

# Lesson Two: Equality Before the Law and the Abuse of Power

## Lesson Two: Lesson Plan

### LEARNING OBJECTIVES:

- Understand the general concept of equality before the law
- Understand the implications of having the opportunity to participate in law-making and being treated equally under the law
- Understand what power is and the difference between legitimate and illegitimate abuses of power

### LEARNING OUTCOMES:

- Be able to explain the link between structural inequality in institutions and inequality of law and policy made by those institutions
- Be able to give examples of abuses of power
- Be able to explain the hallmarks of a legitimate use of power and be able to use these principles to evaluate power in different scenarios

### SKILLS:

- Applying a set of principles to evaluate different situations, constructing arguments, weighing up and evaluating evidence, challenging different ideas, expressing reasoned opinions

## 2.1 Introduction



### 2.1.1 INTRODUCTION - Equality Before the Law - Teacher-led Introduction

Read this out to students or paraphrase:

Just as we expect individuals like you or me to be equally subject to national law, we equally expect countries to be subject to international law. In the same way that we would not expect certain wealthy or powerful individuals to get away with breaking the law, while the rest of us had to face the consequences of breaking the law, we would not expect some countries to be able to violate international law without facing any consequences. While such a notion of equality before the law is ideal, international law has sometimes been criticised for inequality both in terms of what it says and how it is applied.

There are many reasons for this inequality. In Activity 1, we will explore one of the potential reasons by examining the structure of one of the decision-making bodies of the UN, the Security Council.

Note that the Security Council is only one of several organs in the UN. Other important decision-making bodies include the UN General Assembly (which is the main policy-making body of the UN). The issues that we are going to explore in Activity 1 on the Security Council are not necessarily applicable to the other UN organs which have different structures.



## 2.2.1 STARTER ACTIVITY - The Security Council - Printouts for students

### What is the UN?

The United Nations (UN) is an international organisation founded in 1945 in the aftermath of World War II that has the main aim of promoting peace, security and development in the world. The UN is made up of several organs. Its main decision-making bodies are the UN General Assembly and the Security Council. The UN General Assembly currently has 193 members, representing all of the countries in the world. (It does not include certain regions/administrations that consider themselves to be countries but are not recognised as countries by the rest of the international community.)

Beyond the bodies making up the UN itself, there is a large number of UN-linked organisations, funds and agencies across the world that make up the UN system. Each of these is an international organisation in its own right and each focuses on a specific area of international concern. You may have heard of some of these organisations, for example, UNICEF (the UN Children's Fund) which works to protect children's rights, or UNHCR (the UN High Commissioner for Refugees), which works to protect the rights of refugees. Over the years, the organisations in the UN system have carried out important work in a vast number of areas including responding to humanitarian crises, giving assistance to those caught up in conflict, protection of the environment, improving health and sanitation, improving literacy and education, and helping to resolve disputes on international law, to name but a few.

However, all organisations, particularly large ones, face challenges and criticisms in the way they carry out their work. In this activity we look at the Security Council, one of the organs of the UN, to examine the issue of fairness in decision-making.

### What is the Security Council?

The Security Council is one of the organs of the **United Nations** which was set up in the aftermath of World War II to try to prevent the horrors seen in the world wars from ever happening again. The Security Council is responsible for dealing with and making decisions about international peace and security issues in the world.

The Security Council has the power to make decisions that member states are required to implement. The work of the Security Council is complex and delicate. It includes for example:

- Deciding on how to deal with governments or other armed groups that are breaching international peace and security by using force against their opponents and civilians.<sup>1</sup>
- Deciding how to deal with humanitarian crises resulting from conflicts.<sup>2</sup>



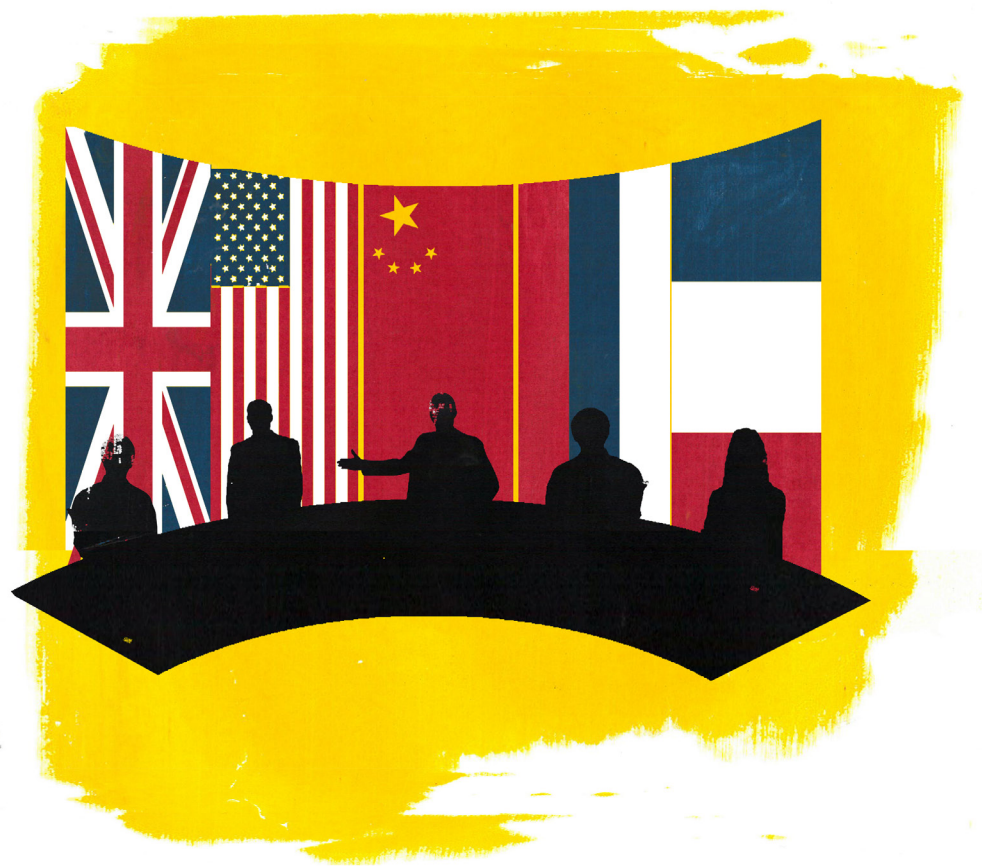
Measures that the Security Council may authorise to deal with the above include:

- Condemning any illegal actions
- Sending independent mediators to defuse a situation
- Imposing sanctions on a government (that is, the restriction of trade and possibly the **freezing of assets**)
- As a last resort, authorising armed force against the government or forces causing the breach of international peace and security
- Allowing aid and medical supplies to be brought into a country to protect a suffering civilian population

The aim that the Security Council tries to achieve is necessary in a world where countries have competing interests and where disputes arise, but some have questioned the fairness of its decisions. Others have linked this point about fairness to the structure of the Security Council, that is, how it is made up and how it makes decisions.

### Which countries are in the Security Council?

The permanent members are China, France, Russia, UK, and USA. The non-permanent members are elected from all the other remaining countries of the UN. They are non-permanent members for two years. To date nearly 70 countries of the General Assembly have never been elected to the Security Council.<sup>3</sup>



### Your task:

Read the statements below and decide whether any aspect suggests unfairness in the way decisions are made, or that a decision is unfair.

a) The Security Council has 5 permanent members and 10 non-permanent members. For important decisions to be made, 9 out of 15 Council members have to vote in favour, including all 5 of the Permanent Members.

b) The permanent members of the Security Council have been on the Council since it was set up in 1945. The non-permanent members are elected for 2-year terms.

c) Any of the five permanent members of the Security Council can prevent a resolution from being passed. This is commonly referred to as exercising a veto.

d) From 2011 - 2014, during a period of grave humanitarian crisis, draft Security Council resolutions condemning the actions and abuses of the Syrian government were vetoed by China and Russia and were therefore not passed.

e) From the 1970s up until the present, the US has vetoed most of the resolutions critical of Israel's military and settlement activities in the Palestinian territories. The *International Court of Justice* has said that the settlements are illegal.



### 2.2.2 STARTER ACTIVITY - The Security Council - Instructions for teachers

If time permits, you may wish to ask students to do some research on the aims and functions of the UN Security Council before coming to the lesson. See at: <http://www.un.org/en/sc/about/>

The student printout gives a brief overview of the Security Council and will prepare students for the activity, but more capable students may wish to do more in depth research before coming to the lesson.

Ask students to consider the implications of each statement with regard to equality for countries before you lead a class debrief on it. Students may work individually or in groups.



### 2.2.3 STARTER ACTIVITY - The Security Council - Background for teachers

The point of this activity is to encourage students to consider potential unfairness and inequality at the heart of an organ of the UN that has huge power in making some of the most important global decisions that affect the lives of countless people. It is easy to take at face value the decisions of these important bodies that we hear about in the news, without questioning or analysing them. As with all the activities, the point is not to persuade students one way or another, but to encourage them to examine the evidence for themselves.

a) Many students may spot the point that it seems unfair that only five countries should permanently have decision-making power on some of the most important decisions in the world with some of the most serious consequences. While other countries are elected on a fixed-term basis so that different countries get their turn on the Council, the permanent members can count on always being there.

Critics of the post-war set-up point out that the permanent members of the Security Council represent the winners of the Second World War and some of the most powerful economies at the time. This balance of power may have been understandable in that period, considering that

the winners of the war regarded themselves as guardians of peace and security. However many believe that the world order at the time the UN was set up has less relevance now. Critics believe that the consequences of this are that important decisions made by the Council are often made in a way that suits the interests of the permanent members.

From a rule of law point of view, this clearly suggests that the balance of power lies with a few countries in this body, meaning a lack of equality which has consequences for the fairness of decisions made. You might wish to make the analogy that if it were the same student allowed to be school councillor every year throughout school without election, this would mean a lack of equality among students, and would mean that that student had an unfair and privileged position of power over other students.

b) A majority of 9 out of 15 Council members being needed to pass a vote is relatively uncontroversial. What is controversial is that all five of the permanent members have to agree. This means that if any one of the permanent members decides to disagree with the motion, it will not be passed. This is unfair because it means that a particular decision could reflect overwhelmingly the opinion of the international community and yet still not be passed because of a single disagreement by one country out of the five.

c) The veto of the five permanent members of the Security Council means that important decisions can be blocked by one (or more) of those five countries even if everyone else on the Council has voted in favour. This means that the set-up is undemocratic in that the majority view may not always be carried. The fact is that countries have many considerations in voting for or against a resolution and their own self-interest is undeniably a consideration. There are many examples where the majority of the Security Council have voted for a certain measure that also overwhelmingly represents the view of the international community and yet the resolution has not been passed because of one (or more than one) veto from a permanent member.

d) This is an example where the use of the veto has been criticised for being political with grave consequences. Between 2011 and 2014, during the Syrian conflict that continues today, the Syrian government had used serious force against rebel forces and against civilians. Several resolutions were put before the Security Council, variously seeking to condemn the government for its human rights abuses and violations of international humanitarian law, to consider sanctions against the government, and to refer the situation to the International Criminal Court. The resolutions were vetoed by Russia and China, with both countries giving reasons that it was not constructive to put pressure on the Syrian government. Critics of the countries' actions have suggested that it is their economic and trade links to the Syrian government that prompted their vetoes, and that their individual interests therefore overrode the best interests of the Syrian



people.

e) The US has also been criticised for using its veto for political purposes. Since the 1970s, the US has vetoed most of the resolutions put before the Security Council that have been critical of Israel, even in cases where as above, the majority of national governments supported the resolution in question. Resolutions put before the Security Council included condemnations of Israel for violating previous resolutions of the Security Council, for violating international humanitarian law and condemnations of Israel's many military activities in Palestinian territories. In 2011, the Obama administration was severely criticised by the international community for its decision to veto a resolution unanimously supported by the rest of the Security Council members, regarding the condemnation of Israeli settlements in the occupied Palestinian territories.<sup>4</sup> The **International Court of Justice** had ruled that Israeli actions were illegal and that international law did not allow the threat or use of force and the acquisition of territory in this way, and that it contravened principles supporting the right to self-determination (the right of people to decide on their own governance and future).<sup>5</sup> It seems to undermine the rule of law where a resolution condemning actions that had been ruled to be illegal by the **International Court of Justice** could be undermined by just one country as it shows an unwillingness to accept the ruling of the court. This undermines court judgments and reduces the value of the law.

Conclusion: The point that students should take away from this activity is that the structural inequality of an important decision-making body can make the substance of its decisions unequal. It is almost unavoidable that countries act in their self-interest in interpreting international law, and so where some countries are given more power in a decision-making structure, it is likely that those decisions will favour the interests of those with more power.



### 2.3.1 ACTIVITY I - Reforming the Security Council - Printouts for students

Having thought about the structural weaknesses of the Security Council in the previous activity, you have now been asked by the UN Secretary-General to put forward suggestions on how the Security Council could be reformed to make the structure more equal and fair, with a view to making its decisions more equal and fair.

Write down a couple of your ideas for reform in the box below and explain what you think the strengths and weaknesses of each suggestion are:

#### Reform Idea One:

Strengths:

Weaknesses:

#### Reform Idea Two:

Strengths:

Weaknesses:



### 2.3.2 ACTIVITY I - Reforming the Security Council - Instructions for teachers

Allow students to think through possibilities for reforming the structure and process of the Security Council before discussing as a class.



### 2.3.3 ACTIVITY I - Reforming the Security Council - Background for teachers

Various suggestions have been made for the reform of Security Council structure and decision-making process, such as the veto not being available to permanent members in the most serious situations such as where mass atrocities or genocide are in question. The problem with this proposition is that it would be difficult to agree on where this threshold had been reached, and since the restriction of its use applies only to the most extreme circumstances, most decisions would still be subject to the veto.

Another much-discussed suggestion is to expand the number of permanent members in the Security Council, so that it achieves better geographical representation and more realistically reflects the balance of power in the world. The advantage of this is that a wider representation of world powers on the Council would help to balance out the interests of individual countries and better keep them in check. However, this reform would still not achieve democratic decision-making. There would still be two “classes” of states; the only difference would be that the group of permanent members with veto powers would be larger than it currently is.

The most radical approach, suggesting the removal of the right of veto altogether, could potentially improve the inclusion and representation of all member states. Voting by simple majority means that in theory at least, all members are equal in voting status and have the equal right to represent the interests and positions of their own countries. Therefore, where a vote was carried, the motion could be said to formally represent the interests of the majority of the Security Council and probably the international community. However, in reality, even this reform is unlikely to achieve equality and a truly democratic voting system because powerful states are likely to exert their influence on less powerful states that may have economic, political or security reasons for supporting more powerful states in the position they take.

## 2.4 Introduction



### 2.4.1 INTRODUCTION - Abuse of Power - Teacher-led Introduction

**Read this out to students or paraphrase:**

There is nothing wrong with power in itself, and it is necessary that some people have the power to make policies that run society effectively. It is equally necessary that people are given the power to implement those policies. For example, in a school, it is necessary that management have the power to implement education policies that the government has set out, and that teachers have the power to carry out these policies. Otherwise, the school would not function.

However, power should not be abused. This means that power should only be exercised for the purpose for which it was granted, and in a reasonable way which includes making fair decisions using the correct procedure. For example, teachers have the authority to discipline students to keep order in the classroom and making sure that lessons run efficiently, but it would not be a fair and correct exercise of that power if a teacher disciplined only one student all the time, and where he or she had done nothing wrong. This would be unfair firstly because the teacher would not be applying the disciplinary policy to everyone equally and also because the teacher would not be disciplining the student for legitimate reasons.



## 2.5.1 ACTIVITY 2 - The Exercise of Power – Printout for students

Thinking about the exercise of power in an international context, consider in each fictional scenario whether power has been used correctly.

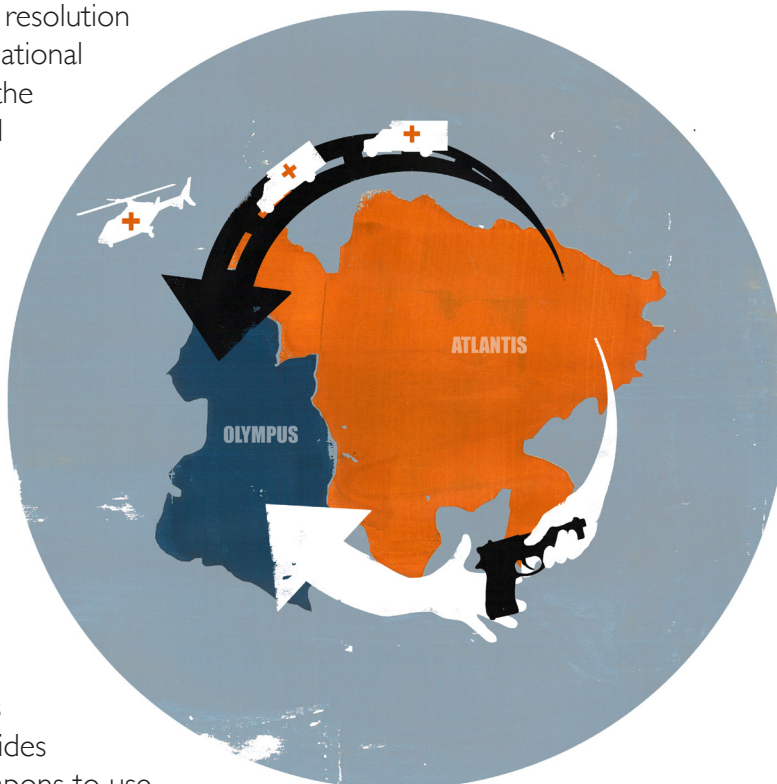
Remember that for power to be used correctly you should take into consideration whether it was:

- a) A fair and reasonable decision, within the limits of the power given
- b) A decision being made for the right purpose
- c) The correct procedure being used to come to a decision

### Example 1

An imaginary country, Olympus, is in the middle of a civil war between the government and rebel groups. There have been heavy casualties and there is evidence that the government is using military force against civilians. The government refuses to let doctors and emergency supplies into the country.

The Security Council of the United Nations has passed a resolution authorising the international community to enter the country to deliver aid to civilians and to protect civilians. Atlantis, a country that shares a border with Olympus, responds to the Security Council resolution by sending aid convoys into Olympus, delivering supplies to civilians. It also stations troops in Olympus and provides rebel forces with weapons to use against government forces.



### Example 2

The Charter of an international organisation, Health United, says that:

“Health United may make a decision that all countries in the world have to follow in areas relating to public health in the public interest. In a non-emergency situation, Health United must consult the international community before making a decision in order to give countries a chance to express their view on what impact the decision would have for them. The consultation must be issued to countries in written form at least a year before the decision is made.”

A major cholera epidemic breaks out in Europe and Health United makes an immediate decision that all countries outside Europe must impose a travel ban to Europe unless the journey is absolutely necessary.

Conscious that whooping cough and tuberculosis are on the rise, Health United makes another immediate decision that all countries must vaccinate children under 12 against these diseases immediately, funded by each country's health budget. Poorer countries say that they cannot afford these vaccinations immediately. Health United says that it will provide subsidies (financial help) for poorer countries as long as they buy the vaccines from Pharma Co, a drug company that is partly owned by some of Health United's top officials.





## 2.5.2 ACTIVITY 2 - The Exercise of Power - Instructions for teachers

Ask students to discuss the two situations in groups before sharing ideas as a class. Some or all of the questions below can be asked to draw out answers:

- a) Who has been given power to make a decision in each situation?
- b) What has the power been given for and what is the extent of that power?
- c) Has the authority in possession of that power respected the limits imposed upon it?
- d) Did the authority exercise the power fairly and reasonably?
- e) Was that power used for the right purpose?
- f) Were the correct procedures followed when exercising that power?
- g) Who is affected by the exercise of power and what are the consequences of an abuse of power in that situation?

If time is short, half the class could consider Example 1 and half could consider Example 2.



### 2.5.3 ACTIVITY 2 - The Exercise of Power - Background for teachers

#### Example 1

The details given in this example suggest that Atlantis has exceeded the power given by the Security Council to enter into Olympus. The resolution says that countries are authorised to enter Olympus to deliver aid and to protect civilians. By stationing troops in Olympus and providing rebels with weapons, Atlantis has gone beyond the power it was given, and is probably exercising it for an illegitimate purpose, that is, overthrowing the present Olympian government.

#### Example 2

The Charter of Health United leaves open the possibility for the organisation to make decisions that must be followed immediately when there is an emergency situation, which a large scale cholera outbreak might fall into. The organisation has probably exercised its power within appropriate limits on the information we have been given.

However, in a non-emergency situation the Charter specifies the procedure that must be followed for the organisation's power to be exercised correctly. While there are certain diseases on the rise, we are not told that there is anything immediately urgent about the situation. Health United exceeds its power by making a decision without holding a year-long consultation as required by its Charter. The decision that it makes cannot be said to be fair or reasonable because poorer countries are unable to meet the requirements. The solution that Health United proposes suggests an abuse of power as it is using its authority to benefit a company that its top officials have an interest in.





### 2.6.1 ACTIVITY 3 - Abuse of Power - Teacher-Led Case Study

If there is time you may wish to take students through this well known example of the abuse of power:

After Saddam Hussein (the Iraqi President at the time) invaded Kuwait in 1990, a series of sanctions were imposed on Iraq, which had a serious impact on its economy and its civilian population. The Oil-for-Food programme was a \$60bn (£32bn) scheme that aimed to allow Iraq to sell some of its oil under a UN-regulated scheme so that it could buy food, medicine and other humanitarian supplies with the money gained, without breaking the sanctions imposed on it.<sup>6</sup>

#### **What was the power given to UN officials?**

UN officials were responsible for administering this programme and for approving sale contracts.

#### **What was the aim of the power?**

The point of the power to approve sale contracts was to make sure that all sales were legitimate and that the proceeds were for the benefit of the Iraqi people.

#### **How was the power abused?**

UN officials (as well as some foreign politicians and various companies) were accused of being complicit in the widespread corruption and abuse of the programme. Saddam Hussein was allowed to divert profits unlawfully from the programme to fund his regime, which is believed to have made billions of dollars through illegal sales to neighbouring countries and through bribing foreign officials. UN officials were responsible for making sure that correct procedures were followed for sales. They did not do so and further, are said to have used their power to allocate sales to certain companies in exchange for money.<sup>7</sup> Officials therefore used their power to benefit themselves rather than the Iraqi people, which was what the power was granted for.



### 2.7.1 PLENARY - Why is it Important to Exercise Power Correctly? - Teacher-led Discussion

Ask students to consider this question based on what they have learned in the lesson. More advanced students could be asked to think about the question independently and to jot ideas down. Other students may need prompting by being asked what they think might happen if those with power were allowed to exercise it in any way they wished.

Prompts might be framed as below:

Why are certain people or authorities given power?

Can you make a checklist of questions authorities using a power should ask themselves? For example, 'Is the decision being made fairly?', 'Has the correct procedure been followed?'



### 2.7.2 PLENARY - Why is it Important to Exercise Power Correctly? - Background for teachers

If power is not exercised correctly, it is open to abuse. Those with power have been entrusted with it to make decisions and to carry out actions so that they can fulfil a specific purpose in the public interest. Those decisions and actions can have important and far-reaching consequences on the lives of those affected and so it is vital that the decisions are made fairly and within the limits of rules set. Decisions and actions carried out can benefit some people (for example the public being protected from disease through certain measures), can put a burden on others, (for example countries being required to implement measures to protect public health), or even impose a penalty (for example a decision to impose financial sanctions on countries that have broken the law).

Those who are entitled to benefit from decisions expect authorities' decisions to be made for the right reasons, expect their best interests to be protected and expect that all those who are entitled to benefit will be treated equally. Those who gain a burden as a result of those decisions rely on those decisions to be made according to rules and within certain limits and not at the whim of decision-makers. Those who receive a penalty through decisions made expect the decision to have been made fairly and according to objective rules, so that penalties are not being imposed for

the wrong reasons and only on some wrongdoers and not others.

There are many relevant observations students may make, but examples of student answers may include:

- The abuse of power means that some may be unfairly targeted. Some people/parties may consistently receive benefits from decisions while others are punished according to the decision-maker's whim or private interests.
- The abuse of power means that power is being exercised for the wrong reasons and is therefore not being used in the public interest but is instead used for the gain of a few in power. For example, if authorities had the power to use funds in the public interest and instead benefited themselves with the funds, this would be an obvious example where power had not been used correctly with the consequence that the public would be deprived of the benefit they were entitled to.
- If power is exercised arbitrarily people cannot predict decisions or know with any certainty what will be decided. The same set of circumstances may lead to different outcomes. This is unfair as it means that people in similar situations might be treated differently, with no good reason for any different treatment.

## Lesson Two: Glossary

**Arbitrary:** based on a capricious or random decision without justification or reason

**Freezing of Assets:** the prevention of an individual, an organisation, or a government from accessing or disposing of money or property that they are holding

**Independent mediators:** an independent professional responsible for encouraging and helping parties at conflict to reach an agreement

**International Court of Justice:** the main judicial organ (court) of the UN considering questions on international law which rules on disputes between states and provides advice on legal questions raised by UN organs and agencies

**International law:** the law that regulates the behaviour and relations of states as well as other international actors

**Sanctions:** a penalty imposed, in this context, on states when they fail to comply with their obligations under international law

**Self-determination:** the right of people to decide on their own governance and future

**United Nations:** an international organisation with 193 member states, established in 1945 after the end of WWII to maintain international peace and security, to promote cooperation between states on global issues, to promote human rights and to aid in the process of decolonisation

**UN Secretary-General:** the head of the executive body of the UN, the Secretariat

**United Nations Security Council:** the UN body responsible for maintaining peace and security in the world

**Veto:** the right to object to or reject a proposal or a decision by a law or rule-making body

## Footnotes:

<sup>1</sup> Under Article 41 of the UN Charter, the Security Council may authorise non-forceful measures to respond to a threat to international peace and security. Measures may include economic sanctions, interruption of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

Under Art. 42 of the UN Charter the Security Council is able to authorise the use of military force in order to restore and maintain international peace and security. For example the Security Council has on occasions: a) authorised the use of military force to respond to an illegal use of force by one state against another (for example Iraq's invasion of Kuwait in 1990) or by a government against its own civilians (for example in Libya in 2011) b) authorised UN Peacekeeping operations to use limited force on various occasions for self-defence or to keep the peace, for example in the former Yugoslavia in 1999, in Somalia 1993 and the Democratic Republic of Congo in 2010 c) authorised the use of all necessary means or measures to maintain or restore international peace and security by multinational forces in various conflict regions, including Bosnia and Herzegovina, Liberia, Iraq and Haiti.

<sup>2</sup> For example the Security Council authorised United Nations humanitarian agencies and their implementing partners to use various routes across conflict lines and certain border crossings in Syria, in order to provide humanitarian aid and relief.

<sup>3</sup> See link for list of countries never elected to the Security Council: <http://www.un.org/en/sc/members/noteselected.asp>

<sup>4</sup> Examples of vetoed resolutions include: Resolution 24 (2011), Resolution 878 (2006), Resolution 783 (2004), and Resolution 240 (2004)

Examples of resolutions that were passed include: Resolution 672 (1990), Resolution 726 (1992)

<sup>5</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*. <http://www.icj-cij.org/docket/files/131/131671.pdf>

<sup>6</sup> More information can be found at: [http://news.bbc.co.uk/1/hi/world/middle\\_east/4445609.stm](http://news.bbc.co.uk/1/hi/world/middle_east/4445609.stm)

<sup>7</sup> Summary of Volcker Committee Report on the Oil-for-Food Programme:  
[http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/27\\_10\\_05\\_summary.pdf](http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/27_10_05_summary.pdf)  
 Links to the full report can be found here:  
<http://news.bbc.co.uk/1/hi/world/americas/4550859.stm>