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Security Council Resolution 2532 (2020) on COVID-19: A Missed Opportunity?



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Introduction

After the novel coronavirus (COVID-19) was declared a pandemic by the World Health Organization (WHO) on 9 March 2020, the UN Security Council (SC) eventually adopted on 1st July 2020 with extreme delay Resolution 2532 (2020),¹ addressing the security implications of this infectious disease. Resolution 2532 was the outcome of an exhausting negotiation process following the explicit request by the UN Secretary-General (SG) António Guterres to discuss this topic within the SC.²

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¹ UN Doc S/RES/2532 (2020) (1 July 2020) adopted unanimously.

² On 9 April 2020, the SG, acting under Article 99 of the UN Charter, brought to the attention of the Security Council (SC) the impact of the ongoing pandemic, which went beyond the health sphere, 'potentially leading to an increase in social unrest and violence that would greatly undermine our ability to fight the disease':

<https://www.un.org/sg/en/content/sg/statement/2020-04-09/secretary-generals-remarks-the-security-council-the-Covid-19-pandemic-delivered>.

Against this background, on 23 March 2020, the SG had called for a global ceasefire (renewed on 3 April 2020 and on 22 September 2020) in order not to divert resources and attention from the 'common enemy' represented by COVID-19.

The SC was something of an outlier in this respect since all the other UN bodies had already been active regarding COVID-19 for much longer.³ The long wait was due to the dispute between China and the United States (US) on the source and name of the novel coronavirus, the strong criticism by the former Trump administration towards the way the WHO had dealt with the pandemic, and in particular the charges against the Director-General of the WHO as being under China's control in the wake of the COVID-19 outbreak.⁴ After a lengthy negotiation, the P5 agreed on a very short text, backing the SG's call for a global ceasefire, which appears to have been a watered-down compromise and further evidence of the inadequacy of the voting system within the Security Council.⁵

In order to overcome the stalemate within the SC, any mention of the WHO or the International Health Regulations (IHRs) was deleted from the final version of the Resolution, and the wording was made more ambiguous, instead referring to the UN system in general rather than specific agencies. Due to the delay, the momentum was lost and the practical effect of the Resolution in war-torn countries was minimal, as witnessed by the Nagorno-Karabakh conflict, where the fighting was its worst since the ceasefire of 1994.

This paper presents some reflections on the delay in addressing COVID-19 within the SC, whose action was strongly hindered by its voting mechanism and superpower rivalry. This is in contrast with the General Assembly, which has adopted four resolutions on COVID-19. Specifically, it is argued that Resolution 2532 was a missed opportunity, despite being adopted unanimously, because of its weak legal nature (it is a recommendation) and its poor wording (it does not envisage 'further measures' in case of non-compliance). In short, the SC took the leadership of the global response to tackle the epidemic during the 2014 Ebola outbreak in Western Africa, but in the present case it manifestly failed to do so. In the Ebola case, it is true that the role of the SC was eventually symbolic, since no measures under Article 41 or 42 were issued, but the SC's role was crucial in coordinating international efforts, gaining additional funding, and building momentum in the global community.

³ The UN General Assembly had adopted before July 2020 two resolutions addressing COVID-19: Resolution 74/270, 'Global solidarity to fight COVID-19', 30 March 2020; Resolution 74/L.56, 'International cooperation to ensure global access to medicines, vaccines and medical equipment to face COVID-19', 8 April 2020.

⁴ The US blamed China for the spread of COVID-19 and officially announced its intention to withdraw from the WHO on 6 July 2020. See Lawrence O Gostin, Harold Hongju Koh, Michelle Williams, Margaret A Hamburg, Georges Benjamin, William H Foege, 'US withdrawal from WHO is unlawful and threatens global and US health and security' (2020), 396 *The Lancet*, 293-295. The then President-Elect Joe Biden, however, promised to reverse Trump's decision:

<https://joebiden.com/covid19>.

⁵ Michael Barnett & Martha Finnemore, *Political Approaches*, in Sam Daws and Thomas G. Weiss (eds.), *The Oxford Handbook on the United Nations* (Oxford University Press, 2008).

Therefore, I will explain why Resolution 2532 was a downsizing of the ongoing process of ‘securitization of health’ – which is discussed in the following contribution by Pedro Villarreal – and a step behind when compared to Resolution 2177 (2014) on the Ebola outbreak. Indeed, the SC’s disarray has brought to the forefront the key question of the role the SC can play in dealing with the spread of infectious diseases with global implications (‘non-traditional security threats’).

The measures envisaged in Resolution 2532 (2020)

National egoism prevailed during the negotiation process for Resolution 2532: the US intended the resolution to be an occasion to globally recognize China’s responsibility for the spread of the disease by requesting, among other things, a specific reference to the ‘Wuhan virus’. The US also strongly rejected any reference to the WHO in the final text following the decision of the former administration to cut ties with the Organization by, firstly, suspending funding and, later, by withdrawing as a member. Separately, China was eager to avoid any direct or indirect criticism of its handling of the first phase of the disease outbreak and to dismiss any charge of lack of transparency and cover-up of critical information on COVID-19.

Once over the hurdle of the WHO, a compromise was achieved over the idea of supporting the SG’s call for a global ceasefire (although all the P5 agreed that it would have not hindered the continuation of counter-terrorism operations).⁶ Despite this, the US and the Russian Federation were also concerned that a global ceasefire could have hampered their respective military operations in Afghanistan, Iraq and Syria. The Resolution specifically addresses conflict situations, following the assumption that there is a clear link between violence and instability as a trigger for the spread of COVID-19, and that inversely the pandemic exacerbates the adverse humanitarian impact of the disease on conflict situations.⁷ The Resolution demanded ‘a general and immediate cessation of hostilities in all situations on its agenda and supports the efforts undertaken by the Secretary-General and his Special Representatives and Special Envoys in that respect’ (para. 1). The SC then called upon ‘all parties to armed conflicts to engage immediately in a durable humanitarian pause for at least

⁶ The US full support for a global ceasefire was reiterated in the ‘Remarks at a UNSC Discussion on Resolution 2532 on COVID-19’, 9 September 2020 (‘The United States has also been a strong supporter of the Secretary-General’s call for a global ceasefire, while acknowledging the importance of continuing counter-terrorism operations’), <https://usun.usmission.gov/remarks-at-a-un-security-council-discussion-on-resolution-2532-on-Covid-19-via-vtc/>.

⁷ Erin Pobjie, ‘Covid-19 as a threat to international peace and security: The role of the UN Security Council in addressing the pandemic’, EJIL:Talk!, July 27, 2020, <https://www.ejiltalk.org/Covid-19-as-a-threat-to-international-peace-and-security-the-role-of-the-un-security-council-in-addressing-the-pandemic/>

90 consecutive days, in order to enable the safe, unhindered and sustained *delivery* of humanitarian assistance, provisions of related services by impartial humanitarian actors, in accordance with the humanitarian principles of humanity, neutrality, impartiality and independence, and medical evacuations, in accordance with international law, including international humanitarian law and refugee law as applicable' (para. 2).

Since the establishment of the UN in 1945, it is common practice by the SC to request ceasefires by belligerents both in the context of international and non-international armed conflicts.⁸ The novelty lies rather in the request of a humanitarian pause in a conflict setting, a request that had never been issued before Resolution 2532.⁹ Resolution 2532 then requested the SG to 'provide updates to the Security Council on the UN efforts to address the COVID-19 pandemic in countries in situations of armed conflict or affected by humanitarian crises' (para. 5). In doing so, it created a formal mechanism for the SG to monitor and update the SC on the implementation of the ceasefire. This also afforded the possibility of demanding further measures.

The legal nature of Resolution 2532 (2020)

In Resolution 2532, the SC expressed 'grave concern about the devastating impact of the COVID-19 pandemic across the world, especially in countries ravaged by armed conflicts, in post-conflict situations, or affected by humanitarian crises,'¹⁰ noting that it could undermine peacebuilding and development gains in countries emerging from armed conflicts.

The legal foundation of this Resolution can be traced to Art. 36, para. 1, of the UN Charter, which envisages the power of the SC to adopt recommendations not only in case of a dispute, but also of 'a *situation* that might endanger peace and security'.¹¹ It is, therefore, a recommendation under Chapter VI and not a decision under Chapter VII, and this is evident by the wording of the operative paragraphs of the Resolution (the SC 'demands,' 'calls upon.'). As observed by Morris, ceasefire resolutions

⁸ Christian Henderson, Noam Lubell, 'The Contemporary Legal Nature of UN Security Council Ceasefire Resolutions' (2013), 26 (2) *Leiden Journal of International Law*, 369-397.

⁹ In this sense, Maurizio Arcari, 'Some thoughts in the aftermath of Security Council Resolution 2532 (2020) on Covid-19', (2020) 70 *Zoom out*, 59-76; see also Stefania Negri 'United Nations Security Council Resolution 2532', (2021) *International Legal Materials*, 1-6.

¹⁰ 3rd Preambular Paragraph.

¹¹ Brigitte Stern, 'Article 36', in Jean-Pierre Cot et Alain Pellet (eds.), *La Charte des Nations Unies. Commentaire article par article*, Economica Bruylant, 1991, 603-627.

issued under Chapter VI are 'not binding upon the parties'.¹² In light of the low level of compliance with this Resolution, there has been an escalation of new violence around the globe instead of a decrease,¹³ indicating that an act under Chapter VII, and specifically Article 40, would have been more fit for purpose.¹⁴ In fact, the SC, after having specifically qualified the COVID-19 pandemic as a threat to peace and security, could have invited the parties involved in ongoing conflicts to comply with provisional measures (ceasefire and humanitarian pause), and could have then threatened the adoption of more stringent measures under Articles 41 or 42 in case of non-compliance.

At first glance, there is a striking difference from the wording of Resolution 2177/2014, where it was clearly affirmed that 'the unprecedented extent of the Ebola outbreak in Africa constitutes a threat to international peace and security'.¹⁵ The terminology is instead more similar to that of Resolution 1308/2000,¹⁶ which stressed that 'the HIV/AIDS pandemic, if unchecked, may pose a risk to stability and security'.¹⁷ The SC opted indeed for a Chapter VI language,¹⁸ since the phrasing of Resolution 2532 reproduces textually Art. 33, para. 1, of the UN Charter,¹⁹ and Art. 4 of the Manila Declaration on the Peaceful Settlement of International Disputes (1982).²⁰ The object of Chapter VI concerns issues that might 'potentially' lead to a threat to peace and security, while Chapter VII is addressed to 'ongoing' international crises, such as 'threat to peace, violation of peace and act of aggression' (Art. 39 of the UN Charter).²¹

¹² David M. Morris, 'From War to Peace: A Study of Cease-Fire Agreements and the Evolving Role of the United Nations' (1996), 36 *Virginia Journal of International Law*, 802-897, at 812-813.

¹³ Julia Emtseva, " 'Stop quarantine, start war'. The legality of the use of force in Nagorno-Karabakh", *Völkerrechtsblog*, 6 August 2020, <https://voelkerrechtsblog.org/articles/stop-quarantine-start-war/>.

¹⁴ 'In order to prevent an aggravation of the situation, the Security Council may, before making the recommendations or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. Such provisional measures shall be without prejudice to the rights, claims, or position of the parties concerned. The Security Council shall duly take account of failure to comply with such provisional measures'.

¹⁵ 5th Preambular Paragraph.

¹⁶ UN Doc S/RES/1308 (2000) (17 July 2000) on the Responsibility of the Security Council in the Maintenance of International Peace and Security: HIV/AIDS and International Peace-keeping Operations.

¹⁷ 11th Preambular Paragraph. In its second Resolution on HIV/AIDS (Resolution 1983 (2011)), the SC recalled in the Preamble that the 'spread of HIV can have a uniquely devastating impact on all sectors and levels of society, and that in conflict and post-conflict situations, these impacts may be felt more profoundly', underlining 'its primary responsibility for the maintenance of international peace and security' in the Preamble. However, it did not make any mention of HIV/AIDS as a potential threat to peace and security.

¹⁸ Chapter VI of the UN Charter is entitled 'Peaceful Settlement of Disputes'.

¹⁹ Art. 33, Para. 1, of the UN Charter states 'The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security'.

²⁰ The Manila Declaration makes an explicit reference to 'any situation the continuance of which is likely to endanger the maintenance of international peace and security' (Art. 4).

²¹ Sir Michael Wood, 'United Nations, Security Council', in Rüdiger Wolfrum (ed.), *Max Planck Encyclopedia of Public International Law* (Oxford University Press, 2007), paras. 22-23.

Within the framework provided by Chapter VI, the UN has made significant strides towards the prevention of conflicts through ‘operational prevention’ (with the goal of mediating and deactivating tensions and averting disorders) and ‘structural prevention’ (with the objective of addressing political or socio-economic factors that are the deep-rooted causes of conflicts).²² Hence, a key role is also played by systemic prevention that aims to address global risks that can fuel conflicts which possess a transboundary dimension.²³ Over time, the SC has increasingly focused its attention on the security implications of cross-border threats such as illegal poaching,²⁴ trafficking of persons,²⁵ environmental degradation²⁶ and infectious diseases. Resolution 2532 is part of this recent trend by the SC to deal with non-conventional threats to peace and security, although these have usually been framed within Chapter VII.²⁷

However, the SC, despite recalling its primary responsibility for the maintenance of international peace and security,²⁸ has not explicitly qualified the COVID-19 pandemic as a ‘threat to peace and security’ under Article 39 of the UN Charter. Conversely, Resolution 2532 states that the unprecedented extent of the COVID-19 pandemic ‘*is likely to endanger* the maintenance of international peace and security’.²⁹ Therefore, the SC has affirmed that the COVID-19 pandemic – if not adequately tackled – has the potential to lead to further turbulence in conflict settings and to threaten peace and security, but has not yet reached the threshold for being qualified as a ‘threat’ under Article 39.

The lack of an explicit qualification of COVID-19 as a threat to peace and security and its missed framing within Chapter VII is undoubtedly an element of weakness of this Resolution and undermines its concrete impact in conflict settings, as will be briefly explained. Indeed, a determination of COVID-

²² Steven A. Zyck, Robert Muggah, ‘Preventive Diplomacy and Conflict Prevention: Obstacles and Opportunities’ (2008), *Stability: International Journal of Security and Development*, pp.68-75.

²³ Marina Caparini, ‘UN Police and Conflict Prevention’, Sipri Discussion Paper, June 2018, https://www.sipri.org/sites/default/files/2018-06/2018_caparini_discussion_paper_uncops.pdf .

²⁴ Anne Peters, ‘Novel practice of the Security Council: Wildlife poaching and trafficking as a threat to the peace’, EJIL:Talk!, February 12, 2014, <https://www.ejiltalk.org/novel-practice-of-the-security-council-wildlife-poaching-and-trafficking-as-a-threat-to-the-peace/> .

²⁵ UN Doc S/RES/2388 (2017) (21 November 2017).

²⁶ For instance, see UN Security Council High-Level Discussion on Humanitarian Effects of Environmental Degradation on Peace and Security (via VTC), 17 September 2020, <https://www.unccd.int/news-events/briefing-un-security-council-humanitarian-effects-environmental-degradation-peace-and> .

²⁷ Ilja Richard Pavone, ‘The Human Security Dimension of Ebola and the Role of the Security Council in Fighting Health Pandemics: Some Reflections on Resolution 2177/2014’ (2014), *South African Yearbook of International Law* pp. 56-81

²⁸ 1st Preambular Paragraph.

²⁹ 11th Preambular Paragraph.

19 as a 'threat' under Article 39 would have implied the possibility to rely on Chapter VII powers and to foresee 'enforcement measures'.

Similarities and differences between Resolutions 2177 (2014) and 2532 (2020)

In light of the above-mentioned observations, a brief comparison can be drawn between the SC's action on COVID-19 and on the Ebola outbreak.³⁰

The first key contrast between the two resolutions is the different geopolitical landscape. The US under the former Trump administration has exhibited a strong tendency towards unilateralism,³¹ as witnessed by the US withdrawal from UNESCO, the UN Human Rights Council, the Paris Agreement (starting from 4 November 2020) and the WHO (due to take effect in July 2021, although President Biden has pledged to reverse the process). By contrast, in 2014, the Obama presidency took the leadership of the 'securitization of health' process within the SC and promoted the adoption of Resolution 2177/2014 in cooperation with China.³² For Resolution 2532, the initiative was driven by France and Tunisia, while the US and China have significantly slowed down the process of adoption of the Resolution. Furthermore, the lack of any reference to the WHO is also in contrast to Resolution 2117/2014, in which the central role of the Organization was recognized. In the Preamble to the Ebola resolution, the SC urged States to implement relevant temporary recommendations issued by the WHO. Similarly, Resolution 2439/2018 on Ebola in the Democratic Republic of Congo requested an immediate *cessation of hostilities* by all armed groups in light of 'the serious concern regarding the security situation in the areas affected by the Ebola outbreak, which is severely hampering the response efforts and facilitating the spread of the virus in the Democratic Republic of the Congo and the wider region' (para. 4).³³ This Resolution, in particular, determined that the 'ongoing armed conflict', not Ebola itself, was the threat to international peace and security.

³⁰ UN Doc S/RES/2177 (2014) (18 September); see Ilja Richard Pavone, "Ebola and the Securitization of Health: United Nations Security Council Resolution 2117/2014 and Its Limits", in Pedro Villarreal et al (eds.), *The Governance of Disease Outbreaks. International Health Law: Lessons from the Ebola Crisis and Beyond*, Nomos, 2017, p. 301 ss.

³¹ John B. Bellinger III, 'The Trump Administration's Approach to International Law and Courts: Are We Seeing a Turn for the Worse?' (2019) 51 *Case Western Research Journal of International Law*, 7-21.

³² Gian Luca Burci, "Ebola, the Security Council and the securitization of public health", (2014) 10 *QIL. Zoom In*, 27-39.

³³ In Resolution 2439/2018, however, the SC did not qualify Ebola as a potential threat to peace and security, but instead expressed concern about the disease outbreak in the context of wider humanitarian needs.

The more striking difference is, however, related to the fact that the SC has not specifically recognized the COVID-19 pandemic as a ‘threat’, framing its response within Chapter VI rather than Chapter VII. In the precedent of Resolution 2177, the SC acted, indeed, as a ‘global health keeper’,³⁴ pushing the Member States to comply with the IHRs, and took the lead in the international response against Ebola.

Concluding Remarks

In view of the above-mentioned considerations, it is worth considering the added value of Resolution 2532 as part of the global effort against COVID-19. This is particularly because of the long delay in issuing the resolution following the SG’s request, the fact that it is not legally binding in its content, and, furthermore, the lack of any enforcement measure. The absence of any reference to the WHO is evidence of the pressure by the former US administration during the negotiation process and the threat to rely on their veto power. This latter point is, however, controversial, given that – in the practice of the SC – the veto power applies only in case of decisions (and not of recommendations) ex Art. 27, para. 3, of the UN Charter. Therefore, the US did not have the power to hinder its adoption, and the drafters of the resolution could have insisted on at least a ‘nuanced’ reference to the WHO (even with the US voting against), which would have been a signal of vitality by the SC.

This is in stark opposition to the GA which has already adopted four resolutions on COVID-19 and recognized in the omnibus resolution ‘the crucial role played by the World Health Organization, despite the US opposition’.³⁵ On the other hand, a Chapter VI resolution could also be considered the most logical solution when the SC faces an ‘immaterial threat’ such as an infectious disease. The possibility to rely, too, on powers and functions envisaged by the UN Charter apart from Chapter VII in the presence of non-conventional threats was already introduced by South Africa during the debate on securitization of climate change. South Africa stated that ‘[o]ften, the Council has resorted to Chapter VII of the Charter as an umbrella for addressing issues that may not necessarily pose a threat to international peace and security, when it could have opted for alternative provisions of the Charter to respond more appropriately, utilizing other provisions of the same Charter’.³⁶

³⁴ Maurizio Arcari, Paolo Palchetti, “The Security Council as a global ‘health-keeper’? Resolution 2177 (2014) and Ebola as a threat to the peace”, 10 *QIL. Zoom In*, 1-3.

³⁵ USA and Israel voted against the ‘Omnibus Resolution on Covid-19’ adopted on 11 September 2020 (Res 12262/2002) with a vote of 169 Member States in favour, 2 abstentions (Hungary and Ukraine) and only 2 against, <https://www.un.org/press/en/2020/ga12262.doc.htm> .

³⁶ U.N. SCOR, 62d Sess., 5615th mtg. at 17, U.N. Doc. S/PV.5615 (Jan. 8, 2007).

One could wonder if it is really appropriate to act under Chapter VII in the case of a disease outbreak. Resolution 2177/2014, representing the ‘culmination’ of the process of securitization of health, did not eventually envisage coercive measures under Articles 41 or 42, nor the deployment of troops on the ground. Some scholars had already expressed concern about the risk of overlap between the functions of the WHO on the one hand and those of the SC on the other hand.³⁷ Fundamentally, they have raised an issue about the framing of a health issue within a security framework, arguing that health matters would be better suited for other UN bodies, such as the GA or the UN Economic and Social Council (ECOSOC).³⁸ Against this backdrop, it is worth recalling that the GA ‘may discuss any questions or any matters within the scope of the present Charter’ (Art. 10).

Through this lens, the lack of any mention of the WHO is not negative in the least and averts the risk of encroachment. It could also mean a clear division of tasks: the WHO would act – in strict cooperation with the GA – as the coordinating body in managing the health response to COVID-19, dealing with specific issues such as vaccine and treatment distribution. The SC, for its part, would then be entrusted with dealing with the ‘collateral effects’ of infectious diseases in a conflict setting. Aside from the discourse on the clarification of powers and functions in case of disease outbreak, the key fact is that the impact of this Resolution was quite insignificant, since ‘early signs of compliance in conflict zones have begun to slip, and many countries are actually now experiencing an escalation of violence’.³⁹ It was no coincidence that the SG was forced to repeat, on 22 September 2020, his appeal for a global ceasefire.⁴⁰

More generally, the SC’s inability to provide adequate and prompt support to the SG’s call for a global ceasefire highlighted its incapacity to take the lead in the global response to the COVID-19 pandemic, in contradistinction to its approach during the Ebola epidemic. Despite the formal unanimity in its adoption, Resolution 2532 had shown, instead, a background of sharp contrasts, rivalry amongst the P5, and the prevailing of domestic interests over the need for coordination. In more general terms, the

³⁷ P. Acconci, ‘The Reaction to the Ebola Epidemic within the United Nations Framework: What Next for the World Health Organization’ in Frauke Lachenmann, Tilmann J. Röder, Rüdiger Wolfrum (eds.), *Max Planck Yearbook of United Nations Law* Volume 18 (2014), 405-426.

³⁸ L. Balmond, ‘Le Conseil de sécurité et la crise d’Ebola: entre gestion de la paix et pilotage de la gouvernance globale’ (2014), 10 *QIL-Questions of International Law*, 5-17.

³⁹ Remarks at a UN Security Council High-Level Meeting on Maintenance of International Peace and Security: Post-COVID-19 Global Governance (via VTC), 24 September 2020, <https://usun.usmission.gov/remarks-at-a-un-security-council-high-level-meeting-on-maintenance-of-international-peace-and-security-post-covid-19-global-governance-via-vtc/>

⁴⁰ <https://news.un.org/en/story/2020/09/1072972> .

SC's secondary role in the ongoing pandemic is a symptom of the crisis of multilateralism and the current architecture of global health governance in what can be characterized as a period of strong unilateralism and weak international law. It will be of great interest to observe whether President Biden will reverse this process and revitalize the US role within the international architecture, promoting, for instance, a new SC Resolution on COVID-19 under Chapter VII of the UN Charter.