

# Project Description

## Research project: Does International Law Matter? The UN Security Council and State Actions

### 1. Purposes and Aim

Since 1945, the UN Security Council has adopted 2 337 resolutions. Whether these resolutions ultimately constrain the actions of state and non-state actors is a contested issue. Some scholars argue that international law and organizations totally lack any intrinsic significance: international law is a mere component in the power dynamics between states, devoid of prescriptive worth and used only when it serves the interests of states. International institutions are “arenas for acting out power relationships” Other scholars suggest that international rules and institutions may influence and constrain state behaviour, either by rational self-interest or shared values. Even if all states have agreed to respect the prohibition on the use of force there are different opinions on what this prohibition entails. This raises several questions: if peace is a desirable condition, is peace possible if states have different views on what the prohibition on the use of force means? Scholars may have shared perceptions of legal sources and interpretative techniques, but to what extent are these relevant if states on key occasions take other, extra-legal, considerations?

The project aims to explain the significance of norms for states’ actual behaviour. The overarching question is to what extent and how international law influences states’ decision-making and actual behaviour when it comes to the use of force. The project adopts a mixed-method design, combining traditional legal approaches to sources of law and interpretation, empirical legal methods and social science methods. It will use existing datasets to select armed conflicts for further study, including cases which have been subject to debate and decisions of the United Nations (UN) Security Council and cases which have not. This design allows for comparison of the three dimensions mentioned above: *arguments* used by states in the UN Security Council, *voting* of individual members of the UN Security Council and *state behaviour*. The design also permits an assessment whether the course of events and outcome in similar situations – as regards to the legal rules that are involved – are affected by arguments and voting in the UN Security Council.

The project will thus offer a systematic and comprehensive analysis of how norms in international law influences state behaviour. The project will also result in a dataset which will be public and accessible for other scholars after the conclusion of this project.

The project is original as well as feasible. There are several examples of empirical legal research, but it is still a nascent field. By examining international law’s influence on the use of force, the study attempts to answer key questions that many may have an opinion about but where the empirical research is scant and inadequate. By combining researchers from the fields of international law and political science, the project pools expertise in the types of legal and empirical analysis that are required for a satisfactory analysis of these questions.

### 2. Survey of the field

This project speaks to three bodies of research, none of which previously has systematically explored arguments used by states in the UN Security Council, voting of individual members of the UN Security Council and the impact of arguments and voting on state behaviour.

First, there is extensive amounts of scholarly writing on the use of force in international law. Central contributions include Ian Brownlie, *International Law and the Use of Force by States* (1963), Yoram Dinstein, *War Aggression and Self-defence* (2012), Christine Gray, *International Law and the Use of Force* (Third Edition, 2008) and Ingrid Österdahl, *Threat to the Peace* (1998). There is also research on the status and interpretation of UN Security Council resolutions, for example Katinka Svanberg, *FN:s säkerhetsråd i rättens tjänst* (2014). However, research is scarce on the legal status and value of explanation of votes at the UN Security Council. There is also a debate on the legitimate means of interpreting resolutions from UN Security Council.

Second, there is literature on the politics of the UN Security Council, including Cronin and Hurd's *The UN Security Council and the Politics of International Authority* (2008) and Malone's *The UN Security Council: From the Cold War to the 21<sup>st</sup> century* (2004). An important debate relates to the effects and political determinants of voting in the Council. Here, Vreeland and Dreher's *The Political Economy of the United Nations Security Council* (2014) highlights how economic interest and interstate relations shape voting patterns, an argument elaborated in 2004 study by Kuziemko and Werker, whereas O'Neill's 1996 study investigates implications of the asymmetric distribution of voting power in the Council. This literature has advanced the general understanding of the Security Council deliberations, but with a few exceptions (including Thompson's 2009 study *Channels of Power: The UN Security Council and U.S. Statecraft in Iraq*), such deliberations have not been systematically assessed in relation to war, nor been connected to a legal perspective.

Third, there is an extensive body of research on the influence of international organizations on armed conflict. Building on theoretical work on how institutions facilitate cooperation, an empirical literature has assessed whether international organizations, including the United Nations, influence the risk and duration of armed conflicts and to which extent such effects are conditioned on institutional design and procedures. Here, growing attention is devoted to investigating the effectiveness of specific policy instruments, such as peacekeeping operations or mediation and other diplomatic initiatives, which are increasingly available to international organizations. This empirical literature has advanced considerably in the last two decades, but it remains an unresolved question to which extent norm deliberation and voting in the Security Council affect the behaviour of disputants in a conflict subject to its attention.

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### ***3.1 Theoretical Framework: Normative Influence on Armed Conflicts between States***

International law as a scholarly discipline relies on the tacit assumption that the law influences state behaviour, but offers few tools to test this assumption. However, recently there is an empirical turn in international law scholarship, in which the field engages with other disciplines, including social sciences, and the empirical methods that have emerged there.

The classical realist view on international relations concentrates exclusively upon the dynamics of power politics and the "balance of power". According to realist theory, international law and organizations totally lack any intrinsic significance. International law is a mere component in the power equation, devoid of non-instrumental significance or prescriptive worth, which serves as a tool of power when deemed necessary for the vital interests of state. International organizations reflect, rather than effect, world politics.

Institutional theory and constructivist theory in political science offer complementary observations and explanations which suggest that international rules and institutions may influence and constrain state behaviour. It can either be explained by rational self-interest or

shared perceptions among states about what is appropriate behaviour. These perspectives focus attention on how the expectations produced by behaviour affect identities, interests and values which in turn may affect future behaviour.

The predominant mechanisms for creating and enforcing international law are reciprocity, coercion, persuasion and socialization. In the absence of a central authority, rules of international law are to a large extent upheld by measures of self-help, as illustrated in article 51 of the UN Charter concerning the right of states to self-defence against armed attacks. Enforcement measures authorized by the UN Security Council may be perceived as an example of a centralized authority, which uses coercion to induce states to comply with their international obligations. Even in the absence of enforcement measures authorized by the Security Council, this organ may act as an arena where states seek to persuade each other to pursue law-abiding behaviour. Finally, repeated arguments made and votes in the Security Council may together with state behaviour change the values and interests of states via socialization. The project seeks to examine to what extent any or all of these mechanisms are relevant for actual behaviour when it comes to the use of force.

### **3.2 Research questions**

As indicated in the introduction, the overarching research aim of the project is to examine whether international norms and UN Security Council resolutions constrain the actions of state and non-state actors when it comes to the use of force. In order to achieve this aim we need to address several subsidiary questions:

1. What is the status of UN Security Council resolutions and methods to interpret them? Which legal arguments and legal interpretations are used by individual members of the UN Security Council when they consider and take standpoints on: i) the question whether a state has violated the prohibition against the use of force; ii) whether a state is responsible for aggression or iii) if a situation/dispute should be resolved with force?
2. In order to answer the previous question, we need to do a prior inventory of potential legal interpretations. What must we assume (in terms of values and ideology) in order to give rules a particular interpretation?
3. How do by individual members of the UN Security Council vote when they consider and take standpoints on: i) the question whether a state has violated the prohibition against the use of force; ii) whether a state is responsible for aggression or iii) if a situation/dispute should be resolved with force?
4. Has there been a change of state arguments and behaviour since the UN was created?
5. Do standpoints that have been subject to a vote in the UN Security Council influence state behaviour in a situation/dispute? What is the actual state practice on the use of force?
6. What is the role of extra-legal factors, including a particular country's political system, population size, economy, geographical position and alliances? This also involves an enquiry into differences between small and large states.

The project will have a comprehensive approach where various dimensions will be examined and the project has adopted a mixed-method design as explained in the next sections.

### **3.3 A Comprehensive Approach: Arguments, Votes, and Actions**

We focus on three dimensions in relation to international law and the UN Security Council: *argument*, *vote* and *state behaviour*. *Argument* captures the reasons and legal view held by a member of the UN Security Council. This will require the creation of an inventory of potential legal interpretations. What must we assume (in terms of values and ideology) in order to give rules a particular interpretation? *Vote* refers to whether a state has supported, opposed or abstained from taking sides when voting in the UN Security Council. *State behaviour* expresses

what a member of the UN Security Council does (or abstains from doing) in relation to a decision by the Council.

We will evaluate these three dimensions in relation to specific conflicts. For each conflict we will examine *argument*, *vote* and *state behaviour*. Conflicts will be classified in different categories relating to the legal issues involved, for example whether non-state actors can trigger the right to self-defence, the right to anticipatory self-defence and what constitutes a threat against international peace and security.

The examination of arguments, votes and actions requires careful selection of conflicts to be studied. The study should not only examine conflicts that have been subject to enforcement action by the Security Council but also conflicts where the Security Council for various reasons abstained from intervention. Thus, the conflicts surveyed will be grouped into four categories: 1) Conflicts neither discussed nor voted upon by the UNSC; 2) conflicts discussed by the UNSC but not subjected to vote; 3) conflicts discussed and subjected to vote in the UNSC, resolution not passed; and 4) conflicts discussed and subjected to vote in the UNSC, resolution passed. This will allow us to take the next step to investigate whether voting and arguments influence state behaviour in a particular conflict. For conflicts belonging to the two first categories, data will not exist in relation to *vote* and to some extent also be less comprehensive in relation to *argument* (especially in the relation to the first category). However, these two categories will still be included the study in order to obtain comparative leverage on the relevance of norms on state behaviour.

The project will cover interstate as well as intrastate conflicts. The scope of the study will be limited to debates and sessions in the UN Security Council from 1945 to 2014 that concern the use of force. The later date is set to 2014 in order have some distance when answering the fourth research question relating to changes of state arguments and behaviour by time. We will need to test for alternative explanations for state behaviour in terms of extra-legal factors, including a particular country's political system, population size, economy, geographical position and alliances.

### ***3.4 A Mixed-Method Design: Empirical Legal Method***

The project employs a mixed-method approach, combining traditional legal approaches to sources of law and interpretation with a statistical analysis of armed conflicts and in-depth case studies of the operation of causal mechanisms in conflicts. The choice of a mixed-method approach heeds calls in recent evaluations of the field. Young (2011: 19858) concludes that “finding ways to combine quantitative and qualitative methods is a priority in studies of effectiveness”. This empirical legal method uses quantitative results that may raise new questions that the researcher goes on to answer by using traditional – and more systematic qualitative – legal analysis.

The basis of the quantitative analysis will be the extension of an existing dataset on armed conflicts: the Uppsala Conflict Data Program. For the purpose of this project, we will expand the existing dataset by collecting data on the three dimensions: *argument*, *vote*, and *state behaviour*. The data will be gathered from official records of the UN, official statements by state representatives, explanations of vote in the Security Council, and case-specific sources on state behaviour. We will also use existing datasets on armed conflicts that include information on state behavior, for example which states that are party to the conflict.

The material will be coded according to categories corresponding to alternative legal views/interpretations. For example, in relation to a terrorist attack legal views among states may range from that this cannot amount to an armed attack and that the proper response is traditional law enforcement while other states may argue that it constitutes an armed attack that triggers the right to self-defence under article 51 of the UN Charter.

On the basis of the dataset, we will engage in three forms of statistical analysis. First, we will provide a comprehensive descriptive statistical analysis of how states reason, vote and act in relation to specific legal issues (such as self-defence, the right to anticipatory self-defence and what constitutes a threat against international peace and security).

Second, we will conduct time series analyses of how individual states behave in a longer time period involving several conflicts. Time series analyses will also be applied to the behaviour of states as a collective.

In conformance with a nested design in mixed-method analysis, five cases will be drawn from the sample of conflicts in the dataset, based on preliminary statistical results. We will ensure to have cases that both conform to and deviate from the general pattern of observed behaviour. Examples of conflicts that may be studied: Korea war 1950-1953; Suez crisis 1956; Cyprus 1958-1967 and 1974; India-Pakistan 1965; Six-day war 1967; Entebbe 1976; Vietnam-Cambodia 1978-1979; Grenada 1983; Iraq-Kuwait war 1991; Yugoslavian wars 1999-2001; Kosovo 1999; 11/9, 2001; Iraq 2003; Libya 2011; Georgia-Russia war 2008 and Ukraine-Russia 2014. In these five case studies with more detailed analysis of legal arguments and causal relationships will be examined.

Turning to the feasibility of answering the research questions (section 3.2) and the study in general. As already indicated above, we will use an existing dataset on armed conflicts, for example from the Uppsala Conflict Data Program, and expand that dataset. The study will examine arguments and behaviour of temporary as well as permanent members of the UN Security Council.

The first research question will be examined by coding, statistical processing and analysis of resolutions in the UN Security Council. The material used is primarily explanation of votes given in connection with votes in the Council. In order to make this coding we need to make an inventory of potential legal interpretations. During coding new legal interpretations may be discovered. This involves traditional legal methodology as well as quantitative analysis. Minutes from meetings of the UN Security Council are available online. Material before the 1990s is probably not digitalized, which may require additional work and resources from this project or in alternative that the scope of the study is limited in this regard. Depending on the questions asked, tools involving automated text analysis may be used as an additional supplement to manual analysis. This may be used to detect broad changes in argumentation, use of terms and words. The benefit is that more material can be analysed, while the drawback is that certain nuances may be lost. The second research question is closely associated with the first where we will seek value sets, perspectives and ideologies that may explain why a state chooses certain arguments and interpretations.

The third research question may be answered by collecting data from the official website of the UN. There may also be existing datasets that may be used.

The fourth research question will be analysed by testing for correlation between arguments, voting and state behaviour. In order to reach conclusions on causality more in depth analysis will be done into selected conflicts where cases are chosen from the four categories listed above: 1) conflicts neither discussed nor voted upon by the UNSC; 2) conflicts discussed by the UNSC but not subjected to vote; 3) conflicts discussed and subjected to vote in the UNSC, resolution not passed; and 4) conflicts discussed and subjected to vote in the UNSC, resolution passed. The selection of cases within each category and between categories may concern similar conflicts with different outcome when it comes to the influence of legal norms as well as different conflicts with similar outcome when it comes to the influence of legal norms. Thus,

the choice of cases will consider the logic of the distinct two types of research design: the “most similar systems design” (MSSD) and “most different systems design” (MDSD).

Particular attention will be on the actions taken and the arguments used for actions taken. For this end the method of process tracing will be used, i.e. tracing steps taken by states in a chronological order, the *modus operandi* of historians which is similar to techniques used by scholars in international law. One may also note the recent turn to history in international law scholarship. The fifth and sixth research questions will be investigated in parallel to research questions 1-4. Thereafter we will seek theoretical explanations.

### *3.5 Preliminary results*

The previous research of the individual members of the project team indicate the following preliminary results. Klamberg’s research suggests that various extra-legal factors may influence the decision-making and actions of a state. If all of these extra-legal factors induce a certain conduct, international law may not prevent that state from the use of force. International law may only have marginal influence for that decision. However, even if all extra-legal factors induces a state to use force, international law may influence the forms, intensity and state justification of the use of force. For a small state, however, even this marginal influence may be of importance. Ahlin argues that a state like Sweden has a major interest in limiting the freedom of action of individual states by inducing them to accept both legal and non-legal obligations. This is especially true regarding the use of force. The less force that used outside the UN-system, the better for a small state. Small states therefore often put their trust in international law to help them achieve their ultimate (maybe utopian) goal, which is a world where force only is used within the strict confinements of the UN Charter. Focusing on the role of institutional capabilities, Lundgren’s research has demonstrated that international organizations can reduce the probability of intrastate armed conflict and, should such conflict break out, increase the probability of a peaceful settlement. However, there is significant variation both across organizations and across time within individual organizations, suggesting that alternative explanations, specifically decision-making and the generation of international legal norms, can provide additional analytical leverage. In her research, Sundström has studied how regimes behave in ways that may prove costly for them, for example when creating institutions and when cooperating with other actors. The findings point to the importance both of domestic actors to which the political leadership needs to show the credibility of their commitments to promised actions and of international rules and norms. In his earlier research, Tallberg has explored both decision-making in international organizations and determinants of compliance with international law. His work on the first topic suggests the composition of state parties, their preferences, and the applicable decision rules are of extensive importance for international law to come about in the first place. His work on the second topic suggests that a combination of enforcement and management approaches to compliance has the best chances of producing state behaviour in line with international law.

### *3.6 Significance for the research field*

The project promises three central contributions to research. First, it will offer a systematic and comprehensive analysis of how norms in international law influences state behaviour.

Second, it will generate a unique dataset on how states have argued in the UN Security Council and their voting behaviour. This will in turn increase knowledge about the relationship between politics and law in the UN Security Council.

Third, the project will be part of the wider and ongoing trend in legal research of increased use of empirical and social science methods. Further, the project will demonstrate how

perspectives from the two scholarly disciplines, international law and political science may be combined in a constructive and creative way.

### *3.7 Deliverables, Impact, and Communication Strategy*

The principal deliverables of the project will be scholarly publications, in the shape of articles in international peer-review journals. The publication records of the project members vouch for the dissemination and impact of the results.

Another important deliverable will be a novel dataset on legal argumentation and state behaviour in armed conflicts that will include several important variables absent from existing datasets. The dataset will be made available to the scholarly community following publication of the principal results.

A central channel for disseminating results and exchanging ideas will be participation in conferences, workshops and networks. In addition, the project team will organize a research workshop devoted to the topic of the significance of norms for states actual behaviour.

The project does not only involve fundamental legal and scholarly issues, it is also highly topical in view of Sweden's membership of the UN Security Council in the 2017-2018 term. For purposes of reaching policy-makers within government and the public, the project team will contribute popular science articles and be available for the media. The principal investigator has extensive experience of popular-science contributions and well-developed media contacts.

To enhance the potential for effective dissemination of the results to the research and policy communities, the project will set up a project web page, reporting on activities and output. When completed, the dataset will be made available through this web page.