

### **Case Problem**

There is an ongoing internal conflict in State X between the government and the rebels. According to an UN report, the government has used chemical weapons against its own citizen, which constitutes a serious violation of international law.

- a) The Security Council is seized with the matter. Would the Council be authorized to act under Chapter VII UN Charter? Please explain.

**Article 2(4):** All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

The threatened ballistic missile attack upon Syria by the United States, in retaliation for the Syrian government's use of chemical warfare against its own people, has elicited opinions from international lawyers and scholars on the question whether such an attack would violate international law. Invariably the legal source that is cited is Article 2(4) of the United Nations Charter. The language of Article 2(4), because it stands alone and is not tied to nor dependent upon any of the other provisions of the UN Charter, is perhaps the most important rule of international law in the modern era.

### **The U.N. Charter, Chapter 7 – A Brief Explainer**

Chapter 7 of the U.N. Charter—"Action With Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression"—allows member states to use all possible means, including economic sanctions and military action, to enforce a U.N. resolution.

It has been invoked by the Security Council numerous times since it was adopted in 1945, notably to authorize military operations in the Korean War (1950), the Gulf War (1991) and in Somalia (1992), and earlier this year to set up an intervention brigade as part of the U.N. peacekeeping force in the Democratic Republic of the Congo.

France has proposed invoking Chapter 7 to force Syria to hand over its chemical-weapons stockpiles or face consequences—a plan Russia has rejected.

## UN Charter

The *United Nations Charter*<sup>s</sup> is the treaty that established the United Nations. It was initially signed on June 26, 1945 at the founding meeting of the UN in San Francisco. The *UN Charter* describes the principles, functions, and structures of the United Nations and is legally binding on all Member States of the UN.

The *UN Charter* sets out the four main purposes of the United Nations, which are to:

- keep peace throughout the world.
- develop friendly relations among nations.
- help nations work together to improve the lives of poor people, to conquer hunger, disease and illiteracy, and to encourage respect for each other's rights and freedoms.
- be a centre for harmonizing the actions of nations to achieve these goals.

The *UN Charter* also sets out the main principles of the UN, which include:

- recognition of the sovereignty of all of its members.
- members settling their international disputes by peaceful means.
- members refraining from using or threatening to use armed force against any other state.

## The UN General Assembly

The General Assembly is where most of the discussion, debate, and decision-making among Member States over the world's most pressing problems take place. Every Member State is entitled to representation and one vote in the General Assembly. The decisions made in the General Assembly drive the work of the UN. Decisions are usually not called for until there is broad agreement among Member States. When a vote has to be called on UN priority matters (such as peace, security, budgetary matters or the admission of new members), a two-thirds majority vote is required. All other matters require a simple majority of more than half the votes cast; however, a vote is not usually called until a substantial majority of Member States has indicated support. Although the decisions of the General Assembly cannot force any state to take particular actions, General Assembly Resolutions are considered to be an indication of world opinion.

## The UN Security Council

The mandate of the Security Council<sup>6</sup> is set out in the *UN Charter*, especially in chapters six and seven. The *UN Charter* gives the Security Council primary responsibility for the maintenance of international peace and security. The Security Council is the only UN body that can order the use of force to implement its decisions. The Security Council is made up of five permanent members and ten non-permanent members. The permanent members of the Security Council are the United States, China, Russia, France, and the United Kingdom. Non-permanent members are Member States elected to the Security Council and serve two-year terms.<sup>7</sup> The last time Canada was a member of the Security Council was in 1999–2000. Canada lost its bid to be voted in to serve on the Security Council in 2010.<sup>8</sup>

Every member of the Security Council has one vote, but not all the votes are of equal weight. For a proposal before the Security Council to pass, it must receive an affirmative vote from at least nine members. However, if one of the permanent members votes against the proposal, the adoption of that proposal will be prevented. This is called the veto or "great power unanimity" and will prevent the adoption of a proposal even if it has received nine affirmative votes. All Member States are required to carry out a decision of the Security Council.

The Security Council may convene at any time, day or night, whenever it determines there is a threat to international peace. The Council may first try to resolve an issue through peaceful means, such as mediation. If a dispute results in fighting, the Security Council may issue ceasefire directives or send peacekeeping forces to the area to reduce tensions. The Security Council may also order economic sanctions, collective military action, or an arms embargo to prohibit commerce and trade in weaponry with the countries involved in the dispute.

### Case study: The power of the veto

In 2009, Russia used its veto to end the UN peacekeeping mission in Georgia. This use of the veto was controversial because of Russia's involvement in the dispute taking place between Georgia and the South Ossetia and Abkhazia regions. How could other countries try to intervene to maintain peace when Russia, one of the countries involved in the dispute, had the power to veto?<sup>9</sup>

## International Court of Justice

The International Court of Justice (ICJ) is the primary judicial body of the United Nations. It is a civil court that deals primarily with disputes between Member States and does not have the jurisdiction to prosecute individuals accused of crimes.

## Case Study: Libya and the Responsibility to Protect (R2P)

The *Responsibility to Protect (R2P)* is a new international human rights standard aimed at preventing and stopping genocide, war crimes, ethnic cleansing and crimes against humanity (collectively known as "mass atrocities"). The standard was adopted at the United Nations World Reform Summit in 2005. There are three principles underlying R2P:

1. States have the primary obligation to protect their populations from mass atrocities.
2. The international community should encourage and help states to exercise this obligation.
3. The international community has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means to help protect populations. If a state fails in its responsibility to protect its population, the international community must be prepared to take stronger measures, including the collective use of force authorized by the Security Council.

In early 2011, the government of Libya allegedly committed war crimes and crimes against humanity in response to peaceful civilian protests. Muammar Gaddafi, Libya's political leader, called on his supporters to attack the protesters and "cleanse Libya house by house." Beginning in mid-February, the international community started adopting a range of peaceful and coercive measures in response to Gaddafi's growing threats against the people of Libya. These measures included asset freezes, travel bans, arms embargos, and a referral to the International Criminal Court. Within weeks, Gaddafi expressed a clear intent to continue committing massive human rights violations by announcing through the media that his forces would show "no mercy" to rebels, and would search every house that night. His comments indicated an imminent intention to massacre the city's population.

On March 17, 2011 the UN Security Council put the R2P principle into action, declaring a no-fly zone and ceasefire in *Resolution 1973*. This was the first time that the Security Council had ever authorized military action against a non-co-operative state in order to protect the population, explicitly applying the R2P doctrine.

Critics of the UN Security Council's intervention in Libya question why R2P-based military action was taken in Libya, but not in other countries where there are also conflicts that threaten the civilian population, such as Côte d'Ivoire (Ivory Coast), Syria, or Yemen. The international community is working to ensure that appropriate measures under R2P are taken when warranted, so that the R2P doctrine is not abused by countries claiming to protect a population while actually seeking political gain.

## Engendering the R2P

Even prior to adoption of the R2P principle by the UN General Assembly in 2005, researchers from the University of Victoria International Women's Rights Project (IWRP) were among the first to advocate at the UN for "engendering" the R2P by incorporating gender equality principles drawn mostly from Security Council Resolution 1325 (passed in 2000). The IWRP is no longer alone in arguing that, for the R2P doctrine to be effective in protecting all human beings, the UN must not be "gender blind," meaning that those implementing R2P cannot ignore the differing needs and capacities of men and women in times of conflict and post-conflict reconstruction. For example, UN representatives must take into account the reality that when violence erupts, it is vital that women's particular needs are not hidden by a policy that states that everyone is the same. Such a policy fails to recognize that women, because they are generally poorer and socially marginalized, require more or different assistance than men.

The IWRP researchers pointed out how deeply held values and attitudes reinforce systemic barriers for women, such as low social status, fewer or no property rights and lack of access to basic services in health and education, as well as how social constructions of gender inequality create these barriers. IWRP argued that, if the UN allows the R2P doctrine to be "gender blind," it will likely contribute to reinforcing gender-based human rights violations that make the difference between life and death.<sup>71</sup>

### Discussion questions:

1. Describe what is meant by the "collective security mechanism."
2. What does it mean when someone is *hors de combat*? Why should they be protected?
3. What are some advantages of the International Criminal Court over the Tribunals for Rwanda and the former Yugoslavia?
4. Why do you think the R2P principle is an important development in international policy? Why wouldn't the international community want to use R2P as a justification for military intervention in all circumstances where a population might be at risk?

## Appendix II - Glossary

**Article**—A section of a treaty, contract or statute.

**Bilateral treaty**—A treaty agreement made between two countries.

**Ceasefire**—A temporary stoppage of a war in which each side agrees with the other to suspend aggressive actions.

**Civil law**—The body of law that deals with disputes between private parties, such as individuals and corporations. Civil law also refers to the legal system in Quebec.

**Climate change**—Small but steady changes in average temperatures around the world.

**Common law**—A system of law that originated in England and is based on past court decisions.

**Commonwealth**—An association of countries that were formerly colonies of the British Empire.

**Constitution**—The supreme law of a state that sets out how the state will be organized, the powers and authority of the government and the basic principles of society. The constitution will usually “trump” other national or local laws if there is a conflict between them.

**Covenants and Conventions**—Both terms refer to binding agreements, or treaties, made under international law.

**Crimes against humanity**—A legal term defined in the Rome Statute<sup>76</sup> as widespread or systematic offences that constitute a serious attack on human dignity or grave humiliation or degradation of one or more human beings.

**Criminal law**—The body of law that declares acts to be crimes and prescribes punishments for those crimes.

**Custom**—Law that becomes binding on states although it is not written, but rather adhered to out of custom. Customary international law is created when countries repeatedly behave a certain way because they believe they are legally required to do so. It is one of the main sources of international law.

**Declaration**—A document stating agreed upon standards, but is not legally binding.

**Democracy**—A system of government in which people freely choose who will govern them through elections. It also refers to the principles and ideals of such a government, such as freedom of speech and the rule of law.

**Discrimination**—The unjust or prejudicial treatment of different categories of people, especially on the grounds of race or gender.

**Domestic law**—The internal or national laws and legal system of a country, including laws made at the state, provincial, regional or local level. Domestic law is also referred to as “national law.”

**Due process**—The principle that the government must respect all legal rights that are owed to a person according to the law. For example, one of the rights protected under the doctrine of due process is the right to an impartial judge.

**Ethnic cleansing**—The elimination of an unwanted ethnic group or groups from a society, by genocide or forced relocation.

**Extractive Industries**—A term that describes industries or companies engaged in activities that have significant environmental impacts, such as oil, gas, mining and forestry.

**Formal equality**—To treat all people the same, regardless of their gender, race, religion or other circumstances or to treat all states the same, regardless of their economic, political or other status.

**Genocide**—The mass killing of human beings, especially a targeted group, such as people of a particular ethnicity, race, religion or nationality.

**Globalization**—The process by which regions and countries of the world are becoming interconnected.

**Global Warming**—The gradual increase in the temperature of the earth’s atmosphere, believed to be caused by increased levels of greenhouse gasses such as carbon dioxide, methane and nitrous dioxide.

**Humanitarian law**—Defines the conduct and obligations of nations engaged in warfare, both in terms of how states act toward one another and how they act in relation to civilians and those not involved in the fighting. It is also known as the “laws of war.”

**Human rights**—The rights possessed by all persons, by virtue of their common humanity, to live a life of freedom and dignity. Human rights are universal, inalienable and indivisible. The idea of human rights as inalienable means that it is impossible for anyone to give up their human rights, even if he or she wanted to, since every person is granted those rights by virtue of being human. It also means

that no person or group of persons can deprive another individual of her or his human rights. The indivisibility of human rights means that none of the rights considered to be fundamental human rights are more important than any other; they are inter-related.

**Human Security**—An emerging way of thinking about security (the state of being free from danger or threat) that places human beings—rather than states—as the focal point of security considerations. Human security has been described as the freedom from fear and want.<sup>77</sup>

**International governance organizations**—Organizations that are set up by a legal agreement or treaty between two or more states to attempt to solve problems that affect multiple states and designate regulations intended for a global scale.

**International law**—A set of rules and customs that govern the relationships between countries, known as states.

**Jurisdiction**—The power or authority to do something, such as make laws.

**Legally binding**—Means that certain actions are now either required or prohibited by an agreement and violating the terms of the agreement can have legal repercussions enforceable by law.

**Mandate**—A direction or authorization to act in a particular way on an issue. In the context of the UN and other international organizations, it refers to the document that describes how a particular role is to be fulfilled.

**Mass atrocities**—A legal term that includes acts that are considered to be crimes against humanity, war crimes and ethnic cleansing.

**Member State**—A state that is a member of the United Nations.

**Multilateral treaty**—A treaty agreement made between three or more countries.

**Negotiation**—Discussion intended to produce a compromise or mutually acceptable agreement.

**Non-governmental organization (NGO)**—Organizations set up by individuals or groups that advocate for social justice and act as an intermediary between state-dominated international legal systems and individuals. NGOs work to influence government policies at national and international levels.

**Optional Protocol**—An optional protocol to a treaty is a multilateral agreement that governments can ratify or agree to, intended to further a specific purpose of the treaty or assist in the implementation of its provisions.

**Party to a treaty**—A country that has signed onto and ratified a treaty and agrees to be legally bound by its terms.

**Peacebuilding**—The process and activities involved in resolving violent conflict and establishing a sustainable peace.

**Peacekeeping**—An activity that aims to prevent further conflict between parties. Peacekeepers are usually deployed to monitor the implementation of a ceasefire and oversee the resolution of conflict.



**Peacemaking**—Peaceful efforts to stop a conflict or prevent its spread by bringing hostile parties to an agreement. These efforts usually involve the use of diplomatic techniques, such as negotiation.

**Ratification**—The process by which a state officially consents to being legally bound by a treaty.

**Repatriation**—To return someone to their country of citizenship.

**Resolution**—The formal decision of an organization.

**Responsibility to Protect (R2P)**—The international human rights standard aimed at preventing and stopping mass atrocities. R2P empowers the international community to intervene when a country fails to protect its population from serious harm.

**Right**—A moral or legal entitlement to have or do something.

**Rule of Law**—A fundamental legal principle that states that the law applies equally to all persons and that no one, neither an individual nor a government, is above the law.

**UN Security Council Resolution**—A formal expression of an opinion or intention adopted by the UN Security Council. For example, UN Security Council Resolution 1325 provides for the increased participation of women at all levels of decision-making in matters of peace and security.

**Social justice**—Refers to the idea of creating a society that is based on principles of equality, democracy and solidarity; that understands and values human rights and recognizes the dignity of every human being.

**Sovereignty**—The exclusive power and jurisdiction of a state to govern its territory.

**State**—A country or nation considered an organized political community under one government.

**States party**—A country that is a party to a treaty.

**Treaty**—An agreement between states that sets out their mutual legal rights and obligations. Treaties are one of the main sources of international law.

**Tribunal**—A specialized court set up to hear specific kinds of disputes. For example, the International Tribunal for the former Yugoslavia only hears cases related to the mass atrocities taking place in the former Yugoslavia in the 1990s.

**United Nations Charter**—The treaty that establishes the United Nations and describes its principles, purposes and structure.

**Veto**—The power of the permanent members of the UN Security Council to prevent the adoption of a draft Security Council resolution regardless of whether the draft has received the required number of affirmative votes. It is also called the “great power unanimity.”

**War crimes**—Serious violations of humanitarian law during times of war. War crimes may include the willful killing, torture or inhuman treatment of persons or the unjustified destruction of property.