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UN General Assembly Assisting the UN Security Council

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***By Ewelina U. Ochab**

The UN Security Council has been struggling to pass a resolution that would provide for some decisive steps regarding the situation in Syria. [Eight of the proposed resolutions](#), including a [resolution referring](#) the situation to the International Criminal Court (ICC), were vetoed by Russia. Eight vetoes over the period of over six years may suggest that the members of the UN Security Council are unable to agree the best approach to the situation in Syria. However, such a deadlock at the UN Security Council does not mean the end of the story. The situation in Syria is deteriorating, people are dying on a daily basis, and a solution is urgently needed. There may be a solution that the UN Security Council has not looked into yet.

In accordance with [Resolution 377\(V\)](#) of 3 November 1950, the UN General Assembly could take some steps when the UN Security Council fails to do so. The so-called 'Uniting for Peace' Resolution: '*Resolves* that if the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression, the General Assembly shall consider the matter immediately with a view to making appropriate recommendations to Members for collective measures, including in the case of a breach of the peace or act of aggression the use of armed force when necessary, to maintain or restore international peace and security.'

In order to trigger the applicability of the resolution, 1) a resolution would have to fail because of a veto of one of the permanent members, and 2) there would have to arise a threat to the peace, breach of the peace, or act of aggression. Ultimately, if the requirements are fulfilled, the UN General Assembly would then be required to consider the matter expeditiously and make recommendations. These recommendations would not be binding and the states would be free to decide whether to implement them or not. Because of the 'voluntary' nature of the recommendations, the significance of this mechanism is questionable.

The UN Security Council members have made such a request to the UN General Assembly on [seven](#) occasions. The UN General Assembly members have made such a request on [five](#) occasions. Five of the UN Security Council members' requests were made because of a stalemate caused by Russia's vetoes (then USSR). Nonetheless, the Uniting in Peace Resolution has not been considered as a response to the UN Security Council's inaction. Despite the stalemate at the UN Security Council on Syria for years, it has to be emphasised that the UN Security Council has not made such a request for a Uniting in Peace resolution since [1982](#) and the UN General Assembly since [1997](#).

However, December 2016 has seen a different development at the UN General Assembly that may mark the new era of the UN General Assembly becoming more active to address the failing of the UN Security Council.

In December 2016, the UN General Assembly passed a resolution establishing the [International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011](#). The mechanism will:

'collect, consolidate, preserve and analyse evidence of violations of international humanitarian law and human rights violations and abuses and;

prepare files in order to facilitate and expedite fair and independent criminal proceedings, in accordance with international law standards, in national, regional or international courts or tribunals that have or may in the future have jurisdiction over these crimes, in accordance with international law.'

This is a late, small, but positive step forward. Obtaining, securing and preparing evidence for any future proceedings is crucial to ensure the administration of justice. However, the successful adoption of the resolution by the UN General Assembly suggests also that the failings of the UN Security Council to act will not be tolerated by the UN General Assembly. If the UN Security Council does not act, the UN General Assembly must fill the gap. Ideally, this would have been the case. However, based on the one resolution one cannot assume that this would always be the case. One can just hope.

The UN General Assembly December's resolution has faced a lot of criticism, notably from Syria and Russia. Mr Ja'afari, representative of the Syrian Arab Republic [voiced](#) his objection to the UN General Assembly's resolution. First, the resolution was in breach of Article 2, paragraph 7 of the UN Charter, that prevents the UN from interfering in matters of domestic character. Second, the resolution was in breach of Article 12, paragraph 1 of the UN Charter, in that the UN General Assembly

was interfering with a matter that the UN Security Council was 'exercising... the functions assigned.' Third, the UN General Assembly did not have the jurisdiction to establish the relevant mechanism. This criticism was [echoed](#) by Mr Zagaynov, representative of the Russian Federation echoed Mr Ja'afari's concerns. Nonetheless, the resolution was adopted by [105 votes in favour, 12 votes against and 52 abstentions](#). This sends a clear message that the UN Security Council's inaction could not be tolerated by the UN General Assembly. Not when crimes against humanity or war crimes are being committed. Not when thousands of civilians are being killed. Not when chemical weapons are being used.

****Ewelina U. Ochab is a human rights advocate and author of the book "Never Again: Legal Responses to a Broken Promise in the Middle East." Ochab works on the persecution of minorities around the world, with main projects including Daesh genocide in Syria and Iraq, Boko Haram atrocities in West Africa, and the situation of religious minorities in South Asia. Ochab has written over 30 UN topical reports (including Universal Periodic Review reports) and has made oral and written submissions at the Human Rights Council sessions and the UN Forum on Minority Issues. Ochab is currently working on her Ph.D. in international law, human rights and medical ethics.***

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