



The United Nations and Atrocity Crimes: The Over- Politicisation of Decision- Making in the Security Council

Martin Davenas

2018/6



Abstract

This paper critically assesses the ability of the United Nations (UN) to respond to atrocity crimes such as genocide, war crimes, crimes against humanity or ethnic cleansing. It argues that, as a result of the over-politicisation of the decision-making process in the Security Council (SC), the UN has failed on many occasions to protect human lives and human rights. Too often, the international community has ignored urgent crises or responded too late. In other cases, interventions ostensibly carried out in the defence of human rights have been used to further the specific interests of powerful states and/or they have had serious adverse effects on local populations. The paper concludes that this has larger consequences for the legitimacy of the SC and the UN as a whole, pointing to the urgent need to reform the decision-making process in the SC.

This paper is published as part of the UCL Global Governance Institute's Working Paper series. More GGI publications are available at:
<https://www.ucl.ac.uk/global-governance/research-articles>

Suggested citation: Davenas, M. (2018). The United Nations and Atrocity Crimes: The Over-Politicisation of Decision-Making in the Security Council, *UCL Global Governance Institute Working Paper Series*, 2018/6.

Dissertation submitted in part-fulfilment of the Masters Course in Human Rights Law, Queen Mary University of London (QMUL), September 2018.



Contents

- 1. Introduction1**
 - 1.1. The Notion of Atrocity Crime2
 - 1.2. The Role of the Security Council in Relation with Human Rights and Humanitarian Law4
 - 1.3. The Issue of Over-Politicisation5
- 2. The Security Council: A Fertile Ground for the Over-Politicisation of Issues8**
 - 2.1. The Wide Range of Prerogatives of the Security Council.....8
 - 2.2. Inequality in the Security Council..... 12
- 3. The Role of the Veto in the Security Council’s Inability to Protect Victims from Atrocity Crimes 16**
 - 3.1. A Late Reaction to Apartheid in South Africa 16
 - 3.2. A Shield for States Committing Human Rights Violations 19
 - 3.3. Failure to Act and Unauthorised Use of Force21
- 4. The Pernicious Effects of UN Responses to Atrocity Crimes23**
 - 4.1. The Direct Adverse Effects of UN Measures on Human Rights23
 - 4.2. The Consequences of Failed Interventions on the Organisation’s Unity26
- 5. Conclusion.....30**

Bibliography

- Primary Sources34
- Secondary Sources35

1. Introduction

Dag Hammarskjöld, Secretary-General of the United Nations (UN) between 1953 and 1961, once famously said that the UN was created not to give mankind heaven but to save it from hell.¹ However, upon reading the numerous criticisms against the world organisation, one could wonder if it has indeed managed to do so. The UN serves a great many purposes: it pursues international peace and security, the development of friendly relations among nations, co-operation in solving international problems and in promoting and encouraging respect for human rights and fundamental freedoms, and finally it aspires to be a centre for harmonising the action of nations towards those purposes.² As underlined by the fourth purpose, the UN aims at being a forum where nations would coordinate their action and compromise in order to tackle world problems and ensure international peace and security. However, the UN has on many occasions failed to fulfil that promise. It has often been unable to prevent 'hell' which is one of the main reasons it has come under heavy fire: 'It has infuriated with its numbing bureaucracy, its institutional cover-ups of corruption and the undemocratic politics of its security council. It goes to war in the name of peace, but has been a bystander through genocide'.³

This work is not a summary criticism of the UN as a whole, but a study of the decision-making process in the UN Security Council (SC) with regard to responding to mass violations of human rights, and more specifically 'atrocities crimes'. It cannot be denied that the UN has had successes, as asserted by Connors and Schmidt, who write that '[t]he growth of the UN human rights protection system has contributed to an improvement in the human rights situation in many countries and many thematic areas', and add that the visibility of the UN's human rights work 'ensures dissemination of knowledge of international human rights standards and mechanisms'.⁴ However, this paper argues that, as a result of over-politicisation in the SC, the UN has failed on many occasions to protect human lives and human rights. Too often, the international community has ignored urgent crises or responded too late. In other cases, interventions ostensibly carried out in the defence of human rights have been used to further the specific interests of powerful states and/or they have had serious adverse effects on local populations. The paper concludes that this has larger consequences for the legitimacy

¹ Dag Hammarskjöld, Address at University of California Convocation, Berkeley, California, 13 May 1954, United Nations Press Release SG/382 <<http://ask.un.org/faq/14623>> accessed 29 June 2018.

² United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI, art 1.

³ Chris McGreal, '70 years and half a trillion later: what has the UN achieved?' *The Guardian* (7 September 2015) <<https://www.theguardian.com/world/2015/sep/07/what-has-the-un-achieved-united-nations>> accessed 15 April 2018.

⁴ Jane Connors and Markus Schmidt, 'United Nations' in Daniel Moeckli et al (eds), *International Human Rights Law* (2nd edn, Oxford University Press 2014) 395.

of the SC and the UN as a whole, pointing to the urgent need to reform the decision-making process in the SC.

This introductory chapter examines the key notions of atrocity crimes and over-politicisation and the role of the SC in responding to serious human rights violations.

1.1. The Notion of Atrocity Crime

The Framework of Analysis of Atrocity Crimes (FAAC) of the UN Office of the Special Advisers on the Prevention of Genocide and the Responsibility to Protect is a document released in 2014 and intended to be a tool for the prevention of these crimes against humankind. The acts associated with these crimes 'affect the core dignity of human beings'⁵ and as such they are a matter of grave concern for the international community. These crimes are genocide, war crimes and crimes against humanity as well as ethnic cleansing, which is not an independent crime in international law, but encompasses violations of international human rights or humanitarian law which may constitute one of the three legally recognised atrocity crimes.

It is necessary to define these crimes: War crimes are 'serious breaches of international humanitarian law committed against civilians or enemy combatants during an international or domestic armed conflict'.⁶ Genocide, on the other hand, is not exclusively limited to situations of armed conflict. The crime of genocide is an act committed 'with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group'. This act can be killing members of the group, or causing them serious bodily or mental harm, the deliberate infliction of conditions of life calculated to bring about the physical destruction of the group, the imposition of measures intended to prevent births within the group, and finally the forcible transfer of children of the group to another group.⁷ The notion of crimes against humanity was first defined in the Charter of the Nuremberg Tribunal of 1945,⁸ and today, the Rome Statute of the International Criminal Court (ICC) gives a list of acts such as murder, enslavement,

⁵ UN Office of the Special Advisers on the Prevention of Genocide and the Responsibility to Protect, 'Framework of Analysis for Atrocity Crimes – A Tool for Prevention' *UN.org* (2014) <<https://www.un.org/en/genocideprevention/publications-and-resources.html>> downloaded 8 March 2018.

⁶ UN Office of the High Commissioner for Human Rights (OHCHR), *DRC: Mapping Human Rights Violations 1993-2003*, (Info Note No2, 'War Crimes, Crimes against Humanity and Genocide') <https://www.ohchr.org/Documents/Countries/CD/FS-2_Crimes_Final.pdf> accessed 7 June 2018.

⁷ Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948, entered into force 12 January 1951) 78 UNTS 277, art 2.

⁸ Charter of the International Military Tribunal - Annex to the Agreement for the prosecution and punishment of the major war criminals of the European Axis (8 August 1945) 82 UNTC 280 (London Agreement) art 6(c).

deportation, persecutions or other inhumane acts which, 'when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack', constitute crimes against humanity.⁹ Unlike genocide, crimes against humanity need not target a specific group, but any civilian population. Finally, the term 'ethnic cleansing' refers to 'a purposeful policy designed by one ethnic or religious group to remove by violent and terror-inspiring means the civilian population of another ethnic or religious group from certain geographic areas'.¹⁰ In practice, acts amounting to ethnic cleansing can also constitute crimes against humanity, genocide, or war crimes.

The FAAC presents a set of risk factors and indicators that help identify the warning signs, and thus act early to prevent atrocities. In the area of human rights, preventing and putting an end to atrocity crimes must be considered the highest priority for the UN, because these acts are inconsistent with the most basic human rights. Their degree of atrocity amounts to the denial of individuals' human quality. These crimes are by nature violations of human rights as primarily recognised by the Universal Declaration of Human Rights of 1948 (UDHR), which notably proclaims the right to life, the prohibition of discriminations of all kind, of slavery or torture, of arbitrary arrest, etc.¹¹ Those basic human rights will inevitably be breached in situations of atrocity crimes. This alone is reason enough for the international community to make any effort to prevent atrocity crimes. Furthermore, the rights that are violated in these situations are indeed so basic that they are requirements for the enjoyment of other rights. These other rights' implementation, in comparison, might be deemed less 'urgent', albeit no less important. For instance, one could consider that rights of an economic or social nature (or 'second generation' rights) can only be promoted and implemented if the individuals have already reached a satisfying standard of 'safety' of living. However, this does not mean that the SC does not act to protect other rights: '[t]he humanitarian operations in Somalia (1992-93) and Albania (1997), mandated to secure humanitarian aid and food distribution to populations affected by famine or financial crisis, respectively, are an indication that economic rights, and notably the right to food, are just as essential to peace, security, and stability of world order'.¹²

⁹ *Rome Statute of the International Criminal Court* (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 90.

¹⁰ United Nations, Final Report of the Commission of Experts Established Pursuant to United Nations Security Council Resolution 780 (1992), UN SCOR, UN Doc S/1994/674 (27 May 1994), Annex, at 3, 33.

¹¹ UN General Assembly, *Universal Declaration of Human Rights*, UNGA Res 217 III(A) (10 December 1948).

¹² Daphna Shrager, 'The Security Council and Human Rights - from Discretion to Promote to Obligation to Protect' in Bardo Fassbender (ed), *Securing Human Rights? Achievements and Challenges of the UN Security Council* (OUP 2011) 33.

1.2. The Role of the Security Council in Relation with Human Rights and Humanitarian Law

Initially, the SC was not meant to play a role in the field of human rights. These matters were supposed to be dealt with by the General Assembly (GA), which can discuss and make recommendations on 'any questions or any matters within the scope of the [UN Charter]', and by the Economic and Social Council, which also has the power to 'make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all' and co-ordinate the activities of the specialised agencies.¹³ However, a link has been created and progressively emphasised between the primary responsibility of the SC, i.e. to maintain international peace and security, and the protection of human rights. This was done through a 'teleological' interpretation of the SC's mission, as justified by the doctrine of 'implied powers' of international organisations. Skubiszewski explains that implied powers are 'certain powers which are additional to those expressly stipulated in the constituent instrument. These additional powers are necessary or essential for the fulfilment of the tasks or purposes of the organization, or for the performance of its functions, or for the exercise of the powers explicitly granted'.¹⁴ The International Court of Justice (ICJ) has affirmed that implied powers can exist to ensure the effective functioning of the organisation and the highest standard of efficiency¹⁵ and also if these powers serve a statutory purpose of the organisation.¹⁶ In this second situation, the ICJ stated that 'when the Organization takes action which warrants the assertion that it was appropriate for the fulfilment of one of the stated purposes of the United Nations, the presumption is that such action is not *ultra vires* the Organization'.¹⁷ Thus, the SC has gradually expanded its mandate to cover the enforcement of human rights and international humanitarian law, since violations of these corpora of law may constitute threats to international peace and security.

The first occurrence of this connection was the reaction, in 1966, of the SC to the situation in Southern Rhodesia, a British territory in southern Africa, where a racist white minority regime adopted a Unilateral Declaration of Independence in contradiction with 'the inalienable rights of the people of Southern Rhodesia to freedom and independence'.¹⁸ The

¹³ UN Charter (n 2) art 10, art 62, art 63.

¹⁴ Krzysztof Skubiszewski, 'Implied Power of International Organizations' in Yoram Dinstein and Mala Tabory (ed), *International Law at a Time of Perplexity. Essays in Honour of Shabtai Rosenne* (Martinus Nijhoff 1989) 859.

¹⁵ *Effect of awards of compensation made by the UN Administrative Tribunal*, Advisory Opinion, [1954] ICJ Rep 47.

¹⁶ *Certain Expenses of the United Nations* (Article 17, Paragraph 2 of the Charter), Advisory Opinion, [1962] ICJ Rep 151.

¹⁷ *Ibid.*

¹⁸ UNSC Res 232 (16 December 1966) UN Doc S/RES/232, para 4.

Council declared in Resolution 232 that this situation was a threat to international peace and security, and decided for the first time to apply economic sanctions under Article 41 of the UN Charter.¹⁹ Since then, the SC has used its power 'to determine the existence of any threat to the peace, breach of the peace, or act of aggression' under Article 39 to reassert that 'not only conduct which breaches the *jus ad bellum*, but also conduct in violation of norms which serve to protect the individual, such as genocide or ethnic cleansing and serious breaches of human rights [...], as well as grave breaches of humanitarian law [...] constitute threats to international peace and security'.²⁰

Fassbender points out that two sets of issues exist in the work of the SC on human rights: the first are the 'outcome-oriented' issues, which relate to situations where promoting and respecting human rights is the direct goal of the SC's action; the second are the 'procedure-oriented' issues, which address 'questions of safeguarding human rights in the course of action directed towards other goals', such as maintaining and restoring peace by imposing economic sanctions on a state or on individuals.²¹ Thus, the Council's mission in the area of human rights is dual: it must directly take action to deal with violations of human rights which amount to threats to international peace and security, and also prevent actions taken for other purposes from adversely affecting the fundamental rights of peoples and individuals.

1.3. The Issue of Over-Politicisation

Political contestation is an inevitable feature of any international organisation: everything is about compromising and bargaining. Freedman writes that 'there is a misconception that the UN can 'take action'; the reality is that states determine whether action is taken'.²² In this perspective, when the UN acts, it is really a state or a group of states which managed to prevail in the SC who are acting 'through' the UN. However, the degree to which political concerns influence decisions of the SC is often deplored.

In a 2008 meeting of the Third Committee of the General Assembly of the UN, which focuses on examining social, humanitarian and human rights questions, the representative from Bangladesh said that 'politicization of human rights [is] an obstacle to the non-selective

¹⁹ Ibid.

²⁰ Vera Gowlland-Debbas, 'The Security Council as Enforcer of Human Rights' in Bardo Fassbender (ed), *Securing Human Rights? Achievements and Challenges of the UN Security Council* (OUP 2011) 42.

²¹ Bardo Fassbender, 'The Role for Human Rights in the Decision-making Process' in Bardo Fassbender (ed), *Securing Human Rights? Achievements and Challenges of the UN Security Council* (OUP 2011) 74.

²² Rosa Freedman, *Failing to Protect - The UN and the Politicisation of Human Rights* (Hurst & Company 2014) 13.

and universal application of human rights standards', and called for 'a convergence of political willingness to curb human rights violations'.²³

The notions of 'politicisation' and 'over-politicisation' need to be defined. Sangmpam defines over-politicisation as 'a pattern of political features, institutional behaviors and settings, and state formats that denotes the absence of compromise or tenuous compromise in politics as a competition over property, goods, services, values, and above all, political power'.²⁴ Put simply, Oxford Dictionary defines the term 'political', among other meanings, as what is 'done in the interests of status or power within an organisation rather than as a matter of principle'.²⁵ As stated earlier, a certain degree of politicisation is inevitable in any organisation where sovereign states cooperate, therefore the term 'over-politicisation' will refer to a situation where a decision is taken in the interests of power rather than as a matter of humanity, righteousness or compassion, and specifically benefits one or a few states by giving them what they perceive as a 'political advantage'. Thus, in these conditions the decision-making process may be biased, as states' political willingness is directed by their own agenda, and the principles of human rights and fundamental freedoms become secondary concerns.

This over-politicisation has two types of consequences for decision-making: some states will not be willing to implement human rights or humanitarian law as they prioritise purposes linked to their own interests; or they will *claim* to act to implement human rights, but in a way to attain other goals, thus 'using' human rights for political aspirations instead of putting human rights at the centre of interventions. The notion of sovereignty implies that states are free to consent (or not) to treaty obligations. Anand writes that 'the law of nations is not one enacted by some higher authority and superimposed upon States; it arises directly from their consent. It is a law not of subordination, but of co-ordination'; and using Dupuis' expression, he added that 'a society of States in which each member is bound only by its own free will would [...] be an "anarchy of sovereignties"'.²⁶ Thus, when becoming party to a treaty, a State consents to a restriction of its own sovereignty, as affirmed by the Permanent Court of International Justice in 1923, in the SS 'Wimbledon' case.²⁷

²³ UNGA Third Committee (28th and 29th meetings) 28 October 2008, Press release GA/SHC/3929 <<https://www.un.org/press/en/2008/gashc3929.doc.htm>> accessed 3 July 2018.

²⁴ SN Sangmpam, *Comparing Apples and Mangoes: The Overpoliticized State in Developing Countries* (State University of New York Press 2007) 40.

²⁵ Oxford Dictionaries, 'Political' *Oxforddictionaries.com* <<https://en.oxforddictionaries.com/definition/political>> accessed 20 February 2018.

²⁶ R P Anand, 'Sovereign equality of States in international law (Volume 197)' in *Collected Courses of the Hague Academy of International Law* (The Hague Academy of International Law 1986) <http://dx.doi.org/10.1163/1875-8096_pp1rdc_ej.9789024735211.009_228> accessed 4 July 2018.

²⁷ The SS 'Wimbledon', United Kingdom and ors v Germany, Judgment, (1923) PCIJ Series A no 1.

Several scholars and political leaders have identified the notion of sovereignty as the main barrier to achieving international peace and protecting human rights. For instance, Lord Attlee, former British Prime Minister, said that '[t]he root of the trouble in today's world is that we believe in anarchy. We believe in the complete, or almost complete, right of every nation to do what it chooses. One still has the feeling that anything like a surrender of sovereignty is contrary to our human nature'.²⁸ According to Krabbe, international law is not founded on 'the unreal foundations of the sovereignty of the State', its binding force is built on its 'spiritual nature and, therefore, upon the fact that it is a product of men's sense of right'.²⁹ The idea of 'anarchy of sovereignties' corresponds to this notion that states' freedom to act as they see fit is only limited by those obligations to which they have consented. Thus, when speaking of human rights and humanitarian law, sovereignty may be considered an obstacle, since the pragmatism of state actors makes it less likely that they would consent to obligations of this nature, and therefore restrain their freedom, without a 'compensation' of a political nature. Sovereignty is also an obstacle to the integration of states in international organisations, as the line between the internal affairs of a state and the competence of the international organs is heavily contested. As such, sovereignty is often invoked to prevent foreign interference in a state's internal issues. In this regard, Max Huber said that 'for any ethic of a supranational community [sovereignty] is a mortal poison'.³⁰

Therefore, the SC's work on preventing and putting an end to atrocity crimes has often been hindered by political differences between members, and especially permanent members. This assessment requires a determination of the extent to which states' political agendas influence the UN response to atrocity crimes, as well as a closer study of the ways in which this politicisation of human rights-related discussions constitutes an obstacle to the effective enforcement of basic human rights, and therefore of peace and security. In the foreword of the FAAC, then Secretary-General Ban Ki-Moon reasserted the UN's commitment to 'upholding the promise of "never again" and drawing lessons from past failures'. He also cited the 2005 World Summit Outcome Document to reiterate that the international community has committed, should states fail in their primary responsibility to protect their populations from atrocity crimes, to 'take collective action in a timely and decisive manner in line with the United Nations Charter'.³¹ However, the UN has fallen short of this promise.

²⁸ Lord Clement Attlee, quoted in Benjamin M. Becker, *Is the United Nations Dead?* (Whitmore 1969) 130.

²⁹ Hugo Krabbe, *The Modern Idea of the State*, George H Sabine and Walter J Shephard (eds.), (D Appleton and company 1922) <<https://archive.org/details/modernideaofstat00krabiala>> accessed 1 June 2018.

³⁰ Max Huber, quoted in Anand (n 26) 36.

³¹ OHCHR (n 6).

This paper will identify some of these failures and analyse their reasons, by first considering how the very framework of the SC, with its fundamental inequalities, further enables the interferences of politics in the decision-making process, notably through the veto power granted to permanent SC members. The paper will then consider situations of atrocity crimes where the UN has shown no response and consequently allowed the protraction of humanitarian crises. Finally, attention will be given to situations where UN responses have been inadequate either because they adversely affected human rights, or because they damaged the credibility or even the legitimacy of the organisation as a whole.

2. The Security Council: a Fertile Ground for the Over-Politicisation of Issues

The SC has at its disposal a number of powers to respond to threats to international peace and security, from non-binding resolutions addressing human rights concerns or mandating experts to report on countries suspected of committing violations of international human rights or humanitarian law³², to economic sanctions or sending peacekeeping or peace-building missions increasingly built around human rights promotion, as well as establishing *ad hoc* international tribunals. These powers can have grave and sometimes unforeseeable consequences on the targeted state or regime, which means they should not be used lightly. Such decisions should therefore ideally be the fruit of a discussion in which states participate as equals to weigh in on the advantages and disadvantages of each tool, in particular with regards to their human rights implications. However, the structure of the SC itself prompts the over-politicisation of issues that should only revolve around the attainment of peace and the fulfilment of human rights.

2.1. The Wide Range of Prerogatives of the Security Council

There are three main ways in which the SC can actively react to atrocity crimes, as opposed to more 'passive' reactions such as non-binding resolutions. Chapter VII of the UN Charter, entitled 'Action with respect to threats to the peace, breaches of the peace and acts of aggression', notably provides in Article 42 that the SC 'may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security'.³³ The existence of a standing UN army, as originally provided by Chapter VII, never came to be; '[w]hether because countries were reluctant to cede control of their own soldiers, or

³² UNSC Res 1888 (30 September 2009) UN Doc S/RES/1888.

³³ UN Charter (n 2) art 42.

because the Cold War undermined any potential collaboration between East and West, the UN has been left all but toothless'.³⁴ Therefore, the UN has relied a lot on methods of pacific settlement of disputes and non-military actions, but it has also authorised unilateral uses of force by coalitions of states for collective purposes, 'out of necessity, in the absence of a military force at the Council's disposal, and on the basis of the implied powers doctrine'.³⁵ These 'privatisations' of the enforcement powers of the SC have been widely criticised, notably regarding resolutions authorising 'the use of all necessary means', like in Somalia, East Timor, Rwanda or Bosnia and Herzegovina. These authorisations hurt the credibility of the UN, which lacks the authority to enforce its resolutions 'itself' and has to transfer its responsibilities to these 'coalitions of the willing', along with broad discretionary powers in the pursuit of their objectives. Further, Article 41 states that the SC may decide what measures not involving the use of force are necessary to give effects to its decisions. These measures are often of an economic nature, and can involve 'complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations'.³⁶ It should be noted, that 'in practice Article 41 was designed to be read in conjunction with Article 39'³⁷, which means that a determination of the existence of 'a threat to the peace, a breach of the peace or an act of aggression' is required before the SC can consider non-forcible sanctions, as goes for coercive measures of a military nature under Article 42.

Thus, the SC has discretion in the determination of the existence of a threat to international peace and security, as well as in the choice of adequate measures, whether they be provisional measures (Article 40), economic sanctions (Article 41), or military action (Article 42). There is, however, a debate regarding the extent of this discretion. Some have argued that the SC's discretion is absolute, while others have contended that although the SC does benefit from a total discretion in the determination of a threat within the meaning of Article 39, the decision of what type of action is to be taken is limited by general international law, notably *jus cogens* and the purposes and principles of the UN. Indeed, Article 24 of the Charter specifies that '[i]n discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations'.³⁸ A third possibility has been considered, where, on the contrary, the SC is free to decide on whatever type of action it sees fit, however,

³⁴ Freedman (n 22) 17.

³⁵ Gowlland-Debbas (n 20) 55.

³⁶ UN Charter (n 2) art 41.

³⁷ Jeremy M Farrall, *United Nations Sanctions and the Rule of Law* (CUP 2007) 64.

³⁸ UN Charter (n 2) art 24.

'whether it has passed the threshold constituted by Article 39 is something that can be measured by means of judicial criteria'.³⁹

It seems preferable that the SC be limited by general international law both in the determination of the threat *and* the choice of an appropriate reaction, first because, as elaborated further, the SC is a political body with an iniquitous composition, which prompts the interferences from political interests unrelated to human rights; and second, because actions taken under Chapter VII can have dire consequences on the stability of a region, and as a matter of credibility and legitimacy the actions of the UN have to comply with its principles and purposes. With regards to its ambitions to act as 'law-maker' and 'law-enforcer' for the international community, the UN must at all times respect international law, and in particular *jus cogens* and the purposes and principles of the UN. The specifics of these powers are subject to criticisms: for instance, in 1994, the SC authorised a multinational intervention in Haiti, to restore democracy by supporting the 'prompt return of the legitimately elected President, Jean-Bertrand Aristide' and over concerns of human rights violations by the military regime in power.⁴⁰ This intervention was criticised by many states, which contested the existence of a threat to international peace and security and denounced the intervention as an attempt to extend the SC's powers beyond those explicitly granted by the Charter.⁴¹

It has been argued that the international community has a responsibility to use peaceful means to help protect populations from atrocity crimes, and has to be prepared, 'should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity', to take collective action 'in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII'.⁴² This notion of 'Responsibility to Protect' (or 'R2P') is consistent with the purposes of the UN, but while some argue that this responsibility is an *erga omnes* obligation, others contend that it is only a right and not, strictly speaking, a responsibility. One could also wonder if, should the UN fail to fulfil this responsibility, a sole state, or group of states, could intervene in its stead. However, this presents risks in terms of legitimacy of the intervening actors, and also makes the intervention more likely to be influenced by these states' parallel motivations, and thus more likely to be over-politicised.

³⁹ Erika De Wet, *The Chapter VII Powers of the United Nations Security Council* (Hart Publishing 2004) 133.

⁴⁰ UNSC Res 940 (31 July 1994) UN Doc S/RES/940.

⁴¹ Julia Preston, 'U.N. authorizes invasion of Haiti' *Washington Post* (1 August 1994) <https://www.washingtonpost.com/archive/politics/1994/08/01/un-authorizes-invasion-of-haiti/395ff392-0788-4f62-b516-436c8fa35f37/?noredirect=on&utm_term=.db0178501e1f> accessed 7 July 2018.

⁴² UN General Assembly, 2005 World Summit Outcome Document, UNGA Res 60/1 (24 October 2005) UN Doc A/RES/60/1.

The concept of R2P is coherent with the purpose of the UN, but not with the practice of the SC, which is free not to intervene if no consensus can be reached. In that regard, Gowlland-Debbas asks the following question:

*'Surely the 'responsibility to protect' if it is to go beyond a mere pious buzzword must mean that the Security Council has an obligation, and not mere discretion, to take some action in such circumstances [...] and that inaction in the face of violations of peremptory norms must entail the concurrent responsibility of the Security Council and the states which compose it, in particular its permanent members?'*⁴³

Finally, apart from sanctions not involving the use of force and military interventions, the SC has created *ad hoc* tribunals in order to prosecute the perpetrators of war crimes, genocide, crimes against humanity and ethnic cleansing. The first ones were the International Criminal Tribunal for the former Yugoslavia (ICTY), established in 1993⁴⁴, and the International Criminal Tribunal for Rwanda, established in 1994⁴⁵, which paved the way for the creation of the ICC. Although it is difficult to assess how effective these tribunals are in deterring future crimes, it has been argued that these early tribunals heralded a 'major step in the implementation of [international humanitarian law]', 'by affirming the customary nature of certain principles, reducing the gap in the rules applicable to international and non-international armed conflicts and by adapting more traditional provisions of [international humanitarian law] to modern realities through a more flexible interpretation'.⁴⁶ These tribunals are a relatively effective tool to fight against impunity: for example, the ICTY has sentenced 90 individuals for genocide, crimes against humanity, violations of the laws and customs of war, and grave breaches of the Geneva Conventions. However, the ICC in particular has come under heavy fire for its various flaws: for instance, it relies entirely on the cooperation of member states and it is regularly accused of being costly, inefficient and biased because, as of April 2017, nine out of its ten investigations have focused on Africa.⁴⁷

Therefore, the very mechanisms at the disposal of the SC hinge on political considerations. For example, 'contracting out' armed interventions to coalitions of states can leave these intervening states with a wide margin of discretion, enabling them to make their policies and objectives prevail, without sufficient control from the SC. Also, the fact that no

⁴³ Gowlland-Debbas (n 20) 58.

⁴⁴ UNSC Res 827 (25 May 1993) UN Doc S/RES/827.

⁴⁵ UNSC Res 955 (8 November 1994) UN Doc S/RES/955.

⁴⁶ International Committee of the Red Cross, 'Ad hoc tribunals' *Icrc.org* (29 October 2010) <<https://www.icrc.org/en/document/ad-hoc-tribunals>> accessed 9 July 2018.

⁴⁷ Jessica Hatcher-Moore, 'Is the world's highest court fit for purpose?' *The Guardian* (5 April 2017) <<https://www.theguardian.com/global-development-professionals-network/2017/apr/05/international-criminal-court-fit-purpose>> accessed 9 July 2018.

criteria exist to determine the existence of a threat to the peace within Article 39 of the UN Charter implies that the discussion is bound to be ripe with political concerns. As a result, for instance, the SC may refuse to examine violations committed by a state allied to a great power to avoid the latter's discontent. Finally, accusations that the SC has been trying to extend its powers beyond those explicitly granted, and that its approach has been biased have created defiance from many actors, such as China, the League of Arab States, the Non-Aligned Movement, or the African Union. This defiance aggravates the phenomenon of over-politicisation, because it raises, in turn, political obstacles to the implementation of human rights and humanitarian law, which, like general international law, is based on the consent of states. Even though the SC has tremendous powers and primary authority in matters of international peace and security, the use of these powers can prove to be very problematic. After studying the most important prerogatives of the SC in reaction to atrocity crimes, it is necessary to analyse its composition, and its most controversial mechanism: the veto power.

2.2. Inequality in the Security Council

One of the most frequent criticism against the UN is its 'obsolescence particularly in terms of its underrepresented geopolitical structure and decision-making procedures'.⁴⁸ Indeed, after World War II (WWII), it was clear that a close cooperation between the great powers was necessary if international peace was to be maintained. This cooperation took the form of the SC, as the 'executive branch' of the UN. Today, it has fifteen members, five of them have a permanent seat (China, France, Russia, the United Kingdom and the United States) while the others are elected on a rotating basis. The 'perks' of permanent membership include the power to veto the decisions of the Council. The reasoning behind institutionalising inequality in this way was that '[a]lthough there would be universality of membership in the UN as a whole, there would also need to be a core group responsible for maintaining the peace'.⁴⁹ Thus, it was pragmatic reasoning that led the founders of the UN to believe that in order to be truly efficient, as opposed to the League of Nations and its problematic rule of unanimity, the great powers, especially the United States and the Soviet Union, had to accept their responsibility to work together. If this inequality between permanent members of the SC and every other member state of the UN may have been understandable in the context of the post-WWII order, it is in fact inherently flawed and it does not reflect today's realities.

⁴⁸ Seryon Lee, 'The Feasibility of Reforming the UN Security Council: Too Much Talk, Too Little Action?' (2011) 4(2) *Journal of East Asia and International Law* 405, 406.

⁴⁹ Sabine Hassler, *Reforming the UN Security Council Membership: The Illusion of Representativeness* (Routledge 2012) 32.

The privileged position of the permanent members of the SC (the 'P5') is the fruit of difficult negotiations which took place first at Dumbarton Oaks in 1944, and then in San Francisco in 1945. One of the most heated debates was related to the veto power: its existence, whether it could apply to procedural or substantive decisions, whether it would be available to a permanent member that is a party to the dispute, etc. Indeed, many states were opposed to the veto in the draft texts, such as the Arab states or the Latin American states. From the earliest negotiations, the veto has been an 'icon of inequality in the UN system'.⁵⁰ The position of the smaller states was that 'leadership is acceptable; domination is intolerable'. However, the 'Big Five' used a discourse of reassurance and affirmed that the veto would not apply to procedural matters 'but would apply to all matters under the headings of peaceful settlements and enforcement measures',⁵¹ and that they would only use it rarely, where their vital interests would be threatened. They also argued that inequality in the UN's decision-making process was natural and inevitable, and that it was their responsibility, as great powers, to lead the world organisation. A US representative said at the San Francisco Conference that 'there should be no distinction in the world organization between little powers, middle powers, and great powers. The last, because of their resources, had a larger degree of responsibility for the maintenance of peace than the others, but that was not a responsibility which they had sought'.⁵² There is a hypocrisy in this statement as it seems evident that it was indeed what the Big Five had sought: a way to institutionalise their superiority, a way to protect their national interests while dictating terms and settlements to other states.

Cohen demonstrates that the SC, although an executive organ supposed to be mainly competent in emergency situations related to threats to the peace, does in fact also enjoy a legislative power and a constituent power.⁵³ The legislative power comes from the advantages of permanent membership in the Council, since 'if the P5 are in agreement, all it takes for binding action is to successfully pressure or entice four of the remaining ten non-permanent members'⁵⁴, in accordance with Article 27(3) of the UN Charter. Further, Article 109 of the Charter provides that any alteration of the Charter 'shall take effect when ratified in accordance with their respective constitutional processes by two thirds of the Members of the United

⁵⁰ Ian Hurd, *After Anarchy - Legitimacy and Power in the United Nations Security Council* (Princeton University Press 2007) 86.

⁵¹ *Ibid* 100.

⁵² United Nations, 'Documents of the United Nations Conference on International Organization San Francisco 1945 Volume XI' 433 <https://archive.org/stream/documentsoftheun008818mbp/documentsoftheun008818mbp_djvu.text> accessed 12 July 2018.

⁵³ Jean Cohen, 'A Global State of Emergency or the Further Constitutionalization of International Law: A Pluralist Approach' (2008) 15(4) *Constellations: An International Journal of Critical and Democratic Theory* 456.

⁵⁴ *Ibid* 462.

Nations including all the permanent members of the Security Council'.⁵⁵ Therefore, the veto power of the P5 extends to constitutional changes, thus '[w]hatever informal changes the P5 manages to push through the Council cannot be undone via the amendment process, because any permanent member can veto the corrective'.⁵⁶ This is why the veto is the 'icon of inequality': it enables the Big Five to disregard the very rules they make and 'there can be no enforcement of Charter principles against a permanent member or against someone they protect'.⁵⁷

Another practice that hinders the SC decision-making process is that of the 'pocket' or 'hidden' veto, i.e. 'cases in which draft resolutions are not formally tabled because of the threat of veto by one or more permanent members'.⁵⁸ This means that the very expectation of the veto can be enough to deter members of the SC to bring up certain issues if they know or suspect that a permanent member does not want these discussions to take place. For example, one could reasonably think that the lack of effective reaction of the UN to the Chinese repression in Tibet may be due to the fact that Council members know that China will not allow scrutiny of its governance in this territory. A SC member's diplomat said in 2008, after violent protests in the regional capital of Lhasa, that 'even calling for a discussion of this issue would be rejected by the Chinese and people wonder whether this would accomplish anything'.⁵⁹ Even though the impact of this practice is difficult to assess, because it is precisely characterised by the absence of a formal draft or proposition, it still shows that the P5 did not exactly keep their promise to only use the veto rarely. Thus, the veto power cannot just directly prevent the UN from taking action in cases of atrocity crimes it can also indirectly prevent certain controversial issues to be discussed in the SC in the first place.

There is therefore a fundamental incompatibility within the UN Charter: on one hand, Article 2(1) proclaims the sovereign equality of all member states⁶⁰, on the other hand, Article 27(3) requires the concurring votes of all permanent members for SC decisions on substantive matters. Even though, in 1945, these five states were arguably better-placed to maintain the peace, who was to say that any of these permanent members would not, one day, behave in a way that could threaten the peace, commit atrocity crimes, or support a regime that does? By making their membership contingent on the existence of a veto power to their benefit, the

⁵⁵ UN Charter (n 2) art 109.

⁵⁶ Cohen (n 53) 465.

⁵⁷ Ibid 465.

⁵⁸ Security Council Report, 'The Veto' Research Report 2015/3 (19 October 2015) <<https://www.securitycouncilreport.org/research-reports/the-veto.php>> accessed 8 June 2018.

⁵⁹ Louis Charbonneau, 'UN Council keeps silent on Tibet protests' *Reuters* (17 March 2008) <<https://www.reuters.com/article/us-china-tibet-un/u-n-council-keeps-silent-on-tibet-protests-idUSN1758766020080317>> accessed 14 July 2018.

⁶⁰ UN Charter (n 2) art 2(1).

Big Five made sure that the UN could not be more than a tool between their hands, and that it could never be used against them. This inequality has dramatic consequences on the ability of the UN to react to atrocity crimes or mass violations of human rights in general. Inequality is a source of over-politicisation. First, it drives attention away from strictly human rights, humanitarian law, or peace-related issues. For instance, a permanent member of the SC who commits violations of its obligations under the Charter will inevitably face a much more tempered response from the UN than any other state, due to its privileged position. Second, it is evident that this ascendancy of the permanent members in the SC makes interferences from personal ambitions and political agendas in the decision-making process inevitable.

In that regard, the US-led invasion of Iraq in 2003, without UN authorisation (aside from a thirteen years old resolution authorising member-states cooperating with Kuwait to use all necessary means to restore international peace and security in the area⁶¹), has shown how a state could potentially be influenced by motives not related to maintaining peace and enforcing human rights. This intervention had three main stated objectives: 'to disarm Iraq of weapons of mass destruction [WMD], to end Saddam Hussein's support for terrorism, and to free the Iraqi people'.⁶² However, both the existence of said WMDs and the links between Iraq's government and Al-Qaeda have never been proven, and these rationales have been widely criticised. It has also been claimed that one of the objectives of the operation was to gain control of the Iraqi oil fields and, while this cannot be ascertained, it is clear that the privileged position of the United States in the SC prevented any reaction from the UN in the face of this unauthorised and arguably illegal unilateral intervention in Iraq.

Finally, inequality in the SC breeds over-politicisation because it erodes 'representativity' in the organisation and therefore undermines its legitimacy. The UN is indeed often seen as nothing but a puppet of certain powerful states⁶³ which encourages responses of a political nature to UN requests or recommendations. Indeed, if the principle of sovereign equality is perceived as a lie, why should smaller states accept the UN's dominion and willingly cooperate with those few that are above all others?

By ensuring since the earliest existence of the UN that they could maintain the power to protect their (widely-defined) national interests, the P5 created a most fertile ground for the over-politicisation of issues. The actions of the SC are thus biased, dictated by the political

⁶¹ UNSC Res 678 (29 November 1990) UN Doc S/RES/678.

⁶² George W. Bush, 'President Discusses Beginning of Operation Iraqi Freedom' *The White House* (Radio Address of 22 March 2003) <<https://georgewbush-whitehouse.archives.gov/news/releases/2003/03/20030322.html>> accessed 29 June 2018.

⁶³ Siham Al Najami and Mariam M. Al Serkal, 'UN "is a mere puppet under America's control"' *Gulf News Lebanon* (Dubai, 3 May 2009) <<https://gulfnews.com/news/mena/lebanon/un-is-a-mere-puppet-under-america-s-control-1.249803>> accessed 13 July 2018.

interests of the 'first among equals'. It is necessary to study the use of the veto power to determine the extent to which it is often part of a political strategy unconcerned with human rights issues.

3. The Role of the Veto in the Security Council's Inability to Protect Victims from Atrocity Crimes

The UN has failed to come up with an effective response to several crises, such as in Darfur, Gaza, Ukraine or Syria. This inability to reach agreement 'pervades a considerable portion of the Council's work. This in turn hampers the Council's effectiveness and over time could erode its legitimacy'.⁶⁴ An absence of reaction from the SC can lead to the protraction of a crisis and the continuation of atrocity crimes, as well as impunity of the perpetrators who, shielded by a veto power, are not brought to justice.

3.1. A Late Reaction to Apartheid in South Africa

The crime of apartheid, as defined in the 1973 International Convention on the Suppression and Punishment of the Crime of Apartheid, includes similar policies and practices of racial discrimination as practised in southern Africa, which involve inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them.⁶⁵ The Convention notably highlights the fact that inhuman acts resulting from the policy of apartheid are a crime against humanity, and emphasises that 'apartheid and its continued intensification and expansion seriously disturb and threaten international peace and security'.⁶⁶ Therefore, the SC is competent to deal with apartheid, as a threat to the peace. However, early efforts to impose sanctions on South Africa were frequently blocked in the SC by the United States, the United Kingdom and France. According to Adams, '[e]ven though apartheid was condemned by the UN General Assembly in 1966 as constituting a crime against humanity, there were no less than ten draft resolutions aimed at imposing sanctions and other measures that were vetoed at the Security Council'.⁶⁷

⁶⁴ Security Council Report (n 58).

⁶⁵ UNGA International Convention on the Suppression and Punishment of the Crime of Apartheid (adopted 30 November 1973, entered into force 18 July 1976) (1973) A/RES/3068(XXVIII).

⁶⁶ Ibid.

⁶⁷ Simon Adams, 'Speech at the International Conference on Limiting the Use of Veto at the UN Security Council in the Case of Mass Atrocities, Sciences Po Paris, 21 January 2015' *Globalr2p.org* <<http://www.globalr2p.org/publications/351>> downloaded 25 May 2018.

For example, the three Western members of the P5 notably vetoed economic sanctions aimed at 'dissuading the South African racist régime from pursuing its abhorrent policy of apartheid'.⁶⁸ Another draft resolution proposed to the Council even went as far as recommending to the GA the immediate expulsion of South Africa from the UN, in compliance with Article 6 of the Charter, since its policy of apartheid was a violation of the principles of the Charter, of resolutions of the GA as well as the SC, and inconsistent with the UDHR.⁶⁹ When these three members were not vetoing those drafts, they were abstaining: for instance, Resolution 282 of 1970 called for a strengthening of the arms embargo against South Africa, and was adopted with twelve in favour, and three abstentions, from France, the United Kingdom and the United States.⁷⁰

These vetoes were perceived as a challenge to any UN action aiming to end apartheid. The main reason given by the vetoing states was that such sanctions would have damaged the whole economy of the country, and thus would have harmed the millions of black South Africans who depended on their work for foreign firms. The United States, the United Kingdom and France were among the biggest trade partners of South Africa, a partnership worth billions of dollars in investment, therefore these three states did not want to see the South African economy collapse. A Czech delegate said that the vetoing of proposals for the adoption of such sanctions undoubtedly resulted from the 'growing financial and strategic involvement of the United States and Great Britain in South Africa'.⁷¹ Mindful of the fact that more than three hundred American companies were active in South Africa, the Nixon administration (1969-1974) 'viewed close relations with the South African government as vital to its own economic and security interests', and thus 'adopted dialogue as a strategy and continued to moderate criticism of South Africa at the United Nations'.⁷²

However, growing media and public attention to the situation in South Africa, where riots and violence were pervasive, created pressure to condemn the racist regime more firmly. Moreover, in 1977, the new US President Jimmy Carter, 'made human rights a cardinal aspect of foreign policy and took a personal interest in ending apartheid', thus shifting away from the 'Nixon-era *realpolitik*'.⁷³ In the same year, Resolution 418 made the UN arms embargo on South Africa mandatory for all member-states.⁷⁴ Apartheid (and South Africa's isolation from

⁶⁸ UNSC revised draft resolution (26 October 1977) UN Doc S/12312/Rev.1.

⁶⁹ UNSC draft resolution (24 October 1974) UN Doc S/11543.

⁷⁰ UNSC Res 282 (23 July 1970) UN Doc S/RES/282.

⁷¹ J T Nguyen, 'U.S. and Britain block U.N. sanctions against South Africa', *United Press International* (23 June 1986) <<https://www.upi.com/Archives/1986/06/23/US-and-Britain-block-UN-sanctions-against-South-Africa/8848519883200/>> accessed 16 July 2018.

⁷² Saul Dubow, *Apartheid, 1948-1994* (OUP USA 2014) 174.

⁷³ *Ibid.*

⁷⁴ UNSC Res 418 (4 November 1977) UN Doc S/RES/418.

the international community) would only end with South Africa's first non-racial election in 1994, after more than forty-five years of segregation.

As members of the SC, the P5's primary responsibility is maintaining international peace and security, and therefore protect human rights. When acting in the framework of the SC, the member-states' primary focus should be on these goals. However, by using the veto power to delay any real change in South Africa, for fear of jeopardising their privileged trade relations and their own investments in the country, the United States, the United Kingdom and France organised their objectives into a hierarchy. The priority was to maintain the trade partnership with South Africa, even though this state was committing serious and widespread violations of human rights. Therefore, the three Western SC permanent member states downplayed South Africa's actions as long as they could, until finally the pressure was such that an economic cooperation was not possible anymore and South Africa's isolation was complete. Who knows how much earlier apartheid could have ended if the SC had been unanimously devoted to act?

This shows how human rights and fundamental freedoms can become a secondary concern in comparison to political or economic advantages, especially for permanent member-states that strive to maintain and expand their global influence. It is an example of 'realpolitik', or 'political realism', which means 'politics based on national 'interests' or material considerations as distinct from moral objectives'.⁷⁵ Although the relations between South Africa and the Western permanent SC member states was undoubtedly an important partnership, and even though the veto was established in order for the P5 to protect their national interests, it is deplorable that this economic advantage was, in their eyes, worth turning a blind eye to the epitome of racist and colonialist regime that was South Africa during apartheid. Indeed, when the SC takes action, permanent members are expected to cooperate to maintain international peace and security, since Article 24(2) of the Charter makes it a duty for the SC to act in accordance with the purposes and principles of the UN.⁷⁶ Thus, one could argue that by considering, even temporarily, that their economic relations with South Africa were a higher priority than the protection of the fundamental rights of almost 30 million black South Africans, the SC, or at least these three members, acted in contradiction with the purposes and principles of the UN Charter, and that this was a consequence of the prioritisation of national political and economic interests which were not compatible with the protection of human rights.

⁷⁵ Susie Dent, 'Realpolitik' in E Cobham Brewer (ed), *Brewer's Dictionary of Phrase & Fable* (19 edn. Chambers Harrap Publishers 2012).

⁷⁶ UN Charter (n 2) art 1, art 24(2).

3.2. A Shield for States Committing Human Rights Violations

Freedman outlines the inequality ensuing from the veto power as follows:

'When looking at voting records of the Security Council, it swiftly becomes apparent that the five permanent members as well as their closest political allies can and will be protected by the veto. China has blocked every resolution on Tibet that has been proposed at the Security Council. The US vetoes any action against Israel. And, most recently, Russia has ensured that the Security Council takes no action against the Syrian regime'.⁷⁷

Not only do permanent members of the Council use an extensive interpretation of 'national interests' to veto any action of the UN meant to curb violations of human rights taking place in other states that would endanger these interests, they also use it to avoid scrutiny of their own actions and those of their allies. The Syrian conflict gives evidence of the consequences a veto can have on the lives of thousands of people.

Russia is often accused of protecting Syria in the Council by vetoing many resolutions related to the Syrian conflict, such as resolutions on investigations into suspected chemical attacks, or on Western attempts to impose sanctions on the Syrian regime over these attacks. The close diplomatic relations between Russia and Syria are based on a 1980 Treaty of Friendship and Cooperation through which the two states pledged 'to cooperate and coordinate their actions in case of a threat to peace and security of one of the parties'. Accordingly, since 2015, Russia has been helping Syria to fight what it calls 'illegal military groups'.⁷⁸ As of April 2018, '[m]ore than 465,000 Syrians have been killed in the fighting, over a million injured, and over 12 million - half the country's prewar population - have been displaced'.⁷⁹ The Russian involvement consists of bombing campaigns against both terrorist groups and US-backed anti-Assad rebel groups, as well as sending military advisers to help the Syrian army. Russia is allegedly Syria's main weapons supplier, and not only does Russia directly benefit from sales of weapons, it also uses the Syrian conflict as a 'showroom for Russian arms sales' and an opportunity to battle-test 'high-precision weaponry, missiles, helicopters, planes and cruise missiles'.⁸⁰ Alexander Markov, member of Russia's Council on Foreign and Defence Politics, claims that participation in the conflict was a 'colossal

⁷⁷ Freedman (n 22) 17.

⁷⁸ Rosoboronexport, 'Cooperation with Syria' *Roe.ru* (2018) <<http://roe.ru/eng/export/siriya/>> accessed 18 July 2018.

⁷⁹ Al Jazeera, 'Syria's civil war explained from the beginning' *Aljazeera.com* (14 April 2018) <<https://www.aljazeera.com/news/2016/05/syria-civil-war-explained-160505084119966.html>> accessed 15 July 2018.

⁸⁰ Mansur Mirovalev, 'Syria's war: A showroom for Russian arm sales' *Al Jazeera* (6 April 2016) <<https://www.aljazeera.com/news/2016/04/syria-war-showroom-russian-arms-sales-160406135130398.html>> accessed 14 April 2018.

advertising and Russia [was expecting] new purchases worth tens of billions of dollars'.⁸¹ This is another example of how politics can impact on decisions that should be strictly based on humanitarian concerns. Although Russia has vetoed a dozen resolutions since the beginning of the conflict in 2011, it has also backed some resolutions that were unanimously adopted, such as Resolution 2401 of February 2018 that demanded a 30-day ceasefire and unimpeded passage for humanitarian aid.⁸² While UN-mediated peace talks between the government and the rebels are still fruitless, 'Western powers have accused Russia of undermining the peace talks by setting up a parallel political process'⁸³, and therefore damaging the unity of the Council. Russia explained its position by accusing the United States of looking for a 'pretext' to justify an American military action against the Syrian Arab Republic.⁸⁴

These dissensions are arguably transforming the SC into 'an instrument for political posturing between the permanent members'.⁸⁵ While permanent members veto their rivals' resolutions, the Organisation for the Prohibition of Chemical Weapons (OPCW) fact-finding mission in Syria reported in June 2018 that sarin and chlorine were 'very likely used as [chemical weapons]' in several occasions in March 2017.⁸⁶ The Independent International Commission of Inquiry on the Syrian Arab Republic has allegedly amassed many testimonies and evidences of war crimes and crimes against humanity committed by all sides, from the use of chemical weapons to sexual and gender-based crimes committed 'in a campaign to punish opposition communities'.⁸⁷ The UN has yet to come up with an adequate response to these atrocity crimes, since even its ceasefire, unanimously adopted in February 2018, has reportedly been violated⁸⁸, which is further evidence of the lack of credibility and authority of

⁸¹ Ibid.

⁸² UNSC Res 2401 (24 February 2018) UN Doc S/RES/2401.

⁸³ BBC, 'Syria: Does Russia always use a veto at the UN Security Council?' *BBC.co.uk* (16 April 2018) <<https://www.bbc.co.uk/news/world-43781954>> accessed 18 July 2018.

⁸⁴ Mythili Sampathkumar, 'UN in deadlock after US and Russia vote against each other to investigate Syria chemical weapons attack', *The Independent* (New York, 10 April 2018) <<https://www.independent.co.uk/news/world/syria-chemical-attack-douma-latest-us-russia-un-deadlock-investigation-a8298671.html>> accessed 15 July 2018.

⁸⁵ Amnesty International, 'UN: Russia and China's abusive use of veto "shameful"' *Amnesty.org* (28 February 2017) <<https://www.amnesty.org/en/latest/news/2017/02/un-russia-and-chinas-abusive-use-of-veto-shameful/>> accessed 12 March 2018.

⁸⁶ Organisation for the Prohibition of Chemical Weapons, 'OPCW Confirms Use of Sarin and Chlorine in Ltamenah, Syria, on 24 and 25 March 2017' *OPCW.org* (13 June 2018) <<https://www.opcw.org/news/article/opcw-confirms-use-of-sarin-and-chlorine-in-ltamenah-syria-on-24-and-25-march-2017/>> accessed 19 July 2018.

⁸⁷ Stephanie Nebehay, 'War crimes evidence in Syria "overwhelming", not all can be pursued: UN' *Reuters* (26 March 2018) <<https://www.reuters.com/article/us-mideast-crisis-syria-warcrimes/war-crimes-evidence-in-syria-overwhelming-not-all-can-be-pursued-u-n-idUSKBN1H22GN>> accessed 19 July 2018.

⁸⁸ UN News, 'Those responsible for war crimes in Syria "will be held accountable for what they have done," says UN rights chief' *News.un.org* (2 March 2018) <<https://news.un.org/en/story/2018/03/1003981>> accessed 12 July 2018.

the world organisation. The damage caused to the legitimacy of the UN by the over-politicisation of the SC decision-making process is perceptible in the behaviour of its permanent members: on one hand, Russia is undermining the UN's authority by openly supporting the Syrian government, protecting it from any UN action that would endanger the regime and initiating its own peace process through a 'Syrian National Dialogue Congress'; on the other hand, the United States and its allies, France and the United Kingdom, seem to also have given up the idea of an effective UN response to these atrocity crimes, for they started in April 2018 joint strikes against the Syrian Arab Republic on the basis of 'humanitarian intervention'.

3.3. Failure to Act and Unauthorised Use of Force

On the one hand, it seems that regarding 'out-come oriented' issues, the UN lacks the credibility, the authority and the resources to react adequately and diligently to any situation of atrocity crime. On the other hand, states that take unilateral action in response to these issues lack the legitimacy to do so and may be waging illegal and/or 'unjust' and illegitimate wars.

It seems there are two positions on the unauthorised use of force. The first is utilitarian and pragmatic, it assumes that, as the UN is inevitably gridlocked and unable to prevent violations of human rights, the responsibility to put an end to these crimes falls to individual states, or coalitions of states, willing to act, even if their intervention is not authorised by the SC. These unauthorised humanitarian interventions can be deemed illegal since Article 53 of the Charter notably states that 'no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council...' ⁸⁹, and must therefore be considered violations of the prohibition of the use of force in international law. However, advocates of these interventions claim that even if they are illegal, they are still legitimate, and defensible on moral grounds. The Independent International Commission on Kosovo, tasked with determining the adequacy of the unauthorised NATO bombing in Yugoslavia in 1999, said that this gap between legality and legitimacy is not 'healthy', notably because '[a]cknowledging the tension with most interpretations of international law either inhibits solidarity with civilian victims of severe abuse by territorial governments, or seriously erodes the prohibition on the use of force that the World Court and other authorities have deemed valid'. ⁹⁰ One could argue that the solution to the endless debate on legitimacy and legality of humanitarian intervention resides in reforming the UN: if the

⁸⁹ UN Charter (n 2) art 53.

⁹⁰ Independent International Commission on Kosovo, *The Kosovo Report* (OUP 2000) 186.

organisation was indeed able to, at the least, take a stand in any case of atrocity crimes, then there would be no grounds for unilateral intervention in the first place.

This is coherent with the second approach, which is closer to the conceptual foundations of the UN and the letter of its law. According to this position, an intervention unauthorised by the UN is illegal *and* illegitimate, because it is not the international community that is acting but a state or group of states. Therefore, there is no form of representativity, and the intervention could be construed as one or a few states meddling in the affairs of another state, for reasons which could be biased, unfounded, questionable, or even secret, and in any case, contested. Not only does this erode the credibility and authority of the UN, it also fuels criticisms against Western influence and motivations. It also affects the perception of human rights around the world more generally: for example, the post-colonialist critique of human rights is based on the argument that there were, and still are, 'direct connections between the Enlightenment universalizing project and the history of European and Western conquest', and that even today, 'human rights are [...] irretrievably entrenched in a colonial logic'.⁹¹ Human rights are thus often suspected of being nothing more than an 'instrument of foreign policy', rather than a 'corrective to domestic shortcomings'.⁹² In conclusion, over-politicisation is a consequence of institutional inequalities, but also, evidently, a cause of *de facto* inequalities. Therefore, some states benefit from a 'preferential treatment' in the way that they are extremely unlikely to face sanctions or interventions because they are protected by a permanent member of the SC or they, themselves, are one of the P5. This mutual causal link between inequality and over-politicisation makes it near impossible to find ways to encourage UN interventions or sanctions strictly focused on human rights issues and impervious to political incentives.

There are obstacles of a political nature that prevent the UN from actively reacting to even atrocity crimes, but it does not mean that the UN never acts. However, when the world organisation does respond to threats to the peace, there are sometimes adverse consequences for human rights in the concerned region. Therefore, the failures of the UN are not strictly limited to absences of reaction, but also encompass inadequate interventions, that can not only fail to reach the stated objectives, but also actively worsen the humanitarian or human rights crisis, or exacerbate suspicions against the UN human rights discourse.

⁹¹ Marie-Bénédicte Dembour, 'Critiques' in Daniel Moeckli et al (eds), *International Human Rights Law* (OUP 2014) 68.

⁹² Richard Falk, *Human Rights Horizons: The Pursuit of Justice in a Globalizing World* (Routledge 2000) 91.

4. The Pernicious Effects of UN Responses to Atrocity Crimes

Although the veto is a symbol of inequality in the UN and a vector of over-politicisation in the SC, this over-politicisation does not only manifest itself through this power of the permanent members. Even when the UN acts to maintain or enforce the peace, it often lacks the political willingness or the resources to take appropriate and efficient action. Inadequate actions taken by the SC are either the fruit of incompetence or of an apprehension to take direct vigorous actions against the concerned parties which can result in the protraction of human rights issues. In other cases, the justifications of UN-authorised operations are fiercely contested, which can consequently greatly damage the credibility of the UN.

4.1. The Direct Adverse Effects of UN Measures on Human Rights

UN economic sanctions can be either comprehensive or targeted. The first type of sanction is frequently criticised because it consists in a general embargo on a state and therefore affects the whole population of this state. Indeed, a 'comprehensive embargo inevitably hurts those at the bottom of the economic heap', which brings up the question of 'whether the costs of the sanctions are worth the results'.⁹³ The sanctions against Iraq in 1990 are a well-known example of the adverse effects that UN sanctions can have on civilians. In August 1990, the SC decided to inflict economic sanctions on Iraq after its invasion of Kuwait which constituted a breach of international peace and security.⁹⁴ Among other criticisms, it was notably pointed out that humanitarian suffering of innocent civilians ensued from this comprehensive embargo. There were also concerns over the lack of clear criteria for lifting the embargo, and it was believed that these sanctions would not put direct pressure on Iraq's leaders.⁹⁵ Gowlland-Debbas explains the major flaw of comprehensive sanctions as follows:

'Comprehensive sanctions are difficult to end once set in place, since a targeted entity is hostage to the subjective assessment of a single veto-wielding member as to whether the attainment of the objectives of sanctions have been reached, particularly [...]

⁹³ Gary Clyde Hufbauer and Barbara Oegg, 'Targeted Sanctions: A Policy Alternative?' Paper for a symposium on 'Sanctions Reform? Evaluating the Economic Weapon in Asia and the World' *Peterson Institute for International Economics* (23 February 2000) <<https://piie.com/commentary/speeches-papers/targeted-sanctions-policy-alternative>> accessed 28 July 2018.

⁹⁴ UNSC Res 661 (6 August 1990) UN Doc S/RES/661.

⁹⁵ Global Policy Forum, 'Sanctions against Iraq' *Globalpolicy.org* <<https://www.globalpolicy.org/previous-issues-and-debate-on-iraq/sanctions-against-iraq.html>> accessed 28 July 2018.

where, as in Iraq, the goalposts were moved, which resulted in subjecting Iraq to sanctions for over a decade'.⁹⁶

The sanctions were finally lifted in 2003 with Resolution 1483 which also recognised the occupation of Iraq by the United States and the United Kingdom. It is notably the impact on Iraqi children that drew the attention of the international community on the fate of civilians in Iraq. The exact number of victims is contested and cannot be assessed, but there is little doubt that thousands of children 'who could reasonably have been expected to live died before their fifth birthdays' as a result of thirteen years of economic sanctions imposed on Iraq, sharply restricting all foreign trade.⁹⁷ Sanctions had disastrous effects, such as pervasive malnutrition, increase in infant mortality rates, spread of epidemics, and the collapse of the educational system.⁹⁸

In addition to these sanctions, the military intervention in Iraq must also be mentioned as a striking example of the role of politics in the decision-making process in the SC. Although China, France and Russia were initially opposed to the idea of a foreign intervention in Iraq, at least before the final report of the arms inspectors charged with ascertaining the reality of the existence of WMD in Iraq, the United States and the United Kingdom were able to use their political muscle to have Resolution 1483 adopted on May 22, 2003. The resolution was condemned in strong terms by many, such as a former Ambassador and Permanent Representative of Jordan to the UN, who called it 'a flagrant betrayal of the UN Charter, a scandalous resultant of power politics and opportunistic superpower compromises, and a dangerous submission to the fait accompli of war and aggression, at the expense of principle and international legality'.⁹⁹

Obviously, any foreign occupation of a territory, even under a mandate from the UN, is dangerous for human rights, for evident reasons related to the powerful position of the occupying force. UN peacekeeping missions can also have direct adverse effects, as illustrated by frequent accusations against UN peacekeepers of rape and child abuse. Nearly 2000 allegations of sexual abuse and sexual exploitation by peacekeepers and UN personnel,

⁹⁶ Gowlland-Debbas (n 20) 53.

⁹⁷ David Rieff, 'Were Sanctions Right?' *The New York Times* (27 July 2003) <<https://www.nytimes.com/2003/07/27/magazine/were-sanctions-right.html>> accessed 28 July 2018.

⁹⁸ Ibid.

⁹⁹ Hasan Abu Nimah, 'The Security Council that Betrayed its Mission' *Jordan Times* (28 May 2003) on Globalpolicy.org <<https://www.globalpolicy.org/component/content/article/170/42123.html>> accessed 24 July 2018.

between 2005 and 2017, have been found by an Associated Press investigation, and 300 of these concerned children, but in most cases the accused elude accountability.¹⁰⁰

'Power politics', or 'Machtpolitik', can, like 'Realpolitik', be construed as an approach to politics that interferes with the work of the SC. The practice of realpolitik is not compatible with the missions of the SC because it consists in placing national interest above moral objectives and values when necessary; in the same way the practice of power politics interferes with the human rights work of the Council. This term describes an approach to international diplomacy in which 'each nation uses or threatens to use military or economic power to further its own interests'¹⁰¹, which is obviously incompatible with the task that a seat, especially a permanent seat, at the SC entails. Indeed, how can a state actively promote peace and respect for human rights around the world if its own foreign policies revolve around the use or threat of force?

Targeted sanctions are an improvement in that they are designed to 'focus their impact on leaders, political elites and segments of society believed responsible for objectionable behavior, while reducing collateral damage to the general population and third countries'.¹⁰² These measures usually consist of travel bans, asset freeze or arms embargoes. However, targeted sanctions have also been criticised, notably in cases where individuals suspected of terrorism or of being associated to terrorists have been blacklisted without providing any means to review the pertinence of the information forming the basis of the allegations, thus violating these people's due process rights.¹⁰³ Further, it has also been claimed that even these targeted sanctions can have indirect but dire consequences on human rights in the concerned territory. For example, the UN targeted sanctions against alleged members and associates of Al-Qaeda and the Taliban, ongoing since 1999 and regularly 'updated', have been pointed out for their unintended consequences in Afghanistan, such as increases in corruption and criminality, strengthening of authoritarian rule, increase in human rights violations, humanitarian consequences, strengthening of political factions, etc.¹⁰⁴ Notably, an

¹⁰⁰ Paisley Dodds, 'UN child sex ring left victims but no arrests' *Associated Press* (12 April 2017) <<https://apnews.com/e6ebc331460345c5abd4f57d77f535c1>> accessed 31 July 2018.

¹⁰¹ Robbin D. Knapp, 'German English Words: A Popular Dictionary of German Words Used in English' (1st edn, Robbsbooks.com 2005) 74.

¹⁰² Hufbauer and Oegg (n 93).

¹⁰³ Iain Cameron, 'UN Targeted Sanctions, Legal Safeguards and the European Convention on Human Rights' (2003) 72(2) *Nordic Journal of International Law* 159.

¹⁰⁴ Graduate Institute Geneva, 'Targeted Sanctions Consortium Database' *Global Governance Center* (30 June 2014) <http://graduateinstitute.ch/home/research/centresandprogrammes/global-governance/research-projects/UN_Targeted_Sanctions/targeted-sanctions-consortium-da.html> accessed 30 July 2018.

August 2000 report of the United Nations Office for the Coordination of Humanitarian Affairs highlighted the 'tangible negative effect' of the sanctions on the Afghan people.¹⁰⁵

These elements are further evidence that the UN lacks credibility and gravitas, and that its apparent inability to learn from its mistakes and distance itself from the traditional approach to international politics and diplomacy, ripe with notions of sovereignty and national interest, makes it necessary for the world organisation to undergo a thorough reform of its institutions. Apart from direct adverse consequences of interventions or sanctions, in an already institutionally and practically over-politicised framework, these failures of the UN serve as the crux of anti-UN, or anti-Western discourse in general.

4.2. The Consequences of Failed Interventions on the UN's Unity

Surely, it is difficult to achieve a unanimous UN mobilisation, and even where measures are taken they often prove insufficient '[b]ecause these wars are waged to achieve peace, and because the lack of compelling strategic interest makes heavy sacrifices unthinkable for the invading force', which in turn makes fighting methods anomalous.¹⁰⁶ In any case, these measures are hardly harmless and can have major consequences for human rights. As early as 1998, then UN Secretary-General Kofi Annan acknowledged the conceptual incompatibility between the sanctions regimes and human rights:

*'The international community should be under no illusion: these humanitarian and human rights policy goals cannot easily be reconciled with those of a sanctions regime. It cannot be too strongly emphasized that sanctions are a tool of enforcement and, like other methods of enforcement, they will do harm. This should be borne in mind when the decision to impose them is taken, and when the results are subsequently evaluated.'*¹⁰⁷

This makes the SC's work even more controversial and subject to defiance, especially from states already inclined to promote anti-Western discourses. This also increases the over-politicisation of issues, since many states will point to past failures of the UN to protest against its current actions. Therefore, states are likely to analyse a situation through the prism of their

¹⁰⁵ Global Policy Forum, 'Sanctions Against Al-Qaeda and the Taliban' *Globalpolicy.org* <<https://www.globalpolicy.org/global-taxes/41753-sanctions-against-al-qaeda-and-the-taliban.html>> accessed 30 July 2018.

¹⁰⁶ Philippe R Girard, 'Peacekeeping, Politics, and the 1994 US Intervention in Haiti' (2004) 24(1) *The Journal of Conflict Studies*.

¹⁰⁷ UNGA 'Report of the Secretary-General on the Work of the Organization' UN GAOR 53th Session Supp No1 UN Doc A/53/1 (1998).

political views, instead of prioritising the safety of concerned populations. This means that there is a balance to be found between two objectives of the UN: the achievement of international peace and security, and the promotion and protection of human rights. The question is therefore: how can the international community intervene in order to enforce or maintain peace while minimising the effects such an intervention could have on the local population's human rights? When the SC decides to act, via sanctions or military interventions, it must anticipate what pernicious effects the action could entail, and if this risk is proportionate to the goal. This sort of crucial decision should not be affected by unrelated political concerns, but the UN's past failures to act and errors of appreciation in its actions have created such resistance to its initiatives that it fuels a 'legitimacy crisis', making the organisation less and less efficient, eroding its authority and ultimately undermining the moral incentives at its core. In reaction to the numerous accusations of inefficiency, there has been a tendency to focus 'excessive and disproportionate attention on [particular states]' in order to create an 'ostensible success story' of UN-led human rights protection and '[mask] its failures elsewhere'.¹⁰⁸ This shows how fragile the credibility of the UN is.

A last factor of over-politicisation of issues resides in the justifications brought to support UN-led or UN-authorized interventions. In certain cases, the rationale for intervention is vehemently condemned. For instance, some states will contest the reality of a threat to the peace, or will refuse to support an intervention when they feel the motives for the intervention are biased or unfounded. Consequently, those states often invoke the influence of Western states within the UN to contest the legitimacy of its interventions. Using Abbott and Snidal's understanding of the term, Hurd writes that '[t]he behavior of the Great Powers with respect to the use of force suggests that they sometimes approach the Council with the intention of "*laundering*" their favored policies through the legitimating machine of the Council'.¹⁰⁹ The term 'laundering' is based on the observation that 'activities that might be unacceptable in their original state-to-state form become acceptable when run through an independent, or seemingly independent, [international organisation]'.¹¹⁰ This has the advantage of enabling intervening states to avoid domestic and international controversies. Further, since the autonomy of international organisations remains bounded by state interests and power, '[s]uch interventions can cause [international organisations] to be perceived as politicized, responding to the interests of certain states or to issues beyond their regular purview'.¹¹¹

¹⁰⁸ Freedman (n 22).

¹⁰⁹ Hurd (n 50) 119.

¹¹⁰ Kenneth W Abbott and Duncan Snidal, 'Why States Act through Formal International Organizations?' (1998) 42(1) *The Journal of Conflict Resolution* 3, 19.

¹¹¹ *Ibid* 19.

This practice greatly damages the credibility of the world organisation, which is consequently perceived as an instrument of Great Powers to achieve their international policy goals. Some states have even been willing to lie in order to find consensus in the SC, masking their true and sometimes guilty motivations behind apparently noble justifications, or alluding to an imagined or exaggerated threat to international peace. In that regard, it has recently been found by the on-line investigative French journal *Mediapart* that the multilateral intervention in Libya in 2011, led by France, had very similar aspects to the US-led intervention in Iraq in 2003.¹¹² Officially, the rationale for the intervention was that Libyan civilians were facing terrible repression and needed to be rescued in order to prevent a 'new Srebrenica'. With the support of many developing countries, a compromise was found in the SC: Resolution 1973 was adopted with five abstentions, from China, Russia, Brazil, Germany and India, with a promise that no troops would be sent on the ground. This resolution called for an immediate ceasefire, the establishment of a no-fly zone over Libya and authorised all necessary means to protect the civilian population, excluding a foreign occupation force.¹¹³ The intervention in Libya could be construed as an implementation of the responsibility to protect, and the Secretary-General noted the apparent progress of this notion by saying that 'our debates are now about how, not whether, to implement the responsibility to protect'¹¹⁴. However, the question of whether to implement the responsibility to protect can still be discussed, since sometimes the very legitimacy of the intervention and the reality of its humanitarian justifications are contested.

The question is: was the intervention really motivated by humanitarian objectives, or were those justifications a way to 'launder' an intervention that was in reality motivated by national interests? According to a conversation between a representative of a French intelligence service with a member of the Obama administration, revealed in accordance with the Freedom of Information Act, the French President's motivations were purely that of national interest, and even personal interest: there was a desire to obtain a greater proportion of the Libyan oil production, to increase the French influence in Northern Africa, and to improve the President's political credibility at home, as well as giving the French military an opportunity to assert its position in the world.¹¹⁵ The consequences of the lack of planning for the aftermath of the multilateral intervention are well known: Libya is now widely considered a 'broken

¹¹² René Backmann, 'Guerre en Libye: comment le mandat de l'ONU a été détourné' *Mediapart* (25 March 2018) <<https://www.mediapart.fr/journal/international/250318/guerre-en-libye-comment-le-mandat-de-l-onu-ete-detourne?onglet=full>> accessed 1 August 2018.

¹¹³ UNSC Res 1973 (17 March 2011) UN Doc S/RES/1973.

¹¹⁴ UN Press, 'Effective Prevention Requires Early, Active, Sustained Engagement, Stresses Secretary-General at Ministerial Round Table on "Responsibility to Protect"' (23 September 2011) UN Doc SG/SM/13838 <<https://www.un.org/press/en/2011/sgsm13838.doc.htm>> accessed 3 August 2018.

¹¹⁵ Backmann (n 112).

country'¹¹⁶. The UK Foreign Affairs parliamentary committee, which also noted the aforementioned conversation, concluded that 'France led the international community in advancing the case for military intervention in Libya in February and March 2011'. The result was a humanitarian disaster, with 'political and economic collapse, inter-militia and inter-tribal warfare, humanitarian and migrant crises, widespread human rights violations, the spread of Gaddafi regime weapons across the region and the growth of ISIL in North Africa'.¹¹⁷

It is impossible to assess with certitude the numerous factors that lead to multilateral interventions, however, it is clear that the practice of policy laundering is a reality, and plays a part in making the UN, and specifically the SC, an over-politicised institution. This is happening both directly because some interventions that were authorised for humanitarian purposes really were about pursuing the Great Powers' foreign policy goals; or indirectly because such interventions undermine the credibility and legitimacy of the organisation, which is perceived as biased, or utterly inefficient.

Some States, especially great interventionist powers, may even be willing to not only exaggerate the threat that another state poses to international peace and security, but create incidents destined to be interpreted as such in the eyes of the international community, to avoid accusations of waging an unlawful war. For example, the 'Operation Northwoods' project, drafted by American military's top officers in the 1960s, was a plan to orchestrate violent terrorism in the United States, as well as assassinations of Cuban migrants, the sinking of boats carrying Cuban refugees, or blowing up a US ship. The aim of this operation was to blame Castro's government, give a reason to the United States to intervene in Cuba and manipulate the American public opinion and the international community into supporting the ousting of Cuba's new communist leader¹¹⁸, which would have been a gross violation of international law. Although the Kennedy administration rejected this corrupt plan, it still shows that geopolitical ambitions can motivate the falsification of facts by high-ranking members of the government or the military of a state.

This example also alludes to the theory of 'American exceptionalism', which is the idea that Western civilisation is 'the highest stage of human social evolution' and the United States

¹¹⁶ Mieczyslaw P. Boduszynski and Victor Peskin, 'Libya's forgotten human rights crisis' *Los Angeles Times* (23 February 2015) <<http://www.latimes.com/opinion/op-ed/la-oe-boduszynskipeskin-libya-human-rights-20150224-story.html>> accessed 27 June 2018.

¹¹⁷ Foreign Affairs Committee, 'Libya: Examination of intervention and collapse and the UK's future policy options' (HC 2016-17, 119-I).

¹¹⁸ David Ruppe, 'U.S Military wanted to provoke war with Cuba' *ABC News* (New York, 1 May 2001) <<https://abcnews.go.com/US/story?id=92662&page=1>> accessed 2 August 2018.

is 'both the best representative of that civilization and the model for its future development'.¹¹⁹ This theory considers that the United States are 'both destined and entitled to play a distinct and positive role on the world stage'.¹²⁰ The United States is thus widely seen as a state that plays a decisive role in designing norms of international law, and that condemns states which do not respect these rules, while considering itself to be exempt from these international norms. While historically many states have maintained similar conceptions of legitimacy, the contemporary 'American exceptionalism' school of thought has greatly damaged the credibility of the United States, as well as the institutions it has helped create. This way of thinking is often perceived as the hypocrisy of a 'superpower' which deems itself above the rules it creates. Therefore, and once again, it is the sort of approach to foreign affairs from which arise suspicions of bias and interferences from national interests in the work of the UN.

5. Conclusion: The Necessity to Reform the Security Council

There is much evidence of the omnipresent over-politicisation of issues in the SC: First, one negative vote from any permanent member, the national interests of which are fully 'globalised', can paralyse the whole organisation and therefore let mass violations of human rights continue unhindered. Secondly, the authority of the UN is undermined by those states that were initially considered collectively responsible for the maintenance of international peace and security, as well as those states that resist collective responses to atrocity crimes because they accuse the organisation of being partial. Furthermore, balancing the need for sanctioning or intervening in states for the enforcement of peace in the long term, and the present protection of the concerned population's human rights, are a controversial and political issue in the SC, which ultimately generates distrust for the organisation, hence the legitimacy deficit affecting the UN. Finally, the UN's credibility is greatly affected by its past failures, including situations where interventions have had direct detrimental effects on human rights as well as those where UN mandates have been manipulated for the attainment of national political and/or economic advantages. This further contributes to the 'delegitimisation' of the UN, since legitimacy is nothing but the belief that the institution must be obeyed.

This paper has illustrated how the UN was, from the beginning, susceptible to over-politicisation, how this has been fuelled by institutionalised inequalities, as well as how compliance with or resistance of UN institutions are used as an instrument of political posturing

¹¹⁹ Natsu Taylor Saito, *Meeting the Enemy: American Exceptionalism and International Law* (New York University Press 2010) 227.

¹²⁰ Stephen M Walt, 'The Myth of American Exceptionalism' *Foreign Policy* (11 October 2011) <<https://foreignpolicy.com/2011/10/11/the-myth-of-american-exceptionalism/>> accessed 4 August 2018.

on the international stage. Consequently, one could consider that the UN, a most ambitious idea, may have been too modern at the time of the drafting of the Charter, in the sense that states clung to a traditional approach to international politics and diplomacy, which was not compatible with the collective acknowledgement that international cooperation was vital in order to uphold human rights and humanitarian law. In the end, it appears that the disagreements between the powerful states were too great for them to carry the collective responsibility of maintaining international peace and security.

The UN was envisioned to be a forum where states could coordinate their efforts to tackle international problems, and it has created a body of international law to promote economic and social development and advance international peace and security. From the codification of international law, to the judicial settlement of disputes and the quest for accountability, the UN could be considered the embryo of a real supranational organisation with authority over its members, but it is still tainted by the political views and ambitions of its most prominent members. The systematic over-politicisation of issues in the SC discredits the organisation and its legitimacy. Logically, an international organisation supposedly representing the whole international community should only act in the interests of that community. In order to do so, the UN needs to be more detached and independent from individual concerns of state actors, which necessarily implies that 'Great Powers' must relinquish at least some of their privileges, so that the UN can fulfil its function of 'centre for harmonizing the actions of nations'.¹²¹

While there is a certain consensus on the necessity to reform the SC, there are disagreements on the changes that need to be made. The most frequent propositions are the addition of both permanent and non-permanent members for the sake of representativity as well as changing the SC's working methods, notably restriction of the use of the veto. For instance the 'G4', namely Brazil, India, Japan and Germany, have been bidding to obtain a permanent seat at the SC.¹²² It is true that these states' economic growth and political influence give them a good claim on any future permanent seat in the SC, but in the framework of an organ dedicated to the maintenance of international peace and security, it is doubtful that economic might is a relevant criterion. It would also be difficult to extend permanent membership because there will always be opposition from rival bidders or influential neighbouring states. If the SC is to be extended, the principle of fair regional distribution has to be respected.

¹²¹ UN Charter (n 2) art 1(4).

¹²² Lee (n 48).

As a response to the G4 request, the 'Uniting for Consensus' movement advocated for maintaining five permanent members but having twenty elected members. There would be six African states, five Asian states, four Latin American and Caribbean States, three from Western Europe and Other States and two from Eastern Europe. Marcello Spatafora, former Permanent Representative of Italy to the UN, said in 2005, while discussing the United for Consensus proposition, that the credibility of the organisation and its process of reform was at stake, and that these reforms could not be dictated by power or money, but had to be dictated by principles.¹²³ The consequences of veto use so far suggests that there should not be more states able to wield that power, as it will likely hinder the work of the SC even more. In the context of atrocity crimes and mass violations of human rights, there is a need to separate the discussion from political concerns: the question of how to prevent or put an end to gross violations of basic human rights is about morals, not about politics. If states cannot be trusted to forego national interests or political advantages even in such terrible contexts, then the veto power should not be given to new states, and its use should be restricted for those that already have it.

This sort of proposal has already been made: for instance, the S5, a group of five states, namely Costa Rica, Jordan, Liechtenstein, Singapore and Switzerland, suggested in 2005 that permanent members should, upon casting a veto, provide 'an explanation for [their] decision that is consistent with the purposes and principles of the UN Charter and relevant international law', and further called on the P5 to 'refrain from using the veto 'to block Council action aimed at preventing or ending genocide, war crime and crimes against humanity'. Unsurprisingly, this proposal encountered strong opposition from some permanent members.¹²⁴

Since the Syrian conflict, however, various proposals have been made, aimed at improving the work of the SC in preventing and responding to atrocity crimes. For instance, the French and Mexican initiative of 2015 advocates for the suspension of veto powers in situations of mass atrocities. The proposal gives responsibility to the Secretary-General to bring to the attention of the Council 'situations involving, or likely leading to, genocide, crimes against humanity or war crimes'.¹²⁵ Truly, if permanent members could be persuaded to relinquish this power in cases of atrocities, it would constitute a major improvement as the Council could not be a bystander to these atrocities. The Secretary-General, as an

¹²³ UN Press, "'Uniting for Consensus" group of states introduces text on Security Council reform to General Assembly', *Un.org* (26 July 2005) <<https://www.un.org/press/en/2005/ga10371.doc.htm>> accessed 31 July 2018.

¹²⁴ Security Council Report (n 58).

¹²⁵ *Ibid.*

independent actor in the UN, could raise the matter 'automatically' as soon as alarming reports appear, and when UN experts would reach the certitude that such crimes may take place, the veto power would be suspended. This sort of reform is not entirely far-fetched, in the sense that already France and the United Kingdom have not used the veto since 1989. Further, in September 2015, then-French President François Hollande pledged, at the UNGA, that 'France will never use its power of veto where there have been mass atrocities'¹²⁶, and the United Kingdom also has reiterated that it would not use its veto to block credible action aimed at stopping mass atrocities.¹²⁷ Still, without real determination from other permanent members, these proposals will have to be negotiated, and compromises found between the 'Big Five', since the United States, Russia and China would only accept to give up this power in return for insurances or compensations, which might end up undermining the reach of these reforms. Nevertheless, it is an encouraging thought that some states are willing to freely relinquish their special powers and thus shift priorities in order to focus on attaining international peace and security and respect for human rights.

¹²⁶ Permanent Mission of France to the United Nations in New York, 'Address by President Hollande to the UN General Assembly' (70th session, 28 September 2015) <<https://onu.delegfrance.org/Address-by-President-Hollande-to-the-United-Nations>> accessed 5 August 2018

¹²⁷ Security Council Report (n 58).

Bibliography: Primary Sources

International Cases and Decisions

Certain Expenses of the United Nations (Article 17, Paragraph 2 of the Charter), Advisory Opinion, [1962] ICJ Rep 151

Effect of awards of compensation made by the UN Administrative Tribunal, Advisory Opinion [1954] ICJ Rep 47

The SS 'Wimbledon', United Kingdom and ors v Germany, Judgment, (1923) PCIJ Series A no 1

International Legislation

Treaties

Charter of the International Military Tribunal - Annex to the Agreement for the prosecution and punishment of the major war criminals of the European Axis (8 August 1945) 82 UNTC 280 (London Agreement)

Charter of the United Nations, 24 October 1945, 1 UNTS XVI

Convention on the Prevention and Punishment of the Crime of Genocide, (adopted 9 December 1948, entered into force 12 January 1951) 78 UNTS 277 (Genocide Convention)

International Convention on the Suppression and Punishment of the Crime of Apartheid, UNGA (adopted 30 November 1973, entered into force 18 July 1976) (1973) A/RES/3068(XXVIII)

Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 90

Universal Declaration of Human Rights, UNGA Res 217 III(A) (10 December 1948)

United Nations Resolutions

United Nations Security Council (UNSC) Res 232 (16 December 1966) UN Doc S/RES/232

— — Res 282 (23 July 1970) UN Doc S/RES/282

— — Res 418 (4 November 1977) UN Doc S/RES/418

— — Res 661 (6 August 1990) UN Doc S/RES/661

— — Res 678 (29 November 1990) UN Doc S/RES/678

— — Res 827 (25 May 1993) UN Doc S/RES/827

— — Res 940 (31 July 1994) UN Doc S/RES/940

- — Res 955 (8 November 1994) UN Doc S/RES/955
- — Res 1888 (30 September 2009) UN Doc S/RES/1888
- — Res 1973 (17 March 2011) UN Doc S/RES/197
- — Res 2401 (24 February 2018) UN Doc S/RES/2401

Bibliography: Secondary Sources

Kenneth W Abbott K Wand Duncan Snidal, 'Why States Act through Formal International Organizations?' (1998) 42(1) *The Journal of Conflict Resolution* 3

Abu Nimah H, 'The Security Council that Betrayed its Mission' *Jordan Times* (28 May 2003) on [Globalpolicy.org](https://www.globalpolicy.org/component/content/article/170/42123.html) <<https://www.globalpolicy.org/component/content/article/170/42123.html>> accessed 24 July 2018

Adams S, 'Speech at the International Conference on Limiting the Use of Veto at the UN Security Council in the Case of Mass Atrocities, Sciences Po Paris, 21 January 2015' *Globalr2p.org* <<http://www.globalr2p.org/publications/351>> accessed 25 May 2018

Al Jazeera, 'Syria's civil war explained from the beginning' *Al Jazeera.com* (14 April 2018) <<https://www.aljazeera.com/news/2016/05/syria-civil-war-explained-160505084119966.html>> accessed 15 July 2018

Al Najami S and Al Serkal M M, 'UN "is a mere puppet under America's control"' *Gulf News Lebanon* (Dubai, 3 May 2009) <<https://gulfnews.com/news/mena/lebanon/un-is-a-mere-puppet-under-america-s-control-1.249803>> accessed 13 July 2018

Amnesty International, 'UN: Russia and China's abusive use of veto "shameful"' *Amnesty.org* (28 February 2017) <<https://www.amnesty.org/en/latest/news/2017/02/un-russia-and-chinas-abusive-use-of-veto-shameful/>> accessed 12 March 2018

Anand R P, 'Sovereign equality of States in international law (Volume 197)' in *Collected Courses of the Hague Academy of International Law* (The Hague Academy of International Law 1986)

Backmann R, 'Guerre en Libye: comment le mandat de l'ONU a été détourné' *Mediapart* (25 March 2018) <<https://www.mediapart.fr/journal/international/250318/guerre-en-libye-comment-le-mandat-de-l-onu-ete-detourne?onglet=full>> accessed 1 August 2018

BBC, 'Syria: Does Russia always use a veto at the UN Security Council?' *BBC.co.uk* (16 April 2018) <<https://www.bbc.co.uk/news/world-43781954>> accessed 18 July 2018

Becker B, *Is the United Nations Dead?* (Whitmore 1969)

Boduszynski M P and Peskin V, 'Libya's forgotten human rights crisis' *Los Angeles Times* (23 February 2015) <<http://www.latimes.com/opinion/op-ed/la-oe-boduszynskipeskin-libya-human-rights-20150224-story.html>> accessed 27 June 2018.

Bush G W, 'President Discusses Beginning of Operation Iraqi Freedom' *The White House* (Radio Address of 22 March 2003) <<https://georgewbush-whitehouse.archives.gov/news/releases/2003/03/20030322.html>> accessed 29 June 2018

Cameron I, 'UN Targeted Sanctions, Legal Safeguards and the European Convention on Human Rights' (2003) 72(2) *Nordic Journal of International Law* 159

Charbonneau L, 'UN Council keeps silent on Tibet protests' *Reuters* (17 March 2008) <<https://www.reuters.com/article/us-china-tibet-un/u-n-council-keeps-silent-on-tibet-protests-idUSN1758766020080317>> accessed 14 July 2018

Cohen J, 'A Global State of Emergency or the Further Constitutionalization of International Law: A Pluralist Approach' (2008) 15(4) *Constellations: An International Journal of Critical and Democratic Theory* 456

Connors J and Schmidt M, 'United Nations' in Moeckli D et al (eds), *International Human Rights Law* (2nd edn, Oxford University Press 2014)

De Wet E, *The Chapter VII Powers of the United Nations Security Council* (Hart Publishing 2004)

Dembour M B, 'Critiques' in Moeckli D et al (eds), *International Human Rights Law* (OUP 2014)

Dent S, 'Realpolitik' in Brewer E C (ed), *Brewer's Dictionary of Phrase & Fable* (19 edn. Chambers Harrap Publishers 2012)

Dodds P, 'UN child sex ring left victims but no arrests' *Associated Press* (12 April 2017) <<https://apnews.com/e6ebc331460345c5abd4f57d77f535c1>> accessed 31 July 2018

Dubow S, *Apartheid, 1948-1994* (OUP USA 2014)

Falk R, *Human Rights Horizons: The Pursuit of Justice in a Globalizing World* (Routledge 2000)

Farrall J M, *United Nations Sanctions and the Rule of Law* (CUP 2007)

Fassbender B, 'The Role for Human Rights in the Decision-making Process' in Fassbender B (ed), *Securing Human Rights? Achievements and Challenges of the UN Security Council* (OUP 2011)

Foreign Affairs Committee (Parliament of the United Kingdom), 'Libya: Examination of intervention and collapse and the UK's future policy options' (HC 2016-17, 119-I)

Freedman R, *Failing to Protect - The UN and the Politicisation of Human Rights* (Hurst & Company 2014)

Girard P R, 'Peacekeeping, Politics, and the 1994 US Intervention in Haiti' (2004) 24(1) *The Journal of Conflict Studies*.

Graduate Institute Geneva, 'Targeted Sanctions Consortium Database' *Global Governance Center* (30 June 2014) <http://graduateinstitute.ch/home/research/centresandprogrammes/global-governance/research-projects/UN_Targeted_Sanctions/targeted-sanctions-consortium-da.html> accessed 30 July 2018

Global Policy Forum, 'Sanctions Against Al-Qaeda and the Taliban' *Globalpolicy.org* <<https://www.globalpolicy.org/global-taxes/41753-sanctions-against-al-qaeda-and-the-taliban.html>> accessed 30 July 2018

Global Policy Forum, 'Sanctions against Iraq' *Globalpolicy.org* <<https://www.globalpolicy.org/previous-issues-and-debate-on-iraq/sanctions-against-iraq.html>> accessed 28 July 2018

Gowlland-Debbas V, 'The Security Council as Enforcer of Human Rights' in Fassbender B (ed), *Securing Human Rights? Achievements and Challenges of the UN Security Council* (OUP 2011)

Hammarskjöld D, Address at University of California Convocation, Berkeley, California, 13 May 1954, United Nations Press Release SG/382 <<http://ask.un.org/faq/14623>> accessed 29 June 2018.

Hatcher-Moore J, 'Is the world's highest court fit for purpose?' *The Guardian* (5 April 2017) <<https://www.theguardian.com/global-development-professionals-network/2017/apr/05/international-criminal-court-fit-purpose>> accessed 9 July 2018

Hassler S, *Reforming the UN Security Council Membership* (Routledge 2012)

Hufbauer G C and Oegg B, 'Targeted Sanctions: A Policy Alternative?' Paper for a symposium on 'Sanctions Reform? Evaluating the Economic Weapon in Asia and the World' *Peterson Institute for International Economics* (23 February 2000) <<https://piie.com/commentary/speeches-papers/targeted-sanctions-policy-alternative>> accessed 28 July 2018

Hurd I, *After Anarchy - Legitimacy and Power in the United Nations Security Council* (Princeton University Press 2007)

International Committee of the Red Cross, 'Ad hoc tribunals' *Icrc.org* (29 October 2010) <<https://www.icrc.org/en/document/ad-hoc-tribunals>> accessed 9 July 2018

Independent International Commission on Kosovo, *The Kosovo Report* (OUP 2000)

Knapp R D, 'German English Words: A Popular Dictionary of German Words Used in English' (1st edn, Robbsbooks.com 2005)

Krabbe H, *The Modern Idea of the State*, Sabine G H and Shephard W J (eds.), (D Appleton and company 1922)

Lee S, 'The Feasibility of Reforming the UN Security Council: Too Much Talk, Too Little Action?' (2011) 4(2) *Journal of East Asia and International Law* 405

McGreal C, "70 years and half a trillion later: what has the UN achieved?" *The Guardian*, (7 September 2015) <<https://www.theguardian.com/world/2015/sep/07/what-has-the-un-achieved-united-nations>> accessed 15 April 2018

Mirovalev M, 'Syria's war: A showroom for Russian arm sales' *Al Jazeera* (6 April 2016) <<https://www.aljazeera.com/news/2016/04/syria-war-showroom-russian-arms-sales-160406135130398.html>> accessed 14 April 2018

Nebehay S, 'War crimes evidence in Syria "overwhelming", not all can be pursued: UN' *Reuters* (26 March 2018) <<https://www.reuters.com/article/us-mideast-crisis-syria-warcrimes/war-crimes-evidence-in-syria-overwhelming-not-all-can-be-pursued-u-n-idUSKBN1H22GN>> accessed 19 July 2018

Nguyen J T, 'U.S. and Britain block U.N. sanctions against South Africa', *United Press International* (23 June 1986) <<https://www.upi.com/Archives/1986/06/23/US-and-Britain-block-UN-sanctions-against-South-Africa/8848519883200/>> accessed 16 July 2018

Organisation for the Prohibition of Chemical Weapons, 'OPCW Confirms Use of Sarin and Chlorine in Ltamenah, Syria, on 24 and 25 March 2017' *OPCW.org*, 13 June 2018) <<https://www.opcw.org/news/article/opcw-confirms-use-of-sarin-and-chlorine-in-ltamenah-syria-on-24-and-25-march-2017/>> accessed 19 July 2018

Oxford Dictionaries, 'Political' *Oxforddictionariescom* <<https://en.oxforddictionaries.com/definition/political>> accessed 20 February 2018.

Permanent Mission of France to the United Nations in New York, 'Address by President Hollande to the UN General Assembly' (70th session, 28 September 2015)

<<https://onu.delegfrance.org/Address-by-President-Hollande-to-the-United-Nations>>
accessed 5 August 2018

Preston J, 'U.N. authorizes invasion of Haiti' *Washington Post* (1 August 1994)
<https://www.washingtonpost.com/archive/politics/1994/08/01/un-authorizes-invasion-of-haiti/395ff392-0788-4f62-b516-436c8fa35f37/?noredirect=on&utm_term=.db0178501e1f>
accessed 7 July 2018

Rieff D, 'Were Sanctions Rights?' *The New York Times* (27 July 2003)
<<https://www.nytimes.com/2003/07/27/magazine/were-sanctions-right.html>> accessed 28 July 2018

Rosoboronexport, 'Cooperation with Syria' *Roe.ru* (2018)
<<http://roe.ru/eng/export/siriya/>> accessed 18 July 2018

Ruppe D, 'U.S Military wanted to provoke war with Cuba' *ABC News* (New York, 1 May 2001) <<https://abcnews.go.com/US/story?id=92662&page=1>> accessed 2 August 2018

Saito N T, *Meeting the Enemy: American Exceptionalism and International Law* (New York University Press 2010)

Sampathkumar M, 'UN in deadlock after US and Russia vote against each other to investigate Syria chemical weapons attack', *The Independent* (New York, 10 April 2018)
<<https://www.independent.co.uk/news/world/syria-chemical-attack-douma-latest-us-russia-un-deadlock-investigation-a8298671.html>> accessed 15 July 2018

Sangmpam SN, *Comparing Apples and Mangoes: The Overpoliticized State in Developing Countries* (State University of New York Press 2007)

Security Council Report, 'The Veto' Research Report 2015/3 (19 October 2015),
<<https://www.securitycouncilreport.org/research-reports/the-veto.php>> accessed 8 June 2018

Shraga D, 'The Security Council and Human Rights - from Discretion to Promote to Obligation to Protect' in Fassbender B (ed), *Securing Human Rights? Achievements and Challenges of the UN Security Council* (OUP 2011)

Skubiszewski K, 'Implied Power of International Organizations' in Dinstein Y and Tabory M (ed), *International Law at a Time of Perplexity. Essays in Honour of Shabtai Rosenne* (Martinus Nijhoff 1989)

UN, 'Documents of the United Nations Conference on International Organization San Francisco 1945 Volume XI' 433
<https://archive.org/stream/documentsoftheun008818mbp/documentsoftheun008818mbp_djvu.text> accessed 12 July 2018

UN, Final Report of the Commission of Experts Established Pursuant to United Nations Security Council Resolution 780 (1992), UN SCOR, UN Doc S/1994/674 (27 May 1994)

UNGA Third Committee (28th and 29th meetings) 28 October 2008, Press release GA/SHC/3929 <<https://www.un.org/press/en/2008/gashc3929.doc.htm>> accessed 3 July 2018

UNGA 'Report of the Secretary-General on the Work of the Organization' UN GAOR 53th Session Supp No1 UN Doc A/53/1 (1998)

UNGA, 2005 World Summit Outcome Document, UNGA Res 60/1 (24 October 2005) UN Doc A/RES/60/1

UN News, 'Those responsible for war crimes in Syria "will be held accountable for what they have done," says UN rights chief' *News.un.org* (2 March 2018)
<<https://news.un.org/en/story/2018/03/1003981>> accessed 12 July 2018

UN Office of the High Commissioner for Human Rights (OHCHR), *DRC: Mapping Human Rights Violations 1993-2003*, (Info Note No2, 'War Crimes, Crimes against Humanity and Genocide') <https://www.ohchr.org/Documents/Countries/CD/FS-2_Crimes_Final.pdf> accessed 7 June 2018

UN Office of the Special Advisers on the Prevention of Genocide and the Responsibility to Protect, Framework of Analysis for Atrocity Crimes – A Tool for Prevention, *UN.org* (2014) <<https://www.un.org/en/genocideprevention/publications-and-resources.html>> downloaded 8 March 2018

UN Press, "'Uniting for Consensus" group of states introduces text on Security Council reform to General Assembly', *Un.org* (26 July 2005) <<https://www.un.org/press/en/2005/ga10371.doc.htm>> accessed 31 July 2018

UN Press, 'Effective Prevention Requires Early, Active, Sustained Engagement, Stresses Secretary-General at Ministerial Round Table on "Responsibility to Protect"' (23 September 2011) UN Doc SG/SM/13838 <<https://www.un.org/press/en/2011/sqsm13838.doc.htm>> accessed 3 August 2018

UNSC draft resolution (24 October 1974) UN Doc S/11543

UNSC revised draft resolution (26 October 1977) UN Doc S/12312/Rev.1

Walt S M, 'The Myth of American Exceptionalism' *Foreign Policy* (11 October 2011) <<https://foreignpolicy.com/2011/10/11/the-myth-of-american-exceptionalism/>> accessed 4 August 2018