<sup>109</sup> See *id.*

<sup>110</sup> See Nahlawi, *supra* note 100, at 115.

## B. Can the UNGA Recommend the Use of Force?

As explained in detail above, the prohibition on the use of force acquired the status of *jus cogens* and is an integral part of international law.<sup>111</sup> The UNSC's power to authorize countries to use force contradicts Article 2(4), but is lawful since the U.N. Charter binds member countries, not the U.N. itself.<sup>112</sup> Just as the UNSC's powers under Chapter VII of the U.N. Charter are independent of the U.N. Charter's blanket ban on force, the UNGA, acting as an organ of the U.N., can recommend the use of force to maintain international security and peace.<sup>113</sup>

This position is not without its detractors, as allowing this interpretation would open the floodgates for any organization, regional or international, to begin authorizing the use of force, severely undermining the U.N. Charter.<sup>114</sup> However, as proponents of this position point out, a complete reading of the U.N. Charter demonstrates that other than self-defense, only the U.N. can decide which situation calls for an exception to the prohibition on the use of force.<sup>115</sup> The framework for the use of force and its exceptions is laid out in the U.N. Charter, but requires an "integrated reading of the Charter, whereby all the rules pertaining to the use of force have been connected to each other to yield the currently accepted framework."<sup>116</sup>

The UNSC can make binding recommendations to use force, but there is disagreement about whether this is an exclusive power. Article 24 of the U.N. Charter discusses responsibilities when it comes to maintaining international peace and security, and it clearly gives the UNSC primary responsibility to do so.<sup>117</sup> However, this power is not exclusionary, and over time the residual authority to preserve peace was found to vest in the UNGA.<sup>118</sup> The measures U.N. organs can take in this regard can be found in Article 11(2).<sup>119</sup> While only the UNSC can

---

<sup>111</sup> Andrew J. Carswell, *Unblocking the UN Security Council: The Uniting for Peace Resolution*, 18 J. CONFLICT & SECURITY L. 453, 461 (2013).

<sup>112</sup> *See id.*

<sup>113</sup> *See* Nanda, *supra* note 107, at 139.

<sup>114</sup> *See id.* at 139; Nahlawi, *supra* note 100, at 117.

<sup>115</sup> *See* Nahlawi, *supra* note 100, at 118.

<sup>116</sup> *Id.* at 119–20.

<sup>117</sup> *See id.* at 116.

<sup>118</sup> *See id.*

<sup>119</sup> *See id.* at 117. Article 11(2) of the U.N. Charter provides:

"The General Assembly may discuss any questions relating to the maintenance of international peace and security brought before it by any Member of the United Nations, or by the Security Council, or by a state, which is not a Member of the United Nations in accordance with Article 35, paragraph 2, and, except as provided in Article 12, may make recommendations with regard to any such questions to the state or states concerned or to the Security Council or to both.



authorize action that would be binding upon members, the UNGA also has the right to recommend it.<sup>120</sup> Since countries can obey or ignore the UNGA's recommendations, they are not mandatory. Therefore, recommendations authorizing the use of force would not violate Article 11(2), or the spirit of the U.N. Charter, or usurp power normally reserved for the UNSC.<sup>121</sup>

While there is little argument about the UNGA's ability to give general recommendations, there is dispute over the form recommendations could take to preserve peace. The fear that the UNGA could step on the UNSC's toes by authorizing force may be one of the reasons the Uniting for Peace Resolution has not been utilized as effectively as it could have been. However, a careful reading of the U.N. Charter shows that both organs could use their legal powers to maintain international peace and security. Despite this, no matter has been referred to the UNGA from the UNSC since 1982, though the Uniting for Peace Resolution has been used a handful of times to create peacekeeping forces when the UNSC has been paralyzed by a veto.<sup>122</sup>

### C. What Could the UNGA Do in Syria?

Of the twelve resolutions vetoed by Russia or China relating to the conflict in Syria since 2011, six addressed the use of chemical weapons and the remaining addressed general measures, accountability, and civilian safety.<sup>123</sup> None of them paved the way for regime change in Syria, as the vetoing countries alleged.<sup>124</sup> In the face of all these vetoes, the Uniting for Peace Resolution could have been invoked at any time to put an end to the atrocities being committed in Syria and to protect innocent civilians. Specifically, the Syrian conflict should have been referred to the UNGA, since it took nine members of the UNSC to refer a matter to the UNGA under the Uniting for Peace Resolution and each vetoed resolution relating to Syria had nine member votes.<sup>125</sup> Additionally, voting on the conflict in the UNGA demonstrated that the margins existed to recommend military action in Syria.<sup>126</sup> UNGA action could have begun with sanctions and the severing of diplomatic ties,<sup>127</sup> but as a last resort, it could have exercised its powers to recommend military strikes to respond to chemical weaponry under the Uniting

---

Any such question on which action is necessary shall be referred to the Security Council by the General Assembly either before or after discussion."

<sup>120</sup> See *id.* at 118.

<sup>121</sup> See *id.*

<sup>122</sup> See Nanda, *supra* note 107, at 141.

<sup>123</sup> See Nahlawi, *supra* note 100, at 129–141.

<sup>124</sup> See *id.* at 141.

<sup>125</sup> See *id.* at 128.

<sup>126</sup> See *id.*

<sup>127</sup> See *id.* at 143.

for Peace Resolution if there was a deadlock in the UNSC. Since the threshold to invoke it was so high, the Uniting for Peace Resolution was not exercised in Syria.<sup>128</sup>

#### D. What Can the UNGA Do in Russia?

The Uniting for Peace Resolution was never invoked in the Syrian conflict or in the Myanmar genocide. Instead, U.N. organs came up with novel ways to address the UNSC deadlock in those conflicts. Some examples include the International, Impartial, and Independent Mechanism in Syria, created by the UNGA,<sup>129</sup> and the Independent Investigative Mechanism for Myanmar, created by the U.N. Human Rights Council.<sup>130</sup>

In the aftermath of the Russian invasion, eleven countries voted in favor, Russia voted against, and three countries, including China, abstained from the UNSC vote invoking the Uniting for Peace Resolution and calling for an emergency session on the UNGA.<sup>131</sup> The first step the UNGA took was to pass a resolution condemning Russian aggression.<sup>132</sup> Since the UNGA is more “democratic” than the unrepresentative UNSC, even a nonbinding resolution carried political weight. Additionally, it was a way to record the international reaction towards Russia’s illegal acts of aggression.

Under the Uniting for Peace Resolution, the UNGA can recommend additional steps against Russia, including sanctions. Even though many countries have unilaterally levied sanctions against Russia, hitting their financial, energy, telecommunications, transport, export, and trade sectors,<sup>133</sup> these sanctions are not multilateral. A UNGA recommendation to sanction Russia, though not binding, would again increase political pressure on countries to follow through. Going through the UNGA could ensure the sanctions are uniform, consistent,

---

<sup>128</sup> See *id.* at 120.

<sup>129</sup> See Catherine Marchi-Uhel, *Klatsky Endowed Lecture in Human Rights*, 51 CASE W. RES. J. INT’L L. 223 (2019). The International, Impartial, and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011 can collect evidence to help other national, international, or regional courts prosecuting people for crimes committed in Syria. The IIIM cannot prosecute individuals itself.

<sup>130</sup> See *Independent Investigative Mechanism for Myanmar*, U.N. HUM. RTS. COUNCIL, <https://perma.cc/MJJ7-RWWC>. The Independent Investigative Mechanism for Myanmar collects evidence for future prosecutions in national, international, and regional courts.

<sup>131</sup> See *UNSC Emergency Vote on Ukraine*, *supra* note 9.

<sup>132</sup> See *General Assembly Resolution on Ukraine*, *supra* note 13.

<sup>133</sup> See Michelle Toh et al., *The List of Global Sanctions on Russia for the War in Ukraine*, CNN (Feb. 28, 2022), <https://perma.cc/MDB2-3MQ8>.

and do not have any unintended consequences, as the UNGA could require human rights impact assessments, due process guarantees, and judicial review.<sup>134</sup>

#### IV. CONCLUSION

A failure to invoke the Uniting for Peace Resolution in Syria resulted in missing a chance to “facilitate international action that was both legally sound as well as morally legitimate.”<sup>135</sup> Where the Syrian conflict was a tragic demonstration of the effects of a lack of an international response in the face of the UNSC paralysis, the global community’s quick enforcement of international norms in the Russian invasion of Ukraine illustrates how international law remains relevant. It also paints a picture of how international law should work to promote international peace and security. In addition to the UNGA resolution, a Commission of Inquiry on Ukraine was created by the Human Rights Council,<sup>136</sup> and the International Criminal Court Prosecutor was asking for authorization to begin an investigation into the war crimes being committed in Ukraine by Russia.<sup>137</sup>

This global response should be the turning point in international law, and other U.N. bodies, such as the UNGA, should be called upon more to act where the UNSC is unwilling to. In the face of division, the UNGA should remain the forum where member states unite to forge a path forward through peaceful resolution. A more representative body will be able to enforce international law uniformly. Additionally, forcible and non-forcible measures authorized or recommended by a U.N. organ carry the weight and the force of law, creating valuable precedent rather than eroding time-honored prohibitions on the use of force. Through collective action, international justice can become the norm and the consequences of violating international law can become concrete.

---

<sup>134</sup> See Rebecca Barber, *UN Security Council Won’t Respond to Myanmar’s Coup, But the General Assembly Can*, JUST SEC. (Feb. 25, 2021), <https://perma.cc/G6NT-W5NZ>.

<sup>135</sup> Nahlawi, *supra* note 100, at 143.

<sup>136</sup> See Human Rights Council Establishes an Independent International Commission of Inquiry to Investigate All Alleged Violations of Human Rights in the Context of the Russian Federation’s Aggression against Ukraine, U.N. HUM. RTS. COUNCIL (Mar. 4, 2022), <https://perma.cc/F9YR-DQJG>.

<sup>137</sup> See Office of the Prosecutor, *Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine: “I have decided to proceed with opening an investigation.”* INT’L CRIM. CT. (Feb. 28, 2022), <https://perma.cc/33XN-HRTF>.