

BOUBACAR SIDI DIALLO

**THE EBOLA PANDEMIC AS A THREAT TO
INTERNATIONAL PEACE AND SECURITY:
A QUESTION OF COLLECTIVE SECURITY
OR GLOBAL GOVERNANCE?***

I. INTRODUCTION

Evolution of the issue of public health on an international level prompted states to establish an international organisation, the World Health Organization (WHO), whose mission is ‘the attainment by all peoples of the highest possible level of health’. With this goal in mind, the organisation is obliged to bring help and provide support, to stimulate cooperation and scientific research, and to promote all measures capable of contributing to progress in the protection of health. In the United Nations system the WHO is therefore the main institution responsible for protecting public health at an international level. This means that, in keeping with the principle regulating the powers of international organisations, it is an institution specialising in this area of activity. Such a function derives from the conviction that economic and social cooperation is best achieved by specialised institutions linked to the United Nations. At the same time the WHO enjoys a high degree of autonomy.¹ In the dispute regarding its autonomy or dependence on the UN, writers defining the role of the WHO seem to lean towards the organisation’s autonomy, irrespective of the type of control wielded over it and similar institutions by the UN, meaning that they acknowledge that the UN cannot impose its solutions on them, because specialised agencies

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¹ The World Health Organization, as a specialized agency of the United Nations, is the first organisation whose knowledge and competencies defined in its statute and whose legal personality are responsible for public health on an international plane. This means that it is independent in this matter of any other entities of international law whatsoever. Its social goals as an intergovernmental organisation constitute the fundamental reason for which it was established, as responding to the needs of the states that created it. Member states decided to devolve to it the technical authority to respond to the expectations of these member states’ specialised administrations, with which it cooperates closely. Just like other specialised UN agencies, the WHO is sometimes recognised as a genuine international public service, which in some cases has led to it being granted primary rights for taking decisions or carrying out inspections. Member states strive not to politicise the organisation.

operate within the system of the United Nations, but not under its management’.

Today the World Health Organization plays a particularly crucial role in the fight against various kinds of epidemic. One of these is the Ebola virus epidemic. In its battle with this epidemic, the WHO is taking such measures as: securing access to the sick, their diagnosis, effective treatment, and finding a medicine enabling control of the virus, while simultaneously respecting the dignity of human beings and their beliefs.² The epidemic also raises questions of a general nature concerning public health, including the sanitary state of populations—even in affluent countries—or equality in access to health care. Meanwhile the Constitution of the WHO acknowledges that ‘enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being’.³

However, as defined by the Committee on Economic, Social and Cultural Rights⁴ in its General Comment No. 14, the effective realisation of the right to health requires the intervention of public authorities, particularly where fighting disease is concerned. This responsibility falls on states, through their own independent measures or via cooperation, and on international institutions—and in particular, on the World Health Organization. The spread of a virus and the frequently irrational fears⁵ that were evoked by this spread have gradually altered the approach to the problem. A local health crisis, which could have been brought under control by the WHO, became a regional and even global crisis, demanding a global reaction. Responsibility for this may only be borne by the UN, with which the WHO—as a specialized agency—must ‘establish and maintain effective cooperation’, and when requested by the UN should ‘provide or assist in providing support and help’.⁶ This principle was included in the Security Council’s Resolution 2177 of 18 September 2014, which expressed the conviction that the Ebola epidemic posed a threat to international peace and security.

² The Ebola virus (or Ebola haemorrhagic fever) is a frequently fatal disease that first appeared in 1976, simultaneously in the Democratic Republic of the Congo and Sudan. The virus is endemic in these regions, and 2013 saw an ‘outbreak’ (a term used by the WHO) of the disease in West Africa; cf. WHO, Ebola response roadmap situation report update (21 November 2014).

³ This is confirmed in Article 12 of the International Covenant on Economic, Social and Cultural Rights, according to which ‘parties [...] recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health’.

⁴ Cf. General Comment No. 14, Document E/C.12/2000/4 (11 August 2000).

⁵ Cf. *Courrier international* no. 1250 (16–22 October 2014): 30–37.

⁶ Relations between the UN and specialised agencies are based on the provisions of the Charter, agreements concluded between them, and on practice. These agreements are the consequence of the provision contained in Article 63 of the Charter, which grants the Economic and Social Council the power to enter into agreements with specialised agencies, subject to their approval by the General Assembly, and for the purpose of linking them to the UN.

II. REACTION BY THE INTERNATIONAL COMMUNITY TO THE THREAT TO PEACE AND SECURITY CAUSED BY THE EPIDEMIC

In March 2014 the WHO was notified of the first clusters of the Ebola haemorrhagic fever outbreak which appeared in Guinea in late 2013. Due to the rapid spread of infections, in August 2014 the WHO had to announce that it was an extraordinary event in the area of public health, with international consequences (International Health Regulations 2005).⁷ The UN's response to the situation had appeared on 8 July 2014 in a press release issued by the UN's West Africa Office, in which members of the Security Council expressed their serious concern with the Ebola outbreak in certain countries of West Africa, and called upon the international community to help prevent its spread.

From that moment on the United Nations' response to the Ebola virus epidemic was to be directed towards achieving two goals: to obtain as broad a consensus as possible in the matter of fundamentals and the method for conducting the planned measures, and—in the face of the growing threat—to find the appropriate legal instrument enabling large-scale international mobilisation. With Resolution 2176 of 15 September 2014, on the possible renewal of the mandate for the United Nations' Mission in Liberia (UNMIL), the Council declared unambiguously expressed 'grave concern about the extent of the Ebola virus in West Africa, in particular in Liberia, Guinea and Sierra Leone'; referring (though indirectly) to the concept of responsibility for protection, it also drew attention to the fact that the government of Liberia bore 'primary responsibility for ensuring peace [and] stability', as well as protection of the civilisation population.

Following the proclamation of the first resolution, further elements appeared that would determine the position of the Security Council and, in general, the United Nations. The Council Rada emphasised the connection between the epidemic and 'lasting stability' in Liberia, and indicated the elements essential for organising an adequate response: the main responsibility of the states; the role of regional and sub-regional organisations (Mano River Union, ECOWAS, and the African Union); the crucial significance of international cooperation in satisfying the demand for qualified medical personnel and the appropriate equipment; appointing a chief coordinator at the United Nations for combatting the Ebola virus; and finally the will expressed clearly by the states concerned to contain the epidemic within their borders. However, although when the UNMIL mandate was extended the Council mentioned the threats that Ebola created for the Mission's success in building peace in Liberia, there was no mention in this document of the existence of a threat to international peace and security.⁸

⁷ Cf. G.L. Burci, J. Quirin, *Ebola, WHO, and the United Nations: Convergence of Global Public Health and International Peace and Security* (2014), 18 ASIL Insights.

⁸ The UN Secretary General, who appointed a Senior Coordinator of the United Nations System Response to Ebola, and set in motion a mechanism for the organisation to react in a crisis situation, received a letter from the Presidents of Liberia, Sierra Leone and Guinea calling for a 'resolution on a comprehensive response to the Ebola virus disease outbreak' that would

Then, on 19 September 2014, following the Security Council's adoption of Resolution 2177 (2014), the UN General Assembly passed a resolution regarding funds aimed at withholding and combatting the Ebola epidemic in West Africa. The justification given for this was the need 'to limit this crisis in the area of public health due to the serious humanitarian, economic and social consequences that it may have'. The document also refers to the Security Council's Resolutions 2176 (2014) and 2177 (2014), and notes with satisfaction the General Secretary's intention to establish a UN Mission for Ebola Emergency Response (UNMEER). Consensus among the main bodies of the United Nations system had, in the face of the Ebola outbreak, been reached—achieved in conditions and according to formulas of major gravity. Resolution 2177 (2014) is positioned in the centre of the normative section of the United Nations system. It also reflects the existence of a broader consensus, extending to embrace the entire family of the United Nations.

III. THE THREAT TO INTERNATIONAL PEACE AND SECURITY – THE BASIS OF RESOLUTION 2177 (2014)

At this stage the Security Council had no choice. In order to take active measures to combat the Ebola outbreak, it had to draw on the provisions of the Charter that determines its powers, that is, on Article 24(1), imposing upon the Security Council the chief responsibility for maintaining international peace and security, and on Article 39, permitting it to take action in a situation where peace is threatened or has been breached. However, the Resolution has no mention of Chapter VII of the Charter, or of articles other than the above-mentioned 24 and 39; there is only a laconic sentence in which '[it is determined] that the unprecedented extent of the Ebola outbreak in Africa constitutes a threat to international peace and security'.⁹

Characteristic features of the Ebola virus meant that the threat would obviously spread to neighbouring countries, and thereafter to more distant regions, a spread that was favoured by the increase in the movement of peoples and international exchange.¹⁰

include 'coordinated international response to end the outbreak'; cf. UN Doc. S/2014/669 (29 August 2014); on 17 September 2014 he sent identical letters to the President of the General Assembly and the President of the Security Council, in which he emphasised the security dimension of the crisis resulting from the epidemic. Document UN A/69/389-S/2014/679 (17 September 2014). Most importantly, he announced the intention for the immediate establishing of a United Nations Mission to respond to the Ebola outbreak.

⁹ According to the Security Council, this threat was of a virulence incomparable with that occurring during an ordinary epidemic. It affected above all the societies of unstable states in the process of building peace after years of armed conflict. It was so serious, that measures taken to date in this area could have been significantly hindered or even interrupted by the outbreak, with the barely regained stability undermined by 'further instances of civil unrest, social tensions and a deterioration of the political and security climate'.

¹⁰ Many countries were covered by this resolution, and in particular Nigeria, but the outbreak was also spreading to other African countries such as Mali. Outside of Africa, it also

In this way the health crisis in three states could, due to the context, become a threat to peace and security, and then evolve into a threat on an international scale. Whereas the threat resulting from the health crisis turned into an economic, social, political and humanitarian crisis—and ultimately a crisis in security—its evolution can be explained by measures taken too late with the aim of containing the serious health crisis, expanding ‘exponentially’, which then required the most urgent response. The threat directly affected peace and security, because it concerned countries involved in a process intended to restore lasting peace and security. As Rwanda’s representative remarked, the Security Council, which supported the peace processes in the three countries concerned, may have only worried about the consequences of the Ebola epidemic from the point of view of security.

The Security Council’s position, as well as the situation’s qualification adopted in order to face up to the outbreak of Ebola haemorrhagic fever, even if adopted out of necessity as a matter of urgency, had to be appraised in the light of the Charter’s provisions defining the Council’s range of powers and obligations. From this point of view, one may acknowledge that there existed certain nuances in the ‘revolutionary’ nature of the Council’s position. This was in line with the process of extending application of the term of threat to international peace and security, a process that began before the end of the Cold War, and that evoked numerous questions. However, it would seem that in this case, in the face of an Ebola epidemic, usage of this term in order to justify the Security Council’s intervention, could not be questioned. It was widely known that the concepts of international peace and security had undergone deep transformation in relation to the perspective that the authors of the Charter had to deal with, and which in terms of concept had not been questioned. However, this does not apply to their possible instrumentalisation by the Security Council.

Peace in the negative sense, that of the absence of armed conflicts, or even of armed conflicts between states, is accompanied today by a search for peace in the positive sense, meaning that of a global development responding to the desire for order—and even for more, for ‘social order’.¹¹ Whilst the security of states and between states, pursuant to the provisions of the Charter, remains an essential condition for ensuring security for individuals, it is not sufficient and has to be supplemented by a search for the security of those people who depend upon being protected from such threats as poverty, hunger, crime, the violation of human rights, threats to the environment, human trafficking or disease.¹² As such, in the light of positive peace and people’s security, where both concepts contain a component of health, the threats had become

concerned people who had become infected with the disease before travelling to Europe or North America.

¹¹ J.-M. Sorel, L’élargissement de la notion de menace contre la paix, in: *Le Chapitre VII de la Charte des Nations Unies*, Paris 1995: 16; cf. P. d’Argent et al., *Article 39*, in: J.-P. Cot, A. Pellet, M. Forteau (eds.), *Commentaire de la Charte des Nations Unies article par article*, 3rd ed., Paris 2005: 1164.

¹² Cf. C.-P. David, J.-F. Rioux, Le concept de sécurité humaine, in: J.-F. Rioux (ed.), *La sécurité humaine, une nouvelle conception des relations internationales*, Paris 2002: 19.

multidimensional, which was noted by the Security Council on 31 January 1992 at a sitting of heads of state and government. This was confirmed by the Secretary General in his *An Agenda for Peace*¹³ and by the UN's High-level Panel on Threats, Challenges and Change: 'Any event or process that leads to large-scale death or lessening of life chances and undermines States as the basic unit of the international system is a threat to international security'.¹⁴ One may assert with certainty, and referring to the spirit if not the letter of the Charter, that since that time health crises have constituted a threat to international peace and security, thereby justifying the measures taken by the UN.

At the UN it was the Security Council, responsible above all for maintaining international peace and security, that in reality promoted or even accelerated this transformation—since it took the decision to include 'economic and social threats' in the category of threats to international peace and security. It did this by including in the agenda the famine in Africa, the issue of AIDS, the connection between energy, security and the climate, and the impact of climate change on maintaining peace. There are many elements in the legal instruments used by the Council, from debate during thematic meetings and declarations by the presidency to resolutions. Importantly, where health issues are concerned, the Security Council chose the form of resolutions.¹⁵

Resolution 2177 (2014) is undoubtedly part of the logic that would justify the Council's usage of the qualification of a threat to international peace and security to undertake intervention against the Ebola epidemic. However, although this logic was questioned, the specific character of the context in which Resolution 2177(2014) was adopted allows one to go beyond the questions that the resolution's text may provoke, since its adoption of the qualification of a threat to international peace and security took place without any formal explanation.

One can see here a frequent if not regular practice by the Council, manifested in its drive to confirm that it is executing, in this case, powers that are strictly reserved for it, as expressed in the now famous formula according to which 'a threat to the peace as defined in Article 39 is only a situation in which the appropriate body for deciding to impose sanctions rules that the said situation really is a threat to the peace'.¹⁶ As such there are no obstacles to the Security Council deciding to qualify the Ebola epidemic as a threat to the peace. Admittedly, these powers—sometimes appraised

¹³ Cf. B. Boutros Ghali, *An Agenda for Peace*, UN Doc. A/47/277 (17 June 1992).

¹⁴ Cf. Report of the High-level Panel on Threats, Challenges and Change, UN Doc. A/59/625 (2 December 2004). 'So defined, there are six clusters of threats with which the world must be concerned now and in the decades ahead: economic and social threats, including poverty, infectious disease [...].'

¹⁵ Cf. Resolution 1308 (2000) of 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' and Resolution 1983 (2011) of 7 June 2011 referring to the 'maintenance of international peace and security'.

¹⁶ J. Combacau, *Le pouvoir de sanction de l'ONU. Etude théorique de la coercition non militaire*, Paris 1974: 100.

negatively as bordering on arbitrariness and leading to an excessively guarded perception of matters covered by the international agenda—are not covered by the principle of *legibus solutus*. The Council is obliged to respect the Charter, through the provisions of which it was established, as well as the division of responsibilities and the statutory equilibrium established by the Charter. In addition, one may accept that in international law as well as discretionary power has its limits in obvious error of judgment. The above issues have frequently led to questions being raised, but in no way do they challenge the meaning of the qualification adopted by Resolution 2177(2014).¹⁷

This issue could therefore change position in regard to the constitutional equilibrium contained in the Charter, insofar as we take into account the exercising of given powers, without applying coercion, that can be executed both by the Security Council and by the General Assembly. Whilst the Security Council bears chief responsibility for maintaining international peace and security, it is the General Assembly (Article 10 of the UN Charter) that can discuss ‘any questions or any matters within the scope of the present Charter’, which obviously embraces issues of maintaining peace. According to Article 12(1), the Assembly has limited powers for issuing recommendations (but not for discussing matters) in a situation where the Security Council has already taken measures, performing the ‘functions assigned to it in the present Charter’. In this manner, in a hypothetical situation, both bodies would exercise their powers, powers that could prove to be in competition, because the Council would not act using means of coercion, but could all the same block any initiative whatsoever of the General Assembly. This would be possible were the Council to qualify a particular threat, even virtual, as a threat to international peace and security, thereby performing—on the basis of its own purely discretionary appraisal—‘functions assigned to it in the Charter’. Therefore the Council, uninhibitedly asserting the existence of threats, defines just as uninhibitedly the scope of its functions, and by its own discretion limits the scope of the General Assembly’s functions.

The determinants that sometimes lead to such observations reveal the areas in which this process could be criticised, and where debates on the topics of HIV/AIDS, and then climate change, crystallised. During the work on adopting Resolution 1308(2000), many states emphasised that the struggle with the HIV/AIDS pandemic depended on the General Assembly, and in fact on the Economic and Social Council.¹⁸ All bodies of the United Nations have been appointed to intervene, but while respecting the proper division of tasks between them, and in particular between the General

¹⁷ Pursuant to Article 39 of the UN Charter, the Security Council may only take action where a real threat, and not a virtual threat, has been ascertained. A common-sense interpretation of the word ‘threat’ should induce the Council to take preventative measures, but the subject of the threat must be very real. If the subject is possible, then the same goes for the threat. But the Council cannot base its actions on a virtual threat, putting at risk the balance established by the Charter, whether it is a matter of the equilibrium between state authorities and the UN’s powers, or between its General Assembly and the Security Council.

¹⁸ Cf. H. de Pooter, *Le droit international face aux pandémies: vers un système de sécurité sanitaire collective?*, typescript of doctoral dissertation, Paris 2013: 199 (footnote 736).

Assembly and the Security Council, because fighting this pandemic is not among the main areas of the Council's responsibility. During the debates on the impact of climate change on the maintaining of peace, opinions on this matter were formulated even more distinctly, and even took on institutionalised form. This explains, at least in part, the differences in views that Resolution 2177(2014) evokes.

The change is particularly evident in the debates leading up to its adoption. Only one state, Argentina, which frequently displays distrust towards the Council, openly presented not so much its opposition as nuances regarding its intervention. This country indicated that 'the responsibility for dealing substantively with the causes and consequences of this epidemic is in the purview of other entities and agencies within the United Nations system, such as the General Assembly, the Economic and Social Council and specialized agencies such as the World Health Organization'.¹⁹ While at an international level a fierce debate was underway regarding which of these bodies had the appropriate powers for facing the epidemic, the crisis had destroyed the structure of the societies affected by it, and was capable of ruining the achievements reached in these countries by international peace-building efforts. As a result, peace and security were in serious danger at a national, regional and global level. Such an interpretation can be based on the characteristic features of the context in which the Council intervened, and which would seem to justify its measures. Firstly, the Council made a direct approach to the threat it intends to react to, qualifying it as a threat to international peace and security; such qualification did not appear in the case of two other resolutions concerning the issue of world health. Such a serious threat therefore had to entail measures that were not for a medium or long-term perspective, but response as a matter of utmost necessity. The Security Council was therefore fulfilling the role defined by the Charter, not only in the area of conventional security, but also that of 'civil' security. Faced with the necessity of immediate action, the matter of rivalry with the General Assembly, its powers concerning the maintaining of peace in its structural sense, was no longer valid.²⁰ There was no question of marginalising the General Assembly or any other institution in the United Nations system, but there was an aspiration to achieve the most effective division of missions fulfilled. The fact that 130 states signed the draft resolution confirms that the thinking contained in its wording steps far beyond the tight circle of Council members, and all the more so beyond the circle of its permanent members.

This is not without impact on the appraisal one could draw up of the Council's execution of its discretionary powers. Putting it in more general terms, the said states manifested concerns frequently voiced against the discretionary power—bordering on arbitrariness—of the mighty but capricious Council, acting according to obscure procedures dominated by its permanent members, and in particular by western states. Such criticism can

¹⁹ Cf. declaration by Argentinian representative, UN Doc. S/PV.7268 (n 11) 23.

²⁰ According to P.-M. Dupuy, *Après la guerre du golfe, Revue Générale de Droit International Public* 95, 1991: 623–624.

be rebutted rather easily, since the Council had actually put itself in a situation of a bound competence: the decision resulting not from its own assessment, but from what had been determined by experts at the WHO and non-governmental organisations, above all the likes of Médecins Sans Frontières. The Council accepted the finding and qualified the situation as a threat to international peace and security. This point is above all about the exercising of discretionary powers.

However, the discretionary powers of the Security Council cannot be appraised without taking into account the means adopted by them, or the operations for which it granted its consent. Analysed from the point of view of the means implemented, Resolution 2177(2014) once again proves less revolutionary than it had seemed. The Security Council utilises all possible measures granted it by the system of collective security, but adjusts them to the gravity of the situation, posing a threat to this security. But is this still the simple adapting of the collective security system or is it genuine innovation, with the Security Council striving to present itself as the *deus ex machina* of global management?²¹

IV. THE APPLICATION OF COLLECTIVE SECURITY INSTRUMENTS FOR THE PURPOSE OF FIGHTING THE EBOLA OUTBREAK IN AFRICA

Apart from the Council's exclusive right to assert the existence of a threat to peace and security, it also has the discretionary power (resulting from the Charter) to choose the forms of action. There are many forms, starting from mild measures to those of the most determined nature, quite frankly constituting means of coercion. Pursuant to Article 39, the Council may 'give recommendations' or 'decide what measures need to be applied', although the decision seems more 'typical' for collective security, without distinction resulting from the content of the means adopted: therefore a recommendation may serve as the basis for armed measures. One should note above all that the wording used by the Security Council in Resolution 2177(2014) makes full use of the capabilities granted by Article 39, and even steps beyond them; the Council most often 'encourages', but also 'concludes', 'obliges' and 'requests', meaning that it uses all phrases that seem to exclude any kind of obligatory scope of anticipated means. The adopted solution seems logical. In such a context, obligation seems inappropriate, while means of coercion do not entail usage of armed force, which is defined by Article 41, and even more—such means that embrace operations by armed forces anticipated in Article 42 seem to have 'little sense'. Nevertheless, one cannot rule out that as a result of the transition from recommendation to decision, the Council would use this power in substantive matters such as a motion addressed to states for the

²¹ Cf. R. Kolb, *Le droit relatif au maintien de la paix et de la sécurité internationales, évolution historique, valeurs fondatrices et tendances actuelles*, Paris 2005: 42.

application of security and health protection protocols, or the 'lifting of restrictions to movement and boundaries imposed due to the Ebola epidemic'. The latter issue seems particularly sensitive, insofar as restrictions were actually introduced by states not directly affected by the epidemic.²² In other circumstances, the Security Council, citing the scope of decisions given on the basis of Article 25 of the Charter, could have ignored all objections from states regarding the imposing of international obligations by resolutions passed on the basis of Chapter VII of the Charter.²³ Could it have applied Resolution 2177 (2014) for the purpose of forcing the respect of the provisions of International Health Policy? In such a case it would have been more difficult to accuse it of taking on the role of international legislator, as the resolution would have had limited scope in time and space.²⁴

The positions taken by several international organisations, apart from the WHO, could also have encouraged it to proceed in this direction. For example the International Civil Aviation Organization emphasised that countries unaffected by the epidemic should avoid taking 'measures that will create unnecessary interference with international travel or trade'.²⁵ Likewise, the Executive Council of the African Union, at its sitting on 8 September, called upon African states to lift all travel restrictions. However, the Security Council, which had already taken the first step towards qualification, certainly could not go further at this stage in the matter of the powers that it would be prepared to use for such qualification. In its operational measures implemented against the Ebola virus, the Security Council invoked the conventional instruments that it has for maintaining peace: on the one hand striving to secure action and directing the actions of states and international organisations, while on the other contributing to the organising of peacekeeping operations. Once again the untypical nature of the threat had a direct impact on these different ways of acting.

²² Western states, such as Australia and Canada, suspended the 'considering of applications submitted by foreigners who were physically present in a country indicated by the WHO'. These measures were intended to restrict the spread of the disease on a large scale. However, this attitude was condemned and acknowledged as ineffective (and even having consequences the opposite to those intended) by the WHO and all medical staff in the field. It was also recognised as violating international health regulations, the goal of which is to prevent the spread of disease through proportional measures limiting the risk to public health. This was also the case with the temporary recommendation adopted by the WHO on the basis of the IHR (2005) on 29 April 2009, in which countries decided to go beyond the recommendations, presenting scientific justification for their decision. As can be seen, countries not adhering to the commitments resulting from international law could have hindered the action of the Security Council in the face of a threat to international peace and security.

²³ Cf. P.-M. Dupuy, Y. Kerbrat, *Droit international public*, 12th ed., Dalloz 2014: 682; Resolution 1373(2001) is a noteworthy instrument, because it constitutes a genuine programme of action against terrorism, binding all member states; for more on this topic, cf. S. Szurek, *La lutte internationale contre le terrorisme sous l'empire du Chapitre VII un laboratoire normative*, in: *Revue Générale de Droit International Public* 109, 2005: 17.

²⁴ Cf. L. Condorelli, *Les attentats du 11 septembre 2001 et leurs suites: où va le droit international?*, in: *Revue Générale de Droit International Public* 105, 2001: 834.

²⁵ Cf. UNWTO, Press Release no. 14056, Statement on travel and transport in relation to Ebola virus outbreak (18 August 2014).

The order maintained in the resolution is significant: it refers to who manages the execution of the obligation for protection, above all to the states affected by the epidemic—and in particular those states that approached the organisation for measures to be taken towards protecting their population. The Council recommended measures in the area of health, defining how these measures should be implemented, but also social-economic, humanitarian, and security measures. Apart from lifting travel restrictions, the Council also approached third countries to request support and assistance for states affected by the outbreak by taking essential measures aimed at preventing the spread of the disease. The Council also decided in the classical manner to seek support in international organisations, above all regional organisations directly affected by the situation, suggesting—without invoking the Charter—a division of tasks not differing from that mentioned in the Charter's Chapter VIII. Let us note, indeed, that the African Union intervened at an operational level with particular determination in the face of the threat, and before the United Nations system had reacted. Already on 19 August 2014 the Peace and Security Council had taken a decision to establish a 'mixed civilian and military African Union medical and humanitarian mission, comprising doctors, nurses and other medical and paramedical personnel, as well as the military personnel essential for protection and to sure the mission's effectiveness'. In such a system, other regional organisations—and in particular the European Union—intervene as in the majority of peace operations in Africa, providing support for the activities of African organisations.

The UN system also made use of the technique of peace operations by establishing the United Nations Mission for Ebola Emergency Response (UNMEER), as well as through the mobilisation of existing operations. The establishing of UNMEER did not result from Resolution 2177 (2014), but from the decisions of the Security Council and the Secretary General, who—like the General Assembly—was called upon to support this initiative.²⁶

The Mission's main task was to coordinate the activities of all bodies in the field: UN agencies, specialised agencies, regional organisations, states, non-governmental organisations, and other interested parties; the goal was to avoid the duplication of measures, and to ensure their effectiveness. In addition it functioned as a crisis management unit, its task being to ensure the overall approach, and to create a comprehensive action plan. UNMEER was also unique by way of its composition. It had its head office in Accra, but its operations were carried out in the three most affected countries, bringing together around one hundred UN functionaries 'recruited from all over the world', specialised agencies, and member states, with the involvement of both civilian and military personnel. The Mission also quickly set significant logistical means in motion, thanks to the Secretary General lifting the

²⁶ This Mission, the first of its kind, and according to the General Secretariat one that could be repeated, was unique for more than one reason. Firstly, it was neither a military nor policing mission, but a life-saving UN medical mission under the auspices of the General Secretary directed by his special representative. Secondly, six strategic goals related to combating the Ebola virus were determined for UNMEER.

administrative and accounting restrictions in order to cope with the crisis situation.

Classic peace missions operating in the area, and especially those already functioning in countries affected by the outbreak, were also set in motion. Such was the case with the United Nations Mission in Liberia (UNMIL), established with Resolution 1509 of 19 September 2003, involved in the process of strengthening peace and security, which received new responsibilities, to plan together with Liberian institutions involved in security operations that were essential in the situation of an extraordinary threat to health. Missions operating in Côte d'Ivoire (UNOCI) and in Mali (MINUSMA), without any modification to their mandates, took on tasks (in cooperation with UNMEER) essential for keeping the epidemic out of these countries and ensuring the continuity of their missions.

The usage of peacekeeping instruments adapted to combatting the Ebola outbreak is confirmed in the presence and terms of use of armed forces. While the combination of military and humanitarian operations has frequently been condemned, in this case military intervention was demanded by certain non-governmental organisations, because the army proved to be the only force that was capable of setting in immediate motion logistic operations of a vastness required by the situation caused by the epidemic. However, in the case of UN missions, regional organisations, and initiatives taken by member states, the army here is solely an instrument in actions concerning health.

V. BETWEEN COLLECTIVE SECURITY AND GLOBAL MANAGEMENT

The Security Council's operation against the Ebola epidemic therefore seems ambivalent. The Council's action was based on a system of collective security, and it used instruments provided by this system with the purpose of conducting a campaign differing somewhat from its traditional role. This means that in this case its role was neither that of a policeman, as anticipated in the Charter, nor that of a legislator, to which it sometimes lays claim.²⁷

Countries that took measures were tasked with warning, mobilising and coordinating, while the purpose of including the Security Council in the campaign, due to the extremely urgent nature of the situation, was to ensure a kind of triple mission. Raised to such a rank, the issue 'took advantage' of the Council's involvement thanks to an incomparably higher level of publicity for the situation than if the General Assembly had undertaken intervention. The matter also gained further drama since the Council is a body that usually gets involved in matters of war or peace. The campaign was helped by

²⁷ For more on the subject, cf. United Nations Charter of 26 June 1945, *Journal of Laws of the Republic of Poland* 1947, No. 23, item 90 as amended; L. Kasprzyk, *Rozwój ekonomiczny—nadzieją na wyrównanie szans*, in: J. Symonides (ed.), *Organizacja Narodów Zjednoczonych. Bilans i perspektywy*, Warsaw 2006: 245–261.

the authority resulting from the Security Council's powers of adopting acts of an obligatory or even coercive nature. One should also add the benefit resulting from its empowerment, since this body functions—pursuant to Article 24(1) of the Charter—on behalf of all member states. In this role the Council operated within the idea of collective security, the goal of which is to ensure security for everybody through action taken by everybody.²⁸ However, its methods of action are far from this: the Council has to develop not in the direction of an hierarchical structure, but a net structure. The list of players that can be mobilised is undefined, regardless of their legal status; this applies in particular to non-governmental organisations, private foundations, and also enterprises. The Security Council should therefore replace coercion and *hard law* regulations with persuasion.

Certain features of management—or to be more precise, of so-called global management—have been distinguished here.²⁹ Irrespective of any conceptual doubts related to these terms, the United Nations logically granted itself the right to global management, because it 'is the only forum at which general problems may be resolved with the support of all players of the international community'. As a result, all UN bodies are expected to become parties interested in global management.

However, the case of the Security Council is special, because the Charter gave it a special mission in the area of collective security. The council, relying on the evolution of this system and its convergence, manifested in global management, combines these two functions (guaranteeing collective security and steering global management).³⁰ From this point of view, Resolution 2177(2014) therefore constituted a particularly significant step. However, as Arcari had shown, 'elements of dissonance' exist between collective security and global management, leading to a questioning not of the legitimacy but the effectiveness of the Security Council's work in this area.

Therefore, in order to combat an epidemic, global management must be carried out long-term, and must be sustained: the goal is to create or to streamline national healthcare systems that either do not exist or are failing, and this can be achieved by implementing appropriate development policy. However, by no means can one talk here of an ordinary manner of action, forced most often by extremely urgent situations—and such situations do not seem so far to have occurred with the same severity in most countries. Moreover, the response by the Security Council in the face of the epidemic is also the result of a reductional attitude, prompting one to resolve international problems via their actual or perceived dimension of security.

²⁸ J. Salmon defines collective security as the situation whereby everybody may reap benefits in the form of common measures, guarantees for the whole of society, *Dictionnaire de droit international public*, Brussels 2001: 1024.

²⁹ Cf. J.-M. Moreau-Defarges, *La gouvernance*, Paris 2003; cf.: J.-L. Dunoff, J.-P. Trachtman (eds.), *Ruling the World? Constitutionalism, International Law and Global Governance*, Cambridge 2009, and particularly in the legal aspect: M. Kamto, *Droit international de la gouvernance*, Paris 2013.

³⁰ L. Balmond, *Gouvernance globale et sécurité collective, les profils d'une convergence*, in: M. Arcari, L. Balmond, op. cit.: 3–22.

VI. CONCLUSION

The question posed in this article was about whether the fight with pandemics, which—hypothetically—forces one to seek a balance between a country's security and free trade, is adopting the form of a 'collective system of health security'. Taking the traditional definition of collective security, transferred by analogy to cases of pandemic, we ask whether, in exchange for waiving the right to apply unilateral sanitary means significantly violating freedom of trade, any country can make use of the international community's guarantee in the form of joint measures administered by international bodies in a situation where there is the danger of an infectious disease spreading, and in such a way for the system of collective health security not to violate countries' rights to apply individual measures essential for the protection of health within their borders.

Analysis of the issue presented in this article reveals that in the case of fighting an epidemic we are dealing with elements of a 'collective system of health security'. These elements are the forms of joint measures managed by international organisations and institutions, within the framework of which any country may enlist the support of the international community.³¹ The necessity of such joint action is brought about above all by the trans-border character of the pandemic threat, and places countries in a situation of interdependence. States have thus shaped the universal system of collective health security contained in the International Health Regulations. One could essentially assert that both in the case of the fight with the Ebola epidemic, and with earlier epidemics, we have been dealing rather with the mechanism of global crisis management than the actual forming of a system of health security. As Jan Sandorski emphasises, one may draw the mistaken conclusion from deliberations to date that the international community's fight with the pandemic is taking place solely in the countries of the political South.³²

Boubacar Sidi Diallo
Adam Mickiewicz University, Poznań
diallo@amu.edu.pl

THE EBOLA PANDEMIC AS A THREAT TO INTERNATIONAL PEACE AND SECURITY: A QUESTION OF COLLECTIVE SECURITY OR GLOBAL GOVERNANCE?

S u m m a r y

The international community faces a fragmented and transnational epidemiological threat, the severity and extent of which currently require an unprecedented level of intervention. Over

³¹ Cf. A.D. Rotfeld, The Role of the International Community, in: M.F. Plattner, A. Smolar (eds.), *Globalisation, Power and Democracy*, Baltimore–London 2000: 83–96.

³² For more on this subject, cf. J. Sandorski, *Międzynarodowa ochrona praw człowieka a HIV/ AIDS*, Poznań 2002; E. Karska (ed.), *Globalne problemy ochrony praw człowieka*, Warsaw 2015.

the centuries, mankind has been confronted with a variety of epidemics that have always required a comprehensive action at the international level. According to the UN Security Council, the outbreak of the Ebola virus at the end of 2013 poses a particular threat to international peace and security, as the peace-building and development achievements of the countries most affected by the epidemic are jeopardised and may end in vain or be lost altogether. This in turn undermines the stability of the countries most affected. If the disease is not brought under control, this situation might lead to a new unrest and social tensions, and worsening of the political climate, or stigmatisation and a higher sense of uncertainty in the region. The resolution adopted by the UN Security Council on this matter has a historic dimension, as it has for the first time classified a public health problem as a threat to international peace and security. This happened despite the fact that international mobilisation had been delayed by several months, despite the obvious urgent need for action.