

Repercussions of the end of the war in Ukraine for the United Nations Security System

Repercusiones del final de la guerra de Ucrania para el sistema de seguridad de las Naciones Unidas

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ABSTRACT: Russia's invasion of Ukraine is an extraordinarily serious violation of the prohibition on the use of force that was embodied in Article 2.4 of the UN Charter after a long historical process. The fact that it was perpetrated by one of the permanent members of the Security Council implies a breach of the consensus among the Allies in World War II that gave rise to the United Nations and the system of international peacekeeping and security that it brought with it. The final outcome of the war in Ukraine may mean that the blow to the system of collective security envisaged in the Charter may be fatal, should the outcome be favourable to Russian interests, or that, despite being badly damaged, it may continue to exist, should the final outcome of the conflict be favourable to Ukrainian interests.

KEYWORDS: Use of force; Article 2.4 of the United Nations Charter; Constitution of the International Community; Ukraine; Russia; Security Council.

RESUMEN: La invasión de Ucrania por parte de Rusia supone una violación extraordinariamente grave de la prohibición del uso de la fuerza que se encarnó en el artículo 2.4 de la Carta de las Naciones Unidas tras un largo proceso histórico. El hecho de que haya sido perpetrada por uno de los miembros permanentes del Consejo de Seguridad implica la ruptura del consenso entre los aliados en la Segunda Guerra Mundial que dio lugar a la Organización de las Naciones Unidas y al sistema de mantenimiento de la paz y seguridad internacionales que trajo consigo. El resultado final de la guerra en Ucrania puede suponer que el golpe al sistema de seguridad colectiva previsto en la Carta sea mortal, si se diera un resultado favorable a los intereses rusos, o que, a pesar de quedar muy dañado, pueda seguir subsistiendo, de darse un resultado final del conflicto favorable a los intereses ucranianos.

PALABRAS CLAVE: Uso de la fuerza; Artículo 2.4 de la Carta de las Naciones Unidas; Constitución de la comunidad internacional; Ucrania; Rusia; Consejo de Seguridad.

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INTRODUCTION

Mankind finds itself, to its great regret, at a crossroads in history. This is because Russia's invasion of Ukraine represents a breach of that fundamental consensus among the Great Powers which made possible the inclusion of the prohibition of the use of force and the establishment of the institutional system for the maintenance of international peace and security.

In this regard, it is worth recalling that the use of war to settle disputes between sovereign political entities, and in recent centuries between States, is as old as humanity itself. At the very least, we can trace its origins back to the time when human communities developed sufficiently to relate to each other, both internally and externally. However, in the course of the 19th century, mainly due to the devastating power of modern weaponry, nations tried to limit the arms race and, little by little, the freedom to resort to war. This was not to be an easy path, but successive steps were taken until the Briand-Kellogg Pact of 1928 explicitly and generally prohibited the use of war. In the United Nations Charter, the definitive step was taken, prohibiting not only war, but also the threat and use of force, in Article 2.4: "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations". Nonetheless, exceptions to this prohibition included the exercise of individual or collective self-defence, provided for in Article 51 of the Charter, as well as the institutionalised use of force, regulated in Article 42 et seq. of the Charter.

Since then, the prohibition of the use of force contained in Article 2.4 is widely regarded as "[...] a cornerstone of the United Nations Charter" (International Court of Justice, 2005: 223, para. 148) or even of contemporary international law (Dörr & Randelzhofer, 2012, para. 1). So much so that, for the International Law Commission in its commentary to the draft articles on which the 1966 Vienna Convention on the Law of Treaties was based, it can be regarded as an example of a *jus cogens* rule (International Law Commission, 1966: paragraph 1 of the commentary to draft article 50: 247). On the other hand, the International Court of Justice would later affirm, in its 1986 judgment in the *Nicaragua case*, that "[...]the principle of non-use of force, for example, may thus be regarded as a principle of customary international law [...]" (International Court of Justice, 1986: 100, para. 188).

Furthermore, as we have already mentioned, the UN Charter created an institutional system for the maintenance of international peace and security designed in Chapter VII, which provides for sanctions, including military sanctions, for those States that violate the prohibition on the use or threat of force. Under Articles 24 and 12 of the Charter, the Security Council has primary responsibility for maintaining international peace and security. In this capacity, if it determines, in accordance with Article 39, that there is a threat to the peace, a breach of the peace or an act of aggression, it may decide to take measures involving the use of armed force if other measures it might have taken previously, such as those provided for in Article 41 - economic, diplomatic and restriction of communications - have failed. Indeed, as stipulated in Article 42: "Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations". The design of the system for the maintenance of international peace and security was completed with the regulation of the commitment of the members of the United Nations to the Security Council to make these military sanctions effective against

States violating the prohibition on the use or threat of force in Articles 43 to 50. These articles provided for the adoption of special agreements that would specify the assistance of the Member States and the establishment of a Military Staff Committee that would advise and assist the Security Council in its functions. However, since the special agreements referred to in Article 43 have never been concluded, the system of collective security envisaged in the Charter remains incomplete. This shortfall has been partly addressed by alternative options: peacekeeping operations under UN command, with troops provided by Member States as needed, and Member State operations authorised but not directed by the Security Council (Krisch, 2012, para.3).

On the other hand, due to the loss of harmony among the permanent members of the Security Council since the end of the Second World War, Article 42 was hardly used during the Cold War, as peacekeeping operations were usually based on the consent of the States concerned and were not authorised under Chapter VII. A special case was the Korean Crisis, which could not be considered to fall under the umbrella of an application of Article 42, as the Security Council merely recommended that States assist South Korea in repelling the North Korean attack implicitly on the basis of collective self-defence (UN Security Council, 1950). However, certain elements of coercive action under Article 42 could be seen in the peacekeeping operation in Congo between 1960 and 1964, where, for example, Belgium was required to withdraw its troops from Katanga province, and it was decided to send a UN Force to that territory (UN Security Council, 1960). Subsequently, as the situation deteriorated, the Security Council's mandate for this Force was tightened in early 1961, authorising it to protect Congo from outside interference, and to prevent clashes and civil disturbances, if necessary, by force as a last resort (UN Security Council, 1961). And, although not expressly cited, Article 42 could also be seen as the legal basis for authorising the United Kingdom to apply force following the unilateral declaration of independence by the illegal Rhodesian authorities in 1965 (Security Council, 1965).

In contrast, after the end of the Cold War, hopes were raised that the security system provided for in Chapter VII of the Charter would fulfil its intended role, and since then Article 42 has been invoked relatively frequently. However, as Oliver Dörr and Albrecht Randelzhofer point out, in UN practice, starting in 1990 with Security Council Resolutions 665 and 678 adopted in response to Iraq's invasion of Kuwait, the Security Council does not actually 'take' the measures envisaged in Article 42 of the UN Charter, but rather usually authorises Member States to take the measures that are adopted (Dörr & Randelzhofer, 2012, para. 47). In this regard, it should be recalled that UN Members are obliged to comply with the decision taken by the Security Council, whereby a Member State has the right to use armed force against another Member State if it acts under a Security Council resolution, adopted under Chapter VII of the UN Charter (Dörr & Randelzhofer, 2012, para. 46).

For the purposes of this article, we must highlight how the provisions of the UN Charter prohibiting the use of force and creating the institutional system for the maintenance of international peace and security were based on a great consensus forged among Allied powers in the Second World War and materialised at the Dumbarton Oaks Conference, from 21 August to 29 September 1944. Indeed, based on an American proposal, the Allied Great Powers agreed on the creation of a new international organisation to maintain international peace and security, with primary responsibility lying with a council of restricted membership, the hardcore of which would consist of the five Great Powers (Cot, 2011, para. 3). Some fundamental issues remained unresolved at Dumbarton Oaks, including, most importantly, the issue of voting on decision-making

within the Council, which was decided by Roosevelt, Churchill and Stalin at the Yalta Conference in 1945. Thus, at the Conference held in Yalta in Crimea in February 1945, it was established that a decision would require the vote of seven members, but that, with the exception of decisions on procedural matters, this vote should include the votes of the five permanent members, i.e. the United States of America, the Union of Soviet Socialist Republics (USSR), the United Kingdom, France and China. It should be particularly stressed that the so-called veto power was a condition for the USSR to join the United Nations, and a way to ensure that unwanted decisions were not passed (Couzigou, 2015, para. 13).

Of course, one could argue that the invasion of Russia is not the first violation of the Charter's provisions on the use of force, for it must be acknowledged that Oscar Schachter was not without reason when he stated in his general course at the Hague Academy of International Law that: "It is no wonder that the obligations of the Charter are widely seen as mere rhetoric, at best idealistic aspirations, or worse as providing a pretext, a 'cover', for aggression", or even that: "[...] Collective security as envisaged in the Charter has had little practical effect" (Schachter, 1982: 133). For Schachter, the relative peace enjoyed in the last third of the twentieth century was due more to the balance of power between the superpowers and the fear of nuclear weapons than to the very security system envisaged in the UN Charter, which, largely but not solely due to the exercise of the right of veto, has failed to exercise the authority attributed to it in the Charter (Schachter, 1982: 133-135). Notwithstanding the truth of this illustrious author's previous assertions, I believe that the invasion of Ukraine is not just another violation of the Charter's prohibition of the use of force and its security system. Rather, it implies a violation of enormous proportions, since it is being carried out by a permanent member of the Security Council and it involves an attempt to seize territory and change borders by force, something almost unheard of since the Second World War (Feltman, 2023).

In this way, I consider it of the utmost interest to reflect on the consequences of the invasion of Ukraine on the prohibition of the use of force and the system for the maintenance of international peace and security provided for in Chapter VII of the Charter. In this respect, I believe that the consequences of the conflict will be extremely important, whatever the outcome of the war since the aforementioned consensus between the major powers has been broken. In particular, I believe that if Ukraine manages, with the support of the States that are helping it to exercise its right to legitimate self-defence, to emerge victorious from the conflict and expel the Russian army from its territory, the system for the maintenance of international peace and security provided for in the Charter may be weakened, but it will remain alive. However, should Russia win the armed conflict, in the sense that Ukraine fails to expel it from its territory, then the blow to the system of maintaining international peace and security will most likely be fatal, as a precedent of colossal significance will have been set.

Thus, in my article I intend, first, after the introduction, to elaborate on the exposition of the consensus among the Great Powers as the basis of the security system established in the UN Charter. Second, I will address the invasion of Ukraine as a reflection of the definitive breakdown of the consensus among the Great Powers on the prohibition of the use of force and the maintenance of the security system established in the Charter. Third, I will analyse the possible consequences of the end of the conflict in Ukraine on the Charter's basic norms regarding the use of force and the security system, depending on whether it means a Ukrainian victory or, on the contrary, a Russian victory. Finally, I will offer my conclusions in this regard.

THE GREAT POWERS' CONSENSUS ON CREATING THE UN SECURITY SYSTEM

As mentioned in the Introduction to this article, based on a proposal by the United States of America, the other major Allied powers in the Second World War agreed, during the Dumbarton Oaks Conference celebrated from 21 August to 29 September 1944, on the creation of a new international organisation to maintain international peace and security.

As far as the Soviet Union is concerned, a State that is of particular interest to us in this article insofar the Russian Federation has declared itself to be its successor, we know that it had already accepted the proposal of the United States of America to create this new international organisation in 1943, as stated in the Moscow Declaration on General Security, signed in that city on 30 October 1943. According to this text, the Soviet Union recognised “[...] the necessity of establishing at the earliest practicable date a general international organization, based on the principle of the sovereign equality of all peace-loving States, and open to membership by all such States, large and small, for the maintenance of international peace and security” (United States of America, 1943).

However, the question of voting in the Security Council did not immediately gather the necessary consensus in the subsequent negotiations and was not decided until the Yalta Conference, in February 1945 (United States of America, 1945b). And it is noteworthy that the final formula, which was thereafter referred to as “the Yalta Formula”, sponsored by Roosevelt (Goodrich & Hambro, 1949: 215), based on unanimity among the permanent members of the Security Council for the adoption of measures in non-procedural matters, which was later to be included in the text of the UN Charter - Article 27.3 - is a proposal of the Soviet Union, as recorded in a message from Stalin to Roosevelt on 27 December 1944:

[...] the principle of unanimity of permanent members is necessary in all decisions of the Council in regard to determination of a threat to peace as well as in respect to measures of elimination of such a threat or for suppression of aggression or other violations of peace. Undoubtedly, that when decisions on questions of such a nature are made there must be full agreement of powers which are permanent members of the Council bearing upon themselves the main responsibility for maintenance of peace and security. (United States of America (1945a).

Indeed, as Stalin's words make clear, in the architecture of this new organisation, the basis for achieving peace and security rested on the attribution of primary responsibility to the Security Council – as stated in Article 24 of the future Charter -. The Council would therefore act in this area on behalf of all Member States, which undertake to accept and implement the Council's decisions on such matters. The text of Article 27.3 was adopted at the San Francisco Conference in 1945 by 30 votes in favour, 2 against - Colombia and Cuba -, 3 absences and 15 abstentions (UNCIO, 1945). There was, therefore, a quasi-constitutional cession of an aspect so closely linked to State sovereignty as the use of force to the Security Council and to the permanent members. This was an unprecedented exercise of trust by all Member States unseen in the history of international society. As a result, an enormous responsibility is demanded from the permanent members of the Security Council, since the privilege they had been granted was gigantic. In the words of Bruno Simma, “[...]n pursuing this role, the Security Council is to act as the agent of the community on behalf of the Member States” (Simma, 1994: 257). Similarly, for Sir Humphrey Waldock, “[t]here is thus a clear delegation of constitutional authority to the Council to act in the field of peace and security on behalf of the United Nations and, within the limits of the Charter, to bind all Members by its decisions” (Waldock, 1953: 488).

Indeed, many authors have seen the United Nations Charter as some sort of constitution of institutionalised international society (Simma, 1994: 262; Crawford, 2013: 336), or rather, of a true international community, if one wishes to emphasise the more consensual aspects of the social contract heuristically assumed by all States. For Luigi Ferrajoli, for example, an important paradigm shift in law and politics took place after the Second World War, thanks to the establishment of constitutional democracies in countries that had freed themselves from totalitarian regimes, on the one hand, and a new international order, on the other (Ferrajoli, 2018: 67). For this Italian author:

In both cases, the change was brought about by the instrument of positive law and by the same kind of constituent act, consisting of a firm rejection of the horrors of the past: the constitutionalisation, in the countries liberated from fascist regimes, of the principle of equality and fundamental rights, including those rights to survival that are social rights, and the stipulation, in international relations, of the principle of peace and human rights through the UN Charter of 1945, the Universal Declaration of Human Rights and the successive supranational charters of fundamental rights.

Furthermore, as Baldo Fassbender argues, the fact that the adoption of the Charter was carried out like the adoption of any other treaty does not prevent it from having a constitutional character, as this was the only legal method available to the founders of the United Nations to do so in 1945. For this professor, despite the method of its adoption, the Charter was created to safeguard peace, security, and social and economic development for all the peoples of the world in a new and distinct way. Thus, for Fassbender, “[t]here is ample evidence that the delegates at San Francisco realised that this was a true ‘constitutional moment’ in the history of the international community; they were not simply negotiating another treaty but reorganising the world community for the benefit of ‘succeeding generations’” (Fassbender, 2009: 92).

To a large extent, this constitutional momentum was set in stone by the choice of the expression “Charter”, instead of the term “Covenant” (Wolfrum, 2012, para.2) as well as by the phrase “we the people of United Nations” in the preamble of the Charter, instead of resorting to the traditional “the contracting parties”, etc., which accompanies the adoption of any other treaty. In this respect, as Fassbender rightly warns, “[...] the Charter has left behind the traditional state-centric view of international law, by gearing its rules to the ultimate goal of the general welfare of peoples and individual human beings” (Fassbender, 2009: 102).

But at the same time, the Charter, and in particular the security system it establishes, can also be seen as a quasi-constitutional treaty insofar as it institutionalises the alliance of the victorious powers of World War II. As Bruno Simma points out, “the Charter of the United Nations is not only an embryonic constitution of the world community but at the same time also a treaty institutionalizing an alliance of the victors of World War II” (Simma, 1994: 258). The latter could be the view of the Soviet Union, which perhaps did not consider the UN Charter so much as a constitution of the International Community, as this notion seems to have connotations of the thought of Francisco de Vitoria¹ but rather as a non-aggression pact between the Great Powers. This is the opinion of Professor Richard Gardner, for whom: “The Soviet Union has always seen the U.N. Charter essentially as a contract between rival states rather than as a constitution capable of organic growth in the service of a world community” (Gardner, 1964: 847).

¹ “The whole world, which in a certain sense is a republic, has the power to make just laws that are convenient to all, such as those of the law of nations” (Urdanoz, 1960: 39-40).

The assimilation of the Charter to a constitution implicitly brings the United Nations, and therefore all its organs, including the Security Council, within the parameters of the rule of law. And, in particular, under the obligation to obey and follow the purposes and principles of the UN Charter itself, the pinnacle of the rule of law at the international level, which is expressly required by Article 24.2 of the Charter (Crawford, 2013: 304). Indeed, as the UN Secretary-General has warned:

The Charter of the United Nations is the foundation of the rule of law at the international level. It is applicable to all Member States equally and to the principal organs of the United Nations. In addition, Member States are bound by the wider body of international law. In this respect, it is important for the Security Council, in addition to the other principal organs of the United Nations, to fully adhere to applicable international law and basic rule of law principles to ensure the legitimacy of their actions (United Nations Secretary-General, 2012, para. 11).

These ideas guided the General Assembly in its “Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels” to declare: “that the rule of law applies to all States equally, and to international organizations, including the United Nations and its principal organs, and that respect for and promotion of the rule of law and justice should guide all of their activities and accord predictability and legitimacy to their actions” (United Nations General Assembly, 2012, para. 2).

In short, we have seen how the allied Great Powers in the Second World War agreed to create an international organisation for the maintenance of international peace and security, the cornerstone of which would be the prohibition of the threat and use of force, and its guarantee would be the security system established in Chapter VII of the Charter. Key to the Great Powers' willingness to accept the system was the reservation of the right of veto to the permanent members of the Security Council. This consensus of the major powers in the Security Council was knotted with the acceptance of all remaining Member States to cede their prerogative to use force and leave such a decision to the Security Council. And it is from this common consensus between the Great Powers and the rest of the States that the constitutional nature of the United Nations Charter and the foundations of the rule of law at the international level were born.

HOW THE INVASION OF UKRAINE BROKE THE CONSENSUS AMONG THE P5.

As is well known, on 24 February 2022, Russia invaded the territory of Ukraine, in flagrant violation of Article 2.4 of the UN Charter. But even more serious is the fact that this violation is being committed not only by one of the permanent members of the Security Council, but by the successor to the Soviet Union, which was instrumental in the design, allocation of powers and functioning of the Security Council, in blatant disregard of the principles of the UN Charter and the security system it helped to establish. It is worth recalling that Russia succeeded the Soviet Union in the United Nations following the receipt of a letter dated 24 December 1991 from Boris Yeltsin, the President of the Russian Federation at the time, with the support of the 11 Member States of the Commonwealth of Independent States, informing the Secretary-General of the United Nations that the Russian Federation would take the place of the former Soviet Union in the Security Council and all other UN organs. It should also be noted that no Member State then raised any objection to the content of that letter or its consequences, either in writing or orally (Dastis, 1992: 251). Moreover, in its recent order for interim measures in the case *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of*

Genocide (Ukraine v. Russian Federation), the International Court of Justice confirmed that Russia continued the legal personality of the Soviet Union (International Court of Justice, 2022: 218, para. 27).

This blatant violation hints at Russia's willingness to abandon the consensus that was forged among the allied Great Powers in World War II on the prohibition of the use or threat of force, which was the foundation, or the apex - as one prefers - of the UN Charter. And, as we saw in the previous section, it is this fundamental consensus of the Great Powers around Article 2.4 and the security system envisaged in Chapter VII, with the cessions of sovereignty by UN Member States that it implied, what gave the UN Charter its constitutional character.

Indeed, through the invasion of Ukraine, Russia seems to be withdrawing, *de facto*, from the founding pact that was the UN Charter, whether considered only as a non-aggression pact between the Great Allied Powers in World War II or, in its fullest sense, as a constituent pact of the international community after emerging from the abyss of conflict. There is no shortage of voices, such as Ferrajoli, who perceive that the growing recourse to war, along with other violations of the international legal framework, is causing that “embryonic constitution” to undergo a “striking process of deconstitution” (Ferrajoli, 2022: 58-59).

To illustrate this breakdown in consensus, let us look more closely at the gravity of the events surrounding the Russian invasion of Ukraine, as well as the reactions of the international community. Let us recall, in this regard, that the issue was addressed in the Security Council at its 8979th meeting on 25 February 2022 and, as it was to be expected, unanimity was not reached. On 27 February 2022, the Security Council decided in its Resolution 2623 (2022) to convene an emergency special session of the General Assembly to consider the issue (United Nations Security Council, 2022) under General Assembly Resolution 377 A (V) of 3 November 1950, entitled “Uniting for peace”. It should be noted that the latter resolution established that the General Assembly could meet immediately to consider a situation in which there appears to be a threat to the peace, a breach of the peace or an act of aggression, and the Security Council, for lack of unanimity among its members, has not been able to adopt a resolution. At that special session, on March 2, the UN General Assembly adopted Resolution ES-11/1 by a vote of 141 in favour, 5 against (Belarus, Democratic People's Republic of Korea, Eritrea, Russian Federation, and Syria) and 35 abstentions. The Resolution recognized “[...] that the military operations of the Russian Federation inside the sovereign territory of Ukraine are on a scale that the international community has not seen in Europe in decades [...]” (United Nations General Assembly, 2022a) and characterized the conflict as “[...] aggression by the Russian Federation against Ukraine in violation of Article 2 (4) of the Charter [...]” (United Nations General Assembly, 2022a, para. 2). Furthermore, the Resolution called upon Russia “[...] to abide by the principles outlined in the Charter and the Declaration on Friendly Relations; [...]” (United Nations General Assembly, 2022a, para. 7).

Also, almost at the same time, the Human Rights Council, through its Resolution 49/1 of 4 March 2022, expressed its concern about the information that was coming in about violations and abuses of human rights and violations of international humanitarian law by the Russian Federation (United Nations Human Rights Council, 2022). Based on that resolution of the Human Rights Council, a few weeks later, the General Assembly decided to suspend Russia's membership rights in the Human Rights Council (United Nations General Assembly, 2022b).

For its part, just a few weeks after the beginning of the invasion, the International Court of Justice also showed its concern about the seriousness of the acts carried out by Russia in Ukraine. In its Order of 13 March 2022, specifically in the case of the *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, the Court stated that it was “[...] profoundly concerned about the use of force by the Russian Federation in Ukraine, which raises very serious issues of international law [...]” (International Court of Justice, 2022: 216, para. 18). Furthermore, it underlined -in a tremendously clear manner-, the gravity of the Russian actions, going as far as to point out that: “In the Court's view, the acts complained of by the Applicant appear to be capable of falling within the provisions of the Genocide Convention” (International Court of Justice, 2022: 222-223, para. 45).

Moreover, on 2 March 2022, the ICC Prosecutor announced that he had opened an investigation into the situation in Ukraine based on the referrals received - 43 States Parties - pursuant to Article 14 of the ICC Statute, which provides that State Parties may refer to the Prosecutor a situation in which one or more crimes within the jurisdiction of the Court appear to have been committed and request him to investigate the situation to determine whether a particular person or persons should be charged with the commission of such crimes. Following the general jurisdictional parameters provided for in these referrals, and regardless of the focus of the investigation, the scope of the situation covers all past and present allegations of war crimes, crimes against humanity or genocide committed in any part of the territory of Ukraine by any person on or after 21 November 2013² (International Criminal Court, 2022). Later, on 17 March 2023, ICC Pre-Trial Chamber II issued arrest warrants for Vladimir Vladimirovich Putin, President of the Russian Federation, and Maria Alekseevna Lvova-Belova, Commissioner for Children's Rights in the Office of the President of the Russian Federation. Pre-Trial Chamber II found that there were reasonable grounds to believe that each of the suspects was responsible for the war crime of unlawful deportation of a population and unlawful transfer of a population from the occupied regions of Ukraine to the Russian Federation to the detriment of Ukrainian children (International Criminal Court, 2023).

In the European regional framework, the Russian invasion was also condemned by the most relevant international organisations in terms of international law, such as the Council of Europe and the European Union. Thus, for example, the Committee of Ministers (Deputies) of the Council of Europe, on 24 February 2022, met and adopted a decision condemning the Russian invasion of Ukraine (Council of Europe, Committee of Ministers, 2022a). It further agreed to hold an emergency meeting the following day to consider measures to be taken, including Article 8 of the Statute of the Council of Europe, which provides for the expulsion of Member States. And indeed, the following day, the Committee of Ministers agreed to suspend the Russian Federation from its rights of representation in the Council of Europe by Article 8 of its Statute (Council of Europe, Committee of Ministers, 2022b).

For its part, the European Union also condemned the invasion of Ukraine from the outset, considering it an unjustified military aggression, by which Russia was “[...] grossly violating international law and the principles of the UN Charter and undermining

² Obviously, the reference to 2013 takes into account the events that took place since the “Euromaidan” in November 2013 and the beginning of the Russian invasion of Crimea in February 2014. It is worth recalling that “Euromaidan” was the name most often given to a series of demonstrations that began in Ukraine in late 2013 when former President Viktor Yanukovich declared the suspension of the signing of the Association Agreement with the European Union. As a result, thousands of people took to the streets of Kyiv to show their disagreement with the government's decision (United Kingdom Parliament, 2014).

European and global security and stability” (European Council, 2022). Alongside this condemnation, the EU has imposed massive and unprecedented sanctions against Russia in response to the war of aggression against Ukraine, and the illegal annexation of Ukraine's Donetsk, Luhansk, Zaporizhzhia and Kherson regions (Council of the European Union, 2023). They add to existing measures imposed on Russia since 2014 following the annexation of Crimea and the non-implementation of the Minsk agreements (Council of the European Union, 2014).

For some scholars, this attack also marks a break in Russian strategy, which until now had tried to conceal its expansionist policies in the post-Soviet space, at least with internationally acceptable arguments (Hoffmann, 2022: 225-226; Ginsburg, 2020: 257). Indeed, for Tamas Hoffmann, for example, the Russian approach to date had been characterised by the creation of frozen conflicts, the extension of citizenship and the threat or use of armed intervention to keep conflicts frozen but, so far, it had avoided actual annexation of territories of other sovereign States. Although the seizure of Crimea represented a partial deviation from this strategy, Russia avoided outright denial of the international legal order by invoking the right to self-determination. Russia's military intervention in Ukraine, however, is an attempt to bring about a decisive change in international law. Although Russia formally bases its military intervention on the right of self-defence, its plan of territorial conquest aims to erase the international consensus based on the prohibition of the use of force and annexation and ultimately return the international legal order to the 19th century, when war was a sovereign prerogative (Hoffmann, 2022: 225-226).

In short, the gravity of Russia's violation of the fundamental norms of the international order and the tremendous rejection that has followed by a vast majority of the States of the international community and its international organisations demonstrate that through its actions Russia has broken the founding consensus on the prohibition of the use of force and the system of collective security contained in the United Nations Charter. In this context, there have been repeated calls for reform of the UN Security Council due to its abusive use of the veto, which paralyses it in situations of extreme gravity for the maintenance of international peace or security, both in the past (Blokker, 2021: 57-58) and the present, as seen in the war in Ukraine or in the war between Hamas and Israel. Such concerns have recently been expressed by the Secretary-General of the United Nations (United Nations Secretary General, 2023) or the President of the General Assembly (United Nations News, 2023). Furthermore, along the same lines as Resolution 377 A (V) "Uniting for peace", the General Assembly decided on 20 April 2022, through its Resolution A/76/L.52, that the President of the General Assembly should convene a formal meeting of the General Assembly within 10 working days of the casting of a veto by one or more permanent members of the Security Council, to hold a debate on the situation as to which the veto was cast (United Nations General Assembly, 2022c).

THE IMPACT OF THE INVASION OF UKRAINE ON THE UN SECURITY SYSTEM

The significance of the blow dealt by Russia's invasion of Ukraine to the prohibition on the use of force, the system of collective security established in the UN Charter and the consensus that allowed it, should not be underestimated. It remains to be seen whether the structure then set up to maintain international peace and security can recover from this blow. In my view, its foundations are currently so shaken and its structure so damaged that its collapse is in the balance.

From my point of view, as I said in the introduction, if the war in Ukraine ends or is settled in a way that is more favourable to Russian interests, including territorial gains, than the situation before February 2022, the aforementioned security system is likely to become an empty shell, or more simply put, a walking dead man.

If, however, the Ukrainian war ends in a Ukrainian victory or a negotiated final settlement in which it is clear that the Ukrainian position has prevailed and the high cost to Russia is clear, then the UN Charter's prohibition on the use of force and the collective security system are likely to remain in force, albeit weakened by the Russian-induced breakdown of consensus.

Indeed, this violation of Article 2.4 of the Charter is of such depth that it would constitute, in my view, not only a flagrant violation of the rule itself, as recognised by a majority of the international community, but also an indication of the weakening of its validity. Indeed, according to the famous dictum of the International Court of Justice in the *Nicaragua* case, in order for a rule to be considered a customary norm -in that case, the prohibition of the use of force too- it was not necessary that the application of the rule were perfect in international practice. For the Court, it would be sufficient “[...] that the conduct of States should, in general, be consistent with such rules, and that instances of State conduct inconsistent with a given rule should generally have been treated as breaches of that rule, not as indications of the recognition of a new rule” (International Court of Justice, 1986: 98, para. 186). Furthermore, for the Court, on the contrary, if a State “[...] acts in a manner prima facie incompatible with a recognized rule, but defends its conduct by appealing to exceptions or justifications contained within the rule itself, then whether or not the State's conduct is in fact justifiable on that basis, the significance of that attitude is to confirm rather than to weaken the rule” (International Court of Justice, 1986: 98, para. 186). For me, the invasion of Ukraine represents the materialisation of the phenomenon described in these passages by the International Court of Justice, albeit in this case of the weakening of the rule or the beginning of an eventual process of the birth of a new rule.

A shared view by a broad sector of the doctrine sees signs of a change in the international legal order, especially due to the invasion of Ukraine, influenced by the pressure of authoritarian governments that would try to replace the liberal order based on the United Nations Charter and establish an “authoritarian international law” (Sloss & Dickinson, 2022: 798), or by States that are reacting to Russian aggression and would try to establish a new plurilateral international order that is consistent with liberal values (Sloss & Dickinson, 2022: 799). In this vein, for example, as Professor Fassbender has noted, the prohibition of the use of force is one of those norms so central to the legal order established with the UN Charter that its abolition would imply the abandonment of that legal order. For him:

Such ‘amendments’ to the Charter would result in a legal order so different from the constitution associated with the name of the United Nations that the latter would have to be regarded as discontinued. The inadmissibility of certain amendments does not follow from the fact that the relevant norms possibly ‘preceded’ the Charter but from the outstanding importance of those norms in the constitutional order established by it. (Fassbender, 2009: 144-145)

CONCLUSIONS

We reviewed in the introduction to this article how the prohibition of the use of force emerged in international society until it was embodied in Article 2.4 of the UN Charter

and then acquired the status of a *jus cogens* norm. This prohibition was protected by the system for the maintenance of international peace and security designed in Chapter VII of the Charter, which was based on the consensus of the Allied Great Powers during World War II. Key to this system was the decision on the need for unanimity among the permanent members of the Security Council on non-procedural decisions - which was fleshed out in Article 27 of the Charter – and, thus, on sanctions for violations of the prohibition on the use of force. Although this prohibition has been violated on many occasions and the system of collective action provided for in Chapter VII of the Charter has rarely been used in practice, Russia's invasion of Ukraine, given the seriousness of its attempt to seize the territory of that State, constitutes a very transgressive violation of the Charter, different in gravity from previous violations of Article 2(4).

The reaction of most of the international community in condemning the events, as well as the imposition of sanctions by various international organisations, as seen in this paper, confirms the relevance of Russia's actions on this sad occasion.

However, when we argue that the invasion of Ukraine may weaken the validity of the prohibition on the use of force and the collective security system of Chapter VII of the Charter, we do so because we understand that these events bury, perhaps definitively, the consensus that generated the contemporary legal order, whose pillars are the prohibition on the use of force and the collective security system.

We believe that if the war ends in a way that is favourable to Ukraine's interests, the deep wounds that the Russian invasion has caused to the international legal order may be healed. However, if Russia ends up seizing a large percentage of Ukrainian territory or subjugating Ukraine, the rupture with the current legal order could be definitive, constituting a precedent of dire consequences.

In fact, many authors believe that the Russian invasion of Ukraine has brought us to the crossroads of an epochal change in international society and its legal system. For these authors, at the root of this transformation would be, on the one hand, the attempt by totalitarian regimes to supplant the liberal regime made visible in the UN Charter, or, on the other hand, the international community's reaction to the Russian invasion, which points to the seeds of a new liberal plurilateral system in which the UN-based security system would play a very residual role, if it were to remain.

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