Living together in peace

STUDY GUIDE

FACAMP Model United Nations 2019

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Study Guide FACAMP Model United Nations 2019

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Professor Patrícia Nogueira Rinaldi
Professor Roberta Silva Machado
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Campinas, August 2019.

INTRODUCTION

LIVING TOGETHER IN PEACE
Negative vs. Positive Peace in the United Nations

Patrícia Capelini Borelli[1]
Patrícia Nogueira Rinaldi[2]
Roberta Silva Machado[3]
Talita de Mello Pinotti[4]

Introduction

The United Nations General Assembly (UNGA), through its resolution A/RES/72/130, declared that 16 May should be celebrated as the International Day of Living Together in Peace from that year forward. The aim was to reinforce the importance of mutual understanding and harmonious coexistence to humankind, while fostering a culture of peace (UNITED NATIONS GENERAL ASSEMBLY, 2017, p. 2).

Noteworthy is that, even though the post-1945 world order was built upon the idea of peace, its precise meaning is still open to debate. The traditional perspective towards peace, largely dominant until the 1990s, simply defines it in a negative way, as "the absence of conflict". However, as the conflicts that emerged in that decade showed us, there is a great difference between the absence of conflict and a sustainable peace. This notion is much more complex and rests upon a delicate balance between sustainable development,

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human rights and security. Peace is, therefore, seen as a relational concept that is contingent to the assurance of other provisions. In other words, there would be some conditions that are conducive to peace while others are not: consequently, it would be possible to foster an environment that is more prone to peace than conflict.

This is the essence embedded in the Declaration on a Culture of Peace, issued by the UNGA as resolution A/RES/52/243, on 6 October 1999. It stems from the idea that peace "(...) also requires a positive, dynamic participatory process where dialogue is encouraged and conflicts are solved in a spirit of mutual understanding and cooperation" (UNITED NATIONS GENERAL ASSEMBLY, 1999 b, p. 2). It goes further, by indicating that a culture of peace should be based on a variety of elements as the protection of human rights, the compromise with the peaceful settlement of disputes, and the promotion of development. Once more, the notion of peace is broadened to include different dimensions other than security.

In this sense, the United Nations (UN) has devoted its activities to ensuring that the conditions conducive to peace are equally achieved by all the international community. One of the main compromises to this end was the launch of the 2030 Agenda to Sustainable Development, in 2015. The Agenda, comprised by 17 Sustainable Development Goals (SDGs), advances with the idea that peace is contingent to a set of conditions, such as the end of poverty, gender equality, sustainable consumption and production patterns, environmental protection, justice and others (UNITED NATIONS, 2019).

In this chapter, we argue that even though there has been an effort to expand the definition of peace from a negative towards a positive one, Member States still present an approach that reinforces the idea of negative peace. We will also discuss how the different topics on the UN's agenda, which are presented in the following chapters, highlight the recurrent tension between the two

definitions of peace and the deeper crisis of the multilateral system.

To this end, this chapter is composed by five sections. The first will present the change in the definition of peace from the provisions of the UN Charter; the second will present the Declaration and Programme of Action on Culture of Peace in the post-Cold War era as a way of conceptualizing positive peace; the third will analyze the 2030 Agenda through the lenses of positive peace. The fourth section will highlight the tension between the two concepts of peace in States' approach to different topics of the UN Agenda; and the fifth section, will raise some final considerations to the topic opening the discussion to the following chapters.

The fundaments of a culture of peace in the UN

In 25 April 1945, representatives from 50 nations gathered in San Francisco to draft the final details of the founding document of the UN, the Charter. Its Preamble stated that the organization was created in order to save humanity from the "scourge of war", in a reference to the World Wars.

From the outset, the Charter recognized that there are conditions conducive to conflict and instability, and identifies the aim of avoiding these as the core task of the UN. Even though those conditions are not directly listed in the document, it is possible to identify some of them by highlighting the goals that Member States are determined to achieve through the creation of the organization. Among the drivers of conflict are the violation of human rights, inequality, violation of international treaties, lack of freedom and poor living standards (UNITED NATIONS, 2015, pp. 2-3).

Yet, throughout the text, while describing the tools that would be created to ensure international peace, the UN Charter fails to properly address the idea of a multidimensional peace, which would entail more than the security aspect. This is easily seen when we

look for specific terms in the document. For example, from the 51 occurrences of the word "peace" in the UN Charter, 33 are within the phrase "international peace and security", which translates peace in the traditional perspective of absence of conflict. Other 5 occurrences are under the term "peaceful", which is often applied in the sense of peaceful settlement of disputes, still indicating the priority of avoiding the escalation of violence. Also, the terms "threats to the peace" and "breach to the peace" appear twice each, always relating to traditional challenges to security (UNITED NATIONS, 2015).

Peace is used with meanings other than the security-related ones few times in Charter. However, it is also interesting to note that when this happens, peace is usually connected to the very essence of the concept "culture of peace", which will be better detailed in the next section. For example, the notion of living together in peace first appears as such in the Preamble of the UN Charter. In an effort of avoiding new wars, Member States committed "(...) to practice tolerance and live together in peace with one another as good neighbours (...)" (UNITED NATIONS, 2015, p. 3). In contrast with what was seen in the previous occurrences, "peace" is used in this sentence together with "tolerance" and expresses the harmonious coexistence. This same meaning is applied to Article 1.2, which outlines as one of the UN principles "to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace" (UNITED NATIONS, 2015, p. 4).

In this sense, the most significant use of the word "peace" in the Charter is the one related to one of the six main organs of the UN, the Economic and Social Council (ECOSOC). Chapter IX, that outlines the mandate of ECOSOC, begins with the following article:

> Article 55
> With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:
> a. higher standards of living, full employment, and conditions of economic and social progress and development;
> b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and
> c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion (UNITED NATIONS, 2015, p. 38).

In Article 55, we can see again the notion that there are some conditions conducive to stability and that they are the key to ensure peaceful relations in the international system. It is also possible to argue that this Article puts forward the interconnection between peace, development and human rights that is briefly mentioned in the Preamble of the Charter. Even if not identified in this way in the Charter, these elements would be the core of the concept of a "culture of peace", as defined in 1999. According to it, in order to create an environment prone to peace, it is essential to foster specific values, behaviors and ways of life capable of underpinning peaceful relations between different cultures, individuals and States. Noteworthy is that the very creation of the UN was based on the finding that peace is only possible when there is room for dialogue, understanding, tolerance and respect.

Thus, interestingly enough is the absence, or few occurrences, of the idea of a positive peace in the Charter. While the traditional approach of peace as absence of conflict is the most common use of

the term in the document, the explanation of a positive peace was left aside from the text. This contradiction should be highlighted to the aim of this chapter: even though the Preamble starts by recognizing that an enduring peace is contingent to international cooperation, sustainable development and the respect of human rights, the provisions of the Charter fail in creating tools that adequately reinforce peace as going beyond international security.

After the foundation of the UN, the need to define positive peace would pervade most of the organization's activities and debates. This, however, would be a complex task since it involved the competing interests of many States, and their understanding of what should be the limits to the UN's action to avoid hindering sovereignty. As we will present in the next section, it was only in the end-1908s and mainly the 1990s that the international context made it possible to advance with the idea of positive peace, which would be stepping-stone to the concept of culture of peace.

The UN's process towards defining a positive peace: the concept of culture of peace

The first formal document, under the UN umbrella, conceptualizing peace in a positive way was the Yamoussukro Declaration on Peace in the Minds of Men, which was the final document of the International Congress on Peace in the Minds of Men, convened by the United Nations Educational, Scientific and Cultural Organization (UNESCO) in 1989. The Yamoussukro Declaration established the concept of culture of peace as a mode of behavior based on the principles of "liberty, justice, equality and solidarity among all human beings" (UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION, 1989, p. 49).

Few months after the adoption of the Declaration, the Berlin Wall fell down. By the end of the Cold War in 1991, the international reality was rather complex: the intensification of economic and

financial interdependence; the change in the nature of conflicts, from interstate to intrastate conflicts; and the rise of non-military threats to peace, such as poverty, debt crises, unemployment, the destruction of the ozone layer and climate change. All these factors set an international context that reinforced the need of strengthening a positive concept of peace under the notion of culture of peace.

In 1997, UN Member States attached greater political importance to the concept of culture of peace by taking its negotiations to the UN headquarters in New York, when the topic "Towards a culture of peace" was included as an agenda item of the 52nd session of the General Assembly (UNITED NATIONS GENERAL ASSEMBLY, 1998, p. 51). It took two years of negotiations – from November 1998 to September 1999 – to reach an agreement on the Declaration and Programme of Action on a Culture of Peace, adopted by consensus as Resolution A/RES/53/243 on 13 September 1999 (UNITED NATIONS GENERAL ASSEMBLY, 1999 a). This UNGA resolution provides the most complete definition, so far, of a positive peace:

> Article 1
> A culture of peace is a set of values, attitudes, traditions and modes of behaviour and ways of life based on:
> (a) Respect for life, ending of violence and promotion and practice of non-violence through education, dialogue and cooperation;
> (b) Full respect for the principles of sovereignty, territorial integrity and political independence of States and non-intervention in matters which are essentially within the domestic jurisdiction of any State, in accordance with the Charter of the United Nations and international law;
> (c) Full respect for and promotion of all human rights and fundamental freedoms;
> (d) Commitment to peaceful settlement of conflicts;
> (e) Efforts to meet the developmental and environmental needs of present and future generations;

> (f) Respect for and promotion of the right to development;
> (g) Respect for and promotion of equal rights and opportunities for women and men;
> (h) Respect for and promotion of the right of everyone to freedom of expression, opinion and information;
> (i) Adherence to the principles of freedom, justice, democracy, tolerance, solidarity, cooperation, pluralism, cultural diversity, dialogue and understanding at all levels of society and among nations; and fostered by an enabling national and international environment conducive to peace (UNITED NATIONS GENERAL ASSEMBLY, 1999 b, pp. 2-3).

In this definition, peace is not understood as the absence of difference and conflict between peoples and countries. On the contrary, it recognizes their existence, but the meaning of a positive peace is the management of such differences and conflicts by peaceful means such as negotiation, mediation, arbitration and mutual adaptation.

The Plan of Action on a Culture of Peace outlines a broader vision of peace by defining eight areas of action. The first area is education. All people should be educated in the values, attitudes and modes of behavior that enable them to respect differences and solve their problems in a peaceful way. Peace would also require different forms of education and training towards dialogue and consensus building; conflict prevention and crisis management; and post-conflict and peacebuilding (UNITED NATIONS GENERAL ASSEMBLY, 1999 b, p. 6).

A positive vision of peace is also related to the promotion of a sustainable economic and social development, which is the second area of action. Policies to reduce inequalities within and among nations, by the eradication of poverty, debt relief and food security are fundamental in order to achieve peace. The same for the protection, preservation and regeneration of the environment for

the present and future generations (UNITED NATIONS GENERAL ASSEMBLY, 1999 b, p. 7).

The respect for all human rights and the promotion of gender equality are the third and fourth areas of action towards peace. It requires policies that guarantee all human rights and fundamental freedoms, including the integration of a gender perspective in all relevant international instruments and the guarantee of gender equality in decision-making processes at all levels. It also requires the elimination of all forms of discrimination, including all forms of violence against women (UNITED NATIONS GENERAL ASSEMBLY, 1999 b, p. 8).

Ensuring democratic participation; the promotion of understanding, tolerance and solidarity; and the promotion of participatory communication and free flow of information and knowledge are, respectively, the fifth, sixth and seventh areas towards peace. Peace requires democratic institutions based on the rule of law and grounded on the respect, tolerance and solidarity towards minorities and vulnerable groups, such as indigenous people, displaced persons, refugees and migrants. This is also linked to the promotion of a participatory communication, having the media and press as the main disseminators of a culture of peace (UNITED NATIONS GENERAL ASSEMBLY, 1999 b, pp. 9-10).

The last area of action is related to international peace and security. Peace obviously requires disarmament, the inadmissibility of acquisition of territory by war and the inadmissibility of unilateral measures and any form of coercion against political independence or territorial integrity of a State. However, positive actions beyond the traditional ones are also required, such as: confidence-building measures; the elimination of illicit production and traffic of small and light arms and weapons; the demobilization and reintegration of former combatants and the review of the humanitarian impact of sanctions (UNITED NATIONS GENERAL ASSEMBLY, 1999 b, p. 10).

Considering the three pillars of the UN – international peace and security; human rights and humanitarian action; and sustainable development – many practical measures in the 2000s were grounded on a positive notion of peace[5].

In the area of international peace and security, peacebuilding efforts started to include aspects of a culture of peace, such as the use of confidence-building measures; an education for peace in the demobilization and reintegration processes; a greater involvement of women in peace activities; and an emphasis on conflict prevention. The first United Nations Security Council (UNSC) document connecting peacebuilding efforts with a culture of peace was Presidential Statement 21/5, of 20 February 2001, considers that the promotion of a culture of peace and non-violence is crucial to prevent "(...) the outbreak, the recurrence or the continuation of armed conflict" (UNITED NATIONS SECURITY COUNCIL, 2001, p. 2).

In the area of human rights and humanitarian action, the United Nations Commission on Human Rights – which became the United Nations Human Rights Council (HRC) in 2006 – has been discussing the right to peace since 2002. This is a controversial issue because it would require the complete elimination of the use or threat of use of force in international relations, which would question the exercise of many UN Charter provisions, such as Chapter VII. In order to overcome this controversy, since 2008 the HRC has advanced a perspective of human rights so it could result in a future UN Declaration on the Right to Peace[6] (FERNANDEZ; PUYANA, 2017, p. 281).

5 In order to coordinate actions towards the implementation of the Declaration and Programme of Action, the UNGA proclaimed the 2000 as the International Year for the Culture of Peace; and the decade of 2001–2010 as the International Decade for a Culture of Peace and Non-Violence for the Children of the World (UNITED NATIONS GENERAL ASSEMBLY, 1999 b, p. 1).

6 The UN Declaration on the Right to Peace was finally adopted by the UNGA on 19 December 2016.

In the area of sustainable development, the first global agenda to the promotion of sustainable development in the 21st century, which was the Millennium Declaration and the Millennium Development Goals (MDGs), had the culture of peace as one of its objectives. Under the value of tolerance, the UNGA stated that: "Differences within and between societies should be neither feared nor repressed, but cherished as a precious asset of humanity. A culture of peace and dialogue among all civilizations should be actively promoted" (UNITED NATIONS GENERAL ASSEMBLY, 2000, p. 2).

The 15 year-path towards the implementation of the MDGs was marked by an important reduction of poverty and inequality within and among nations, not to mention greater commitments to the protection, preservation and regeneration of the environment. However, after the 2008 global economic and financial crisis, followed by many civil wars and international conflicts in Middle East, Africa and Asia, the road to a peaceful sustainable development started to face many challenges. Those challenges were addressed in the negotiations of the post-2015 development agenda, as will be discussed in the next session.

The concept of peace in the 2030 Agenda for Sustainable Development

For three years (2012-2015), UN Member States, civil society and NGOs, as well as other stakeholders, negotiated the text of the 2030 Agenda for Sustainable Development, which included 17 SDGs and 169 targets. In order to accommodate different interests, the final draft of the resolution 70/1 resulted in a broad and diffuse text.

The Preamble of the 2030 Agenda emphasizes the inter-relation, indivisibility and universal applicability of the main pillars of the UN – international peace and security, human rights and humanitarian affairs and sustainable development. Concerning the

pillar of peace, the Preamble highlights the inter-relation between peace and sustainable development, and states that one is contingent to the other: "there can be no sustainable development without peace and no peace without sustainable development" (UNITED NATIONS GENERAL ASSEMBLY, 2015, p. 2). Hence, the Agenda emphasizes the positive meaning of peace.

The 2030 Agenda "seeks to strengthen universal peace in larger freedom" (UNITED NATIONS GENERAL ASSEMBLY, 2015, p. 1). Moreover, it indicates that the fulfillment of the goals of the Agenda are key to improve the lives of all, transforming the world "for the better" (UNITED NATIONS GENERAL ASSEMBLY, 2015, p. 2).

Paragraph 3 of the 2030 Agenda indicates the main objectives to be achieved by the year 2030, being one of them "to build peaceful, just and inclusive societies" (UNITED NATIONS GENERAL ASSEMBLY, 2015, p. 3). In paragraphs 7 and 8, States envisage a world free of fear and violence, and a "just, equitable, tolerant, open and socially inclusive world in which needs of the most vulnerable are met" (UNITED NATIONS GENERAL ASSEMBLY, 2015, pp. 3-4).

In paragraph 35, States reiterate the intrinsic relationship between peace and sustainable development by stating that sustainable development "cannot be realized without peace and security; and peace and security would be at risk without sustainable development" (UNITED NATIONS GENERAL ASSEMBLY, 2015, p. 9). In addition, the paragraph emphasizes that in order to build peaceful, just and inclusive societies, it is necessary to respect human rights, including the right to development, as well as to give people access to justice; and enforce the rule of law, good governance, transparency and the accountability of institutions. The paragraph also highlights the necessity of "support[ing] post-conflict countries, including through ensuring that women have a role in peacebuilding and State-building" (UNITED NATIONS GENERAL ASSEMBLY, 2015, p. 9).

In paragraph 36, States pledge to "foster intercultural understanding, tolerance, mutual respect and ethic of global citizenship and shared responsibility" (UNITED NATIONS GENERAL ASSEMBLY, 2015, p. 10). Therefore, the Agenda emphasizes tolerance and the "natural and cultural diversity of the world", and recognizes that "all cultures and civilizations can contribute to, and are crucial enablers of sustainable development" (UNITED NATIONS GENERAL ASSEMBLY, 2015, p. 10).

In this regard, the positive meaning of peace highlighted in the 2030 Agenda replicates some aspects of the text of the Declaration and Program of Action on a Culture of Peace. The Declaration emphasizes that building a culture of peace is connected with the achievement of the following objectives: compliance with international law; promotion of democracy, development and respect for human rights; promotion of education and gender equality; enforcement of democratic institutions; eradication of poverty; reduction of inequality within and among countries; promotion of sustainable economic and social development; elimination of all forms of discrimination (UNITED NATIONS GENERAL ASSEMBLY, 1999 b, p. 3).

In what concerns the main part of the 2030 Agenda, the 17 SDGs, the positive meaning of peace and the inter-relation between peace and sustainable development can be found in SDGs 1, 4, 5, 10 and 16. The eradication of poverty and the reduction of inequalities within and among nations, related to area of action two of the 1999 Programme of Action on a Culture of Peace, are embedded in SDGs 1[7] and 10[8]. Moreover, the elimination of "discrimination against women through their empowerment and equal representation at all levels of decision-making", related to area of action four of the Programme of

7 End poverty in all its forms everywhere.

8 Reduce inequalities within and among countries.

Action, can be found in the targets of SDG 5[9] (UNITED NATIONS GENERAL ASSEMBLY, 2015, p. 18).

SDG 4[10] presents how the relationship between peace and sustainable development in the 2030 Agenda can be understood. In this sense, target 4.7 of SDG 4 affirms that:

> By 2030, ensure that all learners acquire the knowledge and skills needed to promote sustainable development, including, among others, through education for sustainable development and sustainable lifestyles, human rights, gender equality, promotion of a culture of peace and non-violence, global citizenship and appreciation of cultural diversity and of culture's contribution to sustainable development (UNITED NATIONS GENERAL ASSEMBLY, 2015, p. 17).

In this sense, SDG 4 emphasizes that the objectives of the Agenda must be seen in an integrate manner and, in this way, through education[11], peace will be accomplished together with sustainable development and the protection of human rights.

SDG 16[12] focuses on the importance of developing transparent and accountable institutions, as well as promoting peaceful and inclusive societies in order to achieve sustainable development. However, it does not include important aspects necessary to the accomplishment of peace, which are stated in the Declaration on Culture of Peace. Therefore, SDG 16 incorporates only one aspect of the culture of peace, and does not connect peace and sustainable development as integrated and indivisible pillars (UNITED

9 Achieve gender equality and empower all women and girls.

10 Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all.

11 Area of action one of the Programme of Action on Culture of Peace.

12 Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.

NATIONS GENERAL ASSEMBLY, 2015, pp. 25-26).

Although the Declaration is not mentioned as one of the documents that guided the elaboration of the 2030 Agenda[13], both documents can be analyzed as complementary texts, as they emphasize the importance of building societies in which peace is a common goal. However, the focus of each one changes. In the Declaration, the promotion of a culture of peace is a main goal and it can only be achieved through economic and social development, education, gender equality, respect for human rights, and democratic, transparent and accountable institutions. On the other hand, the 2030 Agenda is a broader document, anchored in the inter-relation and indivisibility of the UN pillars.

Although the Agenda focuses on the positive meaning of peace, which can be found in the SDGs cited above, the Declaration on Culture of Peace goes further when describing the conditions needed in order to achieve peace. Hence, the Declaration encourages States to take specific measures in order to prevent conflicts, namely the general and complete disarmament, the refrainment from unilateral actions that can damage or put in danger basic rights, and the reconsideration of the humanitarian impacts of sanctions and the role of women in preventing conflicts (UNITED NATIONS GENERAL ASSEMBLY, 1999 b).

Nonetheless, due to the diffuse and broad character of the 2030 Agenda, the relationship between peace and sustainable development cannot be comprehended without a careful analysis of its text. Although, a detailed reading of the document can unveil some aspects of that relationship, it is not clear whether the conditions to achieve sustainable development are, in fact, the way

13 Paragraph 10 of the Preamble mentions the main documents and international treaties that set the foundations to the Agenda: the UN Charter, the Universal Declaration of Human Rights, the Millennium Declaration, the 2005 World Summit Outcome and the Declaration on the Right to Development (UNITED NATIONS, 2015).

towards peace or whether sustainable development and peace shall be accomplished together.

In this way, due to the need to accommodate different States' interests, they negotiated an agenda that focuses on the achievement of sustainable development and not on the balance of all UN pillars. That is why the Agenda neglects important aspects that are fundamental to build a positive peace: the prevention of conflicts through disarmament, the refrainment of unilateral measures that can put in danger human rights, and the participation of women in conflict prevention. The absence of those aspects in the text of the Agenda brings important challenges to Member States when dealing with current UN issues, which will be analyzed next.

Negative vs. Positive Peace in the UN: the challenges of achieving peace in practice

Although the idea of positive peace has gained major space in the UN since 1945, in practice, States still mobilize the perspective of negative peace to deal with current international issues. Formally, the notion of positive peace attached to the idea of promotion of human rights, development and solid institutions, for example, prevail in most of the UN documents. However, most of the debates between Member States still embodies the negative approach, based on arguments of sovereignty and security. Considering this, this section briefly presents the core idea of each chapter of this book to outline how current topics of the international agenda reflect the dilemma of positive vs. negative peace in the UN.

One of the main challenges of the UNGA falls under the topic *International Migration and Development*, which focuses on the positive role international migrants can play in promoting development. The UNGA has put forward many dialogues in order to enhance understanding, tolerance and solidarity towards

migrants, not to mention efforts to guarantee the basic human rights to irregular ones. All these measures are essential aspects to advance on a culture of peace (UNITED NATIONS GENERAL ASSEMBLY, 1999 b, p. 4).

In practice, however, several countries are resisting to advance measures to protect migrants claiming security concerns, as the chapters dedicated to this topic show. Firstly, there is not an SDG focused on the management of international migration, and the issue is only mentioned as targets under SDG 8 (promotion of decent work and economic growth) and SDG 10 (the reduction inequalities within and among countries). Secondly, many mass-receiving migrant countries refused to adopt the most recent initiative to provide a framework to better coordinate migration flows – the 2018 Global Compact for Safe, Orderly and Regular Migration – arguing that the compact would jeopardize their sovereignty in controlling migrant flows.

International Drug Control is also a topic that receives growing attention within the UNGA and that deals particularly with issues related to the promotion of Human Rights. On the consumption perspective, this topic discusses the importance of working upon the prevention of substance abuse, especially targeting vulnerable groups. The negotiation is strictly connected to SDG 3 – that aims to ensure healthy lives and promote well-being for all –, as it is addressed by a health-centered perspective.

Discussing international drug control by the human rights perspective can also correspond to SDG 16, compromised with the promotion of peace, justice and strong institutions, as the prevention approach aims to reconsider the traditional method, based on criminalization and trafficking combat, to deal with drug control. Based on the security perspective, the traditional approach has been questioned for its efficiency, as it is been pointed as a trigger

to increased violence. However, this approach is still the foundation for most States' national policies regarding drug control, mainly in developing countries, hampering a broader understanding of the topic as a health issue in the international debate.

The inconsistency about the notions of peace is even more evident when we observe the debates within the UNSC, as it is responsible for the maintenance of international peace and security (UNITED NATIONS, 2015, p. 18). Aiming at promoting a peaceful and inclusive society, the topic *Children and Armed Conflict* has been discussed in UNSC since 1998. As children can be affected directly or indirectly by armed conflicts, the main point of this discussion is not only how to strengthen children's protection during and after conflict, but how children's international protection can serve as a tool for conflict prevention.

Guaranteeing education access, dignity and justice is not only a children's right but it is also the basis for a conflict-free society. It is also an essential step to advance the construction of a culture of peace, which is related with guaranteeing "(...) respect for and promotion and protection of the rights of children", as stated by in Article 3 of the Declaration on a Culture of Peace (UNITED NATIONS GENERAL ASSEMBLY, 1999 b, p. 3). Challenges remain, however, on how to advance these ideas in practice: countries still address children protection in armed conflict from a negative peace perspective, neglecting the need to ensure long-term assistance, as reintegration and psychological support.

Another item in the Council's agenda raises the tension between the positive and negative ideas of peace: *Women, Peace and Security*. The discussion derives from the need to protect women's right during and after conflicts, but it has expanded to consider how to increase women participation in all stages of the peace processes. In fact, the 1999 Declaration also considers the elimination of "(...) all

forms of discrimination against women through their empowerment and equal representation at all levels of decision-making" as a fundamental aspect for the consolidation of a culture of peace, reflecting the positive peace perspective. In this sense, beyond SDG 16, this topic recalls SDG 5, also committed with gender equality and empowerment of women and girls (UNITED NATIONS GENERAL ASSEMBLY, 1999 b, p. 7).

Moreover, it aims at advancing on the recognition of women as indispensable players in the construction of a long-lasting peace. Since 2000, when this discussion was introduced in UNSC agenda, the idea of women as agents of peace processes advanced with their introduction in police and military units. However, there was little progress on introducing women in peace agreements and decision-making processes, still permeated by men. As discussed in the chapter dedicated to this topic, the permanent members of the UNSC have divergent opinions on how to address the role of women in peace and security issues arguing that the language of the resolutions can have implications for the principle of sovereignty in States concerned.

Similarly, the principle of sovereignty is also the core of the agenda item *The Situation in the Bolivarian Republic of Venezuela*. Other than SDG 16, this debate draws attention to the importance of strong foundations for a culture of dialogue and diplomacy in order to deal with possible conflicts. As the social and economic situation in Venezuela deteriorates, it has been discussed which are the tools available for the UN to deal with a humanitarian crisis in order to consider if and how the UNSC can act on this case. This subject, however, has divided the positions of permanent members and the opinions in international community. Hence, the core of the debate has been how the UNSC can proceed in this situation, bearing in mind the principles of sovereignty and non-intervention as established in the UN Charter.

Topics that are not directly related to security have a propensity to either decline to a secondary position in the UN agenda or are inclined to be discussed also in terms of sovereignty. This is the case, for example, of the environmental debate. Formally, the statements from Member States usually bring up the importance of protecting Nature or preserving essential resources for the development of future generations. However, historically, the debate his neglected by Member States, since the argument of self-determination upon natural resources within territories tends to stand out.

There are two chapters in this book that illustrate this point. One is dedicated to analyze the case *Whaling in the Antarctic: Australia v. Japan (New Zealand intervening)* that was introduced in the International Court of Justice (ICJ), which has a special role in promoting a dialogue among States, as it acts upon the law as a manner of resolve controversies in a more peaceful way. It was the first time that the Court deliberated upon whaling issues, which differs from the traditional tensions between States. Overall, the case deals with the dispute between Australia and Japan upon the Japanese whaling research program and the possible violation of International Convention for the Regulation of Whaling of 1946.

The case is particularly interesting as it demands considerations towards development and scientific progress aspects of whaling while dealing with the need to protect the marine environment and its species, which corresponds to the major dilemma of sustainable development when addressing nature's preservation. In addition, it brings up SDG 14 to the center of discussion, as it aims to consider conservation and sustainable use of the oceans, seas and marine resources (UNITED NATIONS, 2019). Nevertheless, even though the protection of natural resources and species permeated the case, the main point of the discussions lies on the claiming sovereignty over the Antarctic, which was agreed to be reserved to scientific exploration to be shared among the international community.

The discussion on *Harmony with Nature* follows a similar path. The idea behind Harmony with Nature goes further than sustainable development, as it intends to propose an alternative paradigm of social and economic development guided by a more harmonious relation between Nature and humankind. The chapter dedicated to this topic analyzes how Ecological Economics is an important field, questioning the current understandings of development and progress. The main challenge, however, resides on how to ensure responsible patterns of consumption and production in a fairer way to all societies, so that everyone can have access to what is necessary for them to live but also while respecting nature's cycles and limitations.

Climate action and sustainable development gained more attention in UN as environmental crisis advances as one of the major factors that lead to displacements and conflicts over resources, a preoccupation already demonstrated in the 1999 Declaration on a Culture of Peace (UNITED NATIONS GENERAL ASSEMBLY, 1999 b, p. 7). However, in practical terms, the progress in actions upon climate change and other environmental issues was not as expressive as in other topics, for example, related to security.

Decisive measures to act on climate change or nature's protection are sometimes denied by States under the argument that it could undermine national development and, even, national interests. Consequently, the debate on Harmony with Nature is still restricted within the UN and, more specifically, between UN experts and academic specialists, responsible for the interactive dialogues that inform diplomats about the main points of discussions. At the level of the States, the discussions tend to be quite generic, as the actual measures have difficulties to be implemented.

These topics illustrate how the debates in UN can follow certain perspective upon peace – associated with right to development,

human rights, strong institutions –, but have practical problems of implementation by States that still act in terms of peace tied to a security and sovereignty approach. In fact, as we can see in the next chapters, this is the main point of the difficulties within the UN today: the discussions deal with certain incongruity between what is proposed by the UN as an institution and the concrete action of the States.

Final considerations

Gradually, the notion of peace constructed within the UN approached the proposal of positive peace, similarly to that delivered by Johan Galtung (1969, p. 183), who, as one of the pioneers of the Peace Studies, understands positive peace as the absence of structural violence or "a condition in which there is relatively robust justice, equity, and liberty, and relatively little violence and misery at the social level" (WEBEL, 2007, p. 11).

Much of these efforts to introduce this positive aspect of peace had constructive outcomes, such as avoiding new World Wars by prioritizing diplomacy and dialogue as means to settle disputes. Nevertheless, analyzing the meeting records or the concrete measures adopted by Member States, the proposal of positive peace seems somewhat diffuse. Negative aspects of peace, based on security and the restricted to the absence of conflict, continue to permeate the actions of the States to deal with international issues. In this sense, the perceptions of peace are divided in two main practices: one that inspires most of the UN work, and other that actually reflects the actions of Member States.

This inconsistency tends to be worsened when multilateralism seem to be discredited. Since 2015, multilateralism and international cooperation have been facing substantial obstacles, as unilateral solutions have been preferred to deal with global problems as States recur to security and sovereignty to justify their positions.

As a result, in recent years, much of the decisions agreed in the UN are inconclusive or even dubious. In this scenario, even the culture of consensus as the main practice inside the UN corroborates this outcome, as the agreement between States remain limited to superficial aspects. Consequently, the resolutions adopted on each international topic have become either repetitive or indecisive.

This tendency, however, does not pass unnoticed by the UN Secretariat, NGOs and analysts, who claim the need to recuperate trust in international organizations and multilateral institutions. So it is in the hands of UN Member States to liven up the role of this institution, since the current challenges to international security, sustainable development and human rights will require a more positive notion of peace (UNITED NATIONS GENERAL ASSEMBLY, 2019).

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SECTION I
HIGH SCHOOL
Committees and Councils

CHAPTER 1

HARMONY WITH NATURE: ECOLOGICAL ECONOMICS
United Nations General Assembly

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Introduction

Social and economic development is one of the main pillars of the United Nations since its foundation in 1945. As natural resources are the basis for any industrial activity and for the dynamics of the economy altogether, environmental preservation has been discussed within the Second Committee of the United Nations General Assembly (UNGA) alongside with the development debate. Since the 1970s, the focus of these discussions has been how to sustain the major patterns of production and consumption while preserving Nature for future generations, which is the basis of the sustainable development idea. Alongside with this idea, environmental protection has also gained more attention as the consequences of climate change became more visible.

Since 2009, Harmony with Nature has been discussed by the Second Committee as an alternative approach in order to think and act upon Nature's protection. It assumes that the environment cannot be truly preserved or protected if humanity continues with its current patterns of consumption and production. To change this, we need a deep transformation in the way we are living and thinking about Nature. The concept of Ecological Economics is an important

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tool in this process, as it offers another perspective towards the relationship between humankind and the environment, considering Nature not as a mere source of materials for economic development, but as the most necessary element for humankind to survive.

This chapter presents the debate on Harmony with Nature and how the proposals of Ecological Economics can contribute with its objective. First, we observe the historical background of Harmony with Nature until its consolidation as an official sub item in the UNGA agenda. Then, we explain what Ecological Economics stands for and how it is connected with the concept of Harmony with Nature. Finally, we analyze the most up-to-date aspects of this debate and explore some examples of concrete measures for taking action upon the Harmony with Nature proposals, pointing out the main challenges that still remain towards the implementation of a new relationship between Nature and humankind.

Harmony with Nature as an agenda sub item in the UN General Assembly

This section offers an overview of the evolution of the environmental debate in the Second Committee of the UNGA until the adoption of Harmony with Nature as an agenda sub item. Throughout the years, the environmental debate embodies the discussion about the current economic model of wealth generation, which demands a continued exploitation of Nature for resources. Therefore, environmental preservation and protection has been discussed within the Second Committee responsible for dealing with issues related to economic growth and development (UNITED NATIONS, 2019 c).

The idea of protecting human environment started to be formally discussed within the UN during the second half of the twentieth century due to a growing class of environmental problems, especially

regarding the possibility of shortage of some essential resources. In 1972, the United Nations Conference on Human Environment was held in Stockholm to discuss the model of industrialization and economic development, considering that the intensification of this model could lead the world to a scenario of scarcity. At that time, the so-called Third World countries were consolidating their processes of independence and self-determination and the increased demand for natural resources for its development raised awareness among certain groups about the availability of these resources for every country to develop according to the Western patterns (LAGO, 2009, pp. 45-46).

The final declaration called attention for the right to "equality and adequate conditions of life" and that objective must be observed together with environmental preservation. Some principles were established in order to guarantee this understanding, for example Principle 3 that recognizes the importance to respect the "capacity of the Earth to produce renewable resources", and Principle 4 that reinforces the importance to think about Nature conservation when planning for economic development. The final document also establishes an action plan to preserve the human environment for the future (UNITED NATIONS, 1973, pp. 3-5).

Another important step towards environmental preservation and protection was taken in 1987, when the World Commission on Environment and Development (the Brundtland Commission) issued a report called "Our Common Future", that officially recognized the concept of Sustainable Development[2] as an urgent imperative which depends on political will. This document proposes strategies for achieving economic development, in order to support the policies to

2 According to the official document, "[s]ustainable development requires meeting the basic needs of all and extending to all the opportunity to satisfy their aspirations for a better life" (WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT, 1987).

reduce poverty within nations, but also establishing a conscious action plan towards environmental policies as part of this process. In this sense, "environmental protection is thus inherent in the concept of sustainable development, as is a focus on the sources of environmental problems rather than the symptoms" (WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT, 1987).

Even so, during the Cold War the environmental debate remained limited by the security agenda. But it gained another chapter after 1990, especially in 1992 when the United Nations Conference on Environment and Development, also known as Rio 92, occurred in Rio de Janeiro. It was the biggest conference ever held by the United Nations until that moment and the main goal was to discuss measures to advance on Sustainable Development alongside with other topics as biodiversity and climate change. Two important documents resulted from this conference: the Rio Declaration on Environment and Development and Agenda 21, which for the first time established concrete measures to be taken by States in order to implement sustainable development.

The Rio Declaration recalls Stockholm Conference final document, but advances the commitments made with environmental preservation, based on the idea of sustainable development. Its first principle states that "human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature" (UNITED NATIONS GENERAL ASSEMBLY, 1992, pp. 1-2). Although it addresses the necessity to protect the environment, mentioning "harmony with nature", the declaration reaffirms an anthropocentric view, in which the final aim is to protect humans, not Nature itself, as if humans were not part of it (MIYAI; CAZULA, 2018, pp. 204-205).

In the beginning of the twenty-first century, the idea of sustainable development gained strength and was introduced as

part of the new UN agenda. The event called Millennium Summit focused on how to advance on concrete measures to reach the UN main objectives like achieving peace, the promotion of Human Rights and development with environmental protection. Eight Millennium Development Goals (MDGs) were established as a commitment agenda between nations in order to turn these objectives into reality. Target number 7, "Ensure of Environmental Sustainability", reinforced the importance of reconsidering how humans are using the environment and the search for a more careful approach to guarantee that environmental resources are available for future generations (UNITED NATIONS, 2015, pp. 4-8).

These efforts helped to spread a renewed awareness on the Nature's protection debate. During the first decade of 2000, new researches on this topic were developed and published: the effects of climate change, loss of biodiversity and the levels of pollution are examples of the advancement of environmental debate. The access to this information has driven States, corporations and civil society to take into account the effects of human action on Nature and to rethink the way we are using it in order to find new solutions to deal with the development-environmental protection dilemma.

The World Summit on Sustainable Development held in Johannesburg in 2002 reflects some of these efforts as its Plan of Implementation considers measures to change unsustainable patterns of consumption and production like increasing eco-efficiency and cleaner production. Another remark from this meeting was the more active participation of the business community and corporations representatives, recognizing that companies' actions upon environment and animals can impact consumers' preferences (LAGO, 2006, p. 94; UNITED NATIONS, 2002).

As concerns about Nature's protection and preservation gained importance and more notoriety, the UNGA decided to adopt the

resolution A/RES/63/278 that defined 22 April as International Mother Earth Day. The proposal was introduced by the Plurinational State of Bolivia, responsible for writing a draft resolution about dedicating one day of the year to remind the necessity of taking care of our planet. The idea is not only to recognize the importance of environmental issues in the international agenda, but mainly to express concerns about the predatory use of Nature by human beings, given the present industrialization model (MIYAI; CAZULA, 2018, pp. 204-205; UNITED NATIONS GENERAL ASSEMBLY, 2009 b).

Present at the occasion, the President of Bolivia, Mr. Evo Morales, congratulated the initiative, highlighting the importance of this decision as part of the recognition of Mother Nature's rights: "If we are to live in harmony with nature, we need to recognize that not only we human beings have rights, but that the planet does as well". President Morales also stressed that current problems like climate change and pollution are consequences of the disrespectful relationship humankind has established with Nature, based on the idea that humans are superior to Nature, not understanding them as part of it and not recognizing that Nature has its own rights and cycles that should be respected. As pointed by President Morales in this same occasion: "[...] Earth would have no problems if there were no human beings, but human beings would not be human beings without Mother Earth" (UNITED NATIONS GENERAL ASSEMBLY, 2009 a, p. 3).

This initiative introduced a more Nature-oriented perspective within the UNGA development debate, under the name "Harmony with Nature", emphasizing the need to consider the respect for the organic cycle of the environment as part of the development solutions, as well as the recognition of humankind as an intrinsic part of Nature. Within this context, on 12 February 2010, during its 64th session, the UNGA adopted the resolution A/RES/64/196,

which set under the item Sustainable Development, a sub item entitled "Harmony with Nature" for the agenda of the 65th session (MIYAI; CAZULA, 2018, p. 205; UNITED NATIONS GENERAL ASSEMBLY, 2009 a).

Contributions of the Ecological Economics approach

This section explores the links between the idea of Harmony with Nature and Ecological Economics. Since the 1970s, when the environmental discussions gained more attention in the international agenda and in the academy, some economists became engaged in developing another manner to organize the economy and society in a way that we would not need to jeopardize Nature in order to promote progress. The Ecological Economics approach is a result of these efforts and it is closely related to the Harmony with Nature's proposals, as both work on a "[...] holistic view of the problem of studying and managing our world" (CONSTANZA, 1989, p. 1).

Since the first Industrial Revolution, economic and social development has been associated with high levels of industrialization. This concept was strengthened by the second Industrial Revolution, which improved industrial production and facilitated the introduction of a culture of mass consumption. This dynamic required an enormous exploitation of Nature, since it is the main source of raw materials for the manufacturing processes.

The pervasive use of the environment not only has driven to the shortage of some natural resources, but even the renewable ones are not able to recompose themselves due to the accelerated process of production. Even some solutions found to bypass the problem of scarcity require intervening in natural cycles, breaking – and disrespecting – the Environmental balance. Some of the consequences of these processes are: weather instabilities, loss of biodiversity, intensification of the greenhouse effect and rising ocean

levels. The post-production phase is equally disrespectful with Nature's balance, since the increase of consumption results in more waste and inappropriate disposal of materials in the environment.

Ecological Economics aims at studying alternative ways of thinking and managing the connection between ecosystems and economic systems (CONSTANZA, 1989, p. 1). It goes beyond the studies of economics or ecology, combining also other fields like psychology and anthropology, for example, to reconsider the ways humans interact with the Environment, recognizing and respecting its limits. In this sense, it intends to review the current understanding of mainstream economics, which associates development with unrestrained production and consumption growth.

Robert Constanza, co-creator of the field, recognizes that Ecological Economics "[...] is an attempt to look at humans embedded in their ecological life-support system, not separate from the environment" (CONSTANZA, 2010). It meets the purposes of Harmony with Nature, contributing to build a holistic view about the relationship of humankind and Nature in order to "[...] achieve a just balance among the economic, social and environmental needs of present and future generations" (UNITED NATIONS, 2019 d).

These two concepts complement each other in its objectives of defending Nature not as a mere object to be exploited, but as a subject that – as humans – has intrinsic rights that must be respected. It is important to notice that these proposals go further than the idea of Sustainable Development, which does not question the current patterns of consumption and production, but seeks to find manners to keep them in a way that's less damaging to the environment (MIYAY; CAZULA, 2018, p. 202; SHEEHAN, 2013; UNITED NATIONS GENERAL ASSEMBLY, 2009 a).

Ecological Economics works along with the Harmony with Nature purpose to change the current understandings and paradigms

of consumption and production, considering alternative solutions and interpretations upon economic and social development. Ecological Economics also addresses Mother Earth as a living being, who has its own rights that shall be guaranteed alongside with a more balanced relation between humans and Nature. It does not mean that Ecological Economics stand against the idea of development. Instead, it intends to contribute with another perspective on development that includes a holistic approach the between economy, society and the Environment (DALY; FARLEY, 2004, pp. 5-6; SHEEHAN, 2013).

Ecological Economics has been introduced into the Harmony with Nature debate within UNGA Second Committee mainly by specialists during interactive dialogues. As it is a great challenge for States to consider other ways to organize their economy and society, the role of these specialists has been to raise awareness among representatives and civil society to take action upon Nature's protection considering alternative initiatives and perspectives to basic public policies (ARRUDA, 2016; SHEEHAN, 2013).

The environmental debate after 2010: questioning patterns of consumption and production

This section explores current aspects of the environmental debate in the international agenda and how it has strengthened the Harmony with Nature's approach within UNGA. In 2012, another UN conference was held in Rio de Janeiro in order to reevaluate the progresses and the challenges that still remain towards the dilemma between Environmental protection and economic development.

The United Nations Conference on Sustainable Development, also known as Rio+20, reunited representatives of States Members, Non-Governmental Organizations, corporations, the media and civil society, which were more broadly engaged in environmental discussions. The outcome document, "The Future We Want",

enlarged the political commitment with Sustainable Development, highlighting the importance of thinking of alternatives to promote economic progress without worsening the environmental degradation (UNITED NATIONS, 2012 b, p. 4).

At that time, scientific information about the dangerous consequences of environmental devastation and climate change also gained more attention. But, social and economic debate had a special role during this conference, since States were facing the consequences of the economic crisis of 2008, which had as one of its triggers the unbridled consumption encouraged by easy credit (TIENHAARA, 2013). In this sense, at Rio+20, Member States agreed to discuss sustainable development in a broader sense, contemplating the interconnection between the economic, social and environmental dimensions. The promotion of sustainable and inclusive economic growth, productive activities to the eradication of poverty, and sustainable consumption and production patterns are the main basis of the concept of Green Economy, also introduced in this conference (UNITED NATIONS, 2012 b, pp. 1; 14-15).

"Changing the current unsustainable patterns of consumption and production" is mentioned as one of the objectives and requirements for achieving Sustainable Development together with poverty eradication and protection of natural resources (UNITED NATIONS, 2012 b, p. 1). This topic was deeply discussed in the previous conference, Rio+10 in Johannesburg, but it gained more attention in this post-economic crisis context. As stated in the final document:

> We recognize that urgent action on unsustainable patterns of production and consumption where they occur remains fundamental in addressing environmental sustainability and promoting conservation and sustainable use of biodiversity and ecosystems, regeneration of natural resources and the promotion

> of sustained, inclusive and equitable global growth (UNITED NATIONS, 2012 b, p. 16).

This served as a basis to introduce the 10 Year Framework of Programmes on Sustainable Consumption and Production Patterns for the period 2012-2022, which can be adopted by the States on a voluntary basis. This initiative aims to enhance ideas about how sustainability can promote economic opportunities and an inclusive economy through environmental education and information, especially considering a more efficient use of natural resources (UNITED NATIONS, 2012 a; UNITED NATIONS, 2012 b, pp. 58-59).

The issues addressed during the Rio+20 echoed in the review process of the MDGs three years later and served as a basis for the 2030 Agenda and the 17 Sustainable Development Goals (SDGs), as stated by the resolution A/RES/70/1 adopted by the UNGA in 2015. The review of MDGs intends to evaluate the extent to which the efforts established in 2000 truly worked and how to advance with the implementation of sustainable actions, considering five main principles: People, Planet, Prosperity, Peace and Partnership (UNITED NATIONS GENERAL ASSEMBLY, 2015, pp. 1-2).

Even though all 17 SDGs are interconnected, the goals 11 to 15 address specifically the environmental issue. Goal 11 – Sustainable Cities and Communities – considers how to think a social and economic organization that does not threaten ecosystems and works along with environmental balance; Goal 12 – Responsible Consumption and Production – aims at advancing the initiatives discussed above, in order to promote a more conscious culture of consumption that takes into account the hazards caused by the unbridled use of natural resources to promote economic growth; Goal 13 – Climate Action – calls upon actions to mitigate climate change and its impacts derived from this extensive exploitation of the environment; and Goals 14 and 15 demand attention to lives

below water and on land, respectively, which also reinforce a more respectful relationship between humankind and Nature (UNITED NATIONS, 2019 a).

Although these initiatives do not necessarily question the existing tensions between economic growth and natural resources conservation, the proposal to reconsider the current model of consumption has been a key element to advance on actions and understandings regarding Nature's protection. From this perspective, it is possible to say that this evolution on Sustainable Development debate paved the way to strengthen the Harmony with Nature and the Ecological Economics approaches. Alternative initiatives – such as Solidarity Economy – gained more attention in this context. Differently from Sustainable Development and Green Economy, it considers that environmental preservation cannot occur if humanity does not change its current notion of development, based on the indiscriminate use of natural resources for economic growth, and introduces the concept of a more conscious consumption, including social justice (RAMONET, 2012; UNITED NATIONS, 2019 f).

One of the major achievements of the 2030 Agenda was to bring civil society, corporations and non-governmental agents into the discussions and efforts of the implementation of the SDGs. As a result, in recent years interesting measures emerged in international, national and local levels in order to implement changes for a more conscious relationship with Nature, especially changing the current paradigm of consumption and production. The following section will explore some of these measures.

Rethinking current patterns of consumption and production

As the environmental debate advanced, concrete actions have been implemented in order to mitigate ecological problems and guarantee a more reasonable bond with Nature, for example:

the use of renewable sources for energy; the intensification of reforestation programs; and initiatives such as the carbon market[3]. These examples result from actions taken by States, but also by civil society and corporations, aiming at revising their patterns of mass consumption and production.

One recent initiative to revise the impact of purchasing habits on the planet was the creation of a credit card that limits a person's purchases accordingly with the amount of greenhouse gas emitted in its production. The credit card works with an app that tracks the carbon emitted during the production process and discounts the amount of the monthly credit available for its user. A Swedish tech company has launched it as an Innovative Climate Action in order to raise awareness about how our daily actions can contribute to climate change and environmental degradation with the intention to stimulate a more conscious consumption in society (UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE, 2019).

A more traditional measure to this end is the creation of taxes to discourage certain actions that disrespect the environment. One example is taxing waste. In Finland, the tax on waste exists since 1996, and is known as the landfill tax. Its goal is to reduce the amount of solid residues by charging for the amount of waste to be disposed in a determined landfill. The idea is to discourage excessive consumption and waste, as the amount of waste disposed can be quite costly. In this manner, people tend to reconsider what they will purchase and what they need to dispose in order to avoid paying expensive fees (UNITED NATIONS, 2019 g).

Taxing the use of natural resources is also widely debated as a strategic instrument to encourage individuals and corporations to

3 "Carbon markets aim to reduce greenhouse gas (GHG, or "carbon") emissions cost-effectively by setting limits on emissions and enabling the trading of emission units, which are instruments representing emission reductions" (UNITED NATIONS DEVELOPMENT PROGRAMME, 2016, p. 1).

reconsider how they are using natural resources. Taxing water has been one of the most sensitive points of these discussions, since it is a natural resource indispensable for human life. Those in favor of taxing water argue that with the imposition of a monetary cost on the use of water, agents will tend to use this resource more consciously and, as a consequence, will avoid environmental degradation. The government of the Netherlands, for example, separates and categorizes the use of water by companies, public sector and people, imposing different pay taxes for them in order to compensate for the environmental damage that this excessive industrialization caused (GOVERNMENT OF THE NETHERLANDS, 2019).

However, specialists alert for the social consequences of this kind of measure, especially in developing countries. The main point is that taxing water – and other important natural resources – can enhance social inequalities as it imposes difficulties in terms of economic access to basic consumption for lower social classes. Social justice is an important issue when addressing taxing practices on natural resources, particularly regarding water, since it is not only an essential resource, but also a human right. Bearing this in mind, it is necessary to consider if there is any limit on taxing the use of natural resources or even if taxing is in fact an effective tool to stimulate changes in our relation with Nature (MARCH; SAURI, 2016; VILLAR; RIBEIRO, 2012, pp. 373-374).

The examples here discussed are interesting steps to stimulate a revaluation of our consumption culture and production model. In some cases, these kinds of initiatives have in fact been successful in reducing waste or excessive devastation. Nevertheless, it is necessary to note that great part of the decisions is based on cost-benefit analysis. In this sense, it is assumed that changes can only be promoted or stimulated when monetary costs are imposed. This is the rationale that Ecological Economics and Harmony with Nature

intend to revert. This is why these approaches aims at promoting a more holistic understanding of humankind as part of Nature in order not to depend on the imposition of any extra costs to make people reconsider their behavior on the environment.

Harmony with Nature and Ecological Economics: main challenges for concrete changes

Harmony with Nature and Ecological Economics proposals require deep changes on how humankind consider and manage the natural environment. In this case, one of the challenges is how to introduce changes of perspective without depending on the imposition of a utilitarian perspective like the cost-benefit analysis. Even though, concrete steps have been taken by States and local organizations to introduce measures to enhance Nature's protection, based on a Nature – not human – centered perspective. The main achievement is the recognition of Mother Earth as a subject that has its own rights. However, other initiatives in education and law have played a major role in this process, alongside with political actions (UNITED NATIONS, 2018; UNITED NATIONS, 2019 e).

Education has a pivotal role in promoting a more Nature-centered perspective within society. Education and access to information can be a fundamental tool to promote more conscious social and political leaders, who can demand and implement concrete actions towards Nature's protection. Also, educating people about the rights of Nature from a young age can be less costly than having to deal with degradation problems in the future. Considering this, educational activities about the rights of Nature have been encouraged and recognized as important steps to reevaluate the way people are thinking and managing the natural environment (UNITED NATIONS, 2019 e).

In Argentina, for example, the Universidad Nacional del

Litoral introduced two disciplines to exclusively discuss Earth Jurisprudence. In Costa Rica, the Fundación Gaia, aligned with UN proposals, also teaches Harmony with Nature in their regular program, in order to promote a more conscious relationship with Mother Earth. Similar initiatives in formal educational were also introduced in Australia, Brazil, Bolivia, Ecuador, Spain, and New Zealand, among others. Informal activities – such as public debates, lectures and conferences – have also played a major role in informing about the rights of Nature (GAIA, 2019; UNITED NATIONS GENERAL ASSEMBLY, 2018, pp. 10-11).

Law is also a significant apparatus to implement a new perspective on the relationship between humankind and Nature. The major advance in this sense is the attempt to recognize Mother Earth as an agent that has its own rights. For example, Ecuador included, in 2008, a whole chapter in its constitution affirming the rights of Nature, like the right to restoration (REPÚBLICA DEL ECUADOR, 2008). Bolivia also recognizes Nature as a subject with intrinsic rights at a legal level (BERROS, 2015).

Recognition by law is an important step since it can encompass many instruments at local, national and international level to guarantee Nature's protection. For this to happen, it is imperative to advance the development of a Nature-centered perspective in societies, raising awareness about the importance of protecting the natural environment. According to the Harmony with Nature Programme:

> Rights of Nature is grounded in the recognition that humankind and Nature share a fundamental, non-anthropocentric relationship given our shared existence on this planet, and it creates guidance for actions that respect this relationship. Legal provisions recognizing the Rights of Nature, sometimes referred to as Earth Jurisprudence, include constitutions, national statutes, and local laws (UNITED NATIONS, 2019 e).

Many States have already implemented initiatives aiming at recognizing Nature's rights. Together with Bolivia and Ecuador, Argentina, France and New Zealand are countries that already consider Nature as a subject of rights at a federal level. But local regulations are also being implemented in several countries to adopt the rights of Nature in determined cities, especially those that are famous for ecological tourism (UNITED NATIONS, 2019 e).

Court decisions show this recognition, as living entities – such as rivers, forests and animals – are granted a legal status comparable to humans. That is the case of the Ganges River in India, for example, that was given a "human status" in legal terms by a national court. According to Uma Barthi, Minister of India for water resources: "we have always considered Ganga as mother and mother is a living person. The court has endorsed our point of view" (UNITED NATIONS GENERAL ASSEMBLY, 2018, p. 6; "UTTARAKHAND...", 2017).

In a similar way, New Zealand recognized the Whanganui River and the Te Urewera forest "spiritual and holistic 'personhood'" (UNITED NATIONS GENERAL ASSEMBLY, 2016, p. 8). In Colombia, the Constitutional Court determined that the Atrato River is "subject to the rights that implicate its protection, conservation, maintenance and, in this specific case, restoration" (UNITED NATIONS GENERAL ASSEMBLY, 2018, p. 6). These are only a few cases among many others reported by the Harmony with Nature Programme that demonstrate advancements in the treatment by humans to reconsider their approach to Nature.

It is important to note that great part of these actions towards legal protection have been introduced by indigenous people and other communities that have traditional roots based on Nature. As recognized by members of the Harmony with Nature Knowledge Network: "[...] indigenous peoples worldwide had historically understood the reciprocal and mutually sustaining relationship

between humans and all other entities that are part of Mother Earth on the basis of gratitude and respect" (UNITED NATIONS GENERAL ASSEMBLY, 2018, p. 4). Their history and culture can serve as a basis for thinking how humankind can reestablish a more respectful contact with Earth, especially when it concerns thinking new perspectives for social and economic organization.

Hence, introducing a Nature-centered thinking among industrial society that could be translated into practical actions upon Nature's protection is a challenge that still remains within the Harmony with Nature debate. As a field of study dedicated to reconsider economic aspects towards our relationship with the natural environment, Ecological Economics contributes significantly to the purposes of Harmony with Nature. However, as long as productive and economic growth is associated with the notion of development and progress, it will continue to be difficult to overturn the current vision on Nature as a commodity instead of a subject that has its own rights.

Final considerations

The environmental debate is central within the UNGA Second Committee, as it is strictly connected to development issues. One of the major dilemmas of this debate is how to guarantee socioeconomic development while preserving natural resources, as stated by the notion of Sustainable Development. However, as climate changes and the problems related to intensive degradation and devastation advance, alternative perspectives have been introduced in order to reverse them and reconsider our understanding and approach to the environment.

Harmony with Nature has been discussed by the Second Committee for ten years now, and it shares this concern as it aims to offer a holistic view about the relationship between humankind

and Nature. Although significant initiatives have already been made in terms of guaranteeing Nature's rights, there is much more to be done in order to fully introduce this kind of understanding among societies. Ecological Economics works together with the Harmony with Nature's proposals, as it also attempts to disseminate a more integrated view of Nature, rethinking its role in our social and economical organization.

In this respect, reconsidering the current paradigm of mass consumption and production became a good start to overturn the intensive use of environmental resources. Nevertheless, a great part of the actions implemented for this is based on a utilitarian perspective, depending on the imposition of monetary costs on people to make them rethink their purchasing habits. In terms of the Harmony with Nature-Ecological Economics perspective, it can be considered as not sufficient to change people's minds about their relationship with the natural environment, as we are still considering Nature as a source of commodities instead of an entity that must be protected and cared about.

Achievements have been made in introducing the Harmony with Nature approach in educational programs and similar initiatives, as well as the recognition of the rights of Nature in some countries. Still, there are many obstacles to be overturned in order to integrate the Harmony with Nature and Ecological Economics perspectives with the mainstream economic system. Bearing this in mind, some questions must be addressed by the Second Committee:

i. How to further engage civil society, corporations and governments with the Harmony with Nature and Ecological Economics approaches?

ii. How to advance on measures to change the current patterns of consumption and production considering a Nature-centered perspective?

iii. How to adapt existing norms and laws regarding use of environmental resources for economic activities in order to match the Harmony with Nature and Ecological Economics proposals?

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CHAPTER 2

INTERNATIONAL MIGRATION AND DEVELOPMENT: Promoting social inclusion and eliminating of all forms of discrimination against migrant workers

United Nations General Assembly

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Introduction

The advancement of the global economy in the 21st century definitely relies on migrant workers. A migrant work is defined as the one "(...) who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national" (UNITED NATIONS GENERAL ASSEMBLY, 1990, p. 262). Currently, there are more than 258 million international migrants, and 150.3 million of them are migrant workers (INTERNATIONAL ORGANIZATION FOR MIGRATION, 2019). People decide to migrate due to several reasons: some are running away from poverty or trying to provide for their families, while others are enjoying a job opportunity or looking for new markets to be entrepreneurs[2].

Currently, one of the greatest challenges to international migration is to combat discrimination against migrant workers and to promote their social inclusion in host countries. The International

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2 For the purposes of this chapter, we do not consider refugees in the category of migrants, since refugees are forced to leave their country due to persecution, danger of war or mass human rights violations (UNITED NATIONS, 2019).

Labour Organization (ILO) Convention concerning Discrimination in Respect of Employment and Occupation defines discrimination as "any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation" (INTERNATIONAL LABOUR ORGANIZATION, 1958).

Many migrant workers, especially those employed in unskilled jobs, face exploitative work conditions and suffer job discrimination for being foreign. In many destination countries, there are employers who pay unfair salaries to migrant workers and do not provide them with labor rights, such as social benefits, health and safety protection, the right to notice before dismiss and the right to join unions. Because of that, migrant workers can be easily exposed to a situation of exploitation, abuse and even violence at work (TARAN; GÄCHTER, 2015, p. 6).

Another form of discrimination is the disrespect for the diversity migrant workers bring with them in terms of nationality, race, ethnicity, religion, language, among other social and cultural differences. Many host societies tend to marginalize groups of migrants socially and geographically. Intolerance and violence, xenophobia and the construction of ghettos are the worst outcomes of this type of discrimination against migrant workers (TARAN; GÄCHTER, 2015, p. 5).

In the last decade, discrimination against migrant workers has increased as a result of restrictive migration policies adopted by many United Nations (UN) Member States, especially mass-migrant receiving countries. Restrictive migration policies are usually based on a traditional – often groundless – view that migrant workers jeopardize local economy and steal jobs from national workers (UNITED NATIONS GENERAL ASSEMBLY, 2018 b, p. 7).

Against this perception, the UN has developed, since the 1990s, a series of studies and researches that confirm the positive contribution made by migrant workers to the development of both country of origin and country of destination. Migrant workers contribute to financing for development, to the improvement of skills in the labor market and to the creation of new businesses and jobs (UNITED NATIONS GENERAL ASSEMBLY, 2018 b, p. 7).

The topic "International migration and development" was introduced in the agenda of the United Nations General Assembly (UNGA) Second Committee in 1994, focusing on the contribution of migrant workers to development. Currently, the Second Committee has the task of bringing UN Member States to the negotiation table in order to set up international policies and legislation that guarantee equal treatment between national and migrant workers.

The objective of this chapter is to discuss the evolution of the legal framework regarding the elimination of discrimination against migrant workers and the challenges to guarantee an equal treatment and social inclusion in host countries. In the first section, it will be discussed the existing international conventions that guarantee the rights of migrant workers, highlighting the principle of equality of treatment. Then, the second section will present the UNGA High-Level Dialogues established in the 2000s with the purpose of creating a common view about the need to protect migrant workers against discrimination. The third section will analyze the role of the 2030 Agenda for Sustainable Development and the Global Compact for Migration in enhancing the positive contribution of migration to sustainable development. The chapter will end with some questions for debate.

International legal framework regarding the rights of migrant workers

Migrant workers had a fundamental role in the reconstruction of Europe after the Second World War. Although the two main

international documents adopted in the 1940s, the UN Charter (1945) and the Universal Declaration of Human Rights (1948), had not presented specific provisions to the phenomenon of migration, they set a broader framework for considering the human rights of migrants.

The UN Charter, in its Article 55, established as an international goal the promotion of full employment and higher living standards while respecting human rights for all, without any distinction (UNITED NATIONS, 1945). In Article 7 of the Universal Declaration of Human Rights, every person is considered equal before law and is entitled to equal protection against any discrimination. In Article 23, it is stated that every person has the right to work, to just remuneration and work conditions, and to join unions (UNITED NATIONS, 1948).

The first international legal instrument establishing the human rights of migrant workers was the ILO Convention concerning Migration for Employment (Revised) 1949 (No. 97). For the first time, the principles of equality of treatment and non-discrimination against migrant workers were universally applied. In its Article 6, the Convention stated that "Each Member for which this Convention is in force undertakes to apply, without discrimination in respect of nationality, race, religion or sex, to immigrants lawfully within its territory, treatment no less favourable than that which it applies to its own nationals" (INTERNATIONAL LABOUR ORGANIZATION, 1949). Equal treatment between national and foreign workers should be guaranteed in the following areas: living and working conditions; remuneration; social security; employment taxes; and access to justice.

The 1949 Convention was a useful international instrument to address migration flows in the 1950s and 1960s, a period marked by the economic boom and the improvement of living standards.

In these decades, most international migrants were skilled men from developing countries occupying permanent job positions in developed countries. The situation was different in the 1970s, when the pattern of international migration started to change from permanent skilled migrant workers to temporary unskilled ones. The number of irregular migrants[3] also started to raise, and they were more vulnerable to situations of discrimination, abuse and exploitation (UNITED NATIONS GENERAL ASSEMBLY, 1994, p. 114).

In order to address those changes, ILO Member States adopted the Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers 1975 (No. 143). This Convention determined that Member States had to "(...) respect the basic human rights of all migrant workers" (INTERNATIONAL LABOUR ORGANIZATION, 1975). Besides the principle of equality of treatment between national and migrant workers, Article 10 of the Convention recognized the principle of equality of opportunity. Equality of opportunity entailed equal access to employment, social security, trade unions and cultural rights. Article 12 indicated that States should adopt special social policies to enable migrant workers to have access to the same opportunities as nationals.

Even the new provisions included in the 1975 Convention were not enough to manage the increase in international migrant flows in the 1970s. In its Resolution 34/172, of 17 December 1979, entitled "Measures to improve the situation and ensure the human rights and dignity of all migrant workers", the UNGA stated that migrant workers were still not able to exercise their labor rights as defined by relevant international instruments. Considering that it was necessary to take further actions, the Assembly decided to

3 Irregular migrants are those undocumented or in irregular situation, which means that they do not comply with the migration policies established by receiving countries (UNITED NATIONS GENERAL ASSEMBLY, 1990, p. 263).

create a working group open to all Member States and chaired by Mexico, with the purpose of drafting a special UN convention on the protection of the rights of all migrant workers and their families (UNITED NATIONS GENERAL ASSEMBLY, 1979, p. 189).

The drafting and negotiation of this UN convention took 11 years to be completed, a reflection of the challenges surrounding the most comprehensive and legally binding document regarding the human rights of all migrants, without any type of discrimination, such as sex, race, ethnicity, religion, age, language and nationality. UN Member States only adopted the International Convention on the Protection of the Rights of all Migrant Workers and their Families on 18 December 1990.

In the preamble of the Convention, Member States indicated that they were aware of the problem of non-sufficient recognition of the rights of migrant workers and their families worldwide. Due to this, migrant workers – especially irregular ones – continued suffering from discriminatory policies and were employed under less favorable work conditions. The Convention had the purpose of establishing additional rights to regular migrants as a way to encourage all migrants and employers to consider and respect the laws established by the concerned States (UNITED NATIONS GENERAL ASSEMBLY, 1990, p. 262).

With the purpose of combating incitement to discrimination, hostility and even violence against migrant workers, the 1990 Convention recognized, in its Article 12, that migrant workers and members of their families had liberty to have or adopt a religion or belief of their own choice. Migrant workers should not suffer any form of coercion that could impair this right (except in cases of public order and safety or the need to protect the human rights of others) (UNITED NATIONS GENERAL ASSEMBLY, 1990, pp. 263-264).

Addressing working conditions, Articles 10, 11, 25 and 54 of the Convention established that Member States should prevent inhumane living and working conditions, degrading treatment and physical and sexual abuse. Article 43 ensured that migrant workers have access to educational, health, housing and social services, so they could enjoy better living standards. In terms of labor rights, Article 54 established equal treatment in the following areas: "(a) Protection against dismissal; (b) Unemployment benefits; (c) Access to public work schemes intended to combat unemployment; (d) Access to alternative employment in the event of loss of work or termination of other remunerated activity" (UNITED NATIONS GENERAL ASSEMBLY, 1990, p. 268).

The UN Convention would only enter into force if it had a minimum of 20 ratifying States[4]. However, many mass-migrant receiving countries, such as the United States and some Western European countries, refused to sign the Convention. Some expressed their concern that the document gave too many human rights to migrants. While others justified their position by stating that, since it was a legally binding document, it could mean a possible breach of their sovereignty in respect to the control of their borders and population flows (UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION, 2005, p. 13).

The effects of globalization in the 1990s – such as the rising of economic inequalities, unemployment and poverty – led to an increase of nationalism, xenophobia and acts of racist violence against migrant workers. In this context, the non-ratification of the UN Convention was a major setback, because there was not an international framework to protect migrant workers from these actions.

4 The ratification process implicates that "(...) the legislative or law-making branch of its government has adopted the Convention, and promised to incorporate it into its national laws" (UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION, 2005, p. 11).

As a way to fight against this worrisome situation, the UN decided to mainstream a more positive view about the contribution of international migration to the promotion of development. That was done for the first time in the International Conference on Population and Development (ICPD), held in Cairo in 1994. Chapter X of the ICPD Programme of Action addressed the issue of International Migration, recognizing the need to combat racism and discrimination against migrant workers as a way to take full advantage of their role in promoting development (UNITED NATIONS POPULATION FUND, 1994, pp. 85-86).

Following the conclusions of the ICPD Programme of Action, the UNGA decided, for the first time, to include the topic "International Migration and Development" in the agenda of the Second Committee. With that, UN Member States would meet, biannually, to make recommendations on the issue and keep the dialogue between countries of origin and countries of destination in order to guarantee the rights of migrant workers (UNITED NATIONS GENERAL ASSEMBLY, 1994 b, p. 1). In the next session, it will be addressed the 2000s and the new international efforts to guarantee the elimination of discrimination against migrant workers.

Leveraging equality of opportunity and treatment for migrant workers: The High-level Dialogues on International Migration and Development

On 14 March 2003, the 1990 Convention was finally able to enter into force, when the minimum of 20 countries – mainly from Central and South America, Eastern Europe, Africa and Asia – ratified the document. However, these ratifying States were not mass-migrant receiving countries. This meant that the Convention would have small impact, since only a minority of migrants would be protected by its provisions (UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION, 2005, p. 10).

The low number of ratifying States was a reflection of the little interest of many mass-migrant receiving countries to make greater commitments towards guaranteeing the rights of migrant workers in the beginning of the 21st century. According to the Special Representative of the Secretary-General of the United Nations on International Migration and Development, "the situation was grim. Distrust among states was commonplace. The notion that migration could be constructively discussed at the United Nations was widely dismissed" (SUTHERLAND, 2013).

As a way to overcome this lack of commitment, in its Resolution 58/208, of 23 December 2003, the UNGA decided to organize a High-level Dialogue on International Migration and Development in 2006. This would be a non-binding meeting with the objective of allowing Member States "(...) to identify appropriate ways and means to maximize its development benefits and minimize its negative impacts" (UNITED NATIONS GENERAL ASSEMBLY, 2003, p. 4).

The First High-level Dialogue on International Migration and Development was held in New York on 14 and 15 September 2006. This meeting was providential, because in the mid-2000s, discrimination against migrants was on the rise. Research conducted in Western European countries showed that employers were hiring migrants based on many forms of discrimination, including xenophobia, racism and cultural stereotypes, which led to the social exclusion of migrant population:

> In France, immigrants and descendants of immigrants reported that they were routinely subjected to negative treatment related to their origin, skin color, name or speech [...] in Germany, of 1,000 Turkish people surveyed in 2004, over 56 per cent stated that they had experienced discriminatory treatment at their workplace [...]. The surveys describe issues such as

> racist insults and harassment at the workplace, being treated unequally regarding wages [...] and also being unfairly selected for dismissal (WRENCH, 2011, p. 11).

Member States did not take any formal decisions on this first High-level Dialogue, but it was an important occasion to start renewing efforts on the issue. Participants emphasized that fighting against all types of intolerance and promoting social integration of migrants required educational and informational campaigns in order to show their positive contribution to host societies (UNITED NATIONS GENERAL ASSEMBLY, 2006, p. 3).

Another issue under consideration was the need to adapt labor migration laws in view of the relatively high number of female migrants. Migration policies had to be gender sensitive and offer better protection to women, because they have faced greater risks when migrating and have been more susceptible to undesirable low-paid jobs. Furthermore, participants highlighted the need for policies focused on facilitating entrepreneurship initiatives conducted by female migrants (UNITED NATIONS GENERAL ASSEMBLY, 2006, p. 4).

By the end of the First High-level Dialogue, nearly all participants expressed an interest in continuing a global dialogue on international migration and development. Due to this, the UNGA decided to hold a Second High-level Dialogue on International Migration and Development on 3-4 October 2013 at the UN Headquarters (UNITED NATIONS GENERAL ASSEMBLY, 2013 b, p. 1).

For the Second High-level Dialogue, the Secretary-General Ban-Ki Moon released an eight-point agenda of action[5] entitled "Making

5 The eight points proposed by the Secretary-General were: 1. Protect the human rights of all migrants; 2. Reduce the costs of labor migration; 3. Eliminate migrant exploitation, including human trafficking; 4. Address the plight of stranded migrants; 5. Improve public perceptions of migrants; 6. Integrate migration into the development agenda; 7. Strengthen the migration evidence base; 8. Enhance migration partnerships and cooperation (UNITED NATIONS GENERAL ASSEMBLY, 2013 a, pp. 20-22).

migration work". In his report, he stated that the 2008 global economic and financial crisis contributed to fuel anti-immigrant sentiments and even acts of violence against migrants. He expressed his concern about the widespread notion that migration is a reflection of lack of development, rather than an essential tool for it. In order to counter these misperceptions, his report presented data confirming the positive contribution of migration to development:

> A common misperception is that every job taken by an immigrant is one fewer for a native-born worker. A recent study including 14 OECD destination countries and 74 origin countries for the period from 1980 to 2005 demonstrated that immigration increases employment one for one, implying no crowding-out of native-born workers. Immigration tends to increase total economic output: by increasing domestic demand for goods and services, migrants create jobs. In the United States, for example, it was found that immigrants contributed 32 per cent of GDP growth in the period from 2000 to 2007 (UNITED NATIONS GENERAL ASSEMBLY, 2013 a, p. 10).

As the first point of his action agenda, the Secretary-General called upon Member States to truly commit towards guaranteeing and protecting human rights of all migrants. For him, all barriers migrants face in exercising their rights and accessing social and work protection should be removed. Stronger criminal justice and law enforcement was cited as crucial to combat xenophobic acts against migrants. The Secretary-General also emphasized that Member States should draw their attention to guaranteeing specific rights to migrant groups that are more vulnerable to discrimination, such as women and children (UNITED NATIONS GENERAL ASSEMBLY, 2013 a, p. 14).

The fifth point of the agenda was about improving public perceptions of migrants. An effective way to combat discrimination, xenophobia and intolerance against migrants would be improving

public awareness about the relevant role they play to the development of both countries of origin and destination. In practical means, these awareness efforts would be promoted through a partnership between governments, international organizations, the private sector, labor unions, educational institutions and the media (UNITED NATIONS GENERAL ASSEMBLY, 2013 a, p. 21).

In the occasion of the Second High-level Dialogue, participants focused on how to implement the eight-point agenda of action, and its outcome was a declaration adopted by the UNGA as Resolution 68/4, of 3 October 2013. In the preamble of the Declaration, representatives present in the Dialogue committed themselves to work towards a non-discriminating agenda on international migration. With a strong language, participants condemned all acts of discrimination against migrants and urged States to reinforce laws in order to prosecute those who commit such acts (UNITED NATIONS GENERAL ASSEMBLY, 2013 b, p. 3).

An important outcome of the Second High-level Dialogue was the recognition that international migration is a major force of development for countries and that it should be addressed coherently in the elaboration of the post-2015 development agenda, which will be discussed in the following section.

The 2030 Agenda and the Global Compact for Safe, Orderly and Regular Migration: including migrant workers in sustainable development

Although international community had already recognized migrants' positive contribution to development, the Millennium Development Goals (2000-2015) did not address the role of migration. Due to this, the negotiation of the UN post-2015 Development Agenda would require greater international cooperation in addressing the challenges to ensure a safe and orderly migration.

On 25 October 2015, the UNGA adopted its Resolution 70/1, entitled "Transforming our world: The 2030 Agenda for Sustainable Development". The 2030 Agenda is a 15-year-long "plan of action for people, planet and prosperity", with the promise of "leaving no one behind" (UNITED NATIONS GENERAL ASSEMBLY, 2015 b, p. 1). In this agenda, Member States recognized the need to ensure, by international cooperation, human rights and humane treatment for all migrants.

The 2030 Agenda comprises 17 Sustainable Development Goals (SDGs[6]), and there are three targets related to international migration. Goal 8, Target 8.8, establishes the protection of labor rights and safe working environment for migrants, including female workers in precarious jobs. Goal 10, Target 10.7, addresses the need of facilitating international mobility by the implementation of planned and well-managed migration policies. And Goal 10, Target 10.C, calls for reducing the transaction costs of migrant remittances to less than three per cent[7] (UNITED NATIONS GENERAL ASSEMBLY, 2015 b, p. 20; p. 22).

The adoption of the 2030 Agenda happened simultaneously with the so-called "European migration crisis". The influx of migrants to Europe in 2015 reached worrisome levels as the Mediterranean basin became a dangerous route of migrants and refugees from Syria, Iraq and Afghanistan (UNITED NATIONS GENERAL ASSEMBLY, 2015 a, p. 1).

In this scenario, the lack of a specific SDG to deal with international migration constituted a major gap in international

6 The 2030 Agenda encompasses 17 Sustainable Development Goals and 169 targets.

7 Prior to the establishment of the 2030 Agenda in September 2015, UN Member States adopted the Addis Ababa Action Agenda (AAAA), responsible for outlining ways to finance the implementation of the SDGs. The AAAA provides a framework to reduce the cost of migration by promoting safer and cheaper monetary and financial transactions and lowering the costs of recruiting migrant workers (UNITED NATIONS GENERAL ASSEMBLY, 2015, p. 10).

framework to handle the increase of migration flows in an effective way. According to Browne and O'Brien (2015, pp. 2-3), this is one of the major gaps of the 2030 Agenda: "beyond facilitating remittances and protecting labor rights, the responsibilities of the host countries in assimilating growing numbers of migrants are not mentioned, despite the fact that immigration has become a hot political issue".

Due to this gap, only two months after the adoption of the 2030 Agenda, the UNGA realized it was necessary to hold a High-level meeting with the objective of managing the migration crisis. The UN Summit for Refugees and Migrants was scheduled to happen in 2016 (UNITED NATIONS GENERAL ASSEMBLY, 2015 a, p. 1).

As a preparation for the Summit, the UN Secretary-General, António Guterres, presented the report entitled "In safety and dignity: addressing large movements of refugees and migrants". He stated that when migrants are marginalized, social tensions raise and it prevents host countries from taking full advantage of migration. Therefore, he emphasized the importance of outlining better approaches to social and economic inclusion of migrant workers, such as equal access to education, language training, health, employment, cultural life and justice (UNITED NATIONS GENERAL ASSEMBLY, 2016 a, p. 16).

Concerned with the rise of xenophobia and hatred speech against migrants, the Secretary-General launched the Together Campaign, with the objective of putting migrants, refugees and host communities in personal contact, so they could share values of tolerance and respect as a way of combating discrimination. As a final recommendation, the Secretary-General stated that the UN would only be able to prevent discrimination and promote social inclusion of migrants by the creation of a global compact on safe, regular and orderly migration (UNITED NATIONS GENERAL ASSEMBLY, 2016 a, p. 15).

The UN Summit for Refugees and Migrants was held on 19 September 2016 at the UN Headquarters. In its final document – the New York Declaration for Refugees and Migrants – Member States strongly condemned increasingly xenophobic and racist responses to refugees and migrants:

> We strongly condemn acts and manifestations of racism, racial discrimination, xenophobia and related intolerance against refugees and migrants, and the stereotypes often applied to them, including on the basis of religion or belief. Diversity enriches every society and contributes to social cohesion. Demonizing refugees or migrants offends profoundly against the values of dignity and equality for every human being, to which we have committed ourselves. Gathered today at the United Nations, the birthplace and custodian of these universal values, we deplore all manifestations of xenophobia, racial discrimination and intolerance. We will take a range of steps to counter such attitudes and behaviour, in particular with regard to hate crimes, hate speech and racial violence (UNITED NATIONS GENERAL ASSEMBLY, 2016 b, p. 3).

The greatest achievement of the New York Declaration was the commitment to a process of intergovernmental negotiations leading to the creation of the Global Compact for Safe, Orderly and Regular Migration, as recommended by the Secretary-General in his report. The compact should address, in its content, measures to promote the inclusion of migrants in host societies; guarantee access to basic services for migrants, with a gender-responsive view; and eliminate discrimination, intolerance, xenophobia and racism against migrants (UNITED NATIONS GENERAL ASSEMBLY, 2016 b, p. 23).

The Global Compact for Safe, Orderly and Regular Migration was adopted by the UNGA on 11 December 2018, in Marrakech. After two years of hard negotiations, the Compact is the first global

commitment that address international migration in an integrated way, even though it is a non-legally binding document. It was built on the premise that international migration is fundamental for the promotion of sustainable development of host and parent countries, and its benefits can be optimized by international cooperation (UNITED NATIONS GENERAL ASSEMBLY, 2018 c, p. 3).

The Global Compact has 23 objectives, with the view of ensuring better international migration governance. In its Objective 6, Member States committed themselves to ensure decent work for all migrants by reviewing its policies towards recruitment and labor rights. Measures to improve the situation of migrants working in the informal economy – especially of female migrant workers in domestic work or unskilled jobs – should be a priority. Member States have to adopt measures to prevent all forms of abuse or exploitation of migrant workers, both regular and irregular ones, with special attention to combat sexual and gender-based violence (UNITED NATIONS GENERAL ASSEMBLY, 2018 c, p. 15).

In its objective 16, the Global Compact states measures to empower migrants as a means to promote inclusion in host societies. Member States agreed to facilitate social integration of migrants by fostering diversity and promoting acceptance. They further committed to reduce inequalities between migrants and nationals and avoid polarization in policies and institutions that work with migration (UNITED NATIONS GENERAL ASSEMBLY, 2018 c, p. 24).

Objective 17 entails measures to eliminate all forms of discrimination towards migrants. Since structural discrimination has been present in many host societies, the Compact acknowledges the importance of reinforcing legislation to penalize discrimination and hate crimes and training public officers to identify and respond to such crimes. It also acknowledges the importance of creating

mechanisms to prevent public authorities from constructing migrant profiling mechanisms based on stereotypes or any other discriminatory views (UNITED NATIONS GENERAL ASSEMBLY, 2018 c, p. 26).

The Global Compact also comprises measures to raise awareness about the positive contributions of migration to development. Public discourse based on evidence and partnerships between governments, civil society organizations and the private sector are crucial to promote a constructive perception of migrants (UNITED NATIONS GENERAL ASSEMBLY, 2018 c, p. 25).

Despite its fundamental role in creating a global framework to manage migration globally, the Global Compact was not adopted by consensus. The document was adopted with 152 votes in favor; 5 against – these being the Czech Republic, Hungary, Israel, Poland and the United States and 12 abstentions[8] (UNITED NATIONS GENERAL ASSEMBLY, 2018 a).

Regarding the position of political groups about the adoption of the Global Compact, the representative of Namibia, speaking on behalf of the African Group, said that it was unfortunate to put the Compact to a vote. Since it is not legally binding, the African Group stated that "all Member States should defend the agreement, strive to ensure its best possible implementation and protect it from politicization" (UNITED NATIONS GENERAL ASSEMBLY, 2018 a).

The Group of 77 and China highlighted that migration flows need a better administration to enhance the benefits for both countries of origin and destination. For them, the Global Compact

8 The countries who abstained were: Algeria, Australia, Austria, Bulgaria, Chile, Italy, Latvia, Libya, Liechtenstein, Romania, Singapore and Switzerland. Also, there were 24 non-voting States: Afghanistan, Antigua and Barbuda, Belize, Benin, Botswana, Brunei Darussalam, Democratic People's Republic of Korea, Dominican Republic, Guinea, Kiribati, Kyrgyzstan, Micronesia (Federated States of), Panama, Paraguay, Sao Tome and Principe, Seychelles, Slovakia, Somalia, Timor-Leste, Tonga, Trinidad and Tobago, Turkmenistan, Ukraine and Vanuatu (UNITED NATIONS, 2018).

is an important step towards mainstreaming migration as an enabler of development. The group also expressed its commitment to protecting the human rights of migrant children (UNITED NATIONS GENERAL ASSEMBLY, 2018 e, p. 2).

The Community of Latin American and Caribbean States (CELAC) and the group of Least Developed Countries welcomed the Compact's provisions regarding the role of migrant workers in financing development. Both groups called on Member States to reduce remittance costs and to promote affordable financial services to migrants (UNITED NATIONS GENERAL ASSEMBLY, 2018 d, p. 3; UNITED NATIONS GENERAL ASSEMBLY, 2018 f, p. 4).

As for the delegations who voted against the adoption of the document, the United States justified its vote by saying that the Compact would hurt its sovereignty since it can be considered a stepping stone to build-up a legally binding customary international law on the issue. According to the country, "decisions about how to secure its borders, and whom to admit for legal residency or to grant citizenship, are among the most important sovereign decisions a State can make, and are not subject to negotiation, or review, in international instruments, or forums" (UNITED NATIONS GENERAL ASSEMBLY, 2018 a).

So far, the Global Compact is the most comprehensive international framework to deal with the situation of migrants and their respective needs. Now, the challenge is to guarantee its implementation and further its provisions, so all migrants can truly benefit from sustainable development, as envisioned in the 2030 Agenda.

Final considerations

Since 1994, the UNGA Second Committee has been discussing the topic International Migration and Development with the

objective of creating a consensus towards the evidence-based benefits of migration to development. If properly regulated, international migration has the potential of increasing income, creating new jobs and generating better living conditions to both host and origin countries. However, countries cannot take full advantage of migration if problems such as discrimination, marginalization and social exclusion of migrants are not dealt with appropriate national, regional and international policies.

Thus, the elimination of all forms of discrimination against migrants and the establishment of policies designed to promote their integration in host societies must be a primary concern to States. In order to do so, increasing the number of ratification to the 1990 Convention is crucial, since it guarantees equal treatment between migrants and nationals as well as the human rights of all migrants. Currently, only 51 States have ratified this document, while mass-migrant-receiving countries, such as the United States and countries from the European Union have not even signed the Convention (UNITED NATIONS GENERAL ASSEMBLY, 2018 b, p. 5). This means that the majority of migrants – which are based in these countries – are not under the protection of this central international instrument.

In this context, the adoption of the Global Compact for Safe, Orderly and Regular Migration has been a great achievement, being the first document that outlines a global governance for international migration. However, it continues to be a divisive political issue at the UN due to States' concern about sovereignty and the predominance of the traditional view of migration as a threat to development. Consequently, the Compact has some limitations. Firstly, the international community still lacks a global legally binding document about migration. Secondly, the Compact does not offer detailed provision on how to put it into practice, such as means

of implementation and international mechanisms of monitoring and review. Thirdly, many countries that voted in favor of the document have now suggested their intention to pull out of the Compact.

Finally, UN Member States have to address three main challenges in order to promote social inclusion and eliminate all forms of discrimination against migrant workers, as a way to make migration a true enabler of sustainable development:

i. How can the UN convince Member States that ratifying the conventions about migrants' human rights is the best way for protecting the sovereignty of States, since it will increase the benefits of migration and minimize its negative impacts?

ii. How can Member States make use of a culture of peace in order to eliminate all forms of discrimination against migrants, especially xenophobic and violent acts?

iii. What are the measures that Member States can take to expand social inclusion and integration of all migrants?

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CHAPTER 3

INTERNATIONAL COOPERATION AGAINST THE WORLD DRUG PROBLEM[1]

United Nations General Assembly

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Introduction

The Third Committee of the General Assembly has been discussing the topic "International Drug Control" since 1998. Before that, the topic was part of the agenda of the Economic and Social Council (ECOSOC). It was introduced in the Third Committee through the 2004 Report of the Secretary General, Kofi Annan, with the title "International cooperation against the world drug problem". In the Third Committee, the discussion on international drug control changed its focus from traditional economic issues to social and humanitarian issues, which brought a human rights approach to the topic.

The Third Committee discusses agenda items pertaining to a multitude of "social, humanitarian affairs and human rights issues that affect people all over the world" (UNITED NATIONS, 2019 a). The Committee deals with a variety of topics, thus international drug control is discussed with a special regard to human rights and the consequences of drug abuse among the most vulnerable groups of society.

The international treaties concerning international drug control focus on production, manufacturing and trafficking

1 This chapter was revised and corrected by Professor Roberta Silva Machado. The authors would like to thank her for the inputs, comments and corrections, which were essential to the content and structure of the chapter.

of substances. In 1961, 73 Member States signed the Single Convention on Narcotic, which aimed at overruling the other multilateral agreements among nations concerning drug control, increasing, therefore, the possibility of controlling and eliminating drug trafficking through means of multilateral cooperation (UNITED NATIONS, 2013, p. 8). After the adoption of the Single Convention on Narcotic, States adopted its Protocol in 1972, the Convention on Psychotropic Substances in 1971, and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances in 1988.

The 2030 Agenda for Sustainable Development, adopted by the General Assembly in 2015, reinforced the human rights approach given to the discussion of the topic "International drug control". Sustainable Development Goals 3 and 16 are, respectively, to "ensure healthy lives and promote well-being for all at all ages" (UNITED NATIONS, 2018, p. 5) and to "promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels" (UNITED NATIONS, 2018, p. 12), and they emphasize that prevention, rehabilitation and strong institutions are key factors to counter the world drug problem.

The main purpose of the chapter is to analyze the human rights approach to the topic "International Drug Control", presented in the reports of the Secretary-General, especially the main cross-cutting issues related to it, such as prevention of drug abuse among vulnerable groups – the youth, women and the elderly. In addition, the chapter presents the most recent reports of the United Nations Office on Drugs and Crime (UNODC) concerning those issues, in order to raise awareness about the drug problem around the world.

The chapter will be divided into three main sections. The first section analyzes the historical background of the topic, in which

are presented the Conventions that shaped the traditional approach to international drug control. Moreover, the section analyzes the reports of the Secretary-General from 1998 until 2013, which introduced the humanitarian approach to the topic. The second section covers recent developments of the topic, especially the main cross-cutting issues presented by the Secretary-General, such as prevention of drug abuse among the most vulnerable groups around the world: the youth, women and the elderly. In addition, the second section of the chapter addresses the connection of the topic with the 2030 Agenda for Sustainable Development (Goals 3 and 16). The last section presents the main challenges concerning the topic nowadays.

The discussion on international drug control within the United Nations system

Origins of the topic

The Single Convention on Narcotic Drugs was adopted in 1961 by the United Nations (UN) Member States. The main objective of the conference was to create a single Convention in order to decrease the number of multilateral treaties concerning the issue, as well as the number of international organs that were responsible for the control of narcotic drugs and to increase the control over the production of raw materials of different types of drugs. In order to consider amendments to the Single Convention, the United Nations adopted, in 1972, the Protocol Amending the Single Convention on Narcotic Drugs, also known as the Single Convention Protocol (UNITED NATIONS, 2013, p. 3; p. 8).

At the conference held at the United Nations headquarters, in 1961, the main themes of the resolutions adopted by the Member States concerned technical assistance on narcotic drugs, treatment of drug addicts, illicit trafficking, membership of the Commission

on Narcotic Drugs and international control machinery. Since amendments were made during the 1961 Conference, it was decided to call a new conference considering all the following amendments: Secretariat of the International Narcotics Control Board, Assistance in Narcotics Control, and Social Conditions against Drug Addiction (UNITED NATIONS, 2013, pp. 13-15).

The Single Convention Protocol contains provisions on treatment and rehabilitation for drug abuse and addiction focusing on the fight against the evil that drugs represent, even though the parties recognized the use of narcotics as indispensable for medical and scientific use. The Protocol also calls for international and universal cooperation to guarantee effective measures against the abuse of narcotics (UNITED NATIONS, 2013, p. 23).

After the adoption of the Single Convention on Narcotic Drugs, other international treaties on this issue were adopted: The Convention on Psychotropic Substances (1971) and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) (UNITED NATIONS, 2013, p. 1).

Concerned with public health and welfare, the Convention on Psychotropic Substances (1971) was adopted in order to deal with the newly created drugs, psychotropic and amphetamine drugs. These issues were not addressed properly by the Single Convention of 1961. The main topics debated at the 1971 Conference regarded the provisional application of the Convention on Psychotropic Substances pending its entry into force, and the research on amphetamine drugs. The articles agreed on the Convention were mainly about the special provisions regarding the control of preparations, limitation of use to medical and scientific purposes, provisions related to international trade, prohibition of and restrictions on export and import, measures against the abuse of psychotropic substances, and action against illicit traffic (UNITED NATIONS, 2013, p. 80; pp. 85-87; p. 90; pp. 93-94).

The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) had the main purpose of addressing the impacts of the insertion of the illicit drugs into social groups, particularly children. It also mentions the need of all parties to take appropriate measures to prevent illicit cultivation in order to protect fundamental human rights, and stopping human suffering. At this period, the UN notably showed concern towards the effects of traffic on children, owing to the fact that, worldwide, children were being used as a way of distribution and trade, as well as consumers. In addition, the growth of illicit traffic also represented a concern to the welfare of individuals and affected the economic, cultural and political foundations of society. The main themes debated were about offenses and sanctions, confiscation, extradition, mutual legal assistance and other forms of cooperation and trading (UNITED NATIONS, 2013).

The 1988 Convention against Illicit Traffic in Narcotics Drugs and Psychotropic Substances was the first one to mention the relationship between drug control and human rights issues. Concerned with the rising magnitude of trafficking, the Convention recognized that drugs constituted a great threat to human beings. The parties also recognized that measures were necessary in order to eliminate traffic and prevent the production, without disrespecting the human rights and the environment. Understanding that humans suffer because of the use of drugs, the parties adopted measures to eliminate or reduce the illicit demand for narcotic drugs and psychotropic substances (UNITED NATIONS, 2013, pp. 123-124).

In sum, the objectives of the 1961 Single Convention and its 1972 Protocol, as well as the 1971 Convention were mostly regarding the fight against traffic, financial assistance, different types of illicit drugs, limitation on production, control of drugs, limitation to medical use, and prohibition of traffic. All of those issues were related to the criminalization of production and traffic and the control of

consumption of illicit drugs. The only concern about the well-being of individuals were related to the abuse of drugs and health. However, in the 1988 Convention, due to stronger control laws that criminalize and penalize trafficking, people became the priority when dealing with international drug control, especially children.

Although the Conventions set the basic international norms related to international drug control, during the 1990s the number of addicted people and illegal traffic had increased in the world. Although there were some victories concerning those issues, because of the neutralization of a few large drugs networks that did not prevent trafficking from growing, together with abuse and addiction. States were dealing with their own domestic problems related to controlling drugs, whether it was the problem of addiction and consumption, or economic related issues such as large-scale traffic and the increase in production (UNITED NATIONS OFFICE ON DRUGS AND CRIME, 2010 pp. 71-72).

Within the UN system, international drug control was a subject discussed by the ECOSOC. Therefore, the debates focused mostly on the economic view of the problem, as well as on international cooperation among States in order to create effective measures to address the issue. When the debates moved to the Third Committee of the General Assembly, the objective was to discuss the topic under a human rights approach, focusing on the humanitarian and social matters related to international drug control (UNITED NATIONS, 2018).

The next section presents the main issues addressed on the first reports of the Secretary-General to the United Nations General Assembly on the topic “International Drug Control”.

The introduction of the topic in the Third Committee of the General Assembly

In 1998, the Secretary-General issued a report to the General Assembly (A/53/382) concerning international drug control. Cooperation among the States in a multilateral level was considered as a key factor in countering the world drug problem. Furthermore, the report also highlighted the importance of controlling the supply of narcotic drugs and psychotropic substances in order to counter the growing availability of such stimulants, particularly heroin and cocaine (UNITED NATIONS, 1998, pp. 5-7; UNITED NATIONS, 1999, p. 1).

In 1998, Member States adopted the Political Declaration in order to achieve important goals related to international drug control by the year 2008. In this sense, States would establish or strengthen strategies and policies to reduce drug use, install or enhance legislature within the States in order to combat "illicit manufacture, trafficking and abuse of amphetamine-type stimulants (ATS)" (UNITED NATIONS GENERAL ASSEMBLY, 1998, p. 3), and to achieve considerable and measurable results regarding demand reduction. Most importantly, however, the General Assembly urged Member States to apply concrete measures in order to enhance international cooperation to counter the world drug problem (UNITED NATIONS GENERAL ASSEMBLY, 1998).

From 1999 to 2003, the reports of the Secretary-General on international drug control were mostly aimed at following up the implementation of the outcome of the twentieth special session of the General Assembly, which was directed at countering the world drug problem in a cooperative manner, in which Member States committed to reduce the demand for illicit drugs, as well as the manufacture of psychotropic substances (UNITED NATIONS GENERAL ASSEMBLY, 1999; 2000; 2001; 2002; 2003).

It was only in 2004 that the topic entitled "International

cooperation against the world drug problem" was introduced at the Third Committee through a report of the Secretary-General (A/59/188). The Secretary-General focused on expressing the global trends of the previous years, highlighting that there was a 45% increase in drug abuse. The report announced key indicators for drug information systems, which included drug abuse among the general population and the youth, high-risk drug abuse, drug related mortality and morbidity and, finally, the use of services for drug problems (UNITED NATIONS GENERAL ASSEMBLY, 2004, pp. 5-7).

Moreover, the report called for the prioritization of HIV/AIDS prevention in the context of drug abuse, affirming that the practice of sharing contaminated needles and syringes among injecting drug users was still a significant form of HIV transmission in practically all regions of the world. Additionally, it was observed that the increase in manufacturing, trafficking and abuse of amphetamine-type stimulants (ATS) had a great effect worldwide. In 2003, approximately 38 million people used ATS (UNITED NATIONS GENERAL ASSEMBLY, 2004, pp. 7-8).

Other important topics addressed by the Secretary-General in his report included countering money-laundering, strengthening and further developing the UNODC programs with a focus on "reduction of poverty, the empowerment of women, the creation of new sources of livelihood and the protection of the environment" (UNITED NATIONS GENERAL ASSEMBLY, 2004, p. 12).

Furthermore, the Secretary-General emphasized the actions made by the United Nations system in order to help States accomplish their goals outlined by the twentieth special session and effectively achieve significant progress in reducing demand and supply of illicit drugs by 2008 (UNITED NATIONS GENERAL ASSEMBLY, 2004, p. 17).

The report of the Secretary-General of 2005 (A/60/130) introduced a new issue to the topic of international cooperation

against the world drug problem, namely alternative livelihoods and protecting the environment, in order to stress the work of the Organization in favor of promoting "sustainable livelihoods on providing support to the design and implementation of quality alternative development programs and projects in all key regions producing illicit drugs" (UNITED NATIONS GENERAL ASSEMBLY, 2005, p. 18).

The Secretary-General also concluded that there had been a significant increase in the actions of Member States to enhance the legal framework to counter the manufacture, trafficking and abuse of synthetic drugs, creating and adopting legislation against money laundering. Notwithstanding, the report reinforced that there was still much to be done, especially in relation to the deployment of legislative procedures adopted in relation to international cooperation (UNITED NATIONS GENERAL ASSEMBLY, 2005, p. 19).

In 2006, the report of the Secretary-General (A/61/221) presented a topic exclusively dedicated to the need of further adherence to the international conventions related to international drug control. He reminded that the General Assembly resolution 60/178 "urged all States to ratify or accede to, and States parties to implement, all provisions of the drug control treaties" (UNITED NATIONS GENERAL ASSEMBLY, 2006, p. 7). Moreover, the report followed the outcome of the 2005 World Summit, in which the States discussed adverse effects displayed by multiple factors, namely the world drug problem and its negative impact on development, peace and security as well as human rights (UNITED NATIONS GENERAL ASSEMBLY, 2006, p. 5; p. 7).

Another important topic addressed by the Secretary-General was "Drug abuse prevention, treatment and rehabilitation", in which he commended the work of the UNODC in favor of a better method of dealing with drug abuse and its consequences to societies. In favor

of a more comprehensive approach, the UNODC was favoring the implementation of a rehabilitation plan, focusing on four main areas:

> (a) establishing and coordinating an international network of resource centres for the treatment and rehabilitation of drug abusers; (b) synthesizing and disseminating, through the UNODC Drug Abuse Treatment Toolkit series (...), current knowledge on what works in the treatment and rehabilitation of drug abusers; (c) building the capacity of treatment professionals at resource centres in order to increase their impact in their respective subregions; and (d) helping expand that knowledge by demonstrating, diversifying and enhancing treatment projects (UNITED NATIONS GENERAL ASSEMBLY, 2006, p. 13).

In his 2008 report (A/68/111), the Secretary-General conveyed the important progress achieved since the implementation of the 1998 Political Declaration adopted by the General Assembly in its twentieth special session, which set the year 2008 as the deadline for the fulfillment of the goals and targets described in the Declaration. The 2008 report dealt with the actions made by the UN bodies, agencies and Member States, with an emphasis on the fact that the provisions defined in 1998 were aimed at the prevention of drug abuse and how such measures were executed in the following years (UNITED NATIONS GENERAL ASSEMBLY, 2008, p. 5).

Due to the great impact of the world drug problem on social, economic, health, political and governance aspects of societies, the Secretary-General urged Member States to continue working seriously towards enhancing and developing strategies aimed at strengthening international cooperation among States and the legal framework, in order to achieve a better response to the trends in drug usage and the growing number of users worldwide (UNITED NATIONS GENERAL ASSEMBLY, 2008, p. 23).

In his report of 2010 (A/65/93), the Secretary-General underscored the emerging issues in the previous year, for instance, the danger regarding Afghan opiates, as 92% of all opium poppies is produced in Afghanistan. The country is in a strategic location, which favors the drug routes through the Balkans and Eurasia, reaching countries such as India, China, Russia, and many countries in Europe. Additionally, the Secretary-General highlighted the rising developments in drug production trends and trafficking routes throughout Africa, and shared the concern of the agencies about the threats to security posed by these issues (UNITED NATIONS GENERAL ASSEMBLY, 2010, pp. 14-15).

Furthermore, the report also stressed that drug trafficking could lead to political instability, and that the significant impact posed by the drug trade could be observed clearly in countries from West Africa, Latin America and the Caribbean. Therefore, through the further escalation of such conflicts, threats to human rights become critical, and the work made by the Third Committee concerning this issue clearly aims at diminishing those threats (UNITED NATIONS GENERAL ASSEMBLY, 2010, pp. 15-16).

The 2013 report of the Secretary-General (A/68/126) underlined that the reduction of drug abuse had direct health and social consequences, and that "the ultimate goal is to form a common, science-based foundation for prevention work" (UNITED NATIONS GENERAL ASSEMBLY, 2013, pp. 7-8). Moreover, the Secretary-General highlighted the relevance of the principle of common and shared responsibility in countering the issue at hand as an important matter regarding regional and international cooperation (UNITED NATIONS GENERAL ASSEMBLY, 2013, pp. 7-9).

After a deep analysis of the reports of the Secretary-General on the topic "International cooperation against the world drug problem", from 1998 to 2013, it is clear that the reports addressed

the negative consequences of drug abuse, focused mainly on international cooperation and national policies related to drug control, as well as on prevention and on issues related to health and well-being.

The next section addresses the recent developments regarding the international drug problem since the adoption of the 2030 Agenda for Sustainable Development, in 2015. The main purpose of the section is to highlight the human rights approach to the drug problem, which focused on the prevention of drug abuse, rehabilitation, health and well-being of the most vulnerable groups, such as the youth, women and the elderly.

Recent developments and challenges on the international cooperation against the world drug problem

The Report of the Secretary-General of 2015 (A/70/98) addressed the preparations for the special session of the General Assembly on the world drug problem that was to be held in the following year. The basis of the special segment concerned five different discussions on key thematic areas, "drugs and health, drugs and crime, cross-cutting issues, including human rights, new challenges, threats and approaches, and drugs and development" (UNITED NATIONS GENERAL ASSEMBLY, 2015, p. 4).

The report presented the current world drug situation, which involved illicit production and trafficking of opium, cocaine, cannabis, and amphetamine-type stimulants and new psychotropic substances. Concerning social and health issues, the Secretary-General emphasized the support for Member States in order to reduce drug abuse, in a joint effort with scientists, academics, policymakers, civil society, non-governmental organizations and the private sector. The Secretary-General mentioned the UNODC Youth Initiative, which has the goal of mobilizing the youth through

social media and the organization of youth forums around the world (UNITED NATIONS GENERAL ASSEMBLY, 2015, pp. 9-10).

The report also addressed the "access to treatment, health care, including prevention of HIV/AIDS and other drug-related diseases" as an important human rights issue, due to the connection between drug abuse and HIV/AIDS (UNITED NATIONS GENERAL ASSEMBLY, 2015, p. 10). In addition, the Secretary-General emphasized the necessity of government policies directed to provide access to "prevention, treatment and care services" for women who use drugs and for women in prison, and the access to controlled drugs for medical purposes (UNITED NATIONS GENERAL ASSEMBLY, 2015, p. 11).

In 2015, the General Assembly adopted the 2030 Agenda for Sustainable Development (A/RES/70/1), which established 17 Sustainable Development Goals (SDG). The 2030 Agenda represented a great milestone within the UN, committing States, civil society and stakeholders in achieving those goals by 2030 (UNITED NATIONS, 2019). Sustainable Development Goals 3 ("Ensure healthy lives and promote well-being for all at all ages") and 16 ("Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions and all levels") addressed issues related to the world drug problem (UNITED NATIONS GENERAL ASSEMBLY, 2015, p. 14).

Target 3.5 of SDG 3, which concerns strengthening "the prevention and treatment of substance abuse, including narcotic drug abuse and harmful use of alcohol", is connected with one of the issues addressed by the Secretary-General in his reports on "International cooperation against the world drug problem" – prevention of drug abuse (UNITED NATIONS GENERAL ASSEMBLY, 2015, p. 16). Prevention, according to the reports of the

Secretary-General, is based on a human rights approach, linking prevention, health and well-being, especially concerning vulnerable groups, such as the youth, women and the elderly. On this matter lies the importance of Goal 16 in the fight against drugs and cooperation among countries, which requires strong national institutions. Effective and accountable institutions can be able to deal with drug problem through a human rights approach, which instead of only criminalizing drug abuse, could also promote rehabilitation, health, education and inclusion of individuals.

After the adoption of resolution A/RES/70/1 in 2015, the discussion concerning international cooperation against the world drug problem presented new issues. The General Assembly, in its resolution A/RES/S-30/1 of 4 May 2016, adopted the document entitled "Our joint commitment to effectively addressing and countering the world drug problem". The approach presented in the resolution emphasized the need to focus on "individuals, families, communities and society as a whole, with a view to promoting and protecting the health, safety and well-being of all humanity" (UNITED NATIONS GENERAL ASSEMBLY, 2016 a, p. 3). In addition, it further recognizes the need to ensure the appropriate mainstreaming of "gender and age perspectives in drug-related policies and programmes" (UNITED NATIONS GENERAL ASSEMBLY, 2016 a, p. 3).

Moreover, the necessity to strengthen cooperation among States' domestic authorities in all levels, in order to achieve a more successful approach against the world drug problem, was also highlighted in the resolution (UNITED NATIONS GENERAL ASSEMBLY, 2016 a, p. 3). Notwithstanding, the need of properly address the main causes and outcomes of the world drug problem, "including those in the health, social, human rights, economic, justice, public security and law enforcement fields" (UNITED

NATIONS GENERAL ASSEMBLY, 2016 a, p. 4), was established as a major concern in the years to come. Finally, the Heads of State and Government also prioritized the commitment of eliminating, by 2030, "the epidemics of AIDS and tuberculosis, as well as to combat viral hepatitis and other communicable diseases, inter alia, among people who use drugs, including people who inject drugs" (UNITED NATIONS GENERAL ASSEMBLY, 2016 a, p. 4).

As a result of the dilemmas and solutions portrayed in resolution A/RES/S-30/1 of 2016, the following reports of the Secretary-General concerning the world drug problem were leaning towards a strong focus on humanitarian approach. This is especially clear in the inclusion of the cross-cutting issues, relating drugs and human rights as a topic in the Report of 2016 (A/71/316), which meant that the Secretary-General was now addressing with special regard groups such as the youth, women, the elderly and other vulnerable members of society (UNITED NATIONS GENERAL ASSEMBLY, 2016 b, p. 11).

The Secretary-General commended the efforts of the UNODC, along with Member States, to ensure the mainstreaming of "a gender perspective into drug policies, in conformity with the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) and other relevant standards and norms" (UNITED NATIONS GENERAL ASSEMBLY, 2016 b, p. 11).

Furthermore, the UNODC released the "Guidelines for Drug Use Prevention and Drug Treatment for Girls and Women", in which it encourages policymakers and other relevant actors to "implement evidence-based prevention and treatment strategies in order to provide the skills and opportunities to prevent the initiation of unhealthy behaviors as well as optimal support to those with drug use disorders in a gender-sensitive framework"

(UNITED NATIONS GENERAL ASSEMBLY, 2016 b, p. 12). Additionally, the Report highlighted the need to implement proportionate and effective policies and responses when dealing with drug related issues, in order to ensure that the international drug control Conventions were being properly carried out (UNITED NATIONS GENERAL ASSEMBLY, 2016 b, p. 12).

In his 2018 report, the Secretary-General introduced a new and important addition to the framework of strategies related to preventing drug abuse: the second updated version of "International Standards on Drug Use Prevention", launched by the UNODC and the World Health Organization as a guideline for Member States to implement concrete strategies through the improvement in quality and coverage of drug prevention actions, with special attention to vulnerable groups such as women, the youth and children (UNITED NATIONS GENERAL ASSEMBLY, 2018, pp. 5-6).

Additionally, and most importantly, the report also tackles the cross-cutting issues, a section that was only recently included by the Secretary-General in his reports, and deals with "drugs and human rights, youth, women, children, vulnerable members of society, and communities" (UNITED NATIONS GENERAL ASSEMBLY, 2018, p. 10). This segment of the report is dedicated to many of the actions of the UN bodies and agencies in dealing with the world drug problem among vulnerable groups.

A human rights approach to the world drug problem

Why is it necessary to address prevention, health and well-being when dealing with world drug problem? Throughout the years, it became clear that the traditional approach to drug control, which focused on the fight against trafficking and criminalization, was not effective, because it did not address properly the needs of vulnerable groups, such as the youth, women and the elderly. However, the

recent changes in the approach can be observed in recent reports of the Secretary-General on the issue, presented previously in this section. The reports included a section of cross-cutting issues, which connected drugs and human rights, and presented the most affected groups, creating new methods and strategies aimed at dealing with the topic.

In this sense, the focus also changed from criminalization of drug users and consumers to prevention. According to the "International Standards on Drug Use Prevention", prevention is one of the "main components of a health-centred system to address drugs" (UNITED NATIONS OFFICE ON DRUG AND CRIME, 2015, p. 2), which provides positive results, especially regarding children and the youth.

Concerning women and drug abuse, prevention and access to healthcare treatment are key factors. The UNODC World Drug Report of 2018 states that women face "significant systemic, structural, social, cultural and personal barriers in accessing treatment for drug abuse disorder" (UNITED NATIONS OFFICE ON DRUG AND CRIME, 2018 b, p. 22). Women's drug usage patterns are significantly different from men's, and it may be related to childhood trauma, such as neglect, intimate partner violence, and child sexual abuse, which cause depression and anxiety. Consequently, women are more prompt to self-medication and drug abuse (UNITED NATIONS OFFICE ON DRUG AND CRIME, 2018 b, p. 14; p. 22).

The UNODC World Drug Report affirmed that "women make up one third of the drug users globally and account for one fifth of the global estimated number of PWID [people who injected drugs]", making women more vulnerable to "HIV, hepatitis C and other blood-borne infections" (UNITED NATIONS OFFICE ON DRUGS AND CRIME, 2018 b, p. 5). Another issue concerning women and

drug abuse is the lack of access to treatment and healthcare while they are in prison. When they are released from prison, women face discrimination in accessing healthcare and other social services, pushing them to difficult economic and social situations (UNITED NATIONS OFFICE ON DRUGS AND CRIME, 2018 b, p. 7).

The UNODC 2018 World Drug Report on drug abuse among youth and the elderly presents that, concerning young people, adolescence (12 to 14 years old and 15 to 17 years old, respectively) is a critical period, when they have their first contact with drugs. According to the report, "drug use among young people differs from country to country and depends on the social and economic circumstances of those involved" (UNITED NATIONS OFFICE ON DRUGS AND CRIME, 2018 a, p. 6). For instance, in Western countries, cannabis is the most common substance used among young people. In this sense, drug use can be related to recreational activities, such as "ecstasy", methamphetamine, cocaine or LSD, most common among young people in high-income countries. In poorer countries, or among young people living in the streets, who are subject to violence, sexual abuse and poverty, the most common substances are inhalants, such as "paint thinner, petrol, paint, correction fluid and glue" (UNITED NATIONS OFFICE ON DRUGS AND CRIME, 2018 a, p. 6).

One of the most serious issues concerning the youth and drugs are their involvement with production, manufacturing and trafficking of drugs. Due to poverty and lack of opportunities, young people are more prompt to be recruited by organized crime (UNITED NATIONS OFFICE ON DRUGS AND CRIME, 2018 a, p. 7).

Among the elderly, drug abuse are increasing, especially in Western countries. The so-called "baby boomers", who were born between 1946 and 1964, started using drugs in their adolescence and continued using substances in their adult lives. The most common

substances used by the elderly are opioids. Despite the increasing number of drug abuse among older people, little attention is dedicated to drug use disorders among them, especially to deal with physical and mental health problems. Therefore, healthcare services are not prepared to address the consequences of drug abuse among the elderly, which demand different care treatments, focusing on diseases that are aggravated due to drug abuse (UNITED NATIONS OFFICE ON DRUGS AND CRIME, 2018 a, p. 7).

The UNODC 2018 World Drug Report highlights that, in many regions of the world, healthcare services and drug treatment are inefficient, and the most vulnerable groups do not receive appropriate care related to drug abuse. The reports of the Secretary-General address the necessity of prevention through educational campaigns and programs that target the most vulnerable groups in society, especially women, the youth and the elderly.

The cooperation against the world drug problem concerns not only States and international organizations, but also civil society, non-governmental organizations and other stakeholders. The human rights approach to this issue, by focusing mostly on prevention of drug abuse, can be an effective way to diminish the most pervasive consequences of drug abuse in many societies. Unfortunately, the reality of many countries is different, since they focus on criminalization of consumers, users, and traffickers, by enhancing national security policies. Instead of focusing only on criminalization, national institutions will be more accountable by investing on education, rehabilitation and healthcare services to fight drug abuse and its consequences.

Final considerations

It is undeniable the importance of discussing drug control, and it has been a concern within the scope of the UN for decades. A

lot of progress and modifications have been made to the approach of the topic, especially the focus that has been given to the human rights approach to drug related issues, which reflected both on how the UNODC implements its programs on the field, and how the Secretary-General and, consequently, the Member States debate the topic in the Third Committee.

Currently, there is an emphasis made by the Secretary-General to properly associate the issue with the reduction of poverty and empowerment of women, relating the topic with some of the Sustainable Development Goals of the 2030 Agenda.

Considering the main issues addressed by the UNODC 2018 World Drug Report and the recent reports of the Secretary-General, it is noticeable that the vulnerable groups, such as women, the youth and the elderly, became the focus of the discussions. In addition, it is clear that one of the many challenges regarding the topic currently is how to implement the new programs and solutions proposed by the Secretary-General, other UN organs and agencies, in which all States can benefit equally from these advancements.

Finally, based on the main points of discussion presented in this chapter, it is important to address some questions:

i. How to minimize the drug abuse consequences on vulnerable groups, particularly women, the youth and the elderly?

ii. How can international cooperation provide accountable and effective institutions and law enforcement to deal with drug problem?

iii. How to facilitate the access to healthcare and treatment of people who suffer from drug addiction and drug-related diseases, such as HIV/AIDS, hepatitis C and other blood-borne diseases?

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CHAPTER 4

CHILDREN AND ARMED CONFLICT

United Nations Security Council

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Introduction

This chapter presents the issue of children and armed conflict highlighting the struggles that this vulnerable group faces during and after conflicts. Amidst a conflict and post-conflict scenarios, children are usually deprived from their homes, their families and their basic rights. They are also the ones most affected by the pervasive and long-lasting effects of conflicts. The international tools to safeguard children in armed conflict have advanced throughout the years, emphasizing the respect of human rights, but their enforcement is still insufficient. This topic is of paramount importance to the achievement of Sustainable Development Goal (SDG) 16, which aims at promoting peaceful and inclusive societies. It concerns the development of those that will lead the future, the next generation that is growing up marked by conflict-related traumas.

The topic was initially addressed by the United Nations General Assembly (UNGA), which created a mandate for a Special Representative for Children and Armed Conflict, in 1994. The goal was to raise awareness, improve protection and information collection about the situation. It was only four years later, in 1998, that the subject was inserted into the United Nations Security Council (UNSC) agenda (OFFICE OF THE SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL FOR CHILDREN AND ARMED CONFLICT, 2018 a).

The Council is described in the UN's Charter, in chapters V to VIII. The UNSC is formed by 15 Member States, being 5 of them permanent: the United Kingdom of Great Britain and Northern Ireland, the United States of America, the French Republic, the People's Republic of China and the Russian Federation. The remaining 10 members are elected for a two-year term by the UNGA. The UNSC has the mandate of maintaining the international peace and security, and for this purpose it can choose to apply different tools that range from the peaceful settlement of disputes to the use of force (UNITED NATIONS, 2019 a; 2019 b; 2019 c).

In order to analyze the topic, this chapter is divided into 3 different sections, other than this introduction. The first section will present a historical background of children and armed conflict, indicating conventions and declarations that first approached the issue of children's rights and its connection with conflict. Moreover, we will see the process of inclusion of the topic in the UN's agenda; therefore, this part will serve as a foundation to the following parts of the chapter. The second section will present the current challenges related to children and armed conflict and will suggest that the situation could be dealt with using the perspective of preventing conflicts. Finally, the third section will bring some concluding remarks and questions that should be considered while simulating the topic.

The issue of children and armed conflict addressed by the UN

The protection to children who find themselves in a situation of armed conflict was firstly introduced in the UN debates in the 1950s. It was only in 1989 that a more binding and wider document was signed, being called the Convention on the Rights of the Child. It is rather significant that a Convention dealing with the protection of children only appeared after 30 years the first document had

addressed the topic. In this section, we will present some of the International Law tools dedicated to the rights of children, highlighting the parts that mention conflicts. Next, we will show how the topic of children in armed conflict emerged as a concern to the UN and how it was included in its agenda. In this sense, we cannot forget the scenario shift during the 1990s with the outbreak of intrastate's war, which represented a special threat to the rights of children.

The international protection to children

Even though we can still identify a lack of sufficient support to children during warfare nowadays, documents highlighting the issue have been created since 1924. In the beginning of the 20th century, protection tools relating to children could only be found as parts of wider documents, usually relating to the general concern of human rights. The first declaration to single out children was the Geneva Declaration on the Rights of the Child, in 1924. It recognized children as a special and vulnerable group that lacked tailored assistance and support. The Geneva Declaration was a big step towards the guarantee of rights for the children. Nevertheless, as we shall see, it was not enough to deal with the issue of the children during a conflict (HUMANIUM, 2019).

After World Wars I and II, it became clear the need to state the rights of civilians and the military during conflicts. In 1949, the Fourth Geneva Convention, aiming at ensuring the protection of civilians, first mentioned that special attention should be directed to support children. Its 50th article stated the necessity of cooperation in order to provide the rights to children. This Convention covers children's identification, as well as their parents, in order to maintain them close to their relatives, and, in case they are orphans, the occupying power shall take measures to identify close relatives and friends.

Furthermore, the Convention determines that education[1] shall be provided to children affected by conflicts, and that they shall have access to medications, protection and food. This first document to address the situation of children in armed conflict tried to ensure the basic needs of the children regarding their social development (UNITED NATIONS, 1949, p. 24).

Its Additional Protocol I, dated 1977, also addressed the situation of children in its articles 77 and 78, which further detail how the group should be treated during conflicts. Article 77 states that children should be protected: the ones under 15 cannot be recruited to armies, and if needed, teenagers between 15 to 18 should be chosen from the oldest to the youngest. Furthermore, they shall not be sentenced to death by crimes committed, and, if arrested, should be put in camps different from the ones for adults (INTERNATIONAL COMMITTEE OF THE RED CROSS, 2010, pp. 60-61).

Equally important is article 78, which concerns the evacuation of children during conflict. The evacuation should aim at ensuring a healthy and safe environment to the child, and their family should consent to the practice. In order to guarantee the possibility of the child to return to his/her family, they should bear a card with all their personal information (INTERNATIONAL COMMITTEE OF THE RED CROSS, 2010, pp. 61-62).

Even though the Geneva Convention was an important milestone to the issue of children in armed conflicts, within the United Nations the international protection to children came later on. The issue received special attention on 20 November 1959, when the United Nations General Assembly issued the Official Declaration of the Rights of the Child, which was an updated and expanded version of the Geneva Declaration on the Rights of the Child

1 The Conventions specifically determines that children affected by wars should be ensured education under the same language, religion and national culture as their own (UNITED NATIONS, 2019 b, p. 24).

from 1924. The document provides ten fundamental principles of children's right, which should be upheld at all times. It is important to bear in mind that the principles stated in the declaration are not specific to a situation of conflict, but rather a more general statement to the inherent rights of children. The document emphasizes that children must be the first ones to receive support and that they shall be protected from different types of discrimination and given proper care, including health and social support. Furthermore, the group has the right to education, to be apart from work in early ages in order to be capable to develop themselves in personal areas, and to have a name and a nationality (WALTHER, 2003, pp. 1-2).

In 1974, through its Resolution 3318 (XXIX), the UNGA issued the Declaration on the Protection of Women and Children in Emergency and Armed Conflict. Even though this was the most comprehensive document on the issue, it had only six articles, which in general reinforced the principles listed in previous documents related to the protection of civilians. The Declaration prohibited any practice that could incur in suffering to women and children, such as bombings, torture, maiming, degrading treatment and persecution. The document, however, did not provide further information on how States should abide by these rules or to which condemnations would they be subjected if violating the Declaration (UNITED NATIONS GENERAL ASSEMBLY, 1974).

It was only in 1989 that a binding document relating to children was finally agreed upon: the "Convention on the Rights of the Child". The Convention is specific in mentioning that the protection of the child is under the Universal Declaration of Human Rights and determining that children require special care and assistance. The document focused on identifying the basic rights of every child, but only addressed their situation in armed conflicts in articles 38 and 39. While the first reinforces the idea

stated in the Fourth Geneva Convention to limit the recruitment of children for military activities, the second focused on children's recovery, both psychological and physical, and reintegration in the aftermath of conflicts. In 2002, an Optional Protocol on the involvement of children in armed conflict was added to the Convention. The document contained only 13 articles and focused on the issues of military recruitment and reintegration of former children soldiers, still failing in providing efficient tools to curb the violence against children (OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, 1990, p. 1; pp. 10-11).

Children and armed conflict as an agenda item: the challenges of the 1990s

The UN faced troubled times to protect children in the 1990s. With the end of the Cold War, warfare changed in its dynamics from being predominantly between two or more States, called interstate wars, to being between state and non-state actors, who frequently are competing to take over the government. Intrastate conflicts are usually related to identity politics[2] and, therefore, use different tactics: in this context, the goal is not only to seize new territories, but rather to exert control of the populations in these territories. This is why, as explained by Mary Kaldor (2013, p. 3), "violence is largely directed against civilians as a way of controlling territory rather than against enemy forces" and strategies as torture, forced displacement and attacks against civilians from different identity groups are usually in order. Another important trait of these intrastate conflicts is that, in general, the weaponry adopted is less complex than the ones applied in interstate wars. As non-state actors have a central role in these dynamics, they frequently adopt

2 According to Mary Kaldor (2013, p. 2), identity politics arise from issues related to ethnic, religious or social identification of different groups. In wars originated from identity politics, the aim is to ensure the dominance from one specific identity over others present in a country or region, what invariably leads to violence and war.

lighter weapons that are easier to be administered during attacks and do not require specific training (KALDOR, 2013, pp. 2-3).

In this context, children are specially under threat. The belligerent groups recruit all people they judge necessary to win, and children are always included. As specific knowledge in the battlefield is not mandatory anymore, weapons can be used by children: children soldiers become an even more frequent feature in these conflicts. Also, as violence against civilians turn into the main tactics, children are disproportionately affected, because they are not only subjected to direct violence, but they can lose their support system, meaning their family.

In the 1990s, from Somalia to Bosnia, almost all conflicts targeted violence to children. Hence, the United Nations had to deal with an overload of reports about the extreme violence to which children were subjected in these situations. Consequently, some Member States requested to the Secretary-General a report on the impact of conflict on children, and Graça Machel, a political and human rights activist, was designated to collect and organize the information on the issue. The result was the report "The Impact of Armed Conflict on Children", which highlighted how a conflict environment presents negative consequences on children, who are the first group to feel the impact of war as they are more susceptible to attacks. In the chaotic dynamics of conflict, children can be separated from their parents and left alone to survive, risking to be kidnapped or even abused. Machel suggested the nomination of a person who would act as a special envoy of the Secretary-General to this specific subject (OFFICE OF THE SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL FOR CHILDREN IN ARMED CONFLICT, 2018 a).

In December of 1997, the UNGA took note of the report in its resolution A/RES/51/77 and supported the recommendation

regarding the special representative on children and armed conflict, approving the mandate of the Special Representative of the Secretary-General for Children and Armed Conflict, whose function is to be the "(...) UN advocate for the protection and well-being of children affected by armed conflict". In this regard, the Special Representative is responsible for collecting data on countries that allegedly violate the commitments on the protection of children in armed conflicts, and to advance international cooperation on the matter[3](OFFICE OF THE SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL FOR CHILDREN IN ARMED CONFLICT, 2018 a).

It was only in 29 June 1999, that the UNSC officially included in its agenda the topic "Children in Armed Conflict" and issued a presidential statement condemning violence against children. In 25 August 1999, the Council issued resolution 1261, which contained some commitments that States were willing to comply with, such as the identification and condemnation of six grave violations against children: killing and maiming of children, recruitment or use of children as soldiers, sexual violence against children, abduction of children, attacks against schools or hospitals, denial of humanitarian access for children. The six grave violations would become a reference to the United Nations to discuss the situation of children and armed conflicts. The effective support of the Special Representative of the Secretary-General for Children in Armed Conflict, the United Nations Children's Fund (UNICEF), the United Nations High Commissioner for Refugees (UNHCR) and other parts of the UN and other important organizations that take care of related issues; the serious concern about the situation itself; and

3 Although the Representative is specially bonded to the General Assembly and the Secretariat, it also reports to other UN organs and institutions, as the UNSC and the Human Rights Council (OFFICE OF THE SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL FOR CHILDREN IN ARMED CONFLICT, 2018 a).

the encouragement of the efforts to solve the problem were also topics addressed in the document (OFFICE OF THE SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL FOR CHILDREN AND ARMED CONFLICT, 2018 b; UNITED NATIONS SECURITY COUNCIL, 1999).

In the 5235th meeting of the Security Council, on 26 July 2005, Member States approved resolution 1612, which, in addition to reinforcing their disapproval and condemnation of the situation of children in armed conflicts, created a monitoring and reporting mechanism that would inspect countries subjected to accusations of practicing at least one of the six grave violations. To overview the mechanism, the States created a working group of the UNSC that would monitor and review reports made against countries that violated the international law and, specifically, to keep a straight evaluation of the six grave violations on the nations that have been presenting problems. In this working group, all the fifteen Member States of the UNSC would analyze the complaints and the reports of any situation that reflects one of the six grave violations and then send to the Security Council so they can evaluate the best way to solve the problem (UNITED NATIONS SECURITY COUNCIL, 2005).

It is therefore right to say that effective measures on the issue of children in armed conflict began to be taken only at the beginning of the 21st century. The delay to start an official debate had serious consequences to the UNSC's capacity to adequately address the issue. In the next section, we will highlight the main obstacles and challenges facing UNSC members while addressing the topic under study.

Protection of Children as a Tool of Prevention to Armed Conflicts: identifying the challenges

The 21st century was marked by a series of cases of violence

against children in situation of conflict. In this section, we will highlight the main obstacles presented to the Council when debating this agenda item and some of the current cases related to one or more violations against children. Also, we argue that the protection of children in armed conflicts should be discussed through the lens of conflict prevention, so it could better develop long-term practices to ensure that children can have adequate conditions to live and thrive.

The effects of the absence of protection to Children and the main challenges of our decade

During conflicts, children are disproportionately affected by the direct and indirect consequences of violence. As the Secretary-General pointed out in his 2018 report, "(...) armed conflict strips away layers of protection afforded by families, society and law and children are victimized as both the targets and the perpetrators of violence" (UNITED NATIONS GENERAL ASSEMBLY; UNITED NATIONS SECURITY COUNCIL, 2018, p. 3). For children to enjoy an adequate personal development, they need correct nutrition, adequate education, a safe home, and a family structure that will guide them properly. In a situation of conflict all those basic requirements are taken from the children, what can cause enormous harm to the future life of those victims.

Consequently, the negative impacts of armed conflict on children tend to be not only worse than on adults but also long-lasting. For example, when living in conflict areas, children are often subjected to malnutrition and lack of proper healthcare, which can hinder their physical and psychological development. According to a research carried out by Save the Children to identify the psychological impacts of war on children, conflict related stress negatively impacts several areas of their lives. In Syria, the research

found out that 89% of children living in conflict zones became more fearful and nervous, while in Iraq, 43% of them are in a constant state of grief, which can significantly reduce their capacity to develop emotions and high self-esteem (GRAHAM, 2019, pp. 22- 24).

Another important issue is the restricted access to education during conflict. In this distressful scenario, children do not have a safe environment to continue attending schools and sometimes the very school building is destroyed by bombings and attacks. In the long-term, this disruption in the educational development can compromise children's access to knowledge and the development of personal and professional capacities. The lack of education will compromise the skills of the children affected and most of them will grow knowing how to manage a weapon, but not knowing how to read and write. Hence, reintegration of those children in the aftermath of conflicts brings the necessity of creating special learning programs that cover the fact that these individuals may have a disrupted education path and show considerable gaps in their acquired skills (GRAHAM, 2019, p. 25; UNITED NATIONS GENERAL ASSEMBLY, 1996, pp. 18-19).

Other than that, children also face the traditional impacts of violence that are addressed in the six grave violations, which serve as a reference to the monitoring and reporting mechanism. For children traumatized by violence, who have perpetrated crimes or witnessed them, it is not possible to simply come back to their lives. They will not be the same as when they were first abducted or recruited. Events such as murder, sexual abuses and prostitution are recurrent to children who are abducted or recruited as soldiers. People that experienced such events will naturalize these behavior patterns. Among children this could be even graver, since most of those in conflict zones understand violence as natural, because it is the only reality with which they have lived for their entire

lives. Therefore, it is not unusual to have "conflict-zone children" reproducing violence in other phases of their lives (OFFICE OF THE SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL FOR CHILDREN AND ARMED CONFLICT, 2016, p. 39).

Since the 2000s, the UNSC has been struggling with an escalation of cases around the globe in which the perpetration of one or more of the six grave violations have been identified. According to the report presented by the Secretary-General, in 2018, the Special Representative registered 6,000 violations against children perpetrated by government forces around the world, and more than 15,000 perpetrated by non-state groups. These figures are alarming because they reflect a surge in violence against children in comparison with previous reports. The more common violations have been the recruitment of children, their abduction and kidnapping, and sexual violence and abuse. The situation can be even worse, since one of the great challenges in this area is how to report and verify the practice of any of the six grave violations amidst conflicts (UNITED NATIONS GENERAL ASSEMBLY; UNITED NATIONS SECURITY COUNCIL, 2018 a, p. 3).

Unfortunately, despite some progress in raising awareness and accountability relating to the six grave violations, the Council has failed in providing children the special support they need in conflict. Every time a part in conflict, anywhere in the world, commits one or more of the six grave violations against children, it can be listed through the reporting and monitoring mechanism. The Special Representative of the SG for Children and Armed Conflict will then verify and compile the information in an annual report, presented to the UNGA and the UNSC. As we saw in the previous section, the UNSC working group created in 2005 is assigned to analyze these reports and also to follow up on conflict parties who are listed (UNITED NATIONS SECURITY COUNCIL, 2005).

Currently, 20 situations in 14 different countries have been related to the six grave violations. From the 66 parties listed in the last report, 57 are non-state actors, such as Boko-Haram and the Al-Shabaab, and 9 state actors, such as Tatmadaw Kyi (Myanmar) and Sudan People's Liberation Army (South Sudan). These numbers reveal an important obstacle to the Council's actions towards protecting children in armed conflict: the failure to ensure that parties of a conflict, either State or non-state actors, abide by the international rules of war foreseen in the international conventions presented in the second section of this chapter. As we could see, even though we still lack a more comprehensive tool related to the protection of children in armed conflict, all existent conventions and protocols condemn and prohibit the recruitment, maiming, killing, abduction and sexual violence against children. However, for all the parties listed in the SG report, these standards have not been a concern and were deliberately ignored (GRAHAM, 2019, p. 29: OFFICE OF THE SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL FOR CHILDREN AND ARMED CONFLICT, 2017, p. 4).

Another important challenge is the fact that even when parties are listed in the reporting and monitoring mechanism, they are rarely held accountable for their actions. This is either because governments refrain from imposing sanctions and other restrictions to the parties or they lack proper judicial processes. In this sense, the Council could play a key role by helping these countries to strengthen their capacities and fostering support to international organizations, such as the International Criminal Court (ICC). Finally, the third great challenge faced by the Council is the absence of proper and sustainable funding required by initiatives that aim at the recovery and reintegration of children in the aftermath of conflict. As we saw, conflicts have long-term consequences to the

lives of children and, therefore, their protection, assistance and support have also to be ensured in the long-term. This, however, is costly and many States are not willing to commit to such activities. This post-conflict assistance needs to receive more attention of the Security Council: children need special and sustainable care because they will build the future of their societies, and a society that grows marked by internal conflict, violence and terror will never offer proper conditions to the full recovery of their children (GRAHAM, 2019, p. 29; UNITED NATIONS SECURITY COUNCIL, 2018 a, pp. 3-4).

To illustrate the scenario, we will briefly present two illustrative cases of the complex situation of children and armed conflict, Colombia and the Democratic Republic of Congo. In Colombia, due to the protracted instabilities relating to drug trafficking and internal violence, the protection of children was compromised and a large scale recruitment of children for conflict and cases of murder and torture were reported. In 2017, the *Fuerzas Armadas Revolucionarias de Colombia Ejército del Pueblo (FARC-EP),* agreed on a Peace agreement with the Colombian government and became a political party. As a result, it released more than 100 children who were still held as recruits. This was possible in part due to the engagement of the UNSC Working Group that helped to forge some cooperation links between the parties and suggested political solutions to the instability. In the occasion, the Working Group also emphasized the importance of reintegrating these children into the Colombian society and offering them adequate support. However, the peace agreement did not address the roots of the problem, linked with the lack of development in the country. With FARC-EP out of the conflict dynamics, other non-state actors gained more space and resorted to the recruitment of children, as the *Ejército de Liberación Nacional (ELN),* which is currently listed in the SG report. The reintegration was also flawed and opened space to former children soldiers to be

victimized once more (UNITED NATIONS GENERAL ASSEMBLY; UNITED NATIONS SECURITY COUNCIL, 2018, pp. 8-9).

The situation in the Democratic Republic of Congo is also emblematic because the six grave violations have been committed by both State and non-state actors. In the country, the recruitment of children by all belligerent parties continue to be a common practice: around 1,050 children recruitments were reported in 2017. The number of detention of children allegedly involved with armed groups is also high, more than 290 in 2017. These children face a double burden: they suffer the consequences of being recruited and the imputations of being considered criminals, instead of being considered victims of a more complex framework. In the D.R. Congo, it has also been reported cases of torture, maiming, abduction and denial of humanitarian assistance, especially in the areas controlled by non-state groups. Sexual violence is also a major problem: in 2017, 181 cases were reported involving even the Armed Forces of the D.R. Congo (FARDC). However, most of these episodes were never reported due to the stigma that is attached to the victims: it is not unusual for women and girls that are raped to be abandoned and neglected by their families (GRAHAM, 2019, p. 23; UNITED NATIONS GENERAL ASSEMBLY; UNITED NATIONS SECURITY COUNCIL, 2018, pp. 10-11).

As both cases illustrate, the topic of children and armed conflict can be tricky and raise many different obstacles to be dealt with by the Council. In some situations, it is not only the State that should be held accountable but also non-state groups. This adds complexity to the situation. As the UN is an organization of States and the UNSC is also comprised of Member States, how can they ensure that non-state actors will also uphold international norms related to children protection? Other than that, how can the Council ensure long-term assistance and support to children who were victims of conflict? We

argue that these challenges can only be addressed if the UNSC starts to consider the topic under the umbrella of conflict prevention.

Protection of Children as a tool of Conflict Prevention

The UN has three pillars that sustain all its activities and mandate: (i) peace and security, (ii) human rights, and (iii) sustainable development. Since the surge of intrastate conflicts, in the 1990s, it became clear the reinforcing aspect that these pillars hold: without the promotion of human rights, it is impossible to enjoy peace and security, and, consequently, sustainable development cannot be reached. In this approach, the focus to deal with threats to international peace turns to the root causes of conflicts: in general, conflicts emerge from a previous fragile context, with violation of human rights and lack of development. The only way to break this vicious cycle and avoid protracted crisis is to deal with all three pillars in an effort to prevent conflicts, instead of addressing their dire consequences.

When dealing with the topic of children and armed conflict, it is clear the importance of considering the root causes of conflicts. As we presented above, growing up in a conflict zone considerably increases the chance of normalization of violence by children: when this is the only reality that they know, they will be more prone to reproduce it in their future. Also, the perpetration of the six grave violations in contexts where conflicts are mainly driven by identity politics, usually result in the perpetuation of violence across many generations. Generations who will never be able to break the cycle of violence just because they are not offered the appropriate conditions to do so. Former children soldiers, for example, or children who could not enjoy an adequate educational process due to war, may find it difficult to reintegrate in society even if the conflict is over. As a result, they will probably have to deal with poverty, hunger

and lack of access to basic rights. When facing such a vulnerable situation, violence can become a coping mechanism, and if this is the reality of not only one individual, but the whole society, we may witness the reemergence of conflict (UNITED NATIONS GENERAL ASSEMBLY; UNITED NATIONS SECURITY COUNCIL, 2018, p. 3; UNITED NATIONS SECURITY COUNCIL, 2018 a, pp. 4-5).

Furthermore, the end of a conflict will not reverse the damages in the lives of children. For the ones who took part in direct conflict, suffered abuses, and other types of violence, a peaceful and easy reintegration in society is especially difficult. It is important to pay special attention to the children, their actions and how they grow to see the impacts in the future. The assistance to the group should be continuous, being fundamental the participation of various entities to provide them the necessary support and opportunities (OFFICE OF THE SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL FOR CHILDREN AND ARMED CONFLICT, 2016, p. 39; UNITED NATIONS GENERAL ASSEMBLY, 1996, p. 18).

Hence, the UNSC can only advance and foster children's protection if its members can understand the development-peace-human rights nexus. In Resolution 2427 (2018), the Council identified children protection as a conflict prevention tool for the first time. It called Member States to mainstream children protection in their conflict prevention strategies, encouraged the cooperation with regional organizations to this end and committed to improve early warning of threats to peace relating to children. This was a significant step towards improving the situation of children in armed conflicts (UNITED NATIONS SECURITY COUNCIL, 2018 b).

Another important tool under the conflict prevention approach of this topic is the 2030 Agenda and its Sustainable Development Goals (SDGs). By ensuring and fostering sustainable development worldwide, the Agenda also assists in the strategy

to prevent those conflicts. The document identifies children as a fundamental part of the future and, therefore, focus some of its targets in creating the adequate conditions for them to thrive (UNITED NATIONS, 2018, p. 32).

In a note by the Secretary-General, regarding the possibilities to avoid new conflicts, it was mentioned that education should create the promotion of justice, approach of the human rights and peace. SDG 4 regards the education of children: in the case of children that took part in the conflict, education can help the reintegration in the community. Education supports a new path to the future and improves understanding of individual rights; furthermore, it enables youth to gather capacities to be part of the labor market. Moreover, tailored education to post conflict can help avoid conflicts, by focusing on practices such as negotiation, communication, and mediation. With new skills acquired through education, children affected by conflict can reshape their personality, distancing from the one developed during the conflict. Consequently, it becomes harder to reproduce all the violence experienced once (UNITED NATIONS GENERAL ASSEMBLY, 1996, p. 19; pp. 70-71).

SDG 16 also addresses the issue of children, since it regards the promotion of justice, peace, and strong institutions as crucial to assure human rights and further promote stability. By reinforcing justice and strengthening institutions, SDG 16 provides better conditions for children to enjoy law protection, improves the avoidance of the six grave violations, and facilitates accountability for perpetrators. Target 16.2 specifically created the commitment to "end abuse, exploitation, trafficking and all forms of violence against and torture of children" (UNITED NATIONS GENERAL ASSEMBLY, 1996, p. 39, p. 43; UNITED NATIONS, 1949).

Other than that, the overall aim of the 2030 Agenda is to advance with sustainable development until 2030. If reached,

the SDGs will also improve the lives of millions living in areas of escalating instability or former conflict zones, reinforcing the chances of sustainable peace and stability. This environment would be especially beneficial to children who would be less subjected to the dire implication of conflicts, which have been presented before.

Final considerations

This chapter briefly presented the situation of children and armed conflict, indicating the main challenges that face the UNSC when debating the topic. The situation of conflict, as was analyzed in this work, can bring a series of short and long-term consequences to the lives of children hampering their physical and psychological development.

As current reports of the Secretary-General and its Special Representative to Children and Armed Conflict have been showing, violence against children has escalated in the last decade, assuming different forms, such as killing and maiming, sexual violence, abduction, military recruitment, and denial of access to humanitarian assistance. These are classified as the six grave violations against children and can trigger listings of parties. Unfortunately, the UNSC still faces great obstacles while dealing with this topic, as the lack of compromise by the parties, the low efficiency of accountability mechanisms and the lack of proper and sustainable resources to assist, in the long-term, children affected by conflict. As we saw, this situation is worrisome since failure in providing adequate assistance to children added to vulnerable conditions due to lack of development and violation of human rights can frequently result in more violence and conflict.

For this reason, children protection should not be regarded as a post-conflict policy but rather as a conflict prevention tool, since it can build a culture of peace, tolerance and foster development.

Bearing this in mind, delegates should consider the following questions while debating the topic:

i. Considering the specifics of intrastate conflicts, which measures could be effective to protect children?

ii. How can the Council overcome the challenges presented in the chapter? Mainly related to the lack of accountability and compromise of state and non-state actors to the protection of children?

iii. How can the Security Council better connect children protection and the prevention of future conflicts?

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CHAPTER 5

WOMEN, PEACE AND SECURITY
United Nations Security Council

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Introduction

This chapter will explore the Women, Peace and Security (WPS) agenda, which emerged in the 1990s mainly from a demand of NGOs "concerned about the negative impacts of war on women, particularly the widespread sexual violence" (KARIM; BEARDSLEY, 2017, pp. 13-14).

In its Resolution 1325 (2000), the United Nations Security Council (UNSC) addressed, for the first time, the necessity of protecting women's rights during and after conflict and including them as agents of peace processes. The UNSC must consider the WPS agenda when taking any actions under the United Nations Charter or related to peacekeeping, peacebuilding and conflict prevention.

Chapter V of the UN Charter states that the Council's primary responsibility is to maintain international peace and security, and to determine threats to it (UNITED NATIONS, 1945). In that sense, the WPS agenda aims at bringing a gender perspective to international peace and security issues.

Concerning the peaceful tools that the Council has at its disposal for the settlement of disputes, as seen in chapter VI, the

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WPS agenda intends to place gender equality at the forefront of peace talks and peaceful conflict resolution. When the UNSC may resort to actions under chapter VII, such as sanctions and the use of force, the WPS agenda highlights the need to consider the impact of these measures on women, protecting their rights. When regional organizations act under the authorization and authority of the UNSC, as stated in chapter VIII, they are responsible for protecting women's rights.

The WPS agenda has also an important impact in the Peacekeeping Operations (PKOs). PKOs are not formally addressed in the UN Charter, for they were created from the practice of the UNSC[2]. Considering that PKOs are responsible not only for maintaining peace and security, but also for protecting civilians and human rights, assisting in the political transition and supporting disarmament, demobilization and reintegration of parties in conflict, the WPS agenda has the objective of including a gender perspective in the mandate and composition of those missions (KARIM; BEARDSLEY, 2017, p. 12).

The WPS agenda is broad and complex, especially in Africa, where most of the PKOs are deployed. Women's participation in conflict prevention in Africa has been growing and there are many successful initiatives, such as women's situation rooms and women's early warning mechanisms. In the Sahel region, currently the one most affected by conflicts and humanitarian crises, women have performed a fundamental role in mediation and resolution of conflicts.

This chapter will first present a brief background on the creation and consolidation of the WPS agenda. Then, it will discuss the role of women in conflict prevention and resolution in Africa, by focusing on the Open Debate held by the UNSC in 2016. Finally,

2 For this reason, PKOs are known as chapter "Six and a half", because they are neither precisely a peaceful settlement of dispute nor a mechanism for the use of force (HILLEN, 1994, p. 28).

it will highlight the current challenges to the implementation of Resolution 1325 (2000) in the Sahel Region. This chapter concludes with a few recommendations for debate.

The creation and consolidation of the Women, Peace and Security Agenda

The first UN document to place the gender equality at the forefront of international peace and security was the Beijing Platform of Action of 1995, as a result of the Fourth World Conference on Women. This document contained an entire chapter on the Women, Peace and Security subject, entitled "Women in armed conflict". In paragraph 135 of the Platform, the UN recognized that women are the ones that suffer most and have their rights and demands denied in conflict situations. Therefore, they should take part in any conflict resolution process (UNITED NATIONS, 1995, p. 57).

However, paragraph 134 of the Beijing Platform stated that women faced great barriers to enter into peace talks. They were underrepresented in decision-making positions, even though they have made a progress on achieving positions on foreign affairs and defense occupations. The main decision of Member States to overcome this situation was a visible policy of gender mainstreaming into all UN policies and programmes, in order to make sure that those are addressed equally both to men and women (UNITED NATIONS, 1995, p. 58).

Five years after the Beijing Platform of Action, the Namibian Government hosted a seminar organized by the Lessons Learned Unit of the UN Department of Peacekeeping Operations and the Office of the Special Adviser on Gender Issues and Advancement of Women. As a result of this seminar, Member States adopted the Windhoek Declaration and the Namibia Plan of Action on Mainstreaming a Gender Perspective in Multidimensional Peace Support Operations.

It was the first major document integrating the WPS agenda into all stages of PKOs. It affirmed the importance of gender balance in the military, police and civil staff of peace operations. For that, it was necessary to remove obstacles to women's participation in all spheres of private and public life, through the guarantee of equal rights (UNITED NATIONS GENERAL ASSEMBLY AND SECURITY COUNCIL, 2000, p. 2).

The Beijing Platform and the Namibia Plan of Action paved the way for the UNSC to adopt by unanimity its Resolution 1325, of 31 October 2000, which officially institutionalized the WPS agenda as part of the work of the Council. In the preamble of the resolution, the UNSC recognized the fact that civilian women and girls are the most affected by conflicts and it has negative impacts on peace and reconciliation processes. The Council also stressed the need for women to have a more active and participatory role in conflict prevention and resolution (UNITED NATIONS SECURITY COUNCIL, 2000, p. 1).

In the operative section of the resolution, the UNSC urged Member States both to include a gender perspective into PKOs and to increase women representation at all their levels. As stated in paragraph 8 of Resolution 1325 (2000):

> Calls on all actors involved, when negotiating and implementing peace agreements, to adopt a gender perspective, including, *inter alia*:
> (a) The special needs of women and girls during repatriation and resettlement and for rehabilitation, reintegration and post-conflict reconstruction;
> (b) Measures that support local women's peace initiatives and indigenous processes for conflict resolution, and that involve women in all of the implementation mechanisms of the peace agreements;
> (c) Measures that ensure the protection of and respect

> for human rights of women and girls, particularly as they relate to the constitution, the electoral system, the police and the judiciary (UNITED NATIONS SECURITY COUNCIL, 2000, p. 3).

From 2000 to 2015, the UNSC adopted eight resolutions under the topic WPS, divided into two groups. The first group of resolutions deals with women's active and effective participation in peacemaking and peacebuilding. The correspondent resolutions are: S/RES/1325 (2000), S/RES/1889 (2009), S/RES/2122 (2013) and S/RES/2242 (2015).

In its Resolution 1889 (2009), the UNSC urged Member States to support women's organizations and leadership and counter "negative societal attitudes about women's capacity to participate equally" (UNITED NATIONS SECURITY COUNCIL, 2009, p. 3) in all stages of peace process. In the planning for disarmament, demobilization and reintegration, the Council decided to give greater attention to the needs of girls, women and their children associated with armed forces and armed groups.

In its Resolution 2122 (2013), the Council requested the Secretary-General to increase the number of gender experts in all UN Mediation Teams. With that, the UNSC intended to raise awareness of peace negotiators to the gender dimension of peace talks (UNITED NATIONS SECURITY COUNCIL, 2013 c, pp. 4-5).

In its Resolution 2242 (2015), the UNSC called upon donor countries to dedicate more financial and technical resources to the training of groups of women to work as mediators and negotiators in peace talks. The Council also called upon the Secretary-General to work on a five-year strategy to double the number of women in PKOs' police and military staff (UNITED NATIONS SECURITY COUNCIL, 2015, p. 3; p. 5).

The second group of resolutions focuses on conflict-related

sexual violence and the protection of women and children from sexual violence during armed conflict. The resolutions are: S/RES/1820 (2008), S/RES/1888 (2009), S/RES/1960 (2010) and S/RES/2106 (2013). Especially in this last resolution, the UNSC affirmed that sexual violence used as a tactic weapon in armed conflicts is a war crime. The Council also addressed the issue of sexual violence perpetrated by peacekeepers, and requested the Secretary-General to continue with the zero tolerance policy on sexual abuse and exploitation by PKOs' male personnel (UNITED NATIONS SECURITY COUNCIL, 2013 b, p. 2; p. 4).

Under the scope of these resolutions, the UN and its Member States have made several efforts to include women in all stages of peace process and in the decision-making roles of the PKOs. For instance, in order to ensure the implementation of Resolution 1325 (2000) and of the WPS agenda as a whole, each Member State needed to establish its own National Action Plan (NAP) on Women, Peace and Security. The NAPs consist of a document that sets up the concrete strategies and programmes a government will take to meet its obligations under the WPS agenda. They are also important as a way for civil society to hold governments accountable, especially in countries that were severely affected by armed conflicts, such as Somalia, Rwanda and Afghanistan (UN WOMEN, 2016).

An important step towards the implementation of WPS agenda was in 2007, when India deployed 105 Indian policewomen to the UN Mission in Liberia (UNMIL). It was the first country in history to send an all-female police unit to a peacekeeping mission. Following that, Bangladesh sent all-female police units to the United Nations Stabilization Mission in Haiti (MINUSTAH) and to the United Nations Stabilization Mission in the Democratic Republic of the Congo (MONUSCO). These initiatives had great impact on promoting gender equality in PKOs (KARIM; BEARDSLEY, 2017, p. 18).

Research indicated that in countries where PKO police units were female, the security of other women improved. It helped to address sexual and gender-based violence and to prevent sexual exploitation and abuse from male peacekeepers. Another positive finding was that in countries that received PKOs with a gender perspective, local women were more encouraged to join security services. These countries were also more prone to have domestic reforms that raised the representation of women in the security sector than those who have not (KARIM; BEARDSLEY, 2017, p. 7; p. 18; p. 20).

But there is still much progress to be made. In 2009, the Secretary-General Ban Ki-moon, in the ten-year anniversary of Resolution 1325, launched a campaign to increase the number of female peacekeepers to at least 10% in military units and 20% in police units by 2014. However, the UN could not accomplish this target, especially in the senior ranks, because female officers face greater barriers to move up from middle to higher positions (KARIM; BEARDSLEY, 2017, p. 19).

With this background in mind, the next section will explore the challenges to women's participation in peace processes in Africa, as it is the continent where the largest number of PKOs are deployed.

The Open Debate on the Role of Women in Conflict Prevention and Resolution in Africa (2016)

Since the 2000s, the African Union is engaged with the WPS agenda in the continent. Up to now, there are four main African documents on this agenda: the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol - 2003); the Solemn Declaration on Gender Equality in Africa (2004); the African Union Gender Policy (2009); and the Gender, Peace and Security Programme of the African Union (2015-2020). These documents define measures to defend and

promote women's rights and gender equality at all levels; combat gender-based violence and discrimination; and develop instruments to allow the active participation of women in peace processes (AFRICAN UNION, 2016).

Aligned with the African Union initiatives, in its Resolution 2122 (2013), the Council expressed its intention to give greater attention to WPS agenda in the discussions under the thematic topic Peace and Security in Africa. Undoubtedly, this continent has been at the forefront of the UNSC work when it comes to conflict prevention and resolution. In its resolution 2171 (2014), on the issue of conflict prevention, the Council reaffirmed that women have an important role on the prevention of conflict outbreak and aggravation (UNITED NATIONS SECURITY COUNCIL, 2014, p. 3; p. 4).

Angola, while occupying the presidency of the Council in 2016, decided to convene an Open Debate entitled "The role of Women in Conflict Prevention and Resolution in Africa" to better explore the connection between conflict prevention in Africa and the WPS agenda. Prior to the meeting, the country issued a concept note to support two main points. Firstly, that the inclusion of women in conflict resolution and prevention is linked to the sustainability of peace agreements and the decrease of resurging violence in Africa. Secondly, that the participation of women in peace processes "(...) has facilitated a more inclusive appreciation of the causes of and alternative solutions to conflict" (UNITED NATIONS SECURITY COUNCIL, 2016 c, p. 3).

The points defended by Angola were anchored in the positive results of two conflict prevention mechanisms adopted in Africa: the participation of women in Early Warning Initiatives and the Women's Situation Rooms.

Early Warning Initiatives are civil groups responsible for noting the rising of tensions or the possibility of an armed conflict and

warning United Nations Officers to take preventive action before it happens. In Africa, the participation of women in these initiatives has allowed to prevent gender-based violence and abuse in many cases (UNITED NATIONS SECURITY COUNCIL, 2016 c, p. 5).

Women's Situation Rooms (WSR) are groups of women empowered to be leaders in the election processes. They work within communities by mediating and intervening in tense or even violent situations that may arise during elections (GODIA, 2015). Since 2009, UN Women and the United Nations Office for West Africa (UNOWA) have supported WSR by offering training on mediation and resolution of conflict and facilitating the sharing of knowledge between different groups (UNITED NATIONS SECURITY COUNCIL, 2016 c, p. 4).

However, Angola highlighted in its concept note that women representation in these processes is still limited in Africa. Early Warning Initiatives are mostly composed of men, and women tend to occupy lower positions of decision-making. Concerning WSR, the participants still lack training and usually the rooms are deployed too late in the election process, reducing their chances of success (UNITED NATIONS SECURITY COUNCIL, 2016 c, p. 5).

The objective of the 2016 Open Debate was to address these challenges by increasing the cooperation between the UNSC and the African Union. The meeting occurred on 28 March 2016, with the presence of the five Permanent Members (China, France, Russian Federation, the United Kingdom and the United States) plus the ten Elected Members (Angola, Egypt, Japan, Malaysia, New Zealand, Senegal, Spain, Ukraine, Uruguay and Venezuela) (UNITED NATIONS SECURITY COUNCIL, 2016 b, p. 1).

The outcome of the meeting was a Presidential Statement (PRST) circulated mid-May and issued on 14 June 2016. The penholders were the representatives of Angola and the United

Kingdom[3]. Council Members reached an agreed language, so the statement included the basic principles already agreed on the WPS agenda, such as the inclusion of women in all stages of peace processes; the role of women as mediators of disputes; and the importance of cooperation with regional arrangements (UNITED NATIONS SECURITY COUNCIL, 2016 a, pp. 1-3).

The P-3 (France, the United Kingdom and the United States) were supportive of a stronger language to address the role of women in conflict prevention. The United Kingdom and the United States discussed the lack of gender equality in leadership positions. The United Kingdom emphasized the importance of making better use of financial aid to African countries, by investing in programmes dedicated to fight discrimination against women and empower them to occupy higher ranks at all levels (UNITED NATIONS SECURITY COUNCIL, 2016 b, p. 12).

The United States drew attention to gender-based violence in African conflicts, which is one of the major challenges to peacebuilding. The American diplomat, Ms. Sision, stated that guaranteeing the rule of law and strengthening justice systems is crucial to combat violence against women in countries facing post-conflict reconstruction (UNITED NATIONS SECURITY COUNCIL, 2016 b, p. 13).

France raised concern about the use of women as a weapon and a target for abuse of extremist and terrorist groups. The French diplomat, Mr. Delattre, stated that "the role of women in the prevention and settlement of conflicts should be increased as part of our strategies against violent extremism and terrorism" (UNITED NATIONS SECURITY COUNCIL, 2016 b, p. 26). He defended that African women should have access to reproductive

3 The practice of bringing an Elected Member as penholder is relatively new in the UNSC. It usually happens when the Elected Member is particularly connected with the topic and when the Permanent Members do not have any direct opposition to it.

and sexual rights, health services and education.

However, despite the existence of an agreed language about WPS agenda, the negotiations and the process of drafting the PRST were difficult in terms of connecting the WPS agenda to the conflict prevention agenda in Africa in a concrete way.

China and Russia had a strong opposition to the mention of Resolution 2171 (2014), on conflict prevention in Africa. They were against any language that recalled "(...) member states' primary responsibility to prevent conflict, protect civilians and respect the human rights of individuals within their territory and under their jurisdiction" (SECURITY COUNCIL REPORT, 2016). For both Permanent Members, using this language to address the role of women in conflict prevention, or any mentions to human rights, could lead to actions from the UN or other countries – especially Western countries – that would disrespect the sovereignty of African States.

The Russian diplomat, Mr. Zagaynov, stated that this language could lead to "(...) unacceptable attempts to dictate to African Governments settlement recipes without their consent or request" (UNITED NATIONS SECURITY COUNCIL, 2016 b, p. 27). In his statement, he stressed that African countries bear the primary responsibility to protect women during armed conflicts and to promote their participation in conflict resolution: the UN system should only assist these national efforts. Meanwhile, the Chinese diplomat, Mr. Liu Jieyi, did not even mentioned the role of women in conflict prevention in Africa in his speech, focusing solely on social and economic development (UNITED NATIONS SECURITY COUNCIL, 2016 b, p. 17).

Another point of disagreement in the negotiation of the PRST was how to address the importance of Early Warning Initiatives. China, Russia and Egypt opposed the mention of gender-based

violence and abuse as an indicator of conflict. Again, these countries believed that this language could be "perceived as infringing on state sovereignty or the competencies of other parts of the UN system" (SECURITY COUNCIL REPORT, 2016). In order to reach consensus, this content was excluded from the statement. Concerning the role of WSR in Africa, the language was also superficial: the statement welcomed the initiatives by the African Union and UNOWAS, without specifying ways to increase their use (SECURITY COUNCIL REPORT, 2016).

Considering the disagreements between Council Members in the definition of the WPS agenda in Africa, the next section will explore its implementation specifically in the Sahel region, one of the most vulnerable areas in the continent.

Current challenges to the implementation of the WPS agenda in the Sahel region

For the UN, the Sahel Region stretches from Mauritania to Eritrea, including Burkina Faso, Chad, Mali, the Niger, Nigeria, Senegal and Sudan. Since 2013, the UNSC has been concerned about the increasing violence and the severe climate and humanitarian crisis in the region.

The Human Development Index of Sahelian States is among the worst ones in the world. Over the past years, Sahelian people have faced recurrent food and nutritional crises. At least 11.4 million people there live in food insecurity and 5 million children under five are at risk of acute malnutrition. Most of their livelihoods are being affected by climate change. Sahelian States also have been dealing with successive political crisis, most of them because of weak governance and its negative impact on institutions. The public structure to deliver basic health, education and other important public services, as access to water and proper judicial systems,

is usually weak or nonexistent. In many countries, the political and institutional crises led to a power vacuum, facilitating the strengthening of extremist and terrorist groups (UNITED NATIONS SECURITY COUNCIL, 2013 a, pp. 2-3).

In order to prevent conflict in Sahelian countries, the UNSC adopted the United Nations Integrated Strategy for Sahel in 2013. This strategy was designed by the Secretary-General Ban Ki-moon and its implementation is under the responsibility of UNOWAS. The Strategy has three main strategic goals. The first one aims at enhancing the governance in the region, by strengthening democratic institutions, including political dialogue and free elections. The second one seeks to reinforce national and regional security mechanisms so they can be capable of addressing cross-border threats, such as extremism, terrorism and international organized crime. The third one focuses on integrating humanitarian and development programmes in order to better address the causes and consequences of the humanitarian crises (UNITED NATIONS SECURITY COUNCIL, 2013 a, p. 14; p. 18; p. 22).

The role of women in preventing conflict in the Sahel region is mentioned in some parts of the Strategy. It envisaged enhancing women participation in political parties of Sahelian countries, as a way to stimulate peaceful politics. It also indicated actions to exchange knowledge among groups of women to prevent gender-based violence and election-related conflicts. Another action was to increase participation of Sahelian women in international forums and peace talks about the region (UNITED NATIONS SECURITY COUNCIL, 2013 a, pp. 14-15).

However, the WPS agenda has been treated as a separate issue from the long-term peace consolidation process in the Sahel. As an effort to better integrate a gender perspective in the UNSC's strategy to the region, Sweden, while occupying the presidency of

the Council in 2018, decided to convene a Briefing entitled "Women, Peace and Security in Africa". The meeting had as briefers the UN Deputy Secretary-General, Ms. Amina Mohammed, and the African Union Special Envoy on Women, Peace and Security, Ms. Bineta Diop (UNITED NATIONS SECURITY COUNCIL, 2018, p. 1).

In her briefing, Ms. Mohamed, who had just returned from a joint United Nations - African Union Mission to South Sudan, the Niger and Chad, presented the findings of the mission. She highlighted the vulnerable situation of women in Chad, where Boko Haram – an extremist group originated in Nigeria – has increasingly been using females as suicide bombers. It is a worrisome issue, since approximately two-thirds of suicide attacks involves women or girls. In South Sudan and Chad, Ms. Mohamed recognized the call by women for greater representation in politics and economy. She concluded that, although the Council has been discussing the WPS agenda for 18 years, "(...) rarely have we moved beyond the principles. We believe that now is the time to move from frameworks to action" (UNITED NATIONS SECURITY COUNCIL, 2018, p. 3).

Ms. Diop, in her turn, briefed the Council about how the Sahel region has been hit by extremist groups as Boko Haram and other radical groups. In the Niger, for example, families and young people lack social and economic opportunities because of the conflict and that has resulted in an increase of child marriage, which is a violation of human rights. On the other hand, she cites the resilience of Nigerien women: they have been using the Niger NAP as a tool to demand greater participation in peace talks (UNITED NATIONS SECURITY COUNCIL, 2018, p. 4).

As president of the Council, the Swedish Foreign Minister, Ms. Margot Wallström, made a statement in her national capacity. For her, the implementation of the United Nations Integrated Strategy for the Sahel should focus on the empowerment of women and

gender equality in connection with the Sustainable Development Goals. She stated that most of the female inhabitants of the Lake Chad region are sustained by fishing activities, and as the lake is shrinking due to climate change, their livelihood is under menace. She sadly mentioned that the Lake Chad fisherwomen "wished for only three things: bigger boats, better nets and to not get raped" (UNITED NATIONS SECURITY COUNCIL, 2018, p. 6). This illustrated how the Council needed to give better support to the countries of the Sahel in order to improve women's rights.

Chad was invited to the meeting and stated that due to attacks of Boko Haram and climate change, one of the biggest challenges is to give humanitarian assistance to refugees and internally displaced persons, since most of them are women and children. Chad called on Council Members to move from traditional humanitarian assistance and integrate it with long-term strategies to consolidate sustainable development in the region (UNITED NATIONS SECURITY COUNCIL, 2018, p. 23).

Regarding the P-3 statements, the United States emphasized the work of the United States Agency for International Development (USAID) in funding programs to guarantee health, food security and microenterprises for Sahelian women. The United Kingdom stressed the need to better integrate women's economic empowerment with peace and security in the Council's strategy for the Sahel. France (also speaking on behalf of Germany) mentioned that the fight against climate change is a priority, since Sahelian women are the most affected by it (UNITED NATIONS SECURITY COUNCIL, 2018, p. 11; p. 13; p. 18).

Russia and China kept their position about avoiding a strong language to discuss the WPS agenda in Africa. Russia reaffirmed the importance of women's participation in the resolution of conflicts and post-conflict reconstruction. However, the country remembered

that the WPS agenda must respect the principle of sovereignty, by stating that "We believe that it is national Governments that should play the primary role in protecting women at every stage of an armed conflict" (UNITED NATIONS SECURITY COUNCIL, 2018, p. 12).

China focused on what can be done to improve security and development in the Sahel. In its statement, there are only two mentions to the role of women, one about the need to expand their participation in political processes and peacebuilding, and another about the need of promoting development to better protect them (UNITED NATIONS SECURITY COUNCIL, 2018, p. 15).

The UNSC did not adopt any documents as a result of the briefing presided by Sweden. In the spirit of furthering the discussion on the topic, France and Germany, while sharing the Council's presidency, organized an Arria-Formula Meeting[4] on Women, Peace and Security on 13 March 2019. In their concept note for the meeting, France and Germany stated that:

> The Security Council Arria meeting will be an opportunity to support the participation of women in political processes in the Sahel region. The Security Council has included more and more provisions on the rights and the participation of women, now found in more than 70% of resolutions (PERMANENT MISSION OF FRANCE TO THE UNITED NATIONS; PERMANENT MISSION OF GERMANY TO THE UNITED NATIONS, 2019, p. 1).

For both countries, the meeting was an opportunity to advance initiatives focused on increasing the participation of women in peace processes, since the progress of implementing Resolution 1325 (2000) has not been satisfactory so far. Currently, only 8% of peace

4 An Arria-Formula Meeting is an informal meeting format conducted by one of the Members of the Council. Due to its informal character, Arria-Formula meetings are not held in the Council Chambers and they usually do not have any final documents or meeting records (SECURITY COUNCIL REPORT, 2019).

negotiators and 2% of peace mediators are women (PERMANENT MISSION OF FRANCE TO THE UNITED NATIONS; PERMANENT MISSION OF GERMANY TO THE UNITED NATIONS, 2019, p. 2). For France and Germany, the low number of women in peace talks is a great concern in the Sahel region, because in the fight against extremism and terrorism it is fundamental not only to have their voices heard but also to empower them to be crucial agents of peace processes.

The United Kingdom stated that raising the number of women in politics is essential to build lasting peace and security. The country emphasized the need to empower women and increase their political representation in Sahelian countries. For example, in Mali, 11 women were appointed to government positions, but they have not been included in peace processes. The United Kingdom also called for the UNSC to consult directly with women in conflict situations, reinforcing that WPS agenda should be included in all UN mandates (UNITED NATIONS SECURITY COUNCIL, 2019).

The United States highlighted the need of engaging women in community dialogue in order to prevent violent extremism, especially in the Niger. For this Permanent Member, there is a direct and inverse relationship between State-perpetrated violence against women and the participation of women in governmental decision-making. The country also welcomed the increasing number of NAPs in Africa, from 17 to 23 since 2014. For the United States, these documents allow greater women's political participation in Africa (UNITED STATES MISSION TO THE UNITED NATIONS, 2019).

Russia focused its statement on measures to combat violence against women perpetrated by extremist and terrorist groups, especially in Mali and Chad. The country also mentioned the connection between threats to peace and security and the social and economic problems in the Sahel. Russia ended its statement by

recalling its traditional position on the WPS debate, that all measures to protect women in conflict situations should be conducted by the Sahelian countries themselves and that the Council should only take measures to support these national initiatives, respecting their sovereignty (UNITED NATIONS SECURITY COUNCIL, 2019).

China stated that the UNSC should prevent armed conflicts, facilitating the resolution of disputes through political means while respecting the principle of sovereignty. For this Permanent Member, women, as a vulnerable group, should be protected, and they are important agents in maintaining international peace. On the other hand, China emphasized that initiatives to raise the political participation of women in peace processes should be done by considering local realities, and traditions must be respected (UNITED NATIONS SECURITY COUNCIL, 2019).

The Arria Formula ended with the statement of Ms. Diop, the Special Envoy of the African Union on WPS Agenda. She stated that there is a need to empower women and to include them in all spheres of political life in Africa. For her, the Council must take concrete measures to prevent violence against women in conflict, and for that, more women should be engaged in the field and in PKOs. Her speech summarized the main challenge of the Council nowadays: despite important accomplishments since Resolution 1325 (2000), there is still much to be done for the voice of voiceless women to be heard (UNITED NATIONS SECURITY COUNCIL, 2019).

Final considerations

Women, Peace and Security is a relatively new topic in the Council's agenda and its focus on Africa is even more recent. In these 20 years of international efforts to place gender equality at the forefront of conflict resolution and peace processes, the Council was able to define an agreed language to deal with the

issue. There is a consensus about the essential and effective role of women as mediators in conflicts, the same for the need to increase the participation of women in economic and political processes in countries that are facing reconstruction. There is also a consensus about the importance of having more women in PKOs, bringing gender equality in both military and police staff.

The main disagreement in the Council refers to China and Russia's positions regarding any measures that can open precedents to a breach of sovereignty, issue that is also a concern for African countries. These two Permanent Members have been opposing to any wording that connects the role of women with Resolution 2171 (2014) on conflict prevention. Particularly in the Sahel region, they consider that this language can lead to measures that violate the sovereignty of African countries.

Besides the matter of agreed language, the consolidation of WPS agenda currently faces three challenges, especially considering the delicate situation of the Sahel region.

The first one is to guarantee the effective participation of women in the implementation of peace agreements. In Africa, there is a lack of formal mechanisms to fully integrate women in the peace talks, and in the building of sustainable peace. In PKOs and political missions, it is necessary to develop better training so more women can have the skills to deal with the technical aspects of peace agreements, such as monitoring and implementation of ceasefires.

The second challenge is promoting gender equality and empowering women and girls in humanitarian action. In the Sahel, humanitarian work must go beyond short-term assistance and be integrated with a long-term peaceful development strategy. The process of reconstruction must include women in political parties and institutions and give them access to economic resources. This is the only way to guarantee women and girls essential rights, such as

education, health, employment and financing.

The third challenge is to improve the role of women in preventing and countering violent extremism and terrorism. This issue is gaining more attention of the Council when dealing with the situation in the Sahel, due to the growing use of women and girls as suicide bombers by Boko Haram. It is fundamental to formalize the role of women in Early Warning Initiatives and expand the number of Women's Situation Rooms.

In conclusion, WPS agenda is a thematic issue directly related to the Council's main responsibility to maintain international peace and security. This agenda should be an integral part of the Council's country-specific work, especially in Africa. With this in mind, the Council should address three main questions:

i. How to ensure gender equality in peace processes and peace missions of the United Nations, especially in leadership positions?

ii. What measures can be taken to strengthen groups of African women that work with mediation and prevention of conflicts, especially in the fight against violent extremism and terrorism? How to formally incorporate African women in early warning initiatives and expand Women's Situation Rooms?

iii. How can the Council work better with regional organizations, such as the African Union, in order to improve the participation of women in all political spheres, mainly in the Sahel region?

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SECTION II
UNIVERSITY
Committee, Council and Court

CHAPTER 6

INTERNATIONAL MIGRATION AND DEVELOPMENT: The international protection of irregular migrants

United Nations General Assembly

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Introduction

The phenomenon of international migration is defined as the movement of people across international borders. Today, there are more people living in a country different from the one they were born than ever before (UNITED NATIONS, 2019). People decide to migrate due to various reasons: some migrate out of necessity, trying to escape from poverty and looking for better living conditions. Others migrate voluntarily, in order to join their families, to study or to enjoy a job opportunity[2].

The United Nations (UN) has recognized the contribution made by migrants to the development of both country of origin and country of destination. Migrants are critical workers and are responsible for the growth of many economies: in 2015, they contributed US$ 6.7 trillion dollars to global GDP (9.4% of the total). They also contribute to better financing for development: in 2017, developing countries received US$ 466 billion in remittances (INTERNATIONAL ORGANIZATION FOR MIGRATION, 2019).

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2 For the purposes of this chapter, we do not consider refugees in the category of migrants, since refugees are compelled to leave their countries of origin because of persecution, conflict or mass human rights violations (UNITED NATIONS, 2019).

The United Nations General Assembly (UNGA) Second Committee, responsible for discussing international economic and development issues, has been dealing with the topic International Migration and Development since 1994. The main challenge of the UNGA is to engage Member States in creating and implementing an adequate set of international policies and legal frameworks to protect migrants' human rights and to guarantee a safe, orderly and regular migration.

Paradoxically, despite the fundamental role of migration to development, this is a highly-politicized and divisive topic in the UN. Many Member States focus their migration policies on immigration control and security issues. They avoid assuming legally-binding commitments concerning migrants' human rights because they believe that could mean a breach in their sovereignty in terms of national capacity to exercise border control and to manage population flows.

Because of this, the international community has not been able to fully enjoy the benefits of migration to development, and, as put by the former Secretary-General, Ban Ki-moon "(...) migration and development initiatives remain scattered, underfunded, lacking in national ownership and limited in scale and impact" (UNITED NATIONS GENERAL ASSEMBLY, 2013 a, p. 17).

The lack of a comprehensive international framework to manage migration flows has led to a serious migration crisis, marked by mass flows of irregular migrants. Irregular migrants are defined as those undocumented or in irregular situation, because they do not comply with the laws established by the receiving country (UNITED NATIONS GENERAL ASSEMBLY, 1990, p. 263). To the UN, irregular migrants are considered a vulnerable group because they are more likely to have their human rights violated, since there are more exposed to violence, exploitation and poverty. That

is the reason why guaranteeing their human rights is fundamental to fully give them an opportunity to promote and enjoy sustainable development.

With this in mind, the objective of this chapter is to discuss the evolution of the legal framework regarding the protection of irregular migrants as a way to promote sustainable development. In the first section, it will be discussed the existing international conventions that guarantee the rights of international migrants. The second section will present the UNGA High-Level Dialogues established in the 2000s with the purpose of creating a common view about the need to protect irregular migrants. The third section will analyze the role of the 2030 Agenda for Sustainable Development and the Global Compact for Migration in giving irregular migrants the opportunity to contribute to sustainable development. The chapter will end with some questions for debate.

International legal framework regarding the protection of irregular migrants

Migration became an important international issue right after the Second World War. The post-War migration flows were characterized by economic migrants that composed the formal labor force for the reconstruction of Europe. However, there was no international legal framework specifically to migrants in the 1940s: the two main international documents of the decade, the UN Charter (1945) and the Universal Declaration of Human Rights (1948), have no direct mention to the phenomenon of migration.

On the other hand, these documents defined, for the first time, a broader framework for considering the human rights of migrants. The UN Charter, in its preamble, states the objective of promoting socio-economic advancement and reaching better standards of life to all peoples (UNITED NATIONS, 1945). In Article 23 of the Universal

Declaration of Human Rights, every human being has to be shielded by a social and international order that fully provide their freedoms and rights (UNITED NATIONS, 1948). Therefore, even if the rights of migrants were not specifically set, migrant people would still be protected by basic human rights.

This situation changed in 1949, when the International Labour Organization (ILO) adopted the Convention concerning Migration for Employment (Revised) 1949 (No. 97). The 1949 Convention is a hallmark document pertaining to the rights of migrant workers, since it defines working conditions standards and recruitment laws for migrant workers. Article 6 prescribes the principle of equal treatment between migrant workers and nationals under the matters of remuneration, living and working conditions, social security, taxes and access to justice (INTERNATIONAL LABOUR ORGANIZATION, 1949).

The Convention was crucial to organize international migration in the 1950s and 1960s, when the flow of migrant workers increased as a reflection of the economic growth of the United States and Europe. Migration in these decades was mainly characterized by '*brain drain*' flows: migrants were, by a major part, male skilled workers of the productive age group (UNITED NATIONS GENERAL ASSEMBLY, 1994 a, pp. 113-114).

Irregular or undocumented migrants were not a great international concern in this period, and that is the reason why the 1949 Convention does not present any considerations about their human rights. The only mentions on this issue are Article 8 from Annex I and Article 13 of Annex II[3]. Both paragraphs state that:

3 Annex I of the 1949 Convention is related to "Recruitment, placing and conditions of labor of migrants for employment recruited otherwise than under government-sponsored arrangements for group transfer". Annex II refers to "Recruitment, placing and conditions of labor of migrants for employment recruited under government-sponsored arrangements for group transfer".

"Any person who promotes clandestine or illegal immigration shall be subject to appropriate penalties" (INTERNATIONAL LABOUR ORGANIZATION, 1949).

The pattern of international migration radically changed in the 1970s. The stream of irregular and unskilled migrants to traditional migrant receiving countries – such as those in Western and Northern Europe, Canada, Australia and the United States – started to increase. Besides, in this period there was an increase of female migrants, contrasting with previous decades, marked by male-migrant flows (UNITED NATIONS GENERAL ASSEMBLY, 1994 a, p. 114). These changes were triggered by the generalized social and economic instability in the 1970s, such as the end of the Gold Standard (1971) and the first and second Oil Crisis (1973 and 1979, respectively).

The first international attempt to address irregular migration was the ILO Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers, 1975 (No. 143). In its Article 1, it is stated that "Each Member for which this Convention is in force undertakes to respect the basic human rights of *all migrant workers*" (INTERNATIONAL LABOUR ORGANIZATION, 1975, emphasis added), which includes both regular and irregular migrants. However, the Convention does not outline the specific rights of irregular migrants, focusing more on measures to prevent illegal employment of migrant workers. Article 6 defines that administrative, civil and penal sanctions should be taken by States against those who employ illegal migrants (INTERNATIONAL LABOUR ORGANIZATION, 1975).

Considering the limitations of the ILO 1975 Convention in terms of not defining the human rights of regular and irregular migrants, by the end of the 1970s there was an international

consensus that "(...) migrants constitute a vulnerable group and that the promotion of human rights for this population required a special UN Convention" (UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION, 2005, p. 9).

Under this consensus, the UNGA determined, in its resolution A/RES/34/172, of 17 December 1979, the creation of an open Working Group, chaired by Mexico, to draft a new and broader international convention on the protection of the rights of all migrant workers and their families (UNITED NATIONS GENERAL ASSEMBLY, 1979). The Working Group managed to bring developed and developing countries to the negotiation table. This was important because, in the 1980s, the debt crises in developing countries led to a rapid increase in illegal migration. While migrant-receiving countries started to implement policies to restrict international migration flows, developing countries demanded the recognition of the positive effects of international migration to the development of receiving countries. For that, it was necessary to guarantee the rights of both regular and irregular migrants.

The 11-year hard negotiation process led to the adoption of the International Convention on the Protection of the Rights of all Migrant Workers and their Families on 18 December 1990. The 1990 Convention is the most comprehensive international treaty on the issue and it states several legally-binding provisions regarding the human rights of irregular migrants. In its preamble, the Convention consolidated the vision that if States establish laws expanding the rights of both regular and irregular migrant workers, this will discourage employers to employ and even exploit undocumented migrants' work force; and prevent persons or groups to organize clandestine movements of migrant workers:

> *Considering* that workers who are non-documented or in an irregular situation are frequently employed

> under less favorable conditions of work than other workers and that certain employers find this an inducement to seek such labor in order to reap the benefits of unfair competition,
> *Considering* also that recourse to the employment of migrant workers who are in an irregular situation will be discouraged if the fundamental human rights of all migrant workers are more widely recognized (UNITED NATIONS GENERAL ASSEMBLY, 1990, p. 262).

The Convention recognizes two specific rights for irregular migrants. Article 28 states that they have the right to receive emergency medical care. And Article 30 states that children of migrant workers have the right to education, in both cases of children in irregular situation or children that are in regular situation but their parents are not (UNITED NATIONS GENERAL ASSEMBLY, 1990, p. 266).

Regarding clandestine or illegal movements of migrant workers, Article 68 of the Convention establishes four measures to prevent and eliminate them. The first one is to halt misleading information that incites irregular migration. The second one is to impose national sanctions on those that operate such movements. The third one is to impose national sanctions on those who use threats, intimidation or even violence to organize such movements. The last one is to impose national sanctions to employers of irregular migrant workers (UNITED NATIONS GENERAL ASSEMBLY, 1990, p. 270).

Despite the importance of the Convention, it did not enter into force in the 1990s. None of the mass-migrant receiving countries signed the Convention, such as the United States and Western European countries. Their justification was that guaranteeing human rights of migrants by a legally-binding document could mean a possible breach of their sovereignty in respect to the control of their borders and population flows (UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION, 2005, p. 13).

For the UN, it was necessary to mainstream a more positive view of international migration, connecting it with the promotion of development. That was done for the first time in the International Conference on Population and Development (ICPD), held in Cairo in September 1994. Chapter X of the ICPD Programme of Action addressed the issue of International Migration, recognizing its positive impact on development:

> Orderly international migration can have positive impacts on both the communities of origin and the communities of destination, providing the former with remittances and the latter with needed human resources. International migration also has the potential of facilitating the transfer of skills and contributing to cultural enrichment (UNITED NATIONS POPULATION FUND, 1994, p. 82).

Following the conclusions of the ICPD Programme of Action, the UNGA decided, for the first time, to include the topic "International Migration and Development" in the agenda of the Second Committee. With that, the UN Member States would meet, biannually, to make recommendations on the issue and keep the dialogue between developed and developing countries. This was an important achievement considering that the 1990 Convention still had not had enough signatures to enter into force (UNITED NATIONS GENERAL ASSEMBLY, 1994 b, p. 1). In the next session, it will be addressed the 2000s and the international efforts to leverage the rights of irregular migrants and to increase the number of signatures for the 1990 Convention.

Leveraging the human rights of irregular migrants: The High-Level Dialogues on International Migration and Development

The 1990 Convention only entered into force on 14 March 2003, when the minimum of 20 signatures was achieved. Most of

the countries that ratified the convention were part of Central and South America, Eastern Europe, Africa and Asia. A common attribute among these countries is that they are not mass-migrant receiving countries (UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION, 2005, p. 10).

In the beginning of the 2000s, there was little room to strengthen Member States' commitments towards the rights of all migrants, especially irregular ones. Due to the low level of ratification of the 1990 Convention, the 21st century started without a comprehensive framework to guide States in the coordination of international migration. According to the Special Representative of the Secretary-General of the United Nations on International Migration and Development, "the situation was grim. Distrust among states was commonplace. The notion that migration could be constructively discussed at the United Nations was widely dismissed [in the beginning of the new century]" (SUTHERLAND, 2013).

In order to overcome this lack of commitment, the UNGA decided, in its Resolution 58/208 of 23 of December 2003, to hold a High-level Dialogue on International Migration and Development in 2006. The meeting would allow Member States to discuss the issue in a non-binding matter, which was an important factor to get the United States and Europe back to the negotiation table (UNITED NATIONS GENERAL ASSEMBLY, 2003, p. 3).

The First High-level Dialogue was held on 14-15 September 2006 at the UN Headquarters. No decisions were taken on this meeting, but it was an important moment to start creating a new understanding about migration. For example, there was a recognition that restrictive policies adopted by many mass-migrant receiving countries had an opposite result, since it led to an increase, instead of a reduction, of irregular migration flows. Concerning control and security measures, while some participants supported

a strengthening of these policies, others recognized that they were not enough to reduce irregular migration. In terms of measures to be taken, some Member States recommended an expansion of policies for the regularization of undocumented migrants, while others highlighted the role of information campaigns about the dangers and risks in irregular migration (UNITED NATIONS GENERAL ASSEMBLY, 2006, p. 4).

Another concern was the exploitation and abuse of migrants in an irregular situation, especially women and girls, due to the fact that they were about half of the international migrants in mid-2000s. There was a consensus that migrant women and girls were entitled to special protection against work exploitation, smuggling and trafficking, and that Member States would increase international cooperation to guarantee their safety (UNITED NATIONS GENERAL ASSEMBLY, 2006, p. 4).

The First High-Level Dialogue paved the way to a second one, held by the UNGA on 3-4 October 2013. The Second High-Level Dialogue on International Migration and Development had the objective of bringing new evidence about the role of migration to development. Based on this knowledge, participants aimed at identifying concrete measures to improve economic gains from migration while protecting migrants' rights and reducing the negative implications of irregular flows (SUTHERLAND, 2013).

For the 2013 meeting, the Secretary-General Ban-Ki Moon presented an eight-point agenda of action[4] entitled "Making migration work". In his report, he outlined some figures on irregular migration: in 2013, it was estimated that there were more than 11

4 The eight points proposed by the Secretary-General were: 1. Protect the human rights of all migrants; 2. Reduce the costs of labour migration; 3. Eliminate migrant exploitation, including human trafficking; 4. Address the plight of stranded migrants; 5. Improve public perceptions of migrants; 6. Integrate migration into the development agenda; 7. Strengthen the migration evidence base; 8. Enhance migration partnerships and cooperation (UNITED NATIONS GENERAL ASSEMBLY, 2013 a, pp. 20-22).

million undocumented migrants in the United States; and countries such as the United Kingdom, Italy, Thailand and Malaysia had more than 500 thousand migrants each (UNITED NATIONS GENERAL ASSEMBLY, 2013 a, p. 7). In his perspective, the increase in irregular migration flows in the 2000s reflected the incapacity of States to channel regular migration:

> In situations in which regular migration channels fail to reflect labor market needs, migrants are more likely to engage in irregular movement. Migrants in an irregular situation face a greater risk of exploitation and abuse; they also tend to lack access to basic services and are at risk of detention (UNITED NATIONS GENERAL ASSEMBLY, 2013 a, p. 14).

The Secretary-General highlighted the need to protect the human rights of all migrants, including irregular ones. He recommended Member States to consider better regularization for undocumented migrants and to search alternatives for the mass-detention of migrants, in order to better guarantee their rights. He also mentioned the importance of guaranteeing the basic human rights for migrant children who are separated from their families due to detention of their parents (UNITED NATIONS GENERAL ASSEMBLY, 2013 a, p. 13).

Another point of the action agenda was the elimination of migrant exploitation, ensuring the end of forced labor from global supply chains. Irregular migrants are more vulnerable to labor exploitation, especially in the garment industry, where migrant workers face degrading working conditions and very low salaries (GISELA; THEUWS, 2016, p. 7). For the Secretary-General, the fight against migrant exploitation required protecting migrant workers' rights and pursuing stronger prosecution against those who exploit migrant labor (UNITED NATIONS GENERAL ASSEMBLY, 2013 a, p. 21).

After debating the eight-point agenda of action, Member States agreed on a Declaration as the final document for the Second High-Level Dialogue, adopted by the UNGA as Resolution 68/4 of October of 2013. In the Declaration, the General Assembly "recognized the need for international cooperation to address, in a holistic and comprehensive manner, the challenges of irregular migration to ensure safe, orderly and regular migration, with full respect for human rights" (UNITED NATIONS GENERAL ASSEMBLY, 2013 b, p. 1).

Another positive outcome of the Second High-Level Dialogue was the acknowledging of the significant contribution made by migrants to development and the need to include it in the elaboration of the post-2015 development agenda, which will be discussed in the following section.

The 2030 Agenda and the Global Compact for Safe, Orderly and Regular Migration: giving irregular migrants the opportunity to contribute to sustainable development

On 25 October 2015, the General Assembly adopted the 2030 Agenda for Sustainable Development, a 15-year-long international declaration and plan of action for sustainable development, eradication of poverty and strengthening universal peace. With the promise of "leaving no one behind", the 2030 Agenda recognized not only the multidimensional reality of international migration, but also the positive contribution of migrants to inclusive growth and sustainable development. The UNGA called for international cooperation on ensuring safe, orderly and regular migration, which involves full respect for human rights and the humane treatment of migrants, regardless of their migration status (UNITED NATIONS GENERAL ASSEMBLY, 2015 b, p. 8).

In relation to the 17 Sustainable Development Goals (SDGs[5]), there are three targets related to international migration. Goal 8, Target 8.8, calls for the protection of labor rights and safe working environment for all workers, including migrant ones. Goal 10, Target 10.7, calls for the implementation of planned and well-managed migration policies in order to better coordinate migration flows. And Goal 10, Target 10.C, calls for compromise in reducing to less than three per cent the transaction costs of migrant remittances (UNITED NATIONS GENERAL ASSEMBLY, 2015 b, p. 20; p. 22).

However, the adoption of the 2030 Agenda happened in the midst of the so-called "European migration crisis", mainly as a consequence of the mass flow of Syrian asylum seekers trying to cross the Mediterranean basin. In this scenario, the lack of a specific SDG to deal with international migration constituted a major gap in international framework to promote a safe, orderly and regular migration.

Due to this, only two months after the adoption of the 2030 Agenda, the General Assembly, with the support of the Secretary-General Ban Ki-moon, decided to hold, in 2016, a High-level meeting of the Plenary of the General Assembly: the United Nations Summit for Refugees and Migrants (UNITED NATIONS GENERAL ASSEMBLY, 2015 a, p. 1).

Leading up to the Summit, the Secretary-General released a report in April 2016, entitled "In safety and dignity: addressing large movements of refugees and migrants". He expressed his concern at the increasing of restrictive measures as a way to control irregular migration flows, such as fences, walls and collective expulsions:

> I am concerned at the increasing trend of Member States erecting fences and walls in response to large movements of refugees and migrants, and a

5 The 2030 Agenda encompasses 17 Sustainable Development Goals and 169 targets.

> corresponding tendency of criminalizing irregular migration. Experience has demonstrated that such measures are ineffective in countering people smuggling and human trafficking, by diverting movement elsewhere (UNITED NATIONS GENERAL ASSEMBLY, 2016 a, p. 10).

In order to efficiently deal with irregular migration flows, the Secretary-General recommended the adoption of shared responsibilities policies between countries of destination, countries of origin and transit countries, so they could collectively outline a process of law to determine the legal status of migrants, while respecting their basic human rights. For him, that only could be done by the creation of a global compact on safe, regular and orderly migration (UNITED NATIONS GENERAL ASSEMBLY, 2016 a, p. 15; p. 22).

The United Nations Summit for Refugees and Migrants was held at UN Headquarters on 19 September 2016. As its final document, the UNGA adopted the New York Declaration for Refugees and Migrants. Member States expressed their commitment to build a shared-responsibility framework to deal with irregular migration. One of the intentions of the declaration was to develop a common border control, which would be people-centered and sensitive to vulnerable groups, such as women and children (UNITED NATIONS GENERAL ASSEMBLY, 2016 b, pp. 5-6).

Member States also declared their intention to fight discrimination, abuse and exploitation of irregular migrants, including trafficking in persons and the smuggling of migrants. For that, Member States reinforced the need to protect the safety, dignity and human rights and all fundamental freedoms of migrants, regardless of their migratory status (UNITED NATIONS GENERAL ASSEMBLY, 2016 b, p. 8).

The most important achievement of the New York Declaration was the commitment to a process of intergovernmental negotiations

leading to the adoption of a global compact for safe, orderly and regular migration, as recommended by the Secretary-General in his report. The compact should address, in its content, measures to reduce and restrain the negative impacts of irregular migration (UNITED NATIONS GENERAL ASSEMBLY, 2016 b, p. 21).

After two years of intense negotiations, the Global Compact for Safe, Orderly and Regular Migration was adopted by the UNGA in Marrakech on 11 December 2018. The Global Compact was built on the premise that international migration is fundamental for the promotion of sustainable development of host and parent countries, and its benefits can be optimized by improving migration governance (UNITED NATIONS GENERAL ASSEMBLY, 2018 b, p. 3).

In order to address the concerns of many Member States, one of the basilar principles of the Compact is the respect for national sovereignty. It is a non-legally binding document, and it considers that it is the prerogative of States to determine their migration policy and laws to define the status of regular and irregular migrants. But the respect for national sovereignty does not exclude the principle of shared responsibilities, understood as the following:

> No country can address the challenges and opportunities of this global phenomenon on its own. With this comprehensive approach, we aim to facilitate safe, orderly and regular migration, while reducing the incidence and negative impact of irregular migration through international cooperation and a combination of measures put forward in this Global Compact. We acknowledge our shared responsibilities to one another as States Members of the United Nations to address each other's needs and concerns over migration, and an overarching obligation to respect, protect and fulfil the human rights of all migrants, regardless of their migration status, while promoting the security and prosperity of

> all our communities (UNITED NATIONS GENERAL ASSEMBLY, 2018 b, p. 4).

With these principles in mind, the Global Compact comprises 23 objectives in order to ensure a better international migration governance. Concerning irregular migration, Objective 7 aims at reducing vulnerabilities in migration, making this process more predictable for migrants. One important measure is that Member States include provisions, in their national migration policy, to facilitate and reduce the costs of getting a regular migrant status (UNITED NATIONS GENERAL ASSEMBLY, 2018 b, p. 16).

Objective 11 focuses on a border control coordination in order to deal with irregular migration flows, the smuggling of migrants and human trafficking. Cooperation between neighboring States would involve exchange of information and intelligence; cooperative police-patrol; and, most importantly, the development of counter-smuggling and trafficking measures that are non-discriminatory, children and gender sensitive, in full respect for human rights (UNITED NATIONS GENERAL ASSEMBLY, 2018 b, pp. 18-19).

In terms of basic services for migrants, Objective 15 establishes that immigration authorities should not "exacerbate vulnerabilities of irregular migrants by compromising their safe access to basic services or by unlawfully infringing upon the human rights to privacy, liberty and security of person at places of basic service delivery" (UNITED NATIONS GENERAL ASSEMBLY, 2018 b, p. 24).

Despite its importance to deal with the migration crisis, the Global Compact was not adopted by consensus. The document was adopted with 152 votes in favor; 5 against – these being the Czech Republic, Hungary, Israel, Poland and United States and 12 abstentions[6] (UNITED NATIONS GENERAL ASSEMBLY, 2018 a).

6 The countries who abstained were: Algeria, Australia, Austria, Bulgaria, Chile, Italy, Latvia, Libya, Liechtenstein, Romania, Singapore and Switzerland. Also, there were 24 non-voting States: Afghanistan, Antigua and Barbuda, Belize, Benin, Botswana, Brunei

Concerning the position of political groups about the adoption of the Global Compact, the representative of Namibia, speaking on behalf of the African Group, expressed its regret about putting the Compact to a vote. The African Group reinforced that the document is not legally binding, so "all Member States should defend the agreement, strive to ensure its best possible implementation and protect it from politicization" (UNITED NATIONS GENERAL ASSEMBLY, 2018 a).

The representative of Fiji, speaking on behalf of the Pacific Small Island Developing States, welcomed the inclusion of specific provisions on migrants motivated by natural disasters, climate change and environmental degradation. For that, the Global Compact would better address the needs of Pacific Islands (UNITED NATIONS GENERAL ASSEMBLY, 2018 a).

The Community of Latin American and Caribbean States (CELAC) welcomed the provisions of the Compact to eliminate inadequate detention procedures against migrants. The group highlighted the importance of guaranteeing the necessary safeguards in return procedures when these are applicable, paying particular attention to vulnerable groups such as women and children (UNITED NATIONS GENERAL ASSEMBLY, 2018 c, p. 2).

The Group of 77 and China highlighted that the fruits of globalization and development are unevenly distributed. Therefore, while responsibilities to deal with international migration are shared between developed and developing countries, the political group emphasized that greater responsibilities should be carried by developed countries in handling the costs of ensuring safe, orderly and regular migration for all (UNITED NATIONS GENERAL ASSEMBLY, 2018 d, p. 2).

Darussalam, Democratic People's Republic of Korea, Dominican Republic, Guinea, Kiribati, Kyrgyzstan, Micronesia (Federated States of), Panama, Paraguay, Sao Tome and Principe, Seychelles, Slovakia, Somalia, Timor-Leste, Tonga, Trinidad and Tobago, Turkmenistan, Ukraine and Vanuatu (UNITED NATIONS, 2018).

As for the delegations who voted against the adoption of the document, the representative of the United States argued that "his Government cannot support the adoption of the Global Compact and the draft resolution endorsing it" because "decisions about how to secure its borders, and whom to admit for legal residency or to grant citizenship, are among the most important sovereign decisions a State can make, and are not subject to negotiation, or review, in international instruments, or forums" (UNITED NATIONS GENERAL ASSEMBLY, 2018 a). For the country, the Compact would be a stepping stone to build-up a long-term legally-binding customary international law – or soft law – on the issue, aiming to hurt the United States sovereignty.

Final considerations

Considering the evolution of the legal framework protecting irregular migrants, there was an unprecedented level of advancements in the last two decades, compared to the previous international legislation. For example, the 1990 Convention – which was the first legally-binding document recognizing and guaranteeing the human rights of all migrants, regardless of their migrant status – was finally able to enter into force in 2003. The adoption of the Global Compact for Safe, Orderly and Regular Migration at the end of 2018 was also a hallmark in the process of creating a more coherent and integrated governance for international migration.

On the other hand, those accomplishments are still far from been enough as a solution to end the dangers faced by undocumented migrants and to truly integrate them as part of the sustainable development process. Still there is not a far-reaching legally-binding document capable of bringing all States, especially the mass-migration receiving countries, together under the same framework to combat irregular migration flows and guarantee human rights for all migrants. It is especially worrisome the non-compliance of the United States and

Hungary to the Global Compact. Their votes against the document means a serious weakening of the compact, considering that the United States is the greatest migrant-destiny nation worldwide; and Hungary is one of the main pathways for illegal migrants crossing the European continent from the Middle East.

Still, many countries consider that guaranteeing irregular migrants basic human rights would mean a breach of their sovereignty. Only by changing this view, the UN will be able to make international migration safer and boost its positive contribution to sustainable development worldwide. It is necessary to understand that:

> Protecting and respecting the rights of all individuals, including migrant women and men, most certainly does not mean infringing upon the state's sovereign right to determine migration policies. Having a rights based approach does not only benefit the individuals concerned, but promotes respect for the rule of law for existing institutions and thus benefits both states and individuals (THOMPSON, 2013).

In order to do so, UN Member States have to address three main challenges in order to further the international legal framework on the protection of international migrants and to increase their contribution to development:

i. How can Member States guarantee basic human rights for irregular migrants, especially considering the vulnerable situation of women and children?
ii. How can Member States reduce the costs of international migration – such as recruitment, documentation and remittances – in order to facilitate regular migration and curb irregular flows?
iii. How can the UN better engage mass-receiving migrant countries to the commitments of the 1990 Convention and the Global Compact for Migration?

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CHAPTER 7

THE SITUATION IN THE BOLIVARIAN REPUBLIC OF VENEZUELA

United Nations Security Council

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Introduction

In January 2019, the United Nations Security Council (UNSC)[3] adopted by 9 votes in favor, 4 against and 2 abstentions, a new item to its agenda: the Situation in the Bolivarian Republic of Venezuela. The issue was raised by the United States and sparked great criticism from other permanent members, like Russia and China, which questioned the adequacy of the item to the Council's agenda, considering the organs' mandate. Chapter V of the UN Charter determines that the Council has "(...) the primary responsibility for the maintenance of international peace and security (...)" (UNITED NATIONS, 2015, p. 19). Consequently, any matter regarded as affecting or threatening stability in a global level should be addressed by the UNSC.

Since 2013, after the death of former president Hugo Chávez and the election of his supporter, Nicolás Maduro, Venezuela has

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3 The Security Council is one of the UN main organs, responsible for maintaining international peace and security. It is composed by 15 member States, being five of them permanent – China, France, Russia, United Kingdom and the United States, and ten elected following a region distribution. The permanent members enjoy some special advantages, as the possibility of being penholders of the majority of agenda items and the power of vetoing resolutions by casting a negative vote (UNITED NATIONS, 2015, pp. 18-19).

faced considerable political instability. The opposition strengthened and was even able to win most of the seats in the election to the National Assembly. At the same time, the government's support was significantly shattered by the economic crisis that was driven by the fall of oil prices: oil has been the main pillar of the Venezuelan economy for decades. The political and economic crises were followed by the deterioration of social conditions that led to a humanitarian emergency in the country. According to the Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, Mark Lowcock, around 25% of the population in Venezuela are in need of humanitarian assistance. The situation has yet triggered a massive flow of migration that has been directed to neighboring countries, mostly Colombia and Brazil (UNITED NATIONS SECURITY COUNCIL, 2019 a, p. 2).

This chapter aims at discussing the issue of the Bolivarian Republic of Venezuela in light of its inclusion in the Security Council's agenda. To this end, we will present the selected information in three sections, along with this introduction: the first part shows a brief historical background on the major events that brought Venezuela to its current crisis and explains its introduction in the Councils' agenda. The second section will focus on how the issue is being discussed in the Council and raise some questions regarding its adequacy to the organ's mandate. Finally, the last section will present some concluding remarks and questions that should be considered by participants of this simulation.

Understanding the drivers of Venezuelan instability

The situation in the Bolivarian Republic of Venezuela became more unstable, especially after the death of Hugo Chávez, in 2013, when Nicolás Maduro took control of the country. In a short time, the country, whose economy was largely based on the sale of oil,

saw its commercial base deteriorate due to falling prices, triggering a serious economic crisis.

A multifaceted crisis

In March, 2013, the former president of the Bolivarian Republic of Venezuela, Hugo Chávez, died after a period of sickness and his absence became an additional element in a much broader crisis that would emerge in the country in the following years. During Chavez's presidential term, Venezuela enjoyed a period of relative economic growth and improvement in its living conditions, mainly due to the rising prices of oil, which is the main pillar of its national economy. According to the Organization of Petroleum Exporting Countries (OPEC), Venezuela has the biggest proven oil reserves among its members, corresponding to almost 25% of OPEC's total oil reserves. It is estimated that Venezuelan oil exports, until today, correspond to more than 90% of the national exports (ORGANIZATION OF PETROLEUM EXPORTING COUNTRIES, 2019 a; b).

Under Chavez presidency, the oil company *Petroleo de Venezuela* (PDVSA) was put under the government's control and redefined the agreements with its former investors, mainly Americans. In 2001, the Hydrocarbons' Law determined that all previous agreements relating to oil exploitation should have 50% to 60% governmental participation, allowing only companies with mixed capital to have a presence in the country (MOREIRA, 2018, p. 93).

The search for autonomy was also the foundation of Venezuela's foreign policy during Chavez's term. With the "21st century Socialism", the Bolivarian government tried to distance itself from the influence of the United States and to establish a regional leadership towards strengthening integration in Latin America. The task was favored by the fact that, during the beginning of the 2000s, many left-wing governments were established in the region, as were

the cases of Argentina, Brazil and Bolivia. Venezuela also diversified its partnerships improving relations with extra-regional countries, like Russia and China.

With the death of Chavez, the leadership role of Venezuela in the region and its domestic policies were weakened. His successor, Nicolás Maduro, lacked the political skills and charisma that granted Chavez a prominent role during his presidency and that allowed him to curb the opposition. In 2013, Maduro won the presidential elections over the opposing candidate, Henrique Capriles, securing a six-year term. However, in the following years he would lose some support and be exposed to an ever-stronger opposition.

In December 2015, the Democratic Unity coalition won a majority of seats in the Venezuelan National Assembly, taking control of the legislative body. This was a major setback to Maduro's presidency, since the coalition strongly opposed the government and started using the National Assembly to block governmental plans. In 2017, in an attempt to regain control over legislative activities, Maduro decided to organize elections to create a National Constituent Assembly that would initiate a constitutional reform and take over some of the powers of the National Assembly. But the opposition did not participate in the elections and ended up being excluded from the new Assembly and, consequently, did not recognize it. As a response, anti-government protests erupted in the country, questioning the legitimacy of the Constituent Assembly (UNITED NATIONS SECURITY COUNCIL, 2019 a, p. 3).

Amidst rising tensions, new presidential elections were held in May 2018, near the end of Maduro's first term. The election process was controversial. Even though the opposition took part in it, there were complaints of irregularities in the processing of votes. Maduro won the election and was sworn president on 10 January 2019. At this point, the country was already engulfed in a series of anti-

government protests. On 23 January, Juan Guaidó, president of the National Assembly, draw from an article[4] in Venezuela's Constitution to declare himself interim president, claiming that the opposition did not recognize the election of Maduro as being fair and transparent (UNITED NATIONS SECURITY COUNCIL, 2019 a, p. 3).

The emergence of Guaidó triggered a divide in the international community: while some countries recognized him as being the legitimate president, due to Venezuela's political instability, others condemned his action claiming that Maduro was rightfully elected by the Venezuelan people. On the one hand, among those who supported Guaidó are the United States, the European Union and some countries of the region, such as Argentina, Brazil, Canada, Peru, Colombia, Chile, Costa Rica, Guatemala, Honduras, Panama and Paraguay. On the other hand, countries like China, Russia, Bolivia and Uruguay claimed that the resort was unlawful, since elections were held and a candidate was chosen as a result (BRISCOE, 2019).

Some attempts have been made to mediate the crisis and foster dialogue between Maduro and Guaidó. Regional actors, such as the Organization of American States (OAS), the Union of South American Nations (UNASUL) and the Lima Group, which was created in 2017 by 14 regional countries to address the situation, tried to propose solutions, but the international divide also reflected within these arrangements and prevented them from reaching any results. In May, Norway tried to arrange a meeting between the Venezuelan government and its opposition, but the parties left the talks without advancements to solve the political instability (BRISCOE, 2019).

It is important to highlight that on top of the political instability, there is also an economic and humanitarian crisis unfolding in the country. According to the International Monetary Fund (IMF),

4 The Venezuelan Constitution determines in Article 233 that in the absence of an elected president and while new elections are organized, the presidency should be exercised by the president of the National Assembly.

inflation hit 1.37 million per cent and considerably reduced purchasing power, affecting access to food, medicines and other basic goods. Power cuts, fuel rationing and food shortages have also become frequent in many parts of the country. The government is also facing grave restrictions to public resources, since the sharp decline in oil prices in the last few years has considerably affected its revenue. U.S sanctions to Venezuela have also worsened the situation, by limiting the Latin American country oil exports (SABATINI, 2019; UNITED NATIONS SECURITY COUNCIL, 2019 a, p. 3).

As a result, Venezuela is drowning into a social and humanitarian crisis. The poverty rate has increased and, thus, impacted on living conditions: access to clean water is restricted favoring the spread of sanitary-related diseases, undernourishment affects around 4 million people and food insecurity is on the rise. It is estimated that 7 million people in Venezuela are in need of humanitarian assistance, from basic medical and food supply to access to safe water. The lack of development has amplified vulnerability in all areas, forcing many Venezuelans to seek better conditions in other places. According to the Office of the United Nations High Commissioner for Refugees, almost 4 million Venezuelans have fled the country since 2015, most of them heading to neighboring countries, such as Brazil and Colombia. For those people, especially women and children, there is an increased risk of abuse, smuggling and human trafficking while crossing borders (UNITED NATIONS SECURITY COUNCIL, 2019 d, pp. 2-5).

Thus, United Nations entities and international humanitarian organizations, such as the Red Cross and Doctors without Borders, have been scaling-up their assistance programs in order to meet the needs on the ground. As an example, the United Nations Children's Fund (UNICEF) has revised its country program in Venezuela to

expand its field presence in the areas of health, nutrition, sanitation and education. The plan, as endorsed by the Venezuelan Government in 2018, is set to offer assistance services that amount to US$ 32 million from 2018 to 2019. Other organizations, agencies and programs, such as the United Nations Population Fund (UNFPA) and the Food and Agriculture Organization (FAO), have also prepared special initiatives in consultation with different Venezuelan ministries, in order to cope with the above mentioned challenges (UNITED NATIONS CHILDREN'S FUND VENEZUELA, 2019, pp. 3-4).

The delivery of humanitarian assistance has also been used in the confrontation between the Government and opposition. In February, the government accused Guaidó, together with some opposing countries, of using humanitarian assistance to fuel political unrest and decided to close some crossing points on the borders. As a result, there were violent clashes between government supporters and anti-government groups, which led to many injured and 4 deaths (UNITED NATIONS SECURITY COUNCIL, 2019 b, p. 2).

The path towards becoming an item in the Council's agenda

Even before being included as a regular agenda item, the situation in Venezuela has been informally discussed in the UNSC due to the escalation of political instability in the country. In 17 May 2017, the Council addressed the situation of the South American country under "any other business"[5] after the request of the United States. In the occasion, Council members were briefed by the Assistant Secretary-General for Political Affairs, Miroslav Jenča, who better explained the political turmoil that emerged in

5 "Any other business" is a standing agenda item, under which a great variety of issues can be submitted to the Council's consideration. In general, Council members choose to add subjects under "Any other business" (or "Other matters") when they want to be updated about situations that are not included as formal items in the organ's agenda. It can also be a resort when Member States wish to have informal discussion on emerging issues related to the Council's mandate.

Venezuela after Maduro summoned an assembly to draft a new constitutional text. The decision raised heavy criticism from the domestic opposition and the international community. The ASG for Political Affairs also detailed regional initiatives aimed at avoiding the escalation of tensions: however, as we saw, most of them had limited results in actually getting the Venezuelan government and its opposition to engage in a political dialogue (SECURITY COUNCIL REPORT, 2017 b).

Six months later, on 10 November 2017, the United States with the support of Italy hosted an Arria-Formula[6] on the situation in Venezuela. As a more flexible and informal meeting format, the gathering allowed the host to invite a great diversity of actors who were interested in the issue, and allowed a consultation not restricted to the Council members. Representatives from the UN were invited as briefers, such as the then High-Commissioner for Human Rights, Zeid Ra'ad al Hussein, together with regional organizations like the OAS and international and local NGOs like Caritas and the Venezuelan *Foro Penal*. All briefings and discussions focused on the deterioration of the humanitarian, social and political situation in Venezuela (SECURITY COUNCIL REPORT, 2017 a).

A second Arria-Formula on Venezuela was organized on 7 September 2018, as a sideline event of a briefing on "Corruption and Conflict". The meeting, hosted once again by the United States, proposed to discuss the situation in Venezuela as a case study to understand the connection between corruption and instability, classifying the first as a root cause to conflict. The concept note

6 As defined in the UNSC Working Methods Handbook this meeting format is not considered a Council official activity, but helps to improve its Members access to information and mutual understanding. Arria-Formula meetings "(...) are very informal, confidential gatherings which enable Security Council members to have a frank and private exchange of views, within a flexible procedural framework, with persons whom the inviting member or members of the Council (who also act as the facilitators or convenors) believe it would be beneficial to hear and/or to whom they may wish to convey a message" (UNITED NATIONS SECURITY COUNCIL, 2019 e).

distributed to invite Council members and others to the meeting also highlighted the American understanding that the increasing flow of refugees should be considered a threat to regional stability (SECURITY COUNCIL REPORT, 2018).

It is possible to single out three similarities among these meetings. First, all of them were informal gatherings but served as a way to introduce the issue to Council Members, so that the suggestion to include it as a formal agenda item could be later explored. Second, all meetings were held as a result of an initiative from the United States, either by suggesting it under "any other business" or by organizing an Arria-Formula on the situation of Venezuela. Third, in all three occasions Council members attending the meetings could not reach a consensus on whether the situation in Venezuela could be considered eligible to become an item in the Council's agenda. This is because, for some members, like Russia and Bolivia, the political and humanitarian crisis involving Venezuela should be considered an internal affair of the country and, therefore, out of the Council's mandate (SECURITY COUNCIL REPORT, 2017 b; 2018).

Noteworthy, this divide between Council members would not cease to exist even when the issue was introduced as a provisional agenda item. On 26 January 2019, following a further deterioration of the humanitarian situation in Venezuela and a growing flow of refugees, the United States requested to include the issue officially in the discussions. In its 8452th meeting, the Security Council started debating whether the item "The situation in the Bolivarian Republic of Venezuela" should be introduced in the Council's agenda or not. On the one hand, Russia argued that the matter was not under the Council's mandate, since the context of the Venezuelan crisis did not represent a direct threat to the international peace and security. On the other hand, the United States sustained that the severe humanitarian crisis could cause a major regional instability, due

to the high flow of Venezuelans who fled to neighboring countries, which could jeopardize peace and stability in the region. The provisional agenda was put to a vote and with 9 votes in favor, 4 votes against and 2 abstentions, the topic was adopted and entered in the UNSC's agenda. It is interesting to see that the voting results reflect the divide between Council members, especially the five permanent ones. While France, the United Kingdom and the United States voted in favor of the inclusion, China and Russia voted against it[7] (UNITED NATIONS SECURITY COUNCIL, 2019 a, p. 2).

This same trend was repeated in other three meetings[8] held by the Council under the same agenda item. In all four occasions, the briefings delivered by representatives of the Secretariat and other specialists focused on the dire situation leading to the humanitarian crisis, which was presented in the previous section of this chapter. The statements from Member States, however, often revolved around the limits of sovereignty, intervention and the responsibility to protect civilians.

While condemning the humanitarian crisis, they diverged on how to handle the situation. The United States, Belgium, the Dominican Republic, France, Germany, Kuwait, Peru, Poland and the United Kingdom highlighted that the failure of Maduro's government to provide basic assistance was one of the drivers of the crisis and supported the efforts made by the opposition to deliver assistance. For example, in February, during the incident related to the closure of borders, the United States stockpiled some humanitarian goods on the borders of Brazil and Colombia, so that

7 Belgium, Dominican Republic, Germany, Kuwait, Peru and Poland also voted in favor of including the item. Other countries opposing the inclusion were Equatorial Guinea and South Africa. The abstensions were casted by Côte d'Ivoire and Indonesia. It is also important to highlight that voting on the inclusion of agenda items is a procedural matter, consequently, negative votes from any of the permanent members are not registered as vetoes (UNITED NATIONS SECURITY COUNCIL, 2019 b, p. 2).

8 The other meetings were held on 26 February, 28 February and 10 April 2019.

they could be smuggled to Venezuela. This has sparked criticism from some Council members, like Russia and China, who accused the United States of violating the principles of humanitarian assistance as outlined in the General Assembly Resolution 46/182: humanity, neutrality, impartiality and independence. These countries suggested an alternate option to deliver assistance: cooperating with the government through the donation of basic goods (UNITED NATIONS SECURITY COUNCIL, 2019 a; b; c; d).

Among the Latin-American countries that were invited to these meetings, such as Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Honduras, Mexico, Nicaragua, Paraguay and Uruguay, it is possible to identify a common ground on the concern over the humanitarian situation and on the idea that the resort to coercive measures were not welcomed and would only aggravate the situation. These countries, however, present divisions when the issue of the legitimacy of Maduro's government was addressed: many of them, who also formed the Lima Group, immediately recognized Guaidó when he declared himself as the interim president (UNITED NATIONS SECURITY COUNCIL, 2019 a, pp. 19-44).

As for the representative of Venezuela, who was also invited to the meeting, the central claim is that the situation in the country, while precarious, should raise efforts towards international cooperation with the acting government not against it. Venezuela argues that its social crisis is mainly due to the grave recession the country is facing, since the decrease of oil prices and the imposition of sanctions by the United States. The Venezuelan representative also accused the United States and other countries in the region to try to enforce a regime change in the country (UNITED NATIONS SECURITY COUNCIL, 2019 b, pp. 19-25).

Amidst the absence of consensus and the growing tensions, Russia and the United States tried to advance their concurring

views on the subject by drafting resolutions. In its 472nd meeting, held on 28 February, the UNSC voted on both documents: the draft presented by the Russian representative reinforced the role of the Venezuelan government in providing assistance and dealing with the social crisis, while urging Council members to abide by the principles of the UN Charter and refrain from considering coercive measures. The second draft, presented by the United States, focused on the humanitarian crisis and the need to promote new elections in Venezuela (UNITED NATIONS SECURITY COUNCIL, 2019 f; g).

Due to the divide, neither drafts were approved. The first to be voted on was the American draft, which had 9 votes in favor, 3 against and 3 abstentions[9]. The draft resolution was not adopted due to the vetoes of Russia and China. After that, the concurring draft was put to a vote, but it failed to obtain the required number of votes, having only 4 votes in favor, 7 against and 4 abstentions[10]. Thus, the Security Council has no resolution adopted for this agenda item yet (UNITED NATIONS SECURITY COUNCIL, 2019 c; p. 3; p. 6).

A fourth meeting was held on 10 April 2019, but it could not advance any further. Council members had even more divergent opinions and the adequacy of the agenda item to the organ's mandate was the core of the discussion (UNITED NATIONS SECURITY COUNCIL, 2019 d). In order to better understand the roots of these divides it is essential to clearly grasp the complexity of concepts and principles outlined in the UN Charter, the UNSC's mandate and how its practice over time has influenced its options for action.

9 Belgium, Dominican Republic, France, Germany, Kuwait, Peru, Poland, the United Kingdom and the United States voted in favor. South Africa voted against, together with Russia and China, and Côte d'Ivoire, Equatorial Guinea, Indonesia abstained.

10 China, Equatorial Guinea, Russia and South Africa voted in favor, Belgium, France, Germany, Peru, Poland, the United Kingdom and the United States voted against; and Côte d'Ivoire, Dominican Republic, Indonesia, Kuwait abstained from voting.

Venezuela: a matter of international peace and security?

In order to fully understand the implications of the debate on this agenda item and the divide of Council members, it is paramount to present and highlight some provisions of the UN charter and of the organ's mandate. Their application and interpretation are what allows the Council to deal with the Venezuelan situation in almost any way it sees fit.

Understanding the thresholds of UNSC actions

The UN was built in the aftermath of the World Wars in order to help sustain an international order that would have as its foundations the coexistence of sovereign States and the restriction to the use of force. These features are envisaged in the very beginning of the UN Charter: article 2.1 indicates that sovereign equality is the guiding principle of the organization, whereas the preamble states that by signing the Charter, countries agree to refrain from using force when it has not been authorized by the UN. These two elements have important implications to our study (UNITED NATIONS, 2015, pp. 3-6).

Being an organization composed of sovereign States, the UN created a set of rules and provisions that aim at protecting this sovereignty and avoiding its undermining by acts of aggression. At the same time, the self-determination of the peoples was also taken as a fundamental principle to govern international relations. Therefore, States would be the main actors to forge and implement international cooperation and the peoples should be free to make their own choices and to self-govern. This is an important characteristic of the UN's work: the organization was created to promote international cooperation and to elaborate decisions that would seize the compromise of member States and influence their actions. However, this practice is voluntary and should not, by

any means, overcome sovereignty and interfere in internal affairs (ALVAREZ, 2009; UNITED NATIONS, 2015, pp. 4-6).

This is why article 2.7 of the UN Charter indicated that "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State or shall require the Members to submit such matters to the settlement under the present Charter (...)" (UNITED NATIONS, 2015, p. 6). In other words, States are free to accept international agreements and thereby adapt its internal law to respect it, but the UN cannot bypass the State to intervene in domestic affairs. What adds increased complexity to this matter is the second part of the same article 2.7, which reads as follows: "(...) but this principle shall not prejudice the application of enforcement measures under Chapter VII" (UNITED NATIONS, 2015, p. 6).

Chapter VII, entitled "Action with respect to threats to the peace, breaches of the peace, and acts of aggression", is one of the four chapters that together outline and detail the mandate and tools of the Security Council. The organ, according to the UN Charter, has the primary responsibility to maintain international peace and security and to that end can choose from a variety of options that range from tools to the peaceful settlement of disputes, envisaged in Chapter VI, to enforcement alternatives, envisaged in Chapter VII. Chapter VII brings to the Council three main features: first, it determines the organ as being responsible to define what it understands as a "threat to peace" in the international system; second, it allows the Council, once it has identified a threat, to resort to enforcement measures to solve the issue; third, it gives the Council two options in this sense, either to impose sanctions or to use collective force (UNITED NATIONS, 2015, p. 19; pp. 27-28).

Interestingly, article 2.7 of the UN Charter, by connecting the non-interference with the mention to Chapter VII, can virtually

loosen the concept of sovereignty as applied by the UNSC. By stating that the non-interference commitment cannot "(...) prejudice the application of enforcement measures under Chapter VII", the UN Charter allows the UNSC to consider bypassing a State if it identifies a threat to peace (UNITED NATIONS, 2015, p. 6). The problem is that there is no clear definition of what should or should not be labeled as a threat to international peace and security. And, as determined by article 39, it falls under the Council discretionary power to identify those in the international system. As a consequence, Council members can regard as a threat any circumstance that they consider could jeopardize international security. For example, the violation of human rights, the lack of development, or even a humanitarian crisis having the potential to trigger conflict, could be considered a threat to international peace and security.

These non-traditional threats gained momentum in the 1990s with the dissemination of civil conflicts, whose root causes were usually interlinked with a previous vulnerable situation. In this new scenario, civilians became frequently subjected to increasing levels of violence and of violation of human rights. The result was the recurrence of atrocities and war crimes in Somalia, Bosnia, Rwanda, where the Council, when facing the tension between non-intervention and protection of human rights, found itself in a deadlock. The collective system that underpins the UN's capacity to use force was envisaged as a way to restraint the unilateral use of force by States, avoiding the repetition of world wars. It was fundamentally related to the idea of sovereign States and, therefore, not ready to deal with instabilities arising from domestic issues (THAKUR, 2009, pp. 2-3).

However, when the protection of civilians and human rights started to outweigh sovereignty, the provisions of the Charter were not enough to guide the Security Council. In order to avoid new

collective failures as the ones aforementioned, the then Secretary-General, Kofi Annan, called upon States to forge a new consensus that could allow the protection of human rights, while refraining from completely destroying the premise of sovereign States (THAKUR, 2009, p. 7).

It was when the concept of sovereignty, as outlined in the UN Charter started to soften and became contingent to the capacity of the States to ensure basic services and a minimum standard of living to its population. Whenever a State failed with its citizens resulting in grave harm to them, the international community would have the responsibility to provide assistance, even if it was against the consent of the State, a concept known as "Responsibility to Protect" (R2P). It could be applied by the Council, when the State "(...) either is unwilling or unable to fulfill its responsibility to protect or is itself the perpetrator of crimes or atrocities" (THAKUR, 2009, p. 7).

Essentially, the aim would be to protect civilians and ensure the end of atrocities, restoring minimal conditions to promote stability. Yet, the Council discovered that the practice of such concept of R2P was rather complex: clearly establishing the limits between protection of civilians and interference was not an easy task once in the ground. Heavy criticism regarding this distinction came with the application of R2P in Libya in 2011, which resulted in the overthrow of Muammar Gaddafi. As a response, many countries, especially developing ones, created the idea of "Responsibility *while* protecting", which again reinforced the utmost compromise with non-intervention in domestic affairs.

In any case, one pre-condition remains unchanged: the need to connect humanitarian crisis and violation of human rights with a threat to international peace and security, so that the use of provisions under Chapter VII can he legitimized. If this is not the case, the Council can still resort to Chapters VI or VIII of

the Charter. The first offers the possibility of peacefully settling disputes through mediation, arbitration, good offices and other tools. As for who can put forward these options, it falls under the Council power to request the involvement of a third part, which can be a specific country, a group of countries, a regional organization or the UN Secretary-General. In fact, Chapter VI was designed to be the main tool applied by the Council in disputes settlement. In turn, Chapter VIII highlights the special relation between the UN and regional arrangements: article 52.3 states that the Council "(...) shall encourage the development of pacific settlement of disputes through such regional arrangements (...)" and article 53.1 still gives the option of calling upon these regional institutions to support the enforcement of UNSC's decisions. All that to reinforce the collective responsibility with the peaceful settlement of disputes agreed on the UN Charter (UNITED NATIONS, 2015, pp. 35-36).

In summary, the Security Council, supported by the UN Charter, has one of the most diversified sets of practices within the UN. Being the organ responsible to maintain peace and stability, it can either do so by facilitating peaceful negotiations to put an end to a conflict or by imposing coercive measures, such as sanctions or even the collectively authorized use of force. In the next subsection, we will present some alternatives at the disposal of the Council regarding the Situation in the Bolivarian Republic of Venezuela.

Venezuela under the scrutiny of the Council

As we saw in the first section, the internal instabilities in Venezuela have been escalating quickly since 2016, when the Supreme Court took over some functions of the National Assembly, sparking protests. This unleashed a political crisis that counter Maduro's government with its opposition, which recently was embodied in the person of Guaidó. In January he declared himself

interim president by using a mechanism from the Venezuelan Constitution: this raised the issue of legitimacy further aggravated by the recognition that many States gave to Guaidó.

This political imbroglio, however, added up to a previous context of economic recession and social crisis. Since the sharp decrease of oil prices, government revenue was considerably restrained, expenditures in basic services was reduced and hyperinflation undermined purchasing power, limiting the access to food, health supplies and education to a great part of the Venezuelan people. The sanctions imposed by the United States aggravated the already poor situation. As a result, people started seeking for better conditions in neighboring countries, triggering a massive outflow of internally displaced persons and refugees.

As the previous sections presented, this was the situation which the Council had to face when addressing the agenda item on the Situation of the Bolivarian Republic of Venezuela. Nevertheless, interpretations may vary on whether this is a matter of domestic or international affairs. If the overall situation of the country is analyzed, it is possible to argue that Venezuela is facing an economic crisis, which led to both social and political crises, but that do not differ much from other countries that are not regarded as items in the Council's agenda. If this is the case, the main concern should be foster international cooperation in order to support the government boosting Venezuela's economy. In this sense, the topic would be out of the UNSC's mandate that specifically deals with security issues. Addressing Venezuela in this organ could, therefore, seriously threaten the principles of the UN Charter that reinforce the role of sovereign States.

However, if we consider the potential consequences of the humanitarian crisis in Venezuela and how it could jeopardize regional instability it is possible to justify the legitimacy of the

Council in debating the issue. Other than that, the concept of R2P could be raised to question the Venezuelan government capacity to provide minimum conditions to its population. If it is confirmed that the government is incapable, or unwilling, to provide assistance and that this condition is imposing grave harm to civilians, then UNSC could draw from its previous decisions to resort to coercive measures, either sanctions or the use of force.

Therefore, the actions of the Council towards Venezuela, one could argue, are more contingent to the understanding and interpretation of the principles that underpin the very mandate of the organ. In this sense, the agenda item on Venezuela exposes the core of UNSC's inconsistencies and limitations, but also highlights how eclectic its practices need to be if the Council is to fulfill its primary responsibility of maintaining international peace and security.

Final considerations

This chapter discussed the current situation in Venezuela from the standpoint of a UN organ tasked with ensuring international peace. As we presented, the current crisis in Venezuela begins with the decline of the country's economy that considerably deteriorated living conditions. In this scenario, the political opposition gets stronger fostering social unrest in some parts of the country. At the same time, the protracted economic crisis ends up creating the conditions to a social and humanitarian crisis.

The situation in Venezuela reached a different level when it was added to the Security Council's agenda. The inclusion subjected the national framework to international scrutiny, and open the possibility to the Venezuelan crisis to raise UNSC's action towards it. However, this Chapter also presented, in order to adequately address the issue, that Council members will have first to review the

organ's practices and revisit the provisions contained in its mandate and in the UN Charter. This is so because it is possible to claim that the Venezuelan issue falls far from the Council's responsibility.

In light of that, three main questions should be considered regarding the simulation of this agenda item:

i. Is the crisis in the Bolivarian Republic of Venezuela a direct threat to international peace and security?

ii. What are the limits of sovereignty and non-intervention?

iii. What are the options to ensure the delivery of principled humanitarian assistance to Venezuelans?

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CHAPTER 8

WHALING IN THE ANTARCTIC
(Australia v. Japan: New Zealand intervening)
International Court of Justice

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Introduction

Whaling has become a controversial subject in international relations over the decades. The multilateral regulation of whaling was possible after the adoption of the International Convention for the Regulation of Whaling (ICRW), in 1946. The main purpose of the Convention was to safeguard marine resources for future generations (INTERNATIONAL CONVENTION FOR THE REGULATION OF WHALING, 1946; DORSEY, 2013, p. 31).

Since the adoption of the ICRW, many efforts have been implemented towards sustainable and rational whaling, converting this activity in a matter of environmental awareness. Civil society has called the attention of States about the necessity of preserving marine life, especially in places that are considered "marine sanctuaries", such as the Antarctic. In this sense, this article has the purpose to analyze the dispute between Australia and Japan before the International Court of Justice[2] (ICJ), in which Australia accused

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2 The ICJ is the main judicial organ of the United Nations (UN) and its main function is to settle legal disputes between UN Member States. The Court can also give advisory opinions on legal questions referred to it by States, the General Assembly, the Security Council, and authorized UN organs and specialized agencies (UNITED NATIONS, 2019 a).

Japan and its Whale Research Program under Special Permit in the Antarctic (JARPA II) of breaching its obligations under the ICRW.

On 31 May 2010, Australia accused Japan of violating article VIII of the ICRW. According to Article VIII, whaling in the Antarctic is permitted if the activity is pursued with a scientific purpose. In this sense, Australia accused Japan of conduct a whaling research program (JARPA II) in violation of the provisions of Article VIII (INTERNATIONAL COURT OF JUSTICE, 2014 a).

The case "Whaling in the Antarctic" unveils the importance of sustainable whaling, an issue highlighted by civil society and States around the world. The 2030 Agenda for Sustainable Development, adopted by the General Assembly in 2015 (A/RES/70/1), emphasizes the crucial relevance of protecting the oceans and marine life. Sustainable Development Goal 14 (Conserve and sustainably use the oceans, seas and marine resources for sustainable development), aims at conserving and protecting marine life. In this way, concerning whaling and other fishing activities, States made a compromise to end illegal, unreported, unregulated and destructive fishing practice in order to restore fish stocks as well as implementing scientific-based management plans (UNITED NATIONS DEVELOPMENT PROGRAMME, 2019; UNITED NATIONS, 2019 b).

In this sense, the purpose of the chapter is to analyze the dispute between Australia and Japan before the ICJ, in order to present the main aspects of the Court's decision, since the case highlight a very controversial activity nowadays, which can affect marine life and compromise the balance of the ecosystem. The article is divided into four main sections. Section one presents the legal framework concerning whaling, especially in the Antarctic continent. The second section analyzes the case Australia vs. Japan before the ICJ, presenting Australia's application before the Court and Japan's counter-memorial. Section three analyzes the Court's decision on

the case. Section four presents some concluding remarks on the current situation on whaling in the Antarctic.

The regulation of whaling under international law

The International Convention on the Regulation of Whaling (1946)

Whaling is an activity that has been practiced over approximately a thousand years with the main purpose of extracting the whale's oil, bones, and meat, which are used for consumption. In the beginning, whaling was mainly experienced in the land stations with the use of hand-thrown harpoons and nets from rowing boats. Afterwards, the captured whales were processed in the coastal waters. Later, new techniques on whaling were developed and States were able to expand their research and operations into other territories, since the whales could be processed totally in on-board factory ships, which had also helped improve and increase the number of whales captured (FITZMAURICE, 2017, p. 1).

In this scenario, the unregulated and unlimited whaling initiated in 1833 persisted over 21 years with a large-scale number of whales captured, especially in the Antarctic. This was possible due to the technologies created and improved over the years that followed the pelagic whaling together with the unprecedented exploitation of all species of whales. During the period of 1927 to 1931, the number of Antarctic pelagic whaling quadrupled and there was an overproduction concomitantly with the world economic crisis. The result was the collapse of the pelagic whaling industry (FITZMAURICE, 2017, p. 1).

Within that situation and due to the world economic crisis and the overexploitation of whales during both World War I and World War II, two international conventions were adopted in order to protect whales and regulate whaling: the Geneva Convention for the Regulation of Whaling (1931) and the Agreement for the Regulation

of Whaling (1937). Both Conventions were not considered very effective, but they were important precedents to the development of a legal basis for the creation of a future international treaty: the 1946 International Convention for the Regulation of Whaling (ICRW). States negotiated norms that tried to combine the needs of the whaling industry and the conservation of whale stocks. States also agreed that whales were a common global resource that might be preserved with the cooperation among nations (FITZMAURICE, 2017, pp. 1-2).

The negotiations on the text of the Convention approached the importance of the protection of primitive whaling, as well as the need for authorization of whaling for scientific purposes under a stipulated number of whales. In this way, the negotiations were divided into two parts: in the first part, States focused on creating a Protocol in 1945 to regulate the whaling season from 1947 to 1948; the second part focused on the consolidation of the International Whaling Commission (IWC) (FITZMAURICE, 2017, pp. 2-3).

The ICRW tries to balance economic and industrial needs with the conservation of whales. The inter-war period was marked by "the beginning of international law's approach to a whale as an object of, on the one hand, an economic exploitation and thus a subject to legal regulation; on the other, the totemic object; and the object of, almost, worship" (FITZMAURICE, 2017, p. 3). Thus, the ICRW comprehends a regulatory system for the management of whale stocks by the means of conservation and utilization of whale species determined by the whales open and closed seasons, whaling methods as well as establishing the Southern Ocean Sanctuary. Thus, the whaling regime of the Convention established three types of whaling: commercial, aboriginal and scientific (FITZMAURICE, 2017, p. 3).

The text of the ICRW is vague concerning the extent of conservation as well as the limits on industrial whaling. Concerning

scientific whaling, Article VIII affirms that States parties are responsible for issuing permits for scientific research on whaling, which means that the IWC cannot regulate States' scientific whaling programs (FITZMAURICE, 2017, p. 4).

According to Fitzmaurice (2017, p. 4),

> The ICRW was negotiated and structured almost seventy year[s] ago and its main provisions were based on two pre-war treaties from 1931 and 1937. The basic structure of the Convention reflects the approaches to environmental matters of the period when it was negotiated and, as such, it was not based on principles that characterise the contemporary approach to environmental protection.

In this sense, the current international environmental regime has developed towards conservation and protection of species, and the recent approach concerning whaling focuses on preservation purposes rather than commercial purposes. The activism of civil society and NGOs reinforced the preservation approach concerning whaling, especially in the Antarctic continent.

The Antarctic Treaty (1959)

The Antarctic Treaty was adopted on 1 December 1959. Until the present date, 54 countries have ratified the Treaty. The Preamble of the Treaty states that Antarctica shall be used "exclusively for peaceful purposes and shall not become the scene or object of international discord" (SECRETARIAT OF THE ANTARCTIC TREATY, 2011). In addition, cooperation among countries is seen as the basis of scientific investigation, which will contribute to the progress of humankind.

The Treaty consists of 14 articles, which describe the obligations and rights of the parties concerning the use of the Antarctic continent. For instance, the Treaty prohibits military activities in

the Antarctic (Article I), and prohibits the right to territorial claims (Article IV). Concerning scientific research, the Treaty states that it must be exchanged between States, as well as scientific personnel between expeditions and stations (Article III). Moreover, any dispute between the contracting parties involving the interpretation of the Antarctic Treaty should be resolved through diplomatic negotiation and, if the dispute is not settled, it shall be referred to the International Court of Justice, with the consent of the parties involved (Article XI) (CONFERENCE ON ANTARCTICA, 1959).

The Antarctic Treaty, in Article IX, establishes that States Parties will follow the principles of the Treaty, inter alia, the use of Antarctica for peaceful purposes, facilitation of scientific research and cooperation, and "preservation and conservation of living resources in Antarctica" (CONFERENCE ON ANTARCTICA, 1959).

Later, on 20 May 1980, States adopted the Convention for the Conservation of Antarctic Marine Life Resources (CAMLR Convention), which focused on the protection of the marine environment of Antarctica. The objective of the Convention is the conservation of Antarctic marine life resources and the regulation of the exploitation of species of the marine ecosystem. Furthermore, the Convention focuses on the question of research, for example, the compilation of data on local species, the quantity designations of the species being studied, the species to be protected, and the opening and closing of fisheries (COMMISSION FOR THE CONSERVATION OF ANTARCTIC MARINE LIVING RESOURCES, 2019).

Whaling in the Antarctic (Australia v. Japan: New Zealand intervening)

Australia's application before the ICJ

In its application before the ICJ, Australia accused Japan of breaching Article VIII of the ICRW. In this sense, Australia's

Memorial focused on proving that Japan's whaling program in the Antarctic was not for scientific purposes, which violated Article VIII of the ICRW. Australia's main argument focused on the exception of Article VIII and the meaning and effect of this article. By stating that Article VIII was an exception in the Convention, Australia affirmed that any permission granted to pursue whaling for scientific purposes had to be according to the main objective of the Convention, namely the conservation of whale stocks (INTERNATIONAL COURT OF JUSTICE, 2014 a).

Australia defended that JARPA II was not a research program of scientific purposes within the meaning of Article VIII[3] of the ICRW:

> In Australia's view, it follows from this that Japan has breached and continues to breach certain of its obligations under the Schedule to the ICRW. Australia's claims concern compliance with the following substantive obligations: (1) the obligation to respect the moratorium setting zero catch limits for the killing of whales from all stocks for commercial

3 1. Notwithstanding anything contained in this Convention, any Contracting Government may grant to any of its nationals a special permit authorizing that national to kill, take, and treat whales for purposes of scientific research subject to such restrictions as to number and subject to such other conditions as the Contracting Government thinks fit, and the killing, taking, and treating of whales in accordance with the provisions of this Article shall be exempt from the operation of this Convention . Each Contracting Government shall report at once to the Commission all such authorizations which it has granted. Each Contracting Government may at any time revoke any such special permit which it has granted. 2. Any whales taken under these special permits shall so far as practicable be processed and the proceeds shall be dealt with in accordance with directions issued by the Government by which the permit was granted. 3. Each Contracting Government shall transmit to such body as may be designated by the Commission, in so far as practicable, and at intervals of not more than one year, scientific information available to that Government with respect to whales and whaling, including the results of research conducted pursuant to paragraph 1 of this Article and to Article IV. 4. Recognizing that continuous collection and analysis of biological data in connection with the operations of factory ships and land stations are indispensable to sound and constructive management of the whale fisheries, the Contracting Governments will take all practicable measures to obtain such data (INTERNATIONAL CONVENTION FOR THE REGULATION OF WHALING, 1946, p. 2).

> purposes (para. 10 (e)); (2) the obligation not to undertake commercial whaling of fin whales in the Southern Ocean Sanctuary (para. 7 (b)); and (3) the obligation to observe the moratorium on the taking, killing or treating of whales, except minke whales, by factory ships or whale catchers attached to factory ships (para. 10 (d)). Moreover, according to Australia's final submissions, when authorizing JARPA II, Japan also failed to comply with the procedural requirements set out in paragraph 30 of the Schedule for proposed scientific permits (INTERNATIONAL CRIMINAL COURT, 2014 a, p. 27).

Australia explained that when the Convention was adopted, before the Stockholm Conference in 1972 and the international attempt on raising awareness about conservation and sustainability, the main goal of conservation of whale stocks had a different meaning than it has nowadays. It meant to develop the whaling industry in a controlled way, without focusing on the conservation of whales. Later on, the International Whaling Commission started to emphasize the "conservation of whales as an end in itself" (INTERNATIONAL COURT OF JUSTICE, 2011, p. 52).

The Australian memorial also considered different forms of whaling as the ICRW comprehensiveness about the different types of whaling. The "aboriginal subsistence whaling" which is characterized by the subsistence need, and whaling for scientific research purposes or whaling under special permit, which is an exception of the Convention. Any other form of whaling not characterized by those two types is recognized by the ICRW as commercial whaling, and if it does not follow the protocols prescribed by the Convention, it is subject to moratorium (INTERNATIONAL COURT OF JUSTICE, 2011, p. 56).

In this sense, the Australian memorial questioned the legality

of Japan's whaling program, defending that the comprehensiveness of the Convention has evolved from the recognition that whaling industry depends on the conservation of the whale stocks to a regime of conservation of the natural environment (INTERNATIONAL COURT OF JUSTICE, 2011).

Regarding the Japanese research Program JARPA II, which constitutes the main part of the Australian argument against Japan, the Memorial labeled the program as a way to get around the moratorium, accusing Japan of authorizing a program of non-scientific purposes. Furthermore, Australia stated that Japan used its program as an excuse to foment its market using lethal methods to kill and treat whales guaranteeing the whale meat supply of the whaling industry:

> (...) Japan's fundamental purpose in conducting JARPA II is not scientific research at all. As demonstrated in Chapters 5 and 6, Japan's whaling is not within the scientific research exception contained in Article VIII of the ICRW and is contrary to the commercial whaling moratorium, the Southern Ocean Sanctuary and other obligations in the ICRW (INTERNATIONAL COURT OF JUSTICE, 2011, p. 139).

Furthermore, Australia explained that the conditions of special permits under Article VIII had evolved since it was first introduced. In this sense, Article VIII must be interpreted as a limited exception to the ICRW directly related to answering the subject of scientific purposes and the conservation of whales, and that any other perspective should not be comprehended within the scope of the limited exception of Article VIII (INTERNATIONAL COURT OF JUSTICE, 2011, p. 188).

Moreover, Australia affirmed that special permit did not minimize the Convention regime and must follow strict characteristics. It must contribute for the conservation of whale

stocks; it must use appropriate methods to achieve objectives; and it must use lethal methods only when other methods are not possible, with periodic reviews and avoiding negative effects. Thus, Australia defended that special permit granted by Japan to JARPA II to kill whales in the Antarctic must follow those characteristics of scientific purposes (INTERNATIONAL COURT OF JUSTICE, 2011, p. 189).

In this way, Australia stated that the Japanese program did not fit into the exception provisions of Article VIII. On the contrary, Japan granted special permit for large-scale whaling to respond to its internal economic interests to foment the whale market and industry, breaching its obligations under Article VIII of the ICRW (INTERNATIONAL COURT OF JUSTICE, 2011, p. 189).

Counter-Memorial of Japan

Japan's counter-memorial was elaborated based on Australia's main arguments. Japan explained that Australia affirmed that JARPA II was not been carried out in conformity with Article VIII of the ICRW. However, Japan stated that Article VIII did not have any provision regarding the limit of fisheries. Therefore, from Japan's perspective, Australia's argument was a way of saying that, due to the non-creation of exceptions by Article VIII, Japan could not fish a great quantity of whales. In this sense, Japan affirmed that, due to its legitimate right to authorize special permit on whaling under Article VIII, Australia had no right to review Japan's determination of the need for special permit for whaling (INTERNATIONAL COURT OF JUSTICE, 2012, p. 411).

Furthermore, Japan affirmed that Article VIII (1) stated that each contracting party authorizes its nationals to kill, take and treat whales for purposes of scientific research. In this sense, Japan argued that whaling was not regulated by or under the ICRW,

except in the terms of Article VIII. In Japan's view, the ICRW was, therefore, no longer relevant to questions related to the legality of whaling expeditions. Therefore, each government is competent to set the conditions of whaling expeditions (INTERNATIONAL COURT OF JUSTICE, 2012, p. 325).

Moreover, Japan defended JARPA II as a purely scientific program. In Australia's view, modern technology offered a diversity of non-lethal methods, such as satellite tagging, biopsy sampling and sighting survey. Therefore, lethal methods must be used in a research program under Article VIII only when "no other means are available" (INTERNATIONAL COURT OF JUSTICE, 2014 a, p. 6).

However, according to Japan, non-lethal methods proposed as replacements for lethal sampling did not produce sufficiently accurate data necessary for scientific analysis or were not practicable, as recognized by the IWC Scientific Committee and various experts. Besides, Japan argued that it was the mathematics behind the statistical analysis that determines a sustainable practice of whaling and, in the case of JARPA II, its results had been highly appreciated by the scientific community (INTERNATIONAL COURT OF JUSTICE, 2012, pp. 222-223; INTERNATIONAL COURT OF JUSTICE, 2014 a, p. 46).

Australia stated that Japan objectively fails to meet the requirements of Article VIII, and the legality of its program could not be proved by the legal fiction Japan had created through the issue of special permits. Japan challenged Australia's argument by explaining that Article VIII did not have provisions related to the supposed "requirements" presented by Australia in its Memorial (INTERNATIONAL COURT OF JUSTICE, 2012, , pp. 222-223; p. 411).

In its memorial, Australia affirmed that JARPA II did not have the four essential criteria of a program of scientific purposes, which were stated in the resolutions and guidelines adopted by the IWC. In

order to respond to this argument, Japan reaffirmed its position on following strictly what Article VIII stated and explained that once these criteria were made outside the scope of Article VIII, Japan did not consider them obligatory. Besides that, Japan presented a different understanding of what the essential criteria for a scientific research program were (INTERNATIONAL COURT OF JUSTICE, 2012, p. 413).

Finally, Australia stated that Japan issued special permits for a program, which intended to subvert the moratorium on commercial whaling, ignoring relevant IWC guidelines. In this sense, Australia concluded that Japan was not acting in good faith with JARPA II. Japan affirmed that the IWC guidelines were recommendatory and, concerning JARPA II, it argued that it was pursued in conformity with Article VIII (2), which requires that "any whales taken under these special permits shall so far as practicable be processed and the proceeds shall be dealt with in accordance with directions issued by the Government by which the permit was granted" (INTERNATIONAL COURT OF JUSTICE, 2012, p. 413).

Therefore, even though Japan recognized that most of the cost of JARPA II had been funded by the commercialization of whale meat, it affirmed that the significant scientific results of the program surpassed its commercial purposes and, in this sense, JARPA II was primarily and genuinely a scientific program (INTERNATIONAL COURT OF JUSTICE, 2012, p. 419).

New Zealand's intervention

New Zealand presented a request to the ICJ, in which it stated that the government of New Zealand had the right to intervene as a non-party in the proceedings brought by Australia against Japan to the ICJ. According to Article 62 (1) of the Statute, when a State considers "that it has an interest of a legal nature which may be

affected by the decision in the case, it may submit a request to the Court to be permitted to intervene" (INTERNATIONAL COURT OF JUSTICE, 2019).

According to the Declaration of Intervention of New Zealand, Article VIII might "be interpreted in good faith" in its "context and in light of the object and purpose of the Convention, taking account of subsequent practice of the parties and applicable rules of international law" (INTERNATIONAL COURT OF JUSTICE, 2014 a, p. 18). Therefore, New Zealand stated that the provisions of Article VIII should be interpreted as follows:

> (a) Article VIII forms an integral part of the system of collective regulation established by the Convention, not an exemption from it. As such, it cannot be applied to permit whaling where the effect of that whaling would be to circumvent the other obligations of the Convention or to undermine its object and purpose.
> (b) Only whaling that is conducted 'in accordance with' Article VIII is exempt from the operation of the Convention.
> (c) Article VIII only permits a Contracting Government to issue a Special Permit for the exclusive 'purposes of scientific research'. The purpose for which a Special Permit has been issued is a matter for objective determination, taking account of the programme's methodology, design and characteristics, including: the scale of the programme; its structure; the manner in which it is conducted; and its results.
> (d) Article VIII requires a Contracting Government issuing a Special Permit to limit the number of whales to be killed under that permit to a level that is the lowest necessary for and proportionate to the objectives of that research, and that can be demonstrated will have no adverse effect on the conservation of stocks.
> (e) A Contracting Government issuing a Special

> Permit must discharge its duty of meaningful co-operation, and demonstrate that it has taken proper account of the views of the Scientific Committee and the Commission.
> (f) Only whaling under Special Permit that meets all three of the requirements of Article VIII outlined above is permitted under Article VIII (INTERNATIONAL COURT OF JUSTICE, 2014 a, p. 18).

By examining the reasoning of New Zealand concerning the object and purpose of Article VIII of the ICRW, it is clear that both New Zealand and Australia had a similar interpretation of Article VIII, which focused on the requirement of scientific purpose of any program of whaling in the Antarctic. In addition, New Zealand called the attention for the conservation of whale stocks and affirmed that Japan should ensure that the number of whales being killed should be "the lowest necessary for, and proportionate to, the scientific purposes" (INTERNATIONAL COURT OF JUSTICE, 2014 a, p. 19).

Whaling in the Antarctic: The ICJ Decision

In its Judgment, the ICJ analyzed the alleged violations committed by Japan, described in Australia's Memorial. The Court considered if Japan breached Article VIII of the ICRW. Before analyzing if JARPA II was indeed following the provisions of Article VIII, the Court presented a general overview of the ICRW and the meaning of Article VIII. The Court mentioned previous conventions, such as the Convention for the Regulation of Whaling (1931) and the International Agreement for the Regulation of Whaling (1937). Both Conventions focused on the sustainability and prosperity of the whaling industry (INTERNATIONAL COURT OF JUSTICE, 2014 a, pp. 24-25).

The ICRW (1946) differed from previous conventions because it did not "contain substantive provisions regulating the conservation of whale stocks or the management of whaling

industry" (INTERNATIONAL COURT OF JUSTICE, 2014 b, p. 25). The ICRW gave the International Whaling Commission (IWC) the task of regulating whaling. The IWC is composed by members from each State Party to the ICRW and can give recommendations concerning the regulation of whaling. Although recommendations are not binding, if approved by consensus or unanimously, they "may be relevant for the interpretation of the Convention and its Schedule" (INTERNATIONAL COURT OF JUSTICE, 2014 a, p. 26).

In 1950, the IWC established a Scientific Committee, composed of scientists nominated by States Parties. The Committee analyzes information about whales and whaling, which can be submitted by States Parties "in compliance with their obligations under Article VIII, paragraph 3, of the Convention" (INTERNATIONAL COURT OF JUSTICE, 2014 b, p. 26). In this sense, the Committee analyzes and reviews special permits granted by States to their nationals for purposes of scientific research (INTERNATIONAL COURT OF JUSTICE, 2014 a, p. 26).

The Court then proceeded to analyze the arguments of both Parties in order to verify if Japan had breached the ICRW. The decision of the Court on this matter involves the verification of the validation of JARPA II according to the provisions of Article VIII. Therefore, the Court's main role, in this case, was to decide whether the special permit conceded to JARPA II was in accordance with the provisions of Article VIII, meaning that the purpose of JARPA II was exclusively scientific (INTERNATIONAL COURT OF JUSTICE, 2014 b, p. 4).

Concerning Article VIII, paragraph 1, the Court explained that Article VIII was an integral part of the ICRW and, therefore, it "has to be interpreted in light of the object and purpose of the Convention and taking into account other provisions of the Convention, including the Schedule" (INTERNATIONAL COURT OF JUSTICE, 2014 a,

pp. 28-29). However, if whaling is conducted with special permit that follows the provisions of Article VIII, it is not subject to the obligations concerning "the moratorium on the catching of whales for commercial purposes, the prohibition of commercial whaling in the Southern Ocean Sanctuary and the moratorium relating to the factory ships" (INTERNATIONAL COURT OF JUSTICE, 2014 a, p. 29).

Moreover, the Court analyzed the relationship between Article VIII and the object and purpose of the Convention. The Court affirmed that the Preamble of the ICRW indicates its purposes, which is "the conservation of all species of whales while allowing for their sustainable exploitation" (INTERNATIONAL COURT OF JUSTICE, 2014 a, p. 29). In this sense, the Convention addresses the interests of all nations and of the future generations, by protecting all species from overfishing and increasing the size of whale stocks. Concerning the Preamble of the ICRW and Article VIII, the Court affirmed that scientific programs should improve scientific knowledge, as well as the conservation of the ecosystem and of living marine resources, "which the whale stocks are an integral part" (INTERNATIONAL COURT OF JUSTICE, 2014 a, p. 29).

The Court proceed to analyze the special permit conceded by Japan to the killing, taking and treating of whales in the Antarctic. In this way, the Court analyzed if Japan's program was for purposes of scientific research and whether or not it used lethal methods. However, the Court explained that it "is not called upon to resolve matters of scientific or whaling policy" and that States had different views concerning appropriate policies towards whaling. Then, the Court would only verify "whether the special permits granted in relation to JARPA II fall within the scope of Article VIII, paragraph 1, of the ICRW" (INTERNATIONAL COURT OF JUSTICE, 2014 a, p. 32).

Concerning whether Japan's program used lethal methods for purposes of scientific research, the Court considered if the

program's design and implementation were compatible with its scientific purposes. In this sense, the Court analyzed the following elements:

> (...) decisions regarding the use of lethal methods; the scale of the program's use of lethal sampling; the methodology used to select sample sizes; a comparison of the target sample sizes and the actual take; the time frame associated with a program; the program's scientific output; and the degree to which a program co-ordinate its activities with related research projects (INTERNATIONAL COURT OF JUSTICE, 2014 a, p. 36).

The Court concluded that the verification of the scientific purposes of a program was related to whether its design and implementation were linked to the achievement of its objectives. In this sense, the Court analyzed if JARPA II design and implementation were reasonable with its objective of scientific purposes, in light of Article VIII of the ICRW (INTERNATIONAL COURT OF JUSTICE, 2014 a, p. 38).

The Court analyzed JARPA (Japanese Whale Research Program under Special Permit in the Antarctic), which preceded JARPA II, in order to compare both programs and to verify if JARPA II were carried out according to Article VIII of the ICRW. Regarding the use of lethal methods, the samples' size of JARPA II were double the samples of JARPA. This revealed that the comparison of both Japanese projects in terms of scientific research indicates an enlargement of the implementation of the programs. It was also discovered that JARPA II has samples of two other species of whales: fin and humpback. However, the fishing and killing of those species did not use lethal methods. Moreover, the Court realized that it was necessary to look further into the two research programs because of their differences. The Court then analyzed the steps regarding the

process of examining the samples size seeing that the steps of the process raised disagreement between the Parties. The objective of the Court was to examine if the evidence found in the programs were in accordance with the samples' size and the objectives of JARPA II (INTERNATIONAL COURT OF JUSTICE, 2014 b, pp. 6-7).

The Court first considered that the samples' size was not reasonable with the objectives of the program and there were discrepancies between JARPA and JARPA II in their objectives, which did not justify the increase of lethal sampling in JARPA II. Secondly, the samples' size used for fin and humpback whales was too small to collect the scientific research information needed. Thirdly, the methods used to determine the samples' size of the whales were not clear. Fourthly, some of the shreds of evidence have suggested that JARPA II could have collected a small amount of samples' size and Japan did not justify why this was not applied to the program. The Court concluded that the evidence showed that Japan did not consider the use of other methods other than lethal in order to fulfil the scientific program (INTERNATIONAL COURT OF JUSTICE, 2014 b, pp. 7-8).

In conclusion, the Court decided that the activities of JARPA II were related to the purposes of scientific research but the evidence had shown that the program was not in accordance with its design and implementation. Therefore, the Court affirmed that the special permit granted by Japan in order to take action on killing, taking and treating whales in the Antarctic were not in accordance with JARPA II "purposes of scientific research" established by Article VIII of the Convention (INTERNATIONAL COURT OF JUSTICE, 2014 b, p. 9).

The Court stated that

> Taken as a whole, the Court considers that JARPA II involves activities that can broadly be characterized as scientific research (...), but that the evidence

> does not establish that the programme's design and implementation are reasonable in relation to achieving its stated objectives. The Court concludes that the special permits granted by Japan for the killing, taking and treating of whales in connection with JARPA II are not "for purposes of scientific research" pursuant to Article VIII, paragraph 1, of the Convention (INTERNATIONAL COURT OF JUSTICE, 2014 a, p. 71).

In its Judgment, the Court found that "the special permits granted by Japan in connection with JARPA II" did not "fall within the provisions of Article VIII, paragraph 1" of the ICRW and "by granting special permits to kill, take and treat fin, humpback and Antarctic minke whales", Japan had not "acted in conformity with its obligations under paragraph 10 (e) of the Schedule" to the ICRW. Moreover, the Court found that Japan had not acted "in conformity with its obligations under" paragraphs 10 (d) and 7 (b) of the Schedule to the ICRW "in relation to the killing, taking and treating of fin whales in the "Southern Ocean Sanctuary" in pursuance of JARPA II". The Court also found that Japan had complied "with its obligations under paragraph 30 of the Schedule to the ICRW with regard to JARPA II". In conclusion, the Court decided that Japan should revoke any "extant authorization, permit or licence granted in relation to JARPA II, and refrain from granting any further permits in pursuance of that program" (INTERNATIONAL COURT OF JUSTICE, 2014 a, pp. 77-78).

The ICJ's decision on the case "Whaling in the Antarctic (Australia v. Japan: New Zealand intervening)" was not unanimous. The ICJ Judges who voted against the final decision of the Court had different opinions concerning the interpretation of Article VIII of the ICRW, which were based on a more strict interpretation of the rules conveyed in it.

Judge Owada affirmed that the purpose of the ICWR was clearly

enunciated in its Preamble, which was to achieve the sustainability of whale stocks and the viability of whaling industry. That being said, he explained that the Convention did not convey the idea of a total permanent ban on the catch of whales. Furthermore, Judge Owada argued that the Convention had a self-contained regulatory regime, which means that no power of decision-making by a majority is given to the IWC automatically to bind the Contracting Parties, and no amendments to the Schedule would become effective in relation to a Contracting Party who objects to the amendments in question. Hence, Japan had a legitimate right to raise objections under what was proposed outside the meaning of Article VIII (INTERNATIONAL COURT OF JUSTICE, 2014 b, pp. 13-15).

Under the perspective of Judge Bennouna, JARPA II could not be described as a commercial whaling program, since there is no objective of profit. In his dissenting opinion, he stated that there was no need to have such a detailed analysis of the samples' sizes to compare in each program, JARPA and JARPA II. Judge Bennouna affirmed that the case of whaling was too emotional and had a cultural charge that interfered in the Court's judgment, since it should be based on international law alone. Judge Bennouna affirmed that JARPA II was launched as a way of having more scientific data then what was collected in the first program. Regarding the Court's decision, Judge Bennouna considered that it was not taken in accordance with the spirit of the Convention and in the cooperation among the States Parties (INTERNATIONAL COURT OF JUSTICE, 2014 b, pp. 21-22).

According to Judge Yusuf's dissenting opinion, the legal criteria adopted in the assessment of the case was wrongly applied. In his point of view, the Court should have based its decision on the legality of the Japanese program related to Article VIII of the Convention, and not by the design and implementation of JARPA

II. In this manner, Judge Yusuf defended that the assessment of the design and implementation of the program was a task for a scientific committee. In addition, he stated that the JARPA II was reviewed and it was in accordance with Article VIII by the Scientific Committee of the IWC in 2005. Furthermore, he believed that there was no legal basis that explained JARPA II breaches to the moratorium on the prohibition on whaling in the Southern Ocean Sanctuary or to the factory ship (INTERNATIONAL COURT OF JUSTICE, 2014 b, pp. 16-18).

In accordance with Judge Abraham's opinion, there was an overlapping claim to the maritime area, which based the Japan's objection to the Court's jurisdiction over the case. He also criticized the request of the Court to a test verifying if the program was actually "for purposes of scientific research", saying that the Court was assuming the status of a Scientific Committee. Furthermore, he defended that the Court should have accepted that JARPA II was a program for purposes of scientific research, namely the various explanations provided by Japan (INTERNATIONAL COURT OF JUSTICE, 2014 b, pp. 7-8).

However, other Judges, who voted in favor of the final decision of the ICJ, had a broader interpretation of the ICRW and of its Article VIII. Judge Cançado Trindade argued that the purpose of the ICRW was not the development and protection of the whaling industry, but the conservation of whale stocks. In his understanding, the ICRW establishes a collective system for the conservation and management of whaling, which is "achieved through a process of collective decision-making by the IWC" (INTERNATIONAL COURT OF JUSTICE, 2014 b, pp. 10-11).

In addition, Judge Cançado Trindade affirmed that Article VIII could not be interpreted as giving "carte blanche" to a State to decide unilaterally that a program is of scientific purposes without

demonstrating it. He stated that other international treaties[4] "have been contributing to the gradual formation of an opinion juris communis in the present domain of contemporary international law", and, in this sense, "the functions conferred upon the IWC have made the Convention an 'evolving instrument' of international law" (INTERNATIONAL COURT OF JUSTICE, 2014 b, pp. 11-12).

In conclusion, Judge Cançado Trindade presented a broad understanding of the Court's decision, by affirming that in 1946, when the ICRW was adopted, the awareness about the necessity of conservation of marine resources did not exist. After the adoption of the 1982 United Nations Convention on the Law of the Sea, there is an awareness that the ocean living resources are not inexhaustible and State unilateralism "gradually yielded to collective regulation towards conservation" (INTERNATIONAL COURT OF JUSTICE, 2014 b, p. 13).

Final considerations

The chapter aimed at discussing the ICJ's decision on the case "Whaling in the Antarctic (Australia v. Japan: New Zealand intervening)". The main objective was to present how both parties in the dispute constructed their arguments and how the Court understood Article VIII of the ICRW. Moreover, the chapter aimed at highlighting the importance of the subject of whaling, especially when this activity is carried out by the States in the Antarctic, a continent that requires collective and multilateral cooperation in order to protect its main resources.

The ICJ's decision on the case was an important precedent and,

4 The 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora; the 1979 Convention on Migratory Species of Wild Animals; the 1980 Convention on the Conservation of Antarctic Marine Living Resources; the 1982 United Nations Convention on the Law of the Sea; the 1992 United Nations Convention on Biological Diversity (INTERNATIONAL COURT OF JUSTICE, 2014 b, p. 12).

as observed by Judge Cançado Trindade, the case provided "a unique occasion for the Court to pronounce upon a system of collective regulation of the environment for the benefit of future generations". The case "may have wider implications than solely the peaceful settlement of the present dispute between the contending Parties, to the benefit of all" (INTERNATIONAL COURT OF JUSTICE, 2014 b, p. 16). Moreover, he added that "although international treaties and conventions are a product of their time, they have an aptitude to face changing conditions, and their interpretation and application in time bear witness that they are living instruments" (INTERNATIONAL COURT OF JUSTICE, 2014 b, p. 16).

The case "Whaling in the Antarctic" brought a serious preoccupation of civil society nowadays, which is achieving sustainable development for future generations, and objective described in the Preamble of the 2030 Agenda for Sustainable Development. In this sense, as stated by Judge Cançado Trindade's separate opinion, the ICJ' decision must be seen as an important precedent that appeals to the "evolution of international law governing conservation and sustainable use of living resources" (INTERNATIONAL COURT OF JUSTICE, 2014 b, p. 16).

Finally, based on the main points of discussion presented in this chapter, it is important to address some questions:

i. Does Article VIII of the ICRW achieve a balance between the needs of industrial and commercial whaling with the conservation and preservation of whales?

ii. Is the text of the ICRW clear enough in order to provide specific rules to the conservation of whales in the Antarctic?

iii. How did Japan respond to the demands made by the ICJ's decision concerning its program JARPA II and its whaling activities in the Antarctic?

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