

Some thoughts in the aftermath of Security Council Resolution 2532 (2020) on Covid-19

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1. *Introduction*

On the 1st July 2020 the UN Security Council (SC) adopted, under the special voting procedure arranged for the extraordinary circumstances caused by the coronavirus disease 2019 (Covid-19) pandemic,¹ Resolution 2532 (2020), which is intended to deal with the impact of the pandemic on peace and security.² This ‘long overdue resolution’³ was the result of three months of painstaking negotiations within the SC and

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¹ The special procedure, providing that SC member States may express their vote in a letter submitted electronically within a 24-hour period after the submission of a draft resolution by the Presidency, was first outlined in the letter of the (Chinese) President of the SC of 27 March 2020 (UN Doc S/2020/253) as a temporary measure to be applied until the end of April 2020, subsequently extended with adjustments for the months of May and June 2020: see G Nesi, ‘The United Nations Principal Political Organs and the Universal Pandemic: How to Meet, Negotiate and Deliberate under “New, Extraordinary and Exceptional Circumstances”?’ (2020) 70 QIL-Questions Intl L 5, 12-19. See also below, section 5.

² See UN Doc S/RES/2532 (2020) (1 July 2020). The resolution was unanimously adopted under the agenda item ‘Maintenance of international peace and security’ on the basis of a draft text submitted by France and Tunisia (UN Doc S/2020/607): see UN Doc S/2020/632 (2 July 2020).

³ Following the expression used by the representative of Indonesia at the videoconference debate held by the SC on 2 July 2020 on the topic ‘Maintenance of international peace and security: Implications of Covid-19’: see UN Press Release SC/14241 (2 July 2020) available at <www.un.org/press/en/2020/sc14241.doc.htm>.

came after the UN General Assembly (GA) had already adopted two resolutions on the implications of the Covid-19 pandemic.⁴

Not surprisingly, the delay in the SC response can be attributed to the disagreement reigning among the Permanent members (P5) over some controversial issues to be addressed in the draft resolution, and to the consequent and constant lingering threat of the whole negotiating process being vetoed.⁵ After the initial P5 talks stalled due to the opposition raised by and between the United States and China over an explicit reference to the origin of Covid-19 pandemic, a draft resolution was circulated at the initiative of Tunisia among the Elected members of the SC (E10), endorsing the appeal for a global ceasefire amid the Covid-19 pandemic launched by the UN Secretary-General on 23 March 2020.⁶ However, this text also spurred division in the SC, due to the language calling for a waiver of economic sanctions that may undermine countries' capacity to respond to the pandemic.⁷ Hence, no official document was issued after the SC closed meeting held on 9 April 2020 on the impact of Covid-19 pandemic, except for a statement delivered by the Secretary-General.⁸

Following this deadlock, a further streamlined text was tabled by France and Tunisia on 23 April 2020, which endorsed the previous Secretary-General's call for a generalized ceasefire, while leaving in brackets the last bone of contention pending between the United States and China, ie the reference to the role of the World Health Organization

⁴ See GA Res 74/270 of 2 April 2020 on 'Global solidarity to fight the coronavirus disease 2019 (COVID-19)' (UN Doc A/RES/74/270 of 3 April 2020) and GA Res 74/274 of 20 April 2020 on 'International Cooperation to ensure global access to medicines, vaccines and medical equipment to face COVID-19' (UN Doc A/RES/74/274 of 21 April 2020).

⁵ For an excellent account of the early negotiations on the SC draft resolution on Covid-19, see L Balmond, 'Le Conseil de Sécurité des Nations Unies face à la pandémie de Covid-19: pourquoi ce silence?' 14 *Paix et Sécurité Européenne et Internationale* (15 July 2020) mn 18-23 available at <<http://revel.unice.fr/psei/index.html?id=2219>>.

⁶ For the text of the Secretary-General's appeal see UN Press Release SG/SM/20018 (23 March 2020) available at <www.un.org/press/en/2020/sgsm20018.doc.htm>.

⁷ This call was primarily supported by South Africa among the E10 and opposed by the United States among the P5. See What's in Blue, 'Security Council Resolution on COVID-19' (30 June 2020) available at <www.whatsinblue.org/2020/06/security-council-resolution-on-covid-19.php>.

⁸ See 'Secretary-General's remarks to the Security Council on the COVID-19 Pandemic [as delivered]' (9 April 2020) available at <www.un.org/sg/en/content/sg/statement/2020-04-09/secretary-generals-remarks-the-security-council-the-covid-19-pandemic-delivered>.

(WHO) in dealing with the pandemic.⁹ This was essentially the text that, after more than two months of bargaining ended with the dropping of any reference to the WHO, and which was eventually adopted on 1st July 2020 as Resolution 2532 (2020).

This two-page resolution may appear to be a modest outcome for such a complex negotiating effort. Nonetheless this text remains worthy of consideration, for what it tells us, as well as for what it fails to tell us. As a matter of fact, the Covid-19 pandemic incorporates the most recent response elaborated by the SC to face unconventional threats to peace and security, such as those generated by the spread of infectious diseases. In that respect, it is interesting to scrutinize the content of Resolution 2532 (2020) from the point of view of the functions and powers granted to the SC under the UN Charter: to this purpose, both the qualification of the situation made in the resolution (section 2), and the kind of measures adopted to deal with this situation (section 3) will be assessed. Furthermore, Resolution 2532 (2020) touches upon aspects that go beyond the strict operative response of the SC to the Covid-19 pandemic, by urging the coordinated international action of other concerned actors and institutions. Hence, this text inescapably brings to the forefront the basic issue of the place and role of the Security Council in the governance of global security problems (section 4). Some final remarks will call into question the timing of resolution 2532 (2020) and the exceptional circumstances under which the text was negotiated (section 5).

2. The qualification of the situation generated by the Covid-19 pandemic

As recalled in its first preambular paragraph, Resolution 2532 (2020) was adopted by the SC under ‘its primary responsibility for the maintenance of international peace and security’. At first glance, this may sound as though a rather obvious and ritualistic reference to be found in the

⁹ Text on file with the author. Concerning the controversial issues at stake, the United States insisted upon having in the draft resolution a call for complete transparency, objectivity and the timely sharing of public health data and information with the international community, while at the same time it objected to any reference to the WHO role, which was accused of mismanaging the Covid-19 pandemic emergency. Conversely, China insisted upon having the WHO mentioned in the text of the draft resolution. See What’s in blue (n 7).

text of a SC resolution. However, the fact that the sentence is placed at the very top of the text also suggests it carries some more specific implications. Insofar as we are dealing with an issue, the spread of infectious diseases, whose connection with international peace and security cannot be taken for granted,¹⁰ the reference in the *chapeau* of the resolution to the primary responsibility conferred to the SC under the Charter could have been intended for the purpose of dispelling any doubt about the competence of the organ to deal with the current crisis.

On the other hand, this is surely not the first occasion in which the SC has had to deal with the impact of global health crisis on peace and security. In this respect, a precedent was set with Resolution 1308 (2000),¹¹ in which the SC addressed the potentially damaging impact of HIV/AIDS on the health of international peacekeeping personnel, by stressing that ‘the HIV/AIDS pandemic, if unchecked, may pose a risk to stability and security’.¹² Some fourteen years later, the SC reconsidered the topic of health and peace in Resolution 2177 (2014), devoted to the outbreak of the Ebola virus in West Africa: this time, the language of Chapter VII of the Charter was openly employed by holding that ‘the unprecedented extent of Ebola outbreak in Africa constitutes a threat to international peace and security’.¹³ Also building on this practice, the impact of a global health crisis has been constantly considered among the issues falling under the SC’s competence in the thematic debates periodically devoted to new threats to international peace and security.¹⁴

¹⁰ As reported in What’s in blue (n 7), the issue of the pandemic’s link with international peace and security was raised in particular by China and South Africa during the early talks (March 2020) within the SC concerning a press statement on Covid-19.

¹¹ UN Doc S/RES/1308 (2000) (17 July 2000) adopted unanimously.

¹² See *ibid* 11th preambular paragraph. The implications of the HIV/AIDS pandemic for peace and security were further addressed by the SC in res 1983 (2011) adopted unanimously on 7 June 2011: see UN Doc S/RES/1983 (2011) (7 June 2011).

¹³ See UN Doc S/RES/2177 (2014) (18 September 2014) 5th preambular paragraph. The resolution was adopted unanimously.

¹⁴ See for example the summary records of the SC meeting devoted to the ‘Maintenance of international peace and security. New challenges to international peace and security and conflict prevention’ UN Doc S/PV.6668 (23 November 2011) where the Director General of the WHO was invited to provide a briefing; and, more recently, the summary records of the meeting devoted to ‘Maintenance of international peace and security. Addressing complex contemporary challenges to international peace and security’ UN Doc S/PV.8144 (20 December 2017).

Given this consolidated piece of practice in the field, it is not surprising that in Resolution 2532 (2020) the SC had intended to address the ‘devastating impact of the COVID-19 pandemic across the world, especially in countries ravaged by armed conflicts, or in post-conflict situations, or affected by humanitarian crises’ and had recognized that ‘conditions of violence and instability in conflict situations can exacerbate the pandemic, and that inversely the pandemic can exacerbate the adverse humanitarian impact of conflict situations’.¹⁵ What is more puzzling, however, is the ‘timid’ qualification drawn by the SC from the above considerations: in this respect, a key paragraph of the preamble of Resolution 2532 (2020) maintains that ‘the unprecedented extent of the COVID-19 pandemic *is likely to endanger the maintenance of international peace and security*’.¹⁶

On its face, there is a stark contrast between this statement and that contained in resolution 2177 (2014), where the outbreak of the Ebola virus was straightforwardly qualified as a threat to the peace. Considering that the impact of Covid-19 is labelled as ‘devastating’ in Resolution 2532 (2020),¹⁷ it can hardly be presumed that the ‘smoother’ qualification herein contained had been chosen by the SC because of the conviction of dealing with a situation less serious than the one created by the Ebola outbreak. Instead, one cannot fail to note that the relevant language of Resolution 2532 (2020) reproduces almost *verbatim* the expression used in Article 33(1) UN Charter as a threshold for triggering the action of the SC in the field of the pacific settlement of disputes under Chapter VI.¹⁸

If one recalls the threat of veto which was repeatedly brandished by some of the P5 during the negotiating process of the text, it can be argued

¹⁵ See Res 2532 (2020) (n 2) third and fourth preambular paragraph, as well as the fifth recognizing that ‘the peacebuilding and development gains made by countries in transition and post-conflict countries could be reversed in light of COVID-19 pandemic outbreak’.

¹⁶ See *ibid* eleventh preambular paragraph (emphasis added).

¹⁷ See *ibid* third preambular paragraph.

¹⁸ According to art 33(1) UN Charter, ‘The parties to any dispute, the continuance of which *is likely to endanger the maintenance of international peace and security*, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice’ (emphasis added). Moreover, arts 36 and 37 UN Charter provide for the power of the SC to recommend respectively procedures or terms of settlement in case of ‘a dispute of the nature referred to in Article 33’.

that choosing the language of Chapter VI instead of Chapter VII in Resolution 2532 (2020) was the toll to pay as part of a search for compromise within the SC. This account however risks oversimplifying the issue and turning the hands of the SC clock back several decades, to a time when the organ was heavily conditioned by the confrontation between Permanent members, and Chapter VI resolutions were the most frequent outcome of its action.

Another explanation for the approach retained in Resolution 2532 (2020) can then be attempted. In this respect, it is worth noting that in recent open thematic debates devoted to the ways and means of upholding the UN Charter in the maintenance of international peace and security, a number of intervening States has censored the overexploitation of Chapter VII enforcement measures in SC practice, at the same time calling for a revitalization and proper implementation of Chapter VI mechanisms.¹⁹ In another context, the preventive approach to the root causes of conflicts that is inherent to Chapter VI has been indicated as being particularly fitting to deal with new threats to international peace and security, among which the spread of infectious diseases is included.²⁰ In light of these elements, Resolution 2532 (2020) could then be seen as an attempt by the SC to reframe its approach towards issues relating to health and peace, by grounding it on the most appropriate legal tools offered by the UN Charter. However, how much the SC has proved successful in this attempt remains open to question.

¹⁹ See for example the interventions by Jordan, Serbia, India, Pakistan, Colombia, Mexico, Algeria, Iran, Zimbabwe, Turkey and the Netherlands at the debate held on 23 February 2015 on the topic 'Reflect on history, reaffirming the strong commitment to the purposes and principles of the Charter of the United Nations' UN Doc S/PV.7389 respectively at 22, 27, 31, 34, 39, 41, 46, 56, 57, 65, 74; the interventions by Kuwait, Ethiopia, Peru, Sweden, France, at the debate held on 21 February 2018 on the topic 'Purposes and principles of the Charter of the United Nations in the maintenance of international peace and security' UN Doc SPV.8185 respectively at 8, 17, 19, 20, 24-25; and, more recently, the interventions by Egypt and Eritrea at the debates of 9 and 13 January 2020 on the topic 'Upholding the United Nations Charter' respectively UN Doc S/PV.8699 at 55 and UN Doc S/PV.8699 (Resumption 2) at 16.

²⁰ See for example the interventions by Bolivia, Pakistan, Indonesia and Nepal at the debate on the topic 'Addressing complex contemporary challenges to international peace and security' UN Doc S/PV.8144 (n 14) respectively at 9, 26, 35, 62.

3. *The measures adopted to deal with the Covid-19 pandemic*

As already mentioned, the bulk of the operative part of Resolution 2532 (2020) consists of upholding the call for a global ceasefire previously issued by the Secretary General.²¹ In particular, operative paragraph (OP) 1 ‘*[d]emands 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*’. As a complement to this basic request, OP 2

*‘[c]alls upon all parties to armed conflicts to engage immediately in a durable humanitarian pause for at least 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’.*²²

As is easy to note, both the above-quoted paragraphs are couched in exhortative terms, and therefore they are consistent with the functions, as well as with the non-binding powers, conferred to SC under Chapter VI of the Charter.

The fact that the SC, in dealing with the impact of Covid-19 on international peace and security, had intended to pursue a preventive approach shaped on Chapter VI is further confirmed by the subsequent paragraphs of Resolution 2532 (2020). On one hand, in OP 5 the Secretary-General is requested to provide updates on the UN efforts to address the pandemic in countries affected by armed conflicts or humanitarian crises, as well as on the impact of the pandemic on the ability of peace-keeping operations to deliver their mandated tasks. On the other hand, in OP 6 the SC requests the Secretary-General to instruct peace-keeping operations to provide support to host countries’ authorities in their effort

²¹ See above (n 6).

²² Res 2532 (2020) (n 2) (italics are in the original). It is worth stressing that OP 3 of res 2532 (2020) further qualifies the scope of the global ceasefire and the humanitarian pause, by providing that they do not apply to armed operations carried out against ISIL, Al-Qaeda and other terrorist entities as designated by the SC.

to address the pandemic, as well as to take appropriate measures to ensure the safety of UN personnel while maintaining the continuity of the peace operations and to train (together with troop-contributing States) such personnel on issues related to the prevention of Covid-19.²³

Admittedly, the modest scope of the above referred measures might be assessed with some leniency, especially if one considers the kind of situation with which the SC was confronted. As noted by some learned commentators, when a threat to international peace and security comes in the form of the health impacts of a global disease, recourse to Chapter VII of the Charter, with its underlying logic of obligation and coercion, may have little sense.²⁴ In these situations, the role of the SC seems to be rather intended to 'generate momentum and additional political, operational and financial commitment by the international community'.²⁵ Consequently, actions inspired by the preventive and exhortative logic of Chapter VI of the Charter appear to be those best fitting for the purpose.

So far, so good. But in the present circumstances, one may legitimately wonder whether the late SC endorsement to a global ceasefire, already authoritatively issued by the Secretary-General, may really help the cause of the fight against the Covid-19 pandemic. In the case at hand, what could have provided some 'added value' to the SC action is the engagement – formulated in the above quoted OP 2 of the resolution – of all the parties involved in armed conflicts to observe a durable humanitarian pause of at least 90 consecutive days, purported to ensure the safe delivery of humanitarian assistance. In contrast with the request for a cease-fire, which is very common in resolutions dealing with ongoing hostilities, the demand for a 'humanitarian pause' stands out as a recent innovation in the practice of the SC. A precedent in this respect is given by resolution 2401 (2018) adopted in the context of the enduring armed

²³ It can be noted that specific provisions to that effect have been included in SC resolutions adopted after the outbreak of the Covid-19 pandemic aimed at determining, extending or renewing the mandate of peace-keeping operations: see for example res 2530 (2020) concerning the United Nations Disengagement Observer Force (UNDOF) UN Doc S/RES/2530 (2020) (29 June 2020) OP 8; as well as res 2524 (2020) concerning the newly established United Nations Integrated Transition Assistance Mission in Sudan (UNITAMS) UN Doc S/RES/2524 (2020) (3 June 2020) OP 2(iv)(c).

²⁴ See 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 Intl L* 5, 17.

²⁵ See GL Burci, 'Ebola, the Security Council and the Securitization of Public Health' (2014) 10 *QIL-Questions Intl L* 27, 29.

conflict in Syria.²⁶ The first OP of the latter resolution demanded, with a wording slightly different from that of resolution 2532 (2020), that all the parties cease hostilities and ensure a humanitarian pause for at least 30 days throughout Syria.²⁷ It must be noted that, in the case of Resolution 2401 (2018), this demand was supported by a paragraph of the preamble underscoring ‘that Member States are obligated under Article 25 of the Charter of the United Nations to accept and carry out the Council’s decisions’.²⁸ If this reference is read against the background of the residual power of decision accruing to the SC beyond the case of Chapter VII of the Charter,²⁹ one may suggest that the humanitarian pause in Resolution 2401 (2018) has to be intended to be endowed with binding effects.³⁰ Unfortunately, the SC fell short of introducing a similar reference to Article 25 UN Charter in Resolution 2532 (2020). As a consequence, the potential constraining effect, as well as the overall impact, of the demand provided for in its OP 2 will inescapably be undermined.

Beyond that, it is a fact that Resolution 2532 (2020) is remarkable for what it fails to say and for the measures it fails to consider. By contrast, it can be noted that the impact of the measures of confinement adopted by individual States for the purposes of containing the pandemic was one of the critical issues considered by the SC at the time of the outbreak of the Ebola virus. In Resolution 2177 (2014) the SC expressed its concern

²⁶ UN Doc S/RES/2401 (2018) (24 February 2018) adopted unanimously.

²⁷ The most significant difference between the two texts consisting in the fact that res 2401 (2018) utilizes the verb ‘demands’ for introducing the request of a humanitarian pause, while res 2532 (2020) employs the term ‘calls upon’. It must be added that res 2401 (2018) also provides, with a formulation almost identical to the one included in res 2532 (2020), that the cessation of hostilities and the humanitarian pause do not apply to armed operations against terrorist groups (see *ibid* OP 2).

²⁸ See *ibid* thirteen preambular paragraph.

²⁹ As is well known, this possibility was envisaged by the International Court of Justice in the 1971 advisory opinion on Namibia: see *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)* [1971] ICJ Rep 16, 52-53 para 113.

³⁰ The conclusion as to the binding effect of the demands contained in res 2401 (2018) was upheld before the SC by the three sponsoring States of the text: see the statement of Sweden, Kuwait and United States in UN Doc S/PV.8188 (24 February 2018) respectively at 2, 3, 4. On the function and impact of art 25 UN Charter in SC practice see M Arcari, ‘Notes sur la “reviviscence” de l’article 25 de la Charte des Nations Unies dans la pratique récente de la sécurité collective’, in M Prieur (ed), *Droit, Humanité, Environnement. Mélanges en l’honneur de Stéphane Doumbé-Billé* (Bruylant 2020) 1091-1102.

about the detrimental effect of the isolation of the affected countries and called upon member States to lift general travel and border restrictions that may contribute to the further isolation of the affected countries and undermine their efforts to respond to the outbreak of Ebola virus.³¹ *Mutatis mutandis*, the issue can be posited also in the case of the Covid-19 pandemic, especially with respect to countries ravaged by armed conflicts or affected by humanitarian crises – which is precisely the kind of situations Resolution 2532 (2020) is intended to address. In spite of the fact that ‘ensuring humanitarian access and opening corridors for the safe and timely movement of goods and personnel’ was one of the priority areas identified by the Secretary-General in his remarks to the SC closed meeting of 9 April 2020,³² the topic remained completely overlooked in Resolution 2532 (2020).

Not surprisingly, the issue above was at the core of the controversy which erupted within the SC shortly after the adoption of Resolution 2532 (2020) over the question of Syria cross-border humanitarian aid deliveries. At that juncture, the authorization for humanitarian agencies to use a number of cross-border points of access to Syria, which had been initially given by the SC with Resolution 2165 (2014) and subsequently renewed for a limited duration,³³ was about to expire and needed further extension. Two different draft resolutions on the topic were presented. The draft submitted by Russia aimed at reducing the number of points of access and linked the issue of their use to the lifting of unilateral sanctions which might undermine Syria’s capacity to respond to the Covid-19 pandemic.³⁴ A second draft submitted by Belgium and Germany, without mentioning the issue of sanctions, expressed concern for the impact of the Covid-19 pandemic on the Syrian health system and aimed at limiting to a minimum the restrictions to cross-border points.³⁵ After that

³¹ See res 2177 (2014) (n 13) OP 3 and 4.

³² See above (n 8).

³³ See UN Doc S/RES/2165 (2014) (14 July 2014) OP 2, authorizing humanitarian agencies to use the border crossing points of Bab al-Salam, Bab al-Hawa, Al Yarubiyah and Al-Ratma. This authorization was most recently extended until 10 July 2020 by res 2504 (2020) adopted at the eve of the outbreak of the Covid-19 pandemic: UN Doc S/RES/2504 (2020) (10 January 2020).

³⁴ See the text of the Russian draft resolution in UN Doc S/2020/658 (9 July 2020) especially the third preambular paragraph and OP 2 and 4.

³⁵ See the text of the draft resolution submitted by Belgium and Germany in UN Doc S/2020/667 (10 July 2020) especially the fourth preambular paragraph and OP 4.

a struggle arose in the SC over those draft resolutions,³⁶ a compromise text was eventually reached on 11 July 2020. Resolution 2533 (2020) renews the authorization to use cross-border points for humanitarian assistance for a period of twelve months, while reducing their number; at the same time, the text refrains from mentioning the impact of the Covid-19 pandemic on the humanitarian situation in Syria.³⁷

One may wonder what the outcome of the above case would have been if the impact of border restrictions and confinement measures in the treatment of Covid-19 pandemic had been dealt with in appropriate terms under Resolution 2532 (2020). At the end of the day, also in view of the modest scope of the measures set forth in Resolution 2532 (2020), one has to recognize that if the ambition of the SC was to set forth a general framework of action for coping with the effects of the Covid-19 pandemic on peace and security, the overall result is rather scant.

4. The SC role in the governance of the global health threat

As already mentioned, a critical bone of contention in negotiating Resolution 2532 (2020), over which in particular China and the United States struggled, was the mention of the role of the WHO in the management of the Covid-19 pandemic. Even if the dropping of the WHO's name from the text was the toll for breaking the deadlock, Resolution 2532 (2020) does not completely ignore the topic of the governance of the global threat created by the health crisis. The point is addressed in the fourth preambular paragraph of the resolution, underscoring that

³⁶ The initial draft resolution submitted by Russia (n 34) was put to the vote on 8 July 2020 and failed to obtain the required majority, having received four votes in favour, seven against and four abstentions (see UN Doc S/2020/664 of 9 July 2020). A further revised draft submitted by Russia some days later (UN Doc S/2020/683 of 13 July 2020) was also rejected with the same outcome of the vote (see UN Doc S/2020/688 of 13 July 2020); on its part, the initial draft resolution submitted by Belgium and Germany (n 35) received 13 votes in favour, but failed to be adopted due to the veto cast by China and the Russian Federation (see UN Doc S/2020/681 of 13 July 2020).

³⁷ UN Doc S/RES/2533 (2020) (13 July 2020) OP 2, excluding from the authorization the border crossings of Al-Ratma, Al Yarubiyah and Bab al-Salam. The resolution, adopted on the basis of a revised draft text submitted anew by Belgium and Germany, received 12 votes in favour, none against and three abstentions (China, the Dominican Republic and the Russian Federation): see UN Doc S/2020/698 (13 July 2020).

‘combating this pandemic requires greater national, regional and international cooperation and solidarity, and a coordinated, inclusive, comprehensive and global international response with the United Nations playing a key coordinating role’.

The critical issue in this paragraph revolves around the ‘key role’ of the United Nations in coordinating the international response needed to deal with the pandemic. The right question to be asked for the present purposes is whether, *within* the United Nations system, it is possible to identify a specific organ or institution which may take the lead in the response against global health emergencies and whether a coordinating role can be played by the SC, especially when global pandemics affect the maintenance of peace and security. Some scholars have suggested that the SC may in this regard play something of a privileged actor, insofar as it draws a unique strength from the capacity to sensitize and mobilize the international community around global problems, from the authority to issue binding decisions, as well as from the legitimacy arising from acting on behalf of the whole UN membership.³⁸ By way of example of such an approach, it can be recalled here that one of the most spectacular aspects of the SC action in the case of Ebola outbreak lay in the SC having urged States to implement relevant temporary recommendations issued by the WHO,³⁹ thereby creating a legal commitment through instruments whose mandatory implications rest on rather shaky grounds.⁴⁰

At the same time, it cannot be underestimated that, from the very early phases of the SC involvement with global pandemics, several UN member States have voiced their concerns about the risk of an ‘institutional overlapping’ between the action of the SC and that of other organs and institutions of the UN system entrusted with functions in the

³⁸ See Balmond (n 24) at 23; and, more generally, on the role of the SC in global governance L Balmond, ‘Gouvernance globale et sécurité collective. Les profils d’une convergence’, in M Arcari, L Balmond (eds), *La gouvernance globale face aux défis de la sécurité collective* (Editoriale Scientifica 2012) 3-22. See also Burci (n 25).

³⁹ See res 2177 (2014) (n 13) OP 9, where the SC ‘urges Member States to implement relevant Temporary Recommendations issued under the International Health Regulations (2005) regarding the 2014 Ebola Outbreak in West Africa, and lead the organization, coordination and implementation of national preparedness and response activities, including, where and when relevant, in collaboration with international development and humanitarian partners’.

⁴⁰ Burci (n 25) 37-38.

economic and social fields such as, in particular, the GA, the Economic and Social Council or the WHO.⁴¹

What clues could then be expected from Resolution 2532 (2020) on the above mentioned questions?

At the outset, one may note that there is a rather reassuring message concerning the relationship between the SC and the GA. The preamble of Resolution 2532 (2020) expressly recalls GA Resolution 74/270 of 2 April 2020, dealing with the global solidarity to fight the Covid-19 pandemic.⁴² Except for this reference, in the remainder of the text the SC abstains from entering into the realm of GA competences relating to the social, economic or humanitarian aspects involved in the spread of the pandemic. Rather astonishingly, no mention is made of another text previously adopted by the GA, Resolution 74/274 of 20 April 2020 dealing with the critical question of the access to vaccines and medical equipment to face Covid-19 pandemic.⁴³ On the contrary, all of the SC action in Resolution 2532 (2020) is strictly focused on the impact of Covid-19 on peace and security. From this point of view, Resolution 2532 (2020) provides an additional piece of evidence in support of the finding made by the International Court of Justice concerning the ‘increasing tendency’ of the GA and the SC to deal in parallel with the same matters: as maintained by the World Court, in such instances ‘while the Security Council has tended to focus on the aspects of such matters related to international

⁴¹ See for example the statements by Ukraine, Jamaica and Indonesia at the SC meeting of 17 July 2000 relating to res 1308 (2000) UN Doc S/PV.4172 respectively at 14, 18 and 21-22; the statement of Argentina at the SC meeting of 18 September 2014 relating to res 2177 (2014) UN Doc S/PV.7268 at 20; the statement of Russia at the SC meeting of 7 June 2011 relating to res 1983 (2011) UN Doc S/PV.6547 at 13. More recently, the point was extensively addressed by several States during the thematic debate of 20 December 2017 devoted by the SC to the topic ‘Addressing complex contemporary challenges to international peace and security’: see among others the statements of Bolivia, China, Ethiopia, Russia, Ghana, the Netherlands in UN Doc S/PV.8144 (n 14) respectively at 9, 17, 19, 20, 51, 55-56. Finally, the topic was also evoked by South Africa at the videoconference debate held on 2 July 2020 by the SC on the topic ‘Maintenance of international peace and security: Implications of Covid-19’: see UN Press Release SC/14241 (n 3).

⁴² See above (n 4).

⁴³ *ibid.*

peace and security, the General Assembly has taken a broader view, considering also their humanitarian, social and economic aspects'.⁴⁴

However, one may legitimately wonder whether the path followed by the SC in the case at hand was due to a sense of inter-institutional cooperation/coordination or rather to a reductionist approach towards the whole question. The latter alternative seems to be preferred if one looks at OP 4 of Resolution 2532 (2020), where the SC

‘Requests the Secretary-General to help ensure that all relevant parts of the United Nations system, including UN Country Teams, in accordance with their respective mandates, accelerate their response to the COVID-19 pandemic with a particular emphasis on countries in need, including those in situations of armed conflict or affected by humanitarian crises’.

In fact, this paragraph covers everything Resolution 2532 (2020) has to say about the issue of the governance of the global pandemic. Besides the flat reference to ‘all relevant parts of the United Nations system’, nothing is said about the individual actors involved in the management of the crisis, their respective roles and powers, or the way in which their different actions have to be coordinated. Put another way, one will search in vain in Resolution 2532 (2020) for the same level of legal commitment and institutional awareness in coordinating the response of the international community which was displayed by the SC at the time of the adoption of Resolution 2177 (2014) devoted to the outbreak of the Ebola virus.

It would be easy to explain this disengagement by the SC by evoking the mistrust reigning among SC member States towards one of the main institutional actors involved in the management of the crisis, ie the WHO. On the other hand, whatever the assessment about the role of the WHO in containing the spread of the Covid-19 disease may be,⁴⁵ one

⁴⁴ See ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion) [2004] ICJ Rep 136, at 149-150 para 27.

⁴⁵ For an overview of the measures adopted by WHO in the context of the Covid-19 crisis see P Acconci, ‘Responses of International Organizations to the Health Emergency Due to the Covid-19. A First Impression’ (2020) 103 *Rivista di diritto internazionale* 415, 434-439. For an overall assessment of the effectiveness of WHO responses to recent global health emergencies see further JB Heath ‘Global Emergency Power in the Age of Ebola’ (2016) 57 *Harvard Intl L J* 1-47.

cannot fail to note that, by contrast, the GA was not prevented from acknowledging ‘the crucial leading role played by the World Health Organization’ in this context.⁴⁶ Be that as it may, even conceding that the silence over the role played by WHO was decisive in reaching an agreement over the text of Resolution 2532 (2020), this can hardly justify the contextual demise of the SC’s leading role in the governance of global health crises. As a matter of fact, after Resolution 2532 (2020), very little seems to remain of the ‘crucial role the Council played in marshalling the international community response to the security implications of the HIV/AIDS and Ebola outbreak’.⁴⁷

5. *Concluding remarks*

Taking stock of the SC action in countering the Covid-19 emergency after the above review of Resolution 2532 (2020) runs the risk of being a rather harsh exercise. Indeed, the measures set forth in Resolution 2532 (2020) have been revealed to be limited in scope and, prospectively, they appear to be very modest in their impact. In addition, the SC seems to have adopted a rather unassertive attitude in leading and coordinating the global response against the pandemic. If the bulk of the SC intervention vis-à-vis global health threats was to ‘create momentum’ within the international community, it must be recognized that the mission remains unaccomplished.

In all the likelihood, among the reasons for this relative failure one may also include the ‘bad timing’ of Resolution 2532 (2020). Beyond the shortcomings in its content, the resolution unquestionably came at a time when all the main institutional actors competent to deal with the pandemic had already made their voice heard. This lack of timing in SC action inescapably evokes the critical questions of its credibility and

⁴⁶ See GA Res 74/274 (n 4) OP 1, where the GA ‘Reaffirms the fundamental role of the United Nations system in coordinating the global response to control and contain the spread of the coronavirus disease (COVID-19) and in supporting Member States, and in this regard acknowledges the crucial leading role played by the World Health Organization’. A slightly different formula also appears in the fourth preambular paragraph of GA Res 74/270 (n 4).

⁴⁷ These were the words used by the Secretary-General in the statement delivered at the SC closed meeting of 9 April 2020 on the Covid-19 pandemic: see above (n 8).

effectiveness, which have recently been addressed in the thematic debates devoted to the topic of the ‘working methods of the Security Council’.⁴⁸ However paradoxical it may appear, the idea to cope with the root causes hindering the efficacy of SC action through procedural devices is not completely flawed, especially if the latter devices are intended to improve the overall transparency of the work of the SC.⁴⁹

It is at precisely this stage that another basic problem involved with Resolution 2532 (2020) emerges: arguably, transparency was one of the victims of the ‘special procedure’ set out by the SC in light of the exceptional circumstances caused by Covid-19.⁵⁰ While the drawbacks of the procedure regulating SC affairs during the emergency lie beyond the scope of this note, it can be recalled here the rather dramatic observation made by one member State in the early phases of the SC lockdown: ‘due to a lack of consensus, there have been no formal Council meetings since 12 March, no verbatim transcripts of its formal meetings, no simultaneous translation and no established framework of the provisional rules of procedure’.⁵¹ Coherently with this statement, no official recordings fully reflecting the position of SC members on Resolution 2532 (2020) are available.⁵²

⁴⁸ See the ‘Concept note for the Security Council open videoconference meeting on the theme “Ensuring transparency, efficiency and effectiveness in the work of the Security Council”, to be held on 15 May 2020’, prepared by Estonia in its capacity of President of the SC for the month of May 2020, UN Doc S/2020/374 (8 May 2020). Among the questions proposed to assist member States in preparing their statements, the following is listed: ‘(b) In light of criticism of the Council for its lack of action, including prevention, with respect to certain situations, what measures can be undertaken by the Council to enhance its effectiveness and transform situations on the ground?’ (at 3).

⁴⁹ See *ibid* the specific question proposed in that respect: ‘(a) The Council has made progress in enhancing its transparency. What are some of the ways in which the Council can improve the efficiency of its work while retaining transparency?’

⁵⁰ See (n 1) above.

⁵¹ See the statement made by the United Kingdom at the open conference meeting on the theme of ‘Ensuring transparency, efficiency and effectiveness in the work of the Security council’ held by the SC on 15 May 2020, as reported in UN Press Release S/14188 (15 May 2020) available at <www.un.org/press/en/2020/sc14188.doc.htm>.

⁵² The webcast SC videoconference meeting of 1st July 2020 was in fact limited to the President’s statement announcing the result of the vote on Res 2532 (2020) (available at <www.un.org/securitycouncil/content/meetings-2020-vtc>). Written statements providing explanations of the voting have been submitted subsequently by seven members the Council (China, Indonesia, Russian Federation, Saint Vincent and Grenadines, South Africa, United Kingdom and United States) and are collected in UN Doc S/2020/638 (2 July 2020).

Curiously enough, the day after the adoption of Resolution 2532 (2020) a high-level open videoconference meeting of the SC was convened for dealing with the theme ‘Maintenance of international peace and security: Implications of COVID-19’.⁵³ This may appear to be a positive development in times of emergency, especially if one considers that open thematic debates are indicated as one of the crucial tools for promoting the participation of the wider UN membership in affairs concerning international peace and security.⁵⁴

However, looking at the account of this meeting, the impression can hardly be avoided that most of intervening SC members were more concerned with commenting on the resolution adopted the day before – as if engaged in a late attempt to provide some insight on its drafting – rather than with the general implications of the Covid-19 pandemic for international peace and security. Furthermore, one can add that the very ‘open’ character of the debate on the issue remained largely virtual, insofar as, besides some briefings provided by specifically invited persons, only the fifteen members of the Council actually intervened at the videoconference of 2nd July 2020. In accordance with the understanding reached among Council members for that videoconference, written statements submitted by additional forty-seven UN member States were subsequently collected in a SC official document.⁵⁵ As aptly observed by one commentator, these arrangements can hardly help to enhance the

⁵³ See the ‘Concept note for the high-level open debate of the Security Council on the theme “Pandemics and security, to be held on 2 July 2020”, prepared by Germany in its capacity of SC President for the month of July 2020, UN Doc S/2020/571 (23 June 2020) and, for a written summary of this meeting UN Press Release SC/14241 (n 3). The full webcast of the debate is also available at <www.un.org/securitycouncil/content/meetings-2020-vtc>.

⁵⁴ See ‘Note by the President of the Security Council’ UN Doc S/2017/507 (30 August 2017) (also known as ‘note 507’, ie the document winding up the main measures intended to enhance the efficiency and transparency of the Council’s work) at 9 paras 38-44 and 16-17 paras 92-100. On this point see also the question proposed in the Concept note ‘Ensuring transparency, efficiency and effectiveness in the work of the Security council’ (n 48): ‘(c) Pursuant to Article 24 of the Charter, the Council acts on behalf of the membership. However, how can the wider membership participate in enhancing the Council’s effectiveness?’

⁵⁵ See ‘Letter dated 8 July 2020 from the President of the Security Council addressed to the Secretary-General and Permanent Representatives of the members of the Security Council’ UN Doc S/2020/663 (9 July 2020).

legitimacy and transparency of the Council.⁵⁶ In sum, there is room for arguing that Resolution 2532 (2020) and the overall action of the SC relating to the Covid-19 pandemic brought very little to the advancement of the cause of the effectiveness of this body.

With the transition to a new phase of the emergency at the UN Headquarters after 6 July 2020, a gradual shift towards in-person meetings of the SC has been envisaged.⁵⁷ In all likelihood, most of the problems caused by the special procedure set forth for the period of UN lockdown will then gradually be overcome. However, one can legitimately ask whether the return to ‘business as usual’ will also overshadow the real issue that hung over the action of the SC in the case at hand, that is the threat of veto by its Permanent members. From this point of view, Resolution 2532 (2020) is here to demonstrate that the SC is running the risk of being, more than another fatality caused by the horrific Covid-19 pandemic, a victim of its own procedures and mechanisms.

⁵⁶ See Nesi (n 1) at 15.

⁵⁷ See the Letter of the President of the Security Council for the month of July (Germany) addressed to the Permanent Representatives of the members of the Security Council, uncovering the modalities of in-persons meetings of the SC for July 2020, UN Doc S/2020/639 (1 July 2020). This procedure has been further extended by the Indonesian Presidency for the month of August: see UN Doc S/2020/778 (4 August 2020).

