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A construção do conceito de Paz pelo Conselho de Segurança

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Palavras chave: Paz, Conselho de Segurança das Nações Unidas, narrativas da paz, legitimidade.

O Conselho de Segurança das Nações Unidas detém, nos termos da Carta das Nações Unidas, a principal responsabilidade na manutenção da paz e segurança internacionais. De entre os poderes que a Carta confere ao Conselho de Segurança para o cumprimento desta sua responsabilidade, os consagrados no capítulo VII são os de conteúdo mais amplo e impositivo permitindo a aplicação de um vasto rol de medidas que podem ter um profundo impacto no membro da comunidade internacional das quais seja alvo, nomeadamente medidas que envolvam a acção militar. A aplicação de uma daquelas medidas pressupõe que num momento prévio o Conselho de Segurança determine a existência de uma situação de ameaça à paz – a mais frequentemente invocada –, de ruptura da paz, ou de acto de agressão. A paz é um conceito operativo que despoleta e fundamenta grande parte da actividade do Conselho de Segurança.

A conceptualização da paz pelo Conselho de Segurança é, pois, determinante para em cada situação legitimar a sua acção e determinar as medidas a aplicar. Contudo, este é um conceito que sofre de grande indeterminação conferindo, assim, prerrogativas de decisão muito amplas. Neste quadro, o presente estudo pretende analisar a evolução da conceptualização da paz pelo Conselho de Segurança desde a sua revitalização no início dos anos 1990 até aos dias de hoje. Para tal, será examinado o reportório das resoluções adoptadas pelo Conselho de Segurança, tendo em consideração a situação em causa, o contexto em que a paz é invocada e as medidas adoptadas.

É argumento deste estudo que não existe uma coerência na conceptualização da paz pelo Conselho de Segurança. A análise do reportório permite concluir que os diversos entendimentos da paz invocados pelo Conselho de Segurança não têm um referente claro numa mesma construção teórica da paz que sirva de enquadramento. Antes, o conceito de paz é mobilizado de forma algo discricionária para preencher um discurso de legitimação. Consequentemente, é a própria acção do Conselho de Segurança que fica fragilizada com prejuízo para a sua capacidade de decisão e para a eficácia das medidas adoptadas.

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The Peace Discourse by the Security Council

Mateus Kowalski¹

1. Foreword

On the 31st January 1992, the Security Council met for the first time in its existence at the level of Heads of State and Government. The subject of the meeting was ‘the responsibility of the Security Council in the maintenance of international peace and security’. At the end of this historical gathering, it was officially stated that “the members of the Council also recognize that change, however welcome, has brought new risks for stability and security. (...) The international community therefore faces new challenges in the search for peace”². This solemn declaration symbolizes the revitalization of the Security Council after the end of the Cold War: the once antagonizing great powers committed themselves to collective action for peace in the Security Council. But then a crucial question arises: what is ‘peace’ for the Security Council?

The question is relevant both for the peace theory and for the action of the Security Council. For the peace theory, it is valuable to know how the organ with primary responsibility for the maintenance of international peace and security conceptualizes ‘peace’. The Charter provides for the transfer of powers from the Member States to the United Nations where in what international peace and security is concerned, including the use of force at the international level³. This introduces a supranational element in the power system of the United Nations⁴. All this also implies the allocation of a relevant responsibility to the Security Council: to develop a discourse on peace.

Secondly, for the action of the Security Council, it is imperative to know what ‘peace’ is, since a threat to or a breach of ‘peace’ validates the decision of an action under Chapter VII of the Charter. In fact, in accordance with Article 39 of the Charter, only if the Security Council determines the existence of a threat to the peace, a breach of the peace or an act of aggression, it can activate the powers conferred to it by Chapter VII and decide enforcement measures for the maintenance or restoration of international peace and security: either non-military or military measures⁵. Article 39 is therefore the trigger for the most powerful instrument of the United Nations’ action⁶.

In this context, what I propose to present here today is a mapping of the peace discourse drawn up by the United Nations Security Council, with relevance for action under Chapter VII, trying to answer the question posed at the beginning of my intervention: what is ‘peace’ to the Security Council? To this end, I will firstly examine the peace discourse by this organ. Then I will try to frame its theoretical approach to peace.

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² United Nations Security Council document S/23500, of 31 January 1992, 2-3.

³ Articles 24 (1) and 25.

⁴ Dupuy, René-Jean (1998) “État et Organisation Internationale” in Dupuy, René-Jean (ed.) *Manuel sur les Organisations Internationales*, págs. 13-30. Dordrecht: Martinus Nijhoff Publishers, 19.

⁵ Article 39 reads as follows: “the Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.”

⁶ Frowein, Jochen; Krisch, Nico (2002) “Article 39” in Simma, Bruno (ed.) *The Charter of the United Nations: a Commentary*, vol. I, 717-729. Oxford: Oxford University Press, 718.

2. Searching for 'peace' in the Security Council

The mapping of the Security Council's discourse on peace focused on the analysis of its repertoire, in particular resolutions adopted under Chapter VII of the Charter and Security Council's presidential statements⁷. The adoption of a resolution under Chapter VII requires a prior conceptualization of 'peace'. Only after that it is plausible to make a determination on the existence of a 'threat' to or a 'breach' of that peace. Moreover, since it provides the justification for the adoption of enforcement measures, the discussion within the Security Council is generally made with greater caution. In fact, in several instances, a threat to peace was alleged to exist by some members, but no such determination was made by the Council. It should also be noted that the concept of 'threat to peace' is the one suffering from greater uncertainty, and the one that leads to more generous interpretations.⁸ Perhaps for this reason, 'threat to peace' is the concept most frequently used by the Security Council to justify its action under Chapter VII.⁹ In practice, it is almost the only one used by the Council. As regards presidential statements, although they do not determine any immediate action by the Council, they often develop a substantive and abstract peace discourse or identify specific situations in which peace is jeopardized and can lead to an action by the Security Council. Quite often, both the resolutions adopted under Chapter VII and the presidential statements identify elements necessary to maintain or restore peace.

The review of the Council's repertoire was aimed at identifying elements of 'peace' present at the Council's discourse as a result of two types of assessment: its evaluation that certain events or situations should give rise to an action under Chapter VII to maintain or restore peace (negative assessment); or its description of the conditions required to maintain or restore peace (positive assessment). In the latter case, where only considered the elements that the Council directly stated as being conditions of peace resulting, therefore, from a direct and prior conceptualization of what peace is.

The present analysis refers to the period between the 3rd November 1989 and the 19th October 2011. The year 1989 marks the end of the antagonism between the great powers which resulted in the blockage of the Security Council in previous decades. The revitalization of the Council has, as a symbolic moment, the delivery on the 3rd November 1989 of a letter by high officials of the Soviet Union and the United States to the General Assembly requesting the inclusion in the agenda of the General Assembly as an urgent matter of an additional item entitled "enhancing international peace, security and international co-operation in all aspects in accordance with the Charter of the United Nations"¹⁰. This 'return to the Security Council' is reflected in its activity at two levels: on the one hand, there was a large increase in the number of resolutions adopted in the period under review – 1370 – by comparison with the previous period since 1945 – 643 –, even if the time of activity is twice as high in the latter; on the other hand, on the expansion of the substantive issues under examination, which in the previous period mainly focused on whether or not there was an inter-state armed conflict.

Of the 1370 resolutions and 830 presidential statements reviewed, 350 resolutions and 91 presidential statements were considered relevant to the mapping of the Security Council's peace

⁷ The presidential statements are delivered on behalf of the fifteen members of the Security Council and represent a position attributable to the organ on a particular subject or situation. The presidential statements do not have a specific provision either in the Charter or in the rules of procedure of the Security Council. However, they are a well established practice.

⁸ Bothe, Michael (1993) "Les limites des Pouvoirs du Conseil de Sécurité" in *Le Développement du Rôle du Conseil de Sécurité, Académie de Droit International de La Haye, Colloque – La Haye, 21-23 Juillet 1992, págs. 67-81*. Dordrecht: Martinus Nijhoff Publishers, 72.

⁹ Dupuy, Pierre-Marie (1997) "The Constitutional Dimension of the Charter of the United Nations Revisited" in *Max Planck Yearbook of United Nations Law, vol. 1, 1-33*. Dordrecht: Martinus Nijhoff Publishers – pág. 25.

¹⁰ United Nations General Assembly document A/44/245, of 3 November 1989. The explanatory memorandum stated that "in the light of recent developments, there are renewed prospects for international co-operation towards common goals" (§2). Following the inclusion of this item in the agenda, the General Assembly adopted the resolution A/RES/44/21, of 15 November 1989.

discourse. At this presentation, and due to time constraints, only a few representative examples will be given.

For analytical purposes, the conceptualization of peace by the Security Council can be divided into two main features: on one hand, the negative peace, reflecting the absence of direct violence – here are considered the acts and instruments of force; on the other hand, those of positive peace, in the sense of absence of structural forms of indirect violence that prevent welfare – here are taken into account economic, social, humanitarian and ecological aspects.

The conceptualization of negative peace by the Security Council is developed by reference not only to traditional inter-state conflicts but also, increasingly, to the new typology of conflicts, the so called 'new wars'¹¹. As regards the former, the Security Council has dealt several times with both the acts of armed violence and their instruments. That was the case when it condemned the invasion and occupation of Kuwait by Iraq¹², when it determined as threats to peace the proliferation of nuclear, chemical and biological weapons, as well as their means of delivery¹³, or, on the situation in North Korea, the test of a nuclear weapon¹⁴.

In what relates to new types of conflicts, the Security Council has been increasingly referring to them, their actors and their means of warfare as constituting a threat to peace. The following are illustrative examples: “acts of international terrorism [which] constitute one of the most serious threats to international peace and security in the twenty-first century”¹⁵; “the proliferation [in Liberia] of arms and armed non-State actors, including mercenaries”¹⁶; or when it stated that “small arms and light weapons pose a considerable impediment to peace”¹⁷.

It is also interesting to note that peace agreements, relating either to inter-states conflicts or to internal conflicts, are understood by the Council as an important element of peace. In one example, on the situation in the former Yugoslavia, it qualified as a threat to peace the “violation of ceasefire agreements”¹⁸. In other situations, it established as a condition for peace the “expeditious implementation of the Algiers Agreements [between Eritrea and Ethiopia]”¹⁹ or the compliance with the “Comprehensive Peace Agreement between the Government of Nepal and the Communist Party of Nepal”²⁰.

The Security Council also builds its discourse around the concept of positive peace, with references that can be analyzed in several categories. In this perspective, a first aspect worth underlining is the relevance given by the Security Council to the Individual alongside with other international law subjects as the States and International Organizations. In fact, the protection of persons is a condition of peace well established in the Security Council’s discourse. For example, the Council has determined that the following situations pose a threat to peace: the heavy loss of human life and widespread material damage²¹; the deliberated targeting of civilian populations or other protected persons, including children²²; the mass displacement of population²³; the spread of HIV/AIDS²⁴; or the potential outflow of people to other States in a given subregion²⁵. But Individuals are occasionally also perceived as threats to peace. That was the case when the Council determined that the continued presence of Charles Taylor, former president of Liberia, in the subregion while detained for prosecution in Freetown posed a threat

¹¹ Kaldor, Mary (2006) *New and Old Wars: Organized Violence in a Global Era*. Cambridge: Polity Press.

¹² Resolution S/RES/674 (1990), on the situation in Iraq-Kuwait.

¹³ Resolution S/RES/1695 (2006), on the situation in DPRK.

¹⁴ Resolution S/RES/1718 (2006), on the situation in DPRK.

¹⁵ Resolution S/RES/1377 (2001), on terrorism.

¹⁶ Resolution S/RES/1521 (2003), on the situation in Liberia.

¹⁷ Resolution S/RES/1894 (2009), on protection of civilians in armed conflict.

¹⁸ Resolution S/RES/721 (1991), on the situation in Yugoslavia.

¹⁹ Resolution S/RES/1798 (2008), on the situation in Eritrea-Ethiopia.

²⁰ Resolution S/RES/1879 (2009), on the situation in Nepal.

²¹ Resolution S/RES/733 (1992), on the situation in Somalia.

²² Resolution S/RES/1314 (2000), on children and armed conflict.

²³ Resolution S/RES/841 (1993), on questions concerning Haiti.

²⁴ Resolution S/RES/1308 (2000), on HIV/AIDS.

²⁵ Resolution S/RES/1529 (2004), on the situation in Haiti.

to peace²⁶, or when it underlined the continued threat posed to international peace and security by Al-Qaida, Usama Bin Laden, and the Taliban, and other individuals, groups, undertakings and entities associated with them²⁷.

The Security Council also includes in its peace discourse references to Rule of Law, justice and organized crime. In this context, it qualified as threats to peace the widespread violations of international law and the general absence of the rule of law²⁸; the non compliance with Security Council measures to bring to justice those responsible for the terrorist assassination attempt on the life of the President of Egypt²⁹; or drug trafficking as well as organized crime³⁰. On the same token it declared the relevance to peace of the tribunals for former Yugoslavia and Rwanda³¹, of the “promotion of justice and the rule of law, including respect for human rights”³², of the compliance with relevant obligations to end impunity³³, and it stated as well that “there can be no peace without justice” referring to the situation in Sudan³⁴.

The Security Council has, in particularly in the last decade, consistently reinforced international institutionalism, including peacebuilding and statebuilding, as a mean for achieving peace. For instance, it underlined the “central and impartial role that the United Nations continues to play in promoting peace and stability in Afghanistan”³⁵, it stated that “comprehensive and coherent use of preventive diplomacy, peacemaking, peacekeeping and peacebuilding tools is important in creating the conditions for sustainable peace”³⁶, it emphasized the importance for peace of the post-conflict peacebuilding³⁷, or stated that the “support for democratic, transparent, and accountable governance is essential in order to achieve durable peace”³⁸. In other situations, it determined as threats to peace the “premeditated armed attacks launched against United Nations personnel engaged in humanitarian and peacekeeping efforts”³⁹, “any obstacle to the freedom of movements of UNOCI and of the French forces that support it”⁴⁰ or the “failure of the Taliban authorities to respond to demands of the Security Council [to stop providing sanctuary and training for international terrorists and their organizations]”⁴¹.

In a number of other cases which do not pertain to a particular category, the Security Council determined as being threats to peace the “illegal exploitation of natural resources and its illicit trade”⁴², the “adverse effects of climate change [which] may, in the long run, aggravate certain existing threats to international peace and security”⁴³, the “depts and claims inherited from the previous [Iraqi] regime [which have an impact on reconstruction and the economic transformations taking place in Iraq]”⁴⁴ or even what it enigmatically labelled as “factors of instability [in Burundi and in the Great Lakes region]”⁴⁵.

²⁶ Resolution S/RES/1688 (2006), on the situation in Sierra Leone.

²⁷ Resolution S/RES/1822 (2008), on terrorist acts.

²⁸ Resolution S/RES/814 (1993), on the situation in Somalia.

²⁹ Resolution S/RES/1054 (1996), on the assassination attempt on the life of the President of Egypt.

³⁰ Presidential Statement S/PRST/2010/15, on the situation in Guinea-Bissau.

³¹ Presidential Statement S/PRST/2008/47, on ICTY and ICTR.

³² Presidential Statement S/PRST/2008/48, on the situation in the Great Lakes region.

³³ Presidential Statement S/PRST/2010/11, on the rule of law.

³⁴ Resolution S/RES/2003 (2011), on the situation in Sudan.

³⁵ Resolution S/RES/1890 (2009), on the situation in Afghanistan .

³⁶ Resolution S/PRST/2010/18, on maintenance of international peace and security.

³⁷ Presidential Statement S/PRST/2008/16, on post-conflict peacebuilding.

³⁸ Presidential Statement S/PRST/2010/7, on post-conflict peacebuilding.

³⁹ Resolution S/RES/814 (1993), on the situation in Somalia.

⁴⁰ Resolution S/RES/1842 (2008), on the situation in Côte d'Ivoire.

⁴¹ Resolution S/RES/1333 (2000), on the situation in Afghanistan.

⁴² Resolution S/RES/1807 (2008), on the situation in DRC.

⁴³ Presidential Statement S/PRST/2011/15, on maintenance of international peace and security.

⁴⁴ Resolution S/RES/1859 (2008), on the situation concerning Iraq.

⁴⁵ Resolution S/RES/1650 (2005), on the situation in Burundi.

3. A Hybrid Peace Discourse

The material diversity of the discourse indicates a structured approach to peace, including elements both of a negative and of a positive peace, which basically shares the broad concept of peace that runs through the veins of the United Nations – the liberal narrative of peace. The liberal grand narrative is currently the dominant theory of peace and the one with greater implementation, both at the doctrinal level and in terms of political agenda. Inspired by the Kantian project, the liberal theory of peace lies in the belief that it is possible to achieve peace, namely a positive peace, by establishing the right political and social conditions. This requires that States and International Organizations effectively organize the international public order as a mean to ensure absence of physical and structural violence, in a mixture of freedom and coercion.

The injection in the United Nations of this peace narrative was influenced by Peace Studies. Johan Galtung had already, in 1969, put forward the distinction between the concepts of negative peace and positive peace as variables of a structured and broad peace⁴⁶. With the end of the Cold War, the United Nations recovered the ambitions of a more active role in international peace and found in Peace Studies the academic base needed to develop and sustain its own peace agenda.

The 'Agenda for Peace' of 1992⁴⁷, which became the first strategic document for this new approach to peace by the United Nations, is basically a transposition of Peace Studies thinking to the United Nations. In fact, an updated reading of the Charter framed by this new approach by the United Nations, reveals a multidimensional concept of peace encompassing various elements of action necessary for the maintenance its intrinsic condition⁴⁸, such as peaceful coexistence, peaceful settlement of disputes, self-determination, development, promotion and respect for human rights, collective action and respect for State sovereignty.

Having said that, and in what regards to the Security Council, the problem that arises is that this organ co-opts elements of the liberal peace agenda that are in operation in the United Nations. It brings those elements into play to conceptualize peace and to legitimize its action for peace without taking into account its very specific organizational and functional situation in the context of the Organization.

Firstly, from the organizational perspective, the Council is an executive body that enjoys functional primacy regarding international peace and security and which is devoid of effective judicial or political control⁴⁹. Furthermore, the special prerogatives of the five permanent members lead the power of the United Nations to focus disproportionately on the 'big five'⁵⁰. Ultimately, it is an international version of Hobbes's Leviathan: a 'super-authority' contractualized by way of the Charter of the United Nations⁵¹. In this sense, it is a clear expression of the realist tradition.

Secondly, from the functional standpoint, the conceptualization of peace by the Council is to be confined to the absence of international armed violence. As was noted by Frowein and Krisch "an extension [of the concept of peace] would not only run the risk of blurring the contours of the concept, but would also call into question the distribution among the different organs of the United Nations"⁵². There are also more mitigated views that sustain that the Council may

⁴⁶Galtung, Johan (1969) "Violence, Peace and Peace Research" *Journal of Peace Research*. 6(3), 167-191.

⁴⁷ United Nations (1992) "An Agenda for Peace: Preventing Diplomacy, Peacemaking and Peace-keeping" *Report of the Secretary-General*. Resolution A/47/277 of 17 June 1992.

⁴⁸ Wolfrum, Rüdiger (2002) "Article 1" in Simma, Bruno (ed.) *The Charter of the United Nations: a Commentary*, vol. I, 39-47. Oxford: Oxford University Press.

⁴⁹ Bedjaoui, Mohammed (1994) *Nouvel Ordre Mondiale et Contrôle de la Légalité des Actes du Conseil de Sécurité*. Bruxelles: Bruylant.

⁵⁰ Reisman, W. Michael (1993) "The Constitutional Crisis in the United Nations" in *Le Développement du Rôle du Conseil de Sécurité, Académie de Droit International de La Haye, Colloque – La Haye, 21-23 Juillet 1992*, págs. 399-423. Dordrecht: Martinus Nijhoff Publishers, 419-420.

⁵¹ Kowalski, Mateus (2010) "O Conselho de Segurança das Nações Unidas: O Grande Leviatã?" *Negócios Estrangeiros*. 18, 159-184.

⁵² Frowein, Jochen; Krisch, Nico, *op. cit.*, 720.

intervene in any situation of large-scale, man-made human suffering⁵³. In any case, and as observed by Martenczuk, Article 39 of the Charter “only refers to the absence of armed violence in international relations”⁵⁴. According to such criterion, peace (or its absence) under Chapter VII must have a demonstrable link to the use of force in international relations. This means that, from the functional standpoint, the Security Council action envisages, ultimately, a negative peace.

Following these two features of the Council, it is possible to conclude that, in the end, its peace discourse is closer to the realist tradition than to the liberal one. This gives the Council the ability for broad use of discretion induced by the contradictions and imbalances of the United Nations’ power architecture: on one hand, it is a mechanism of liberal peace⁵⁵ endowed with a Machiavellian-inspired body⁵⁶; on the other hand, the liberal peace narrative (positive peace) shaping the United Nations as a whole coexists with the structural peace discursive elements used somewhat incoherently by the Council to legitimize its action which should be oriented only to the absence of armed violence (negative peace).

In fact, the Security Council’s discourse is hybrid, without a clear reference in a peace theory, and with a broad content developed by it to allow ‘filling in’ the necessary justificatory discourse for its action, namely when enforcing military or non-military measures. This reflects the political rather than legal approach of the Charter, even if already legally biased, as well as its general tendency to emphasize procedural and not substantive limits⁵⁷. This hybrid peace discourse allows the Council a broad discretion to decide when to act, therefore having its power further increased when compared to that which was awarded in 1945, that is, a role limited to inter-state armed conflicts. In practice, the Security Council may determine for almost any situation the application of enforcement measures, including military ones. To conclude, one may say that it is a realism-inspired organ with a liberal dictionary and toolbox.

⁵³ For a review see Fassbender, Bardo (2000) “*Quis Judicabit?* The Security Council, its Powers and its Legal Control” *European Journal of International Law*. 11(1), 219-232.

⁵⁴ Martenczuk, Bernd (1999) “The Security Council, the International Court and Judicial Review” *European Journal of International Law*. 10(3), 517-547 – 543-544.

⁵⁵ Richmond, Oliver (2008) *Peace in International Relations*. Oxon: Routledge, 35.

⁵⁶ Moreira, Adriano (2002) *Teoria das Relações Internacionais*. Coimbra: Livraria Almedina, 569.

⁵⁷ Kelsen, Hans (1950) *The Law of the United Nations*. London: Stevens & Sons Limited, 735.