



The security council's performance under international law

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1 INTRODUCTION

The United Nations (UN) has one of the largest military contingents in the world, which is why it has coordinated dozens of missions in several countries. Because of this, the Security Council (SC) is the body responsible for defining, authorizing, extinguishing, and renewing the mandates of these missions. Therefore, with their successes and mistakes, the UN and, above all, the CS cannot be ignored as relevant actors in the international scenario and, especially, for International Law.

Given this, understanding the role of the CS in maintaining the international order, in the light of the normative precepts listed in the Charter of the United Nations, is of great importance. For reasons of time and space, the text on the screen will seek to present the main aspects of this body, in addition to making some criticisms.

2 OBJECTIVE

Analyze the role of the Security Council in the international order, presenting the constitution, roles, and importance of this body for the maintenance of international peace and security.

3 METHODOLOGY

The research was developed based on studies presented in the literature of international relations and international law, that is, based on books, doctrines, and articles that are relevant in the academic environment.

4 DEVELOPMENT

The League of Nations is considered the first organization of universal scope integrated by States, to establish a system of collective security, promote cooperation, and ensure international peace. Article 4 of the Pact of the League provided for the formation of a Security Council with five permanent members - the United States of America, France, Great Britain, Italy, and Japan -, and four non-permanent members - Belgium, Brazil, Spain, and Greece, being the first chosen by the Assembly (CORREIA, 2017).

With the outbreak of World War II in 1939, the League lost its purpose, which is why its archives and facilities were transferred to the UN. Therefore, the creation of this body had the purpose of presenting the "guardianship of the powerful", granting the victorious powers of war the primary responsibility for the imposition of peace. In this way, the UN SC flourishes to prevent future generations from the scourge of



war, in addition to being the guardian of international order, especially the sovereignty of States (UNITED NATIONS SECURITY COUNCIL, 2012).

The CS attributions are delimited in several Chapters of the Charter, whose purposes and principles of the UN must be respected, that is, the CS is not "above the law". Chapter V presents the CS, its composition, functions, attributions, voting method, and procedural issues. How the Security Council conducts its work is provided for in Articles 28 to 32. Such devices authorize the continuous functioning of the Security Council, that is, nothing prevents holding periodic meetings at its headquarters and outside it, not being limited to several meetings. In addition, the CS may establish subsidiary bodies and adopt its internal regulations (CORREIA, 2017).

Article 23 of the Charter sets out the nominal relationship of the five permanent members - The Republic of China, France, the Union of Soviet Socialist Republics (USSR), the United Kingdom of Great Britain (including Northern Ireland), and the United States of America. For lack of revision, the Charter still mentions the Republic of China (Taiwan's official name) instead of the People's Republic of China, which joined the Council in 1971. Furthermore, it refers to the USSR instead of the Federation of Russia, which took over the seat in 1991 (GARCIA, 2013).

Similar to the League of Nations, in creating the UN, minor powers aimed to increase their level of representation. Thus, Article 23 of the Charter establishes two criteria for the election of non-permanent members:

- (i) The contribution of Member States to the maintenance of international peace and security and the other purposes of the Organization;
- (ii) Equitable geographic distribution.

Among the other purposes of the Organization would be, in particular, the financial contribution to the UN budget. It should be noted that the mandate of non-permanent members is two years, without the right to immediate re-election. Thus, five elected seats are renewed each year, to avoid a sudden change in the Council, in case all the temporary members were replaced at the same time (CORREIA, 2017).

As for decision-making procedures, the resolutions issued by the Council can take months of prior negotiations, precisely because different coalitions operate within its scope. However, there remains an excessive concentration of power in the hands of the permanent members (known as P-5). The United States, Great Britain, and France, which form the P-3, enjoy a unique capacity for the initiative: usually one of the three is the main one to propose the text that will be discussed, as well as lead the negotiations (GARCIA, 2013).

Article 27 establishes that, in procedural matters, an affirmative vote by nine members is sufficient for decisions to be taken. Therefore, there is no veto if the issue is merely procedural. However, "in all other matters", the Council's decisions will be taken by the affirmative vote of nine members, including the



affirmative votes of all permanent members (CORREIA, 2017). Although the Charter does not mention the word veto, the need for agreement from all P-5s is crystal clear. Furthermore, over time, the understanding prevailed that the abstention (or absence) of a permanent member would not prevent the adoption of an SC resolution. In addition, a UN member state that is not a member of the SC may participate, without voting rights, in the discussion of any question submitted to the body, whenever it considers that such country is a party to the dispute or has its interests directly in the question (GARCIA, 2013).

Article 24 of the UN Charter presents the CS's primary responsibility for maintaining international peace and security. This is to say, he was invested with superior authority in terms of imposing international peace and security. Article 25 reinforces this interpretation by indicating that Member States agree to accept and execute CS decisions, which is why jurists assess this clause as a basis for binding decisions, such as, for example, in the application of sanctions. In this sense, it can be said that CS decisions are binding (UNITED NATIONS SECURITY COUNCIL, 2012).

Chapter VI of the Charter refers to the peaceful settlement of disputes and assigns the Security Council a key role in the effort to be made by international society to find peaceful solutions to conflicts. In this way, there is a gradual procedure that must be observed in the resolution of any international controversy (GARCIA, 2013).

As stated in Article 33, the parties to a dispute shall seek, first of all, to reach a solution by peaceful means, that is, negotiation, inquiry, mediation, conciliation, arbitration, judicial solution, recourse to regional entities or agreements, or any other peaceful means of its choice. However, if the issue is not resolved peacefully, they must submit the situation to the CS (Article 37), since it is incumbent upon the latter to investigate any situation capable of generating friction between the States (UNITED NATIONS SECURITY COUNCIL, 2012).

The competence to put an issue on the agenda for debate does not fall only to the CS. Any Member State may request the attention of both the CS and the General Assembly on a situation that must be resolved (Article 35). Even a non-UN member state may do so, provided that it is a party to the dispute and accepts the obligations for peaceful settlement provided for in the Charter (Article 35). Therefore, the CS will recommend the specific procedures for each case, except for legal disputes, since they will be considered by the International Court of Justice (Articles 36 to 38) (CORREIA, 2017).

If the scenario presents a situation of threat to peace and acts of aggression, the provisions of Chapter VII may be triggered. Since the SC determines which situations constitute a threat to international peace and security, to prevent the situation from getting worse, it may recommend or invite the parties to accept some provisional measure that does not involve the use of armed forces (Articles 39 and 40), among others - the complete or partial interruption of economic relations, rail, sea, air, postal, telegraphic, radio, or any other means of communication, in addition to the disruption of diplomatic relations (Article 41) (UNITED NATIONS SECURITY COUNCIL, 2012).



In the meantime, if the imposed sanctions and the measures of article 41 are not sufficient, the CS must adopt the measures foreseen in article 42, that is, the use of air, naval, or land forces, to maintain or restore the stability of the international system. (Article 42). Once these steps listed in the Charter have been fulfilled, the CS is allowed to use force, or, as it is commonly said in the language of resolutions, “all necessary means” to impose its decisions (CORREIA, 2017).

The first criticism that arises with the SC concerns areas that would not be within its purview or whose conduct collides with other UN bodies. This is the process of "securitization" of the agenda. Considering that securitization is not always the best answer for resolving a given dispute, as well as the use of force should be the ultima ratio, certain guidelines presented to the CS would be better handled by the specialized agencies of the United Nations (GARCIA, 2013).

The second criticism is related to CS attempts to act as a legislator, especially when its decisions on a given subject have a scope that goes beyond the particular case and assumes the format of a general rule. The classic example is Resolution 1373 of the CS, as it differs from all others since it has a legislative nature. This resolution, adopted after September 11, determines concrete actions for States, in addition to criminalizing the financing of terrorism in general. In summary, if previously the SC was seen as the world's policeman, now it assumes the role of the world's legislator (UNITED NATIONS SECURITY COUNCIL, 2012).

The third criticism stems from Article 43 of the Charter, as it determines UN members contribute to the maintenance of international order, and for that, they must place armed forces at the disposal of the CS, which must be ready and available (Article 45). Here lay a dilemma between the need to provide military means, under the terms of the Charter, and the demands for a reduction or control of armaments. How to promote disarmament if the States should be ready to contribute militarily to keep the peace? In theory, if all states were completely disarmed, none could meet the obligations of the Charter. The hermeneutic solution comes from reading Article 26 of the Charter, as it determines:

Article 26. To promote the establishment and maintenance of international peace and security by diverting as little as possible of the world's human and economic resources to armaments, the Security Council shall be charged with formulating, with the assistance of the State Commission Major, referred to in Article 47, the plans to be submitted to the Members of the United Nations, for the establishment of a system of regulation of armaments.

During the creation and assembly phase of the UN structure, the great powers sought to preserve the Security Council's autonomy. The permanent members were not interested in establishing rules that would make the agency's work unfeasible. The US delegation made it clear that it only wanted the “indispensable minimum” for its functioning (UNITED NATIONS SECURITY COUNCIL, 2012).

Consequently, it raises the fourth criticism linked to legal certainty. In practice, the Security Council is not bound by the means provided for in the UN Charter on forms of conflict resolution. Therefore, its competence can be expanded to achieve the objectives of the UN. For example, the peace missions that are conducted by the CS are not exhaustively provided for in the UN Charter, however, they can be established based on the theory of implied powers (UNITED NATIONS SECURITY COUNCIL, 2012).

According to this theory, if the UN Charter grants a specific function to the CS, it also implicitly grants it the necessary means to carry out these activities. That is, if CS “can do more, it can also



do less". If the CS will be able to determine the use of force, as provided for in Chapter VII of the Charter, it will also be able to adopt peacekeeping missions, which is a more incisive means than the various peaceful means of disputes, however, it is less aggressive than a military intervention by the Article 42 of the Charter (GARCIA, 2013).

5 FINAL CONSIDERATIONS

After analyzing the structure, organization, and functions imposed on the CS, as well as the criticisms made regarding its performance, one can see the importance of this body for safeguarding international peace and security.

Through periodic meetings, in addition to proposals for resolutions deliberated by its members, the CS seeks to ensure due compliance with international norms, especially concerning the maintenance of international order - although this does not mean the removal of the political aspects that prevail in the negotiations between Member States-, which is why several criticisms are proposed about the aforementioned United Nations body.



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