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GAMURARI VITALIE

INTERNATIONAL NORMATIVE FRAMEWORK IN SECURITY MATTERS IN THE CONTEXT OF REGIONAL CRISES

eseuri

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ECREDU

CONTENTS

LIST OF ABBREVIATIONS

ACDEG	African Charter on Democracy, Elections and Governance
ACIRC	African Capacity for Immediate Response to Crises
AFISMA	African-led International Support Mission to Mali
AMIB	African Union Mission in Burundi
AMIS	African Union Mission in Sudan
AMISOM	African Union Mission in Somalia
ANAD	Non-Aggression and Defense Assistance Agreement
ANZUS	Australia, New Zealand, United States Security Treaty
APF	African Peace Fund
APSA	African Peace and Security Architecture
ASF	African Standby Force
ASEAN	Association of Southeast Asian Nations
AMU	Arab Maghreb Union
AU	African Union
CACH	Cap for Change
CARICOM	Caribbean Community
CAR	Central Africa Republic
CEI	Central European Initiative
CENTO	Central Treaty Organisation
CEWS	Continental Early Warning System

CIS	Commonwealth of Independent States
CMA	Coordination des Mouvements de l'Azawad
COPAX	Council for Peace and Security in Central Africa
CSCE	Conference on Security and Co-operation in Europe
DDR	Disarmament, Demobilization and Reintegration
DRC	Democratic Republic of Congo
ECCAS	Economic Community of Central African States
ECOMOG	Economic Community of West African States Monitoring
ECOWAS	Economic Community of West African States
EctHR/ECHR	European Court of Human Rights
ECRI	European Commission against Racism and Intolerance
EU	European Union
EULEX	European Union Rule of Law Mission in Kosovo
EUMM	EU Monitoring Mission
FAA	Force Africaine en Attente
FARDC	Armed Forces of the Democratic Republic of Congo
FCC	Common Front for Congo
FOMAC	Multinational Force for Central Africa
GCC	Gulf Cooperation Council
ICC	International Criminal Court
ICGLR	International Conference of the Great Lakes Region
ICJ	International Court of Justice

ICRC	International Committee of the Red Cross
IDF	Israeli Defense Forces
IGAD	Intergovernmental Authority on Development
IGADD	Intergovernmental Authority on Drought and Development
IHFFC	International Humanitarian Fact-Finding Commission
ISIS	Islamic State or Iraq and Syria
GATIA	Groupe Armé Touareg Imghad et Alliés
LAF	Lebanese Armed Forces
MAES	AU Electoral and Security Assistance Mission in Comoros
MARAC	Central African Early Warning System
MICOPAX	Mission for the Consolidation of Peace in Central Africa
MILOB	Military Observers
MISCA	African-led International Support Mission to the Central African Republic
MONUC	United Nations Organization in the Democratic Republic of Congo
MSA	Mouvement pour le Salut de l'Azawad
NATO	North Atlantic Treaty Organization
NGO	Non-governmental Organisation
NMLA	National Movement for the Liberation of the Azawad
LAS	League of Arab States
OAS	Organization of American States
OIC	Organisation for Islamic Cooperation

OGRF	Operational Group of the Russian Forces
OCHA	United Nations Office for the Coordination of Humanitarian Affairs
ONUB	Operation UN in Burundi
OSCE	Organization for Security and Co-operation in Europe
OUA	Organisation of African Unity
PLO	Palestine Liberation Organization
PSC	Peace and Security Council
PKO	Peacekeeping Operations
RDC	Rapid Deployment Capacity
RECs	Regional Economic Communities
RM	Regional Mechanism
SADC	South African Development Community
SADC	South African Development Coordination Conference
SEATO	Southeast Asia Treaty Organization
SIPRI	Stockholm International Peace Research Institute
SIPO	Strategic Indicative Plan of the Organ
SSR	Security Sector Reform
R2P	Responsibility to Protect
UN	United Nations
UNAMI	United Nations Assistance Mission for Iraq
UNAMID	UN-AU mission in Darfur
UNAMSIL	United Nations Mission in Sierra Leone
UNDP	United Nations Development Program

UNESCO	United Nations Educational, Scientific and Cultural Organization
UNICEF	United Nations International Children's Emergency Fund
UNIFIL	United Nations Interim Force in Lebanon
UNHCR	United Nations High Commissioner for Refugees
UNMHA	United Nations Mission to support Hudayah Agreement
UNMIK	United Nations Interim Administration Mission in Kosovo
UNOMIG	United Nations Observer Mission in Georgia
UNPROFOR	United Nations Protection Force
UNPKF	United Nations Peacekeeping Force
UNSMIL	United Nations Support Mission in Libya
UNTAC	United Nations Transitional Authority in Cambodia
USA	United States/United States of America
USSR	Union of Soviet Socialist Republics
3RP	Regional Refugee and Resilience Plan

REVIEW

This monograph provides a detailed and comprehensive overview of the main regional systems aimed at ensuring regional and international security, as well as preventing and combating adverse effects of regional crises. The authors also offer a thorough analysis of the legal framework for the operation of such systems.

This academic work provides informative case studies, such as the analysis of regional crises in Africa, Europe, and the Middle East, that deepen the understanding of the peculiarities of who regional security organizations function and perform their specific activities.

The publication is certainly timely. As the number of regional conflicts and crises continues to grow, the demand for informative works such as this will surely strengthen.

The authors are Alabduljabbar Naif Jassim, Doctor in law; Cauia Alexandr, Doctor in law, Associate Professor at the Free International University of Moldova; Gamurari Vitalie, Doctor in law, Associate Professor at the Free International University of Moldova.

The monograph is divided into three thematic parts:

Part I: "Analysing the Doctrinal and Normative Aspects Related to the Phenomenon of Ensuring the International Security in the Context of Regional Crises" (the modern doctrine of international security in the context of regional crises; the interrelationship between the compe-

tences of the UN Security Council and other international organizations within the framework of regional crises);

Part II: "Role of the International Regional Organizations in Regional Peacekeeping" (extensive analysis of the place, role, functions, and competencies of the North Atlantic Treaty Organization, African Union, League of Arab States and other regional security bodies in preventing and settling the respective regional crises; the main legal challenges in the settling of regional crises);

Part III: "Peacekeeping Operations: From Ensuring the Security to Impelling the Peace Dialogue?" (applicability of the international humanitarian law during peacekeeping operations within regional crises; analysis of the provisions applicable to particular regional conflicts in Africa, Europe, the Middle East).

As a monograph, the chapters are well-structured with an overview, conclusions to each sections, key terms, discussion of the main problematic issues, case analysis, general conclusions and further recommendations.

The authors demonstrated the necessity and importance of cooperation between the United Nations, as a universal actor and a holder of monopoly for coercive actions to ensure the international peace and security, and the regional organizations operating in the same sphere. The monograph contains a detailed comparison between the security systems within regions and between the main regional systems. The main differences between the universal security system ensured by the UN Security Council under the UN Charter, and the regional security systems are also demonstrated, as well as the examples and legal framework of their cooperation.

The monograph aptly describes the current crisis in the regions of Europe, Middle East and Africa and successfully identifies gaps in the legal provisions regulating international and regional cooperation for ensuring regional

peace and security. Moreover, the authors addressed the problem of circumstantial interests of states prevailing over regional security interests, as well as the issues of adjusting the regional organisations' intervention mechanisms with a view of establishing the international legal framework regulating the settling of regional crises.

The monograph also provides a detailed analysis of the one of the main current challenges presented to the international and regional peace and security by terrorism, and the key perspectives of combating it within the regulatory framework of regional security organisations, including in the context of regional crisis settlement, and by peace-keeping missions.

The conclusions and recommendations given by the authors appear to be sound, well-judged, based on the well-analysed factual circumstances, and take into account regional peculiarities of the respective crisis situations.

This monograph would be particularly useful as a useful primary source in university courses dealing with regional and international security.

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INTRODUCTION

Despite the exclusion of war from the list of mechanisms for settling conflicts between states through a series of international normative acts of undeniable legal value, this phenomenon that developed and evolved with technical and scientific progress can still be seen today as an inherent part of the daily life of international relations. The mechanisms and instruments of operation in hostilities have changed substantially, methods and means of conducting war have diversified and evolved, and regional crises are one of the greatest challenges to the international normative system of guaranteeing international peace and security, managed by the United Nations through its structures in strict accordance with the provisions of the UN Charter.

The regional international organisations are formed based on the principles and procedures established by the public international law and are essential elements of the international system for preventing and combating the negative effects of persistent regional crises. The causes of these crises are very diverse, and the mechanisms and instruments for settling them are set out both internationally in the UN Charter and at the regional level in the constitutive acts of regional organisations that aim at ensuring peace and security.

The actuality and importance of the researched subject lie in elucidating the legal regulation of the process of interaction between regional organisations and the UN Security Council in the process of preventing and combating the negative effects of regional crises and their cooperation to settle the regional crises to ensure the peace and the international security.

Despite the existence of clearly defined action procedures in the event of a regional crisis, the practice of preventing and intervening in regional organisations to address them is proving to be quite different. For example:

- NATO intervened to settle the regional crises and on the territory of states that were not part of that organisation at the time, without having an express mandate from the UN Security Council which would have set very clearly the territorial and temporal limits of intervention;

- The African Union and other regional structures on the African continent have provided in its constitutive acts the right to intervene violently to ensure peace and security in the region or to prevent unconstitutional riots on the territory of the member states, without previously noticing the UN Security Council. The permissive interpretation of the provisions of the UN Charter to identify the possibility for African regional international organisations to intervene promptly, including through instruments of impelling and peace and security and to prevent changes of government by force in the states members, is a real challenge to the normative system aimed at ensuring international peace and security;

- The League of Arab States, despite being the oldest regional structure among those analysed and proposing among its statutory objectives, including ensuring regional peace and security, failed to prevent the outbreak of international armed conflicts in Iraq and Syria, was unable

to provide an effective solution to the regional crisis between Israel and Palestine and has not met the challenges genera-ted by the crises in Lebanon and Yemen.

All these findings substantiate the importance of analysing and studying the essence of regional crises in these regions to identify the factual and normative causes that did not achieve the established objective and identify international legal mechanisms and procedures that could significantly contribute to preventing new regional crises and to settle peacefully the existing ones.

Also, the actuality and importance of the researched subject lie in the need to:

- to identify a uniform interpretation of the provisions of the UN Charter as regards the place, role, and po-ssibility of intervention of regional structures in the process of guaranteeing and ensuring peace and security in the concerned region.

- to set priorities for early detection and intervention to prevent the crisis from escalating into a major armed conflict, emphasising the importance, necessity, and effectiveness of using regional organisations as platforms for interaction between their member states in order to prevent and settle regional crises.

- to prioritise the imperative to ensure international and regional peace and security in line with the individual, circumstantial and selfish interests of states with the world or regional power status or local leaders.

- to analyse the precedents of forceful intervention by regional organisations to ensure regional peace and security within the limits set by the constitutive acts or internal mechanisms for rapid intervention to ensure peace and security on the territory of the member states and to prevent degeneration of existing conflicts in genuine armies.

In the light of the indisputable actuality and importance of this research, the aim of the paper is to establish the place, role, and position of regional organisations in the process of ensuring regional peace and security and to conduct a comprehensive research of international legal mechanisms and instruments, which will ensure an active and effective functioning of regional structures, within the limits set by the UN Charter and the UN Security Council in settling regional crises, thus contributing to ensuring international peace and security.

To effectively achieve the proposed goal, the following main objectives of this research are set:

- comprehensive and equidistant analysis of the work of exegetes in the field of the public international law and identification of reasoned positions in the interests of one or another party affected by the crisis under investigation.

- research and interpretation of the normative provisions of the UN Charter and of the constitutive acts of the regional organisations that form the legal basis for the involvement of these structures in the process of prevention and resolution of regional crises and the cooperation between them and the UN Security Council to establish effective cooperation mechanisms to ensure the international peace and security.

- to establish the place, role, and importance of the North Atlantic Treaty Organization in the process of preventing and settling the regional crises on the territory of its states members as well as the normative basis for the organisation's involvement in the crisis settlement process outside the territories of the member states.

- to research the essence of the Kosovo crisis and to assess the practical and normative value of the precedent set for crises generated by the separatist tendencies, including the establishment of regional legal mechanisms

and instruments for settling the crises in conflicts in the left bank of the Dniester, Nagorno-Karabakh, Abkhazia and South Ossetia.

- to identify the experience of the African Union and other regional structures on the African continent in the process of ensuring peace and security on the continent and to establish the specifics of the precedents created by these structures through violent interventions in the process of settling the regional crises, without the prior consent of the United Nations Security Council, including an analysis of the characteristic elements of peacekeeping operations in the context of the regional crises in Congo, Mali, and Libya;

- critical analysis of the structure, competence, mechanisms, and instruments of intervention of the League of Arab States in the process of preventing and settling the crises in the Middle East, highlighting the impossibility of preventing and combating the negative effects on international security and the public international law system generated by armed conflicts in Iraq and Syria, as well as the specific crisis between Israel and Palestine, as well as the nature of peacekeeping operations in Lebanon and Yemen;

- To establish mechanisms and legal instruments to overcome the challenges generated by the current regional crises on the international normative system in terms of combating the use of torture, the phenomenon of international terrorism, and the application of transitional justice in the reconciliation process and ensuring compliance with the rules of war by contingents of UN peacekeeping forces.

For the purposes of this research, we believe that the main hypothesis is that the United Nations crisis prevention and settlement system is not able to meet all the challenges generated by regional crises and only effective

cooperation and collaboration between UN structures and the regional organisations within the limits set by the UN Charter, without allowing exceptions that would lead to the erosion of established principles, could allow the effective settlement of regional crises and consequently ensuring the international peace and security.

Scientific solved matter is to elucidate and argue the need and importance of cooperation between the United Nations as a universal player in international peace and security and regional organisations, especially in Europe, the Middle East, and Africa, describing the facts and identifying regulatory shortcomings and international legal instruments for cooperation to ensure regional peace and security, disregarding the circumstantial interests of states and adjusting the intervention mechanisms of regional structures to establish the international regulatory framework in the context of settling regional crises.

Novelty and scientific originality lies in the fact that the thesis is an extensive study that investigates the place and role of the regional organisations in the process of settling the regional crises to identify mechanisms and legal instruments for cooperation of affected states in regional organisations to prevent the negative effects of armed conflict to ensure regional peace and security as a component of international security under the auspices of the United Nations.

In this regard, we should note the lack of speed and promptness in intervention decisions that fall within the competence of the UN Security Council due to the specific structure and complex decision-making procedures that have led to the escalation of conflicts and substantially eroded the effectiveness of interventions.

The intervention of regional structures to prevent or combat threats to regional security through the mechanisms and instruments established by the

constitutive act in the territories of third countries, without an express mandate from the only competent body, the UN Security Council, may undermine the international regulatory system and a confidence decrease of countries around the world in the efficiency and necessity of the regional mechanisms and instruments existence for ensuring the regional peace and security.

1. ANALYSING THE DOCTRINAIRE AND NORMATIVE ASPECTS RELATED TO THE PHENOMENON OF ENSURING THE INTERNATIONAL SECURITY IN THE CONTEXT OF REGIONAL CRISES

1.1. Doctrinaire positions related to the phenomenon of ensuring international security in the context of regional crises

Currently, the specialised literature on analysing the place and the role of regional organisations in the process of preventing and combating the negative effects generated by the armed conflicts within the process of ensuring peace and regional security provides a series of studies in international languages, conducted by dedicated authors and by those from the affected regions, subjected to this research.

Intended to review the most important works mentioned and analysed in this research, we observed the lack of fundamental work related to the researched subject. Therefore, we plan to highlight the fundamental works approaching the definitions of the main terms used in the title of the thesis and its content. We also propose to spotlight the main analyses of the dedicated authors on different regions researched in this work.

Denis Alland, by his work "Manuel de Droit international public" foregrounds the basic elements of the matter. According to the author, this works aims at "allowing a first contact by a readable and panoramic presentation of its main chapters".[1]

In fact, this manual specifies the actors and the subjects, the international commitments and the respect and the enforcement of the international law "destinies of the international law in the domestic law", the international liability, the countermeasures and international sanctions, the settlement of disputes.

Denis Alland adopts the classic approach in defining the international law he proposes in the beginning: "all rules and institutions governing the behavior of international subjects, i.e., mainly the international states and organisations".[2] Without trying to follow the most recent evolutions in jurisprudence or doctrine, this works provides a classic approach on the main notions rooted in the public international law – state, international organisation and defines clearly its constituting elements, functions, and attributions.

A valuable work allowing us to analyse the basic notions used in the research of the doctrinal system of the public international law is realised by the group of authors from the Republic of Moldova, Burian A., Balan O., and others "Public international law"[3], the 4th edition, which foregrounds the fundamentals of the public international law generally and the definitions we are interested in for the analysed subject, especially: the subject of the public

[1] D. Alland, *Manuel de Droit international public*, Paris, PUF, 2018, p. 13.

[2] Ibidem, p. 17.

[3] *Drept Internațional public*. Ed. Alexandru Burian, Oleg Balan [et al.]. Ed. a 4-a (rev. şi adăug.). Chișinău, 2012. 636 p. ISBN 978-9975-106-99-3.

international law, the territory in the public international law, the international humanitarian law, the armed conflicts, the international security law, the international organisations, etc.

As for the place and the role of the regional organisations within the process of ensuring peace and regional security, the author Gary Wilson, in his work "The United Nations and collective security", provides a comprehensive analysis and considers an entire range of measures that may be used by UN in accomplishing its mission of ensuring the collective security, including military operations, maintenance of peace, non-military sanctions and diplomacy.

Although it is firstly a work of public international law, some ideas are completed with political and economic aspects relevant to observe a clear picture of the UN collective security system in its realization process and the factors impacting the way they function.

Each of these measures are analysed in detail by appreciating the legal framework, the main juridical controversies occurring as for their appropriate use, and the way the UN uses in practice the mechanism ensuring collective security. The author reflects the main strong points and the deficiencies of different means by which the UN may try to prevent, to minimise, or to end the conflict.

The most important chapters of this work for our research would be Chapter I analysing the concept of collective security and Chapter VIII characterizing the role of regional settlements within the UN collective security system.[4]

The work "Regional organisations and the development of collective security. Beyond Chapter VIII of the UN Chapter" by Ademola Abass, provides a rather

[4] G. Wilson, *The United Nations and collective security*, Oxon, Routledge, 2014. 296 p. ISBN 978-1138665521.

sophisticated justification for finding an exception to forbid the use of the force beyond the control of the UN Security Council, defining the elasticity of the article 2 (4) by the fact that "the functioning shortcomings of the collective security ensured by the Security Council made the prohibition of force provided by the article 2 (4) become outdated". The argument of Dr. Abass, which might allow the regional organisations to plan the force without the permission of the UN Security Council, relies on the idea that article 2 (4), requesting from all states "to abstain in all their international relations from threatening to use or using the force against the territorial integrity or political independence of any states or in any other way inconsistently with the UN purposes", builds on the final clause of the article 2 (4). Abass asserts that "there is a lack of consensus as for what type of force might be inconsistent with the UN purpose".[5]

We support the idea to analyse the provisions of article 2 (4) of the UN Charter so the states accept officially, within the regional organisation, to ensure collective security in case the UN is not available or may not act. The realities show us that the African Union and ECOWAS admitted the infringement of the UN universal collective security system in the favour of the African states that tried to establish, after the events from Liberia, Sierra Leone, and especially Rwanda, an efficient continental system of peace and security.

However, the daily realties impel us to analyse and at least to accept the right to doubt the efficiency of interpreting classically the provisions of the UN Charter at the article 2(4) as for the prohibition to forbid the aggression in relation to the imperious need of regional

[5] A. Abass, *Regional organisations and the development of collective security, Beyond Chapter VIII of the UN Charter*. Oxford, Hart Publishing, 2004, p. 187

organisations to intervene promptly in phenomena directly impacting the peace and the security in the region.

The experts Vand der Lijn J. and Avezov, X., describe in the report realised under the aegis of Stockholm International Peace Research Institute (SIPRI) "The Future Peace Operations Landscape: Voices from Stakeholders Around the Globe, Final Report of the New Geopolitics of Peace Operations Initiative"[6] the fact that the states' reasons to support the peace operations vary considerably.

Therefore, despite the fact that the war should be excluded from the set of instruments for the settlement of states between the states, it remains to be unfortunately an ever-present element in the modern international reports, and the UN provides the most important mechanism of preventing and combating this harmful phenomenon to ensure the peace and world and regional security through peacekeeping operations with the plenary implications of the regional organisations.

One of the aspects analysed in our research is the relation between the juridical status of the peacekeeping operations and the sovereignty of the state on whose territory takes place this kind of intervention. Thus, except for the operations from Africa, Europe, and Northern America, the sovereignty of states subject to the peacekeeping operations under the aegis of regional organisations faced a huge opposition motivated by the protection and the respect of the sovereignty of the concerned state.[7]

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[6] J. Van Der Lijn and X. Avezov, *The Future Peace Operations Landscape: Voices from Stakeholders Around the Globe, Final Report of the New Geopolitics of Peace Operations Initiative*. [on-line] Stockholm: SIPRI, 2015. 90 p. [cited 05.01.2021]. Available on Internet: <URL: https://www.sipri.org/publications/2015/future-peace-operations-landscape-voices-stakeholders-around-globe

[7] Ibidem, p. 23.

The report between the responsibility to protect and the principle of states equal sovereignty, and its interpretation in the light of the need to guarantee the peace and the security on the Globe generally and within a region especially, is one of the basic elements in the process of appreciating the place and the role of the regional organisations within the process of ensuring the peace and the regional security, as compounds of world paradigm to ensure the peace and the security under the UN aegis.

There were highlighted in the work the precedents and the solutions adopted in different regions to settle this dilemma and there was ascertained the fact that the report between the states sovereignty and the right of regional organisations to intervene in order to prevent or to counter the dangers and the threats against the peace and the regional security through more "solid" instruments may be qualified in relation to the normative provisions of the international law. Nevertheless, several regional organisations of states in the text of the constitutive act or within other statutory documents the impossibility to intervene on a state member without its express agreement, regardless of circumstances.

Another important element is the critical approach related to the mandate of peacekeeping operations under the aegis of the UN. The authors consider that the peacekeeping missions cannot approach all aspects of the conflict. The missions' mandates should be explicit in the terms of the challenges they are permitted and equipped to approach, and the specific limitations of peacekeeping operations, to establish an exact report between the objectives of the missions and the resources that will be allocated and to not allow the states providing resources to

exceed the competences and the attributions established by the mandate.[8]

The specialist that realised the report considers that despite the fact that they deployed their own peacekeeping operations, the regional organisations are less equipped with the necessary resources to organise them efficiently and lack sometimes impartiality. In addition to the possible concurrent interests of the international organisations, the failure to coordinate between the organisations represents a serious challenge when more institutions are present in a single zone of conflict.[9]

The emphasis on national interests in different regions, to the detriment of the common objective to ensure peace and regional security, generates a substantial decrease of trust between the partners-states affected by the crisis, the states from the region, the regional organisations, and the states providing resources for the peacekeeping operations under the aegis of UN.

The work "What's Wrong with the United Nations and How to Fix IT"[10], realised by Thomas G. Weiss, analyses critically the structure and the sustainability of the system ensuring the collective security under the aegis of the UN, who considers it as affected by several deficiencies as: modest efficiency of decision-making system at an international level, the report between the initiative to ensure the peace worldwide and the sovereign interests of the states and the difficulty to relate as for ensuring the peace and the international security under the aegis of UN due to the excessive bureaucratisation and jurisdictions overlapping. The authors propose a large and systemic range of actions, instruments, and mechanisms to prevent

[8] J.Van Der Lijn And X. Avezov, *Op. cit.*, p. 71-73.

[9] Ibidem, p. 57-68.

[10] T.G. Weiss, *What's Wrong with the United Nations and How to Fix It*, Cambridge, Polity Press, 2016. 320 p. ISBN 978-1-509-50743-6

and combat these elements that lead to the UN system's inefficiency to ensure peace and international security.

The European continent is less affected by armed conflicts, but that does not mean that international structures with regional character in the zone would not present a true interest for our research. The author Kaplan L.S. in the work "NATO Divided, NATO United: The Evolution of an Alliance" specified the circumstances of forming and the specificity of the interaction between the United States of America and the European States in the process of constituting the organisation and their interaction within the organisation during the crucial moments for its existence and within the decisions to intervene in regional conflicts.

Amongst the historic clashes described by Kaplam, we may enumerate the differences between the United States and Europe as for the rearmament of Germany after World War II, the Suez Crisis of 1956, the decision of the United States to revoke the cooperation agreement with the United Kingdom as for Skybolt Missiles Program, the War in Vietnam, the Initiative of Strategic Defense, a series of additional political dissensions within the alliance.[11]

A clear theme is the NATO capacity to survive these temporary difficulties. Since its constitution, NATO has faced internal political disputes, but it continues to survive, being at an important crossroads. Taking into consideration its survival and adaptation history, the disintegration of this regional organisation is less probable, and its role and place within the process of ensuring peace and regional security increase continuously, including by its interventions outside the territory of the member states.

The African continent seems to be, at least statistically, the most affected zone of crises that generated

[11] L. S. Kaplan, *NATO Divided, NATO United: The Evolution of an Alliance*. Westport, Praeger, 2004. 176 p. ISBN 978-0275983772

in armed conflicts with or without international character, affecting substantially the degree of peace and security. The author Paul D. Williams provides a deep and comprehensive evaluation of over six hundred armed conflicts that took place in Africa from 1990 until the present day – from the continental disaster of the Great Lakes Region until the extended conflicts from Sahel and the war networks from the Horn of Africa.[12]

The author analyses the context of these wars, studies typical algorithms of organised violence, the circumstances that caused them, and the major international reactions to ensure sustainable peace. Regardless of the aspect of the realised research, the historical analysis of the events on the African continent provides the possibility to observe the evolution of events and the identification of factors, conditions, and circumstances that generated the imperative intervention of UN and the regional structures to guarantee the peace and the security in the region.

The same author in the article "The African Union's Conflict Management Capabilities"[13] foregrounds and analyses in detail not only the structure and the importance of the African Union as a regional organisation responsible for ensuring peace and security in the region, but also its internal mechanisms that may be used to realise efficiently this desideratum. It is also critically analysed the intervention mechanism and the management of these conflicts within this regional structure to determine the

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[12] P. D. Williams, *War and conflict in Africa*. Cambridge, Polity Press, 2011. 306 p. ISBN 978-0745645452

[13] P. D. Williams, *The African Union's conflict management capabilities* (Working Paper), New York, International Institution and Global Governance Program, 2011. P. 29. https://www.files.ethz.ch/isn/146220/IIGG_WorkingPaper7.pdf (accessed 21 December 2019)

legal and functional impediments on the interventions realised within the organisation.

The extremely complex and dynamic conflict systems generate consistent challenges on the African structure of peace and security. The new practices and cooperation models are developed in an attempt to build a more peaceful and stable continent. The article compiled by the authors D Coning C., Gelot L., and Karlsrud J. "African Peace Operations: Trends and Future Scenarios, Conclusions and Recommendations" reviews the way have evolved the African peace operations in the last decade – from the protection of persons moved from Darfur by Janjaweed militia until the support of operations coordinated by the countries from the region of Chad lake basin in their fight against Boko Haram insurgents.[14]

This work is realised by a group of authors dedicated to the field of regional security on the African continent and provides a critical and complex analysis of the events that took place in the zone in the last four decades ad on the evolution of mechanisms and instruments ensuring the peace and the regional security.

According to the authors, the most important is that the experiences of the last decade impel the African Union to preserve a higher degree of flexibility, so that it may continue to adapt to the extremely dynamic and complex challenges, which it will have to manage.[15]

In the same order of ideas, the authors Soderbaum F., Tavares R. specify in the work "Problematizing Regional

[14] C. De Coning, L. Gelot and J. Karlsrud, African peace operations: trends and future scenarios, conclusions and recommendations. In: *The Future of African Peace Operations: From the Janjaweed to Boko Haram*. London, Zed Books, 2016, p. 1.
[15] Ibidem, p. 144.

Organisation in African Security"[16] more aspects related to the problematizing of the regional organisations role in African security with emphasis on the advantages and the advantages of African regional and sub-regional organisations toward other mechanisms ensuring the security, especially the UN peacekeeping operations, official and unofficial reasons to intervene and the subjects whose security is protected by the peace activities undertaken by the regional organisations.

The state of things in the Middle East zone is the research object of an imposing number of scientific works. The difficulty of their analysis relies on the deep print generated by the opinions and the attitude of authors toward the parties implicated or affected by different crises, including the conflict between Israel and Palestine. The author Mohammedi A. in the article "De l'usage du droit international au Moyen-Orient: approche critique"[17] provides a critical approach on different faulty interpretations of the public international law regarding the status of Palestine made by different subjects of public international law depending on their interests and position toward the concerned authors and this precedent.

A critical approach of international law has to permit a clear defence of states sovereignty, not only from the conservative prospect of interstate games, but also because it is the only mean to make from the international a framework for coexistence than an instrument of assertiveness or influence. The critical approach should

[16] F., Soderbaum and R. Tavares 'Problematizing regional organisation in African security', *African Security,* vol. 2, nr. 2-3, 2009, pp. 69-81. ISSN 1939-2214.

[17] A. Mohammedi, 'De l'usage du droit international au Moyen-Orient: approche critique' *Revue Québécoise de droit international.*,vol. 30, nr. 2, 2017, pp. 171-193. ISSN 0828-9999.

concentrate more on "The sovereignty of the strongest" than on the sovereignty of the other states.[18]

The Middle East is one of the zones with the highest density of armed conflicts or crises that impelled UN intervention or regional organisations to ensure peace and regional security. In this region, the attempts of the Arab League to intervene and other regional measures to ensure peace and security have faced the dominant position of the state's sovereignty in relation to the need to interfere in order to prevent or to combat the negative effects of the crises affecting the peace and the security in the region.

Another work analysing the conflict in the light of ensuring peace and regional security in the Middle East is "Palestine and the Arab-Israeli Conflict: 100 Years of Regional Relevance and International Failure", realised by Makdisi K.[19]

The author considers the Israeli-Palestine conflict as a neuralgic point for regional security and for world security, generally. The author asserts that these international trends and global movements add an extra layer to the regional situation, and until the matter of Palestine will be settled significantly and correctly, such tension and violence will continue; the European states must be more self-critical as for their role in Israeli everlasting occupation of Palestine, despite the commitments declared in relation to the solution of both states. The reality is that the EU deepened the economic, cultural, and security connections with Israel and sustained only a weak Palestine authority. Their policies

[18] Ibidem, p. 193.

[19] K. Makdisi, Palestine and the Arab-Israeli Conflict: 100 Years of Regional Relevance and International Failure. In: *MENARA Working Papers*. [on-line] 2018, nr. 27, p.25 https://www.iai.it/sites/default/files/menara_wp_27.pdf (accessed 5 January 2021).

regarding Palestine will be the main test for their commitment to a correct solution to the Arab-Israeli conflict and the respect of main principles of human rights and international law.[20]

It is important to ascertain the difficulty of identifying unbiased works on this subject amongst authors affected by their ethnicity and due to the complexity of the researched subject in its essence and as for ensuring peace and security in the region.

The religious compound is an element that cannot be denied within the analysis paradigm of factors and circumstances provoking threats and dangers against peace and regional security in the Middle East. The authors Hashemi N. and Postel D. analyse chronologically in the work "Sectarianization. Mapping the New Politics of the Middle East" the events that generated the sectarianization of Iraq, especially and the Middle East, generally: the Iranian Revolution of 1979, the USA invasion and occupation in 2003 and the recent wave of insurgencies of 2011.

The authors uphold that the USA invasion in 2003 was a moment of sectarianization outburst by which may be drawn a line between "sectarian" and "non-sectarian" Iraq, overlooks "the cumulative factors that had developed over several generations" under an authoritarian regime.[21]

The primary conclusion of this work resumes to the fact that sectarianism and the religious compound were largely used by the authoritarian governments of the states from the Middle East either to provoke or to argue the military interventions and threats against the peace and the regional security.

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[20] Ibidem, p. 20.

[21] N. Hashemi and D. Postel, *Sectarianization. Mapping the New Politics of the Middle East.* London, Hurst, 2017, p. 101.

It is also described the instrumentation of religious differences, diversity, and pluralism in the political fights of the regimes against their own electoral circumscriptions.[22]

Therefore, the authors realise a work imposing as a strong reference for the history of sectarianism from the Middle East and the mechanisms of power policy behind it and foregrounds a chronologic analysis of religious, civilization, and structural aspects of sectarianism as an element used by the regional powers and by other actors to mask the moment interests and to argue the military interventions and the threats against the peace and the regional security. This work underlines the way the authoritarian regimes of the Middle East had decades of experience in the instrumentation of religious differences.

In the sense of specialty literature analysis, we will mention the fact that at the national level there are a range of works analysing under different aspects the phenomenon of international security, generally and the regional security, especially. They represent a true interest for the understanding of real circumstances and the factors that generated the international normative approaches regulating expressly elements related to ensuring the regional security and the international legal instruments of ensuring peace and regional security.

The study "Status of Peacekeeping Forces in the International Law: Case of the Republic of Moldova"[23] realised by Mr. Gamurari V., analyses the normative-legal basis for the process of instituting the peacekeeping missions, researches the specificity of mandates and the peacekeeping missions in the region, especially, points out

[22] Ibidem, p. 154.

[23] V. Gamurari, *Statutul forțelor pacificatoare în dreptul internațional: Cazul Republicii Moldova*, Chișinău, Asociația Promo-LEX, 2015. 41 p.

the specificity of mechanisms and procedures related to the institution of peacekeepers contingent in the districts from the left side of Dniester. There are specified the similarities and the differences between the juridical status, the character and the essence of mechanisms ensuring the peace and the security in the districts from the left side of Dniester and other stressed zones from the region, and the perspectives of changing the mandate, the content and the character of the mechanisms and instruments of ensuring the peace in a civil peacekeeping mission under the aegis of UN.

The article "The Obligation of States to Comply with Imperative Norms of International Law of the Context of International Security Insurance" analyses the concept of international security in the light of a reconciliation process of a society that faced an armed conflict or a crisis situation, by applying the mechanisms of the transitional justice, a process that proved its viability in many states that passed through these kinds of situations. The analysis of international security concept in complex with other institutions of the international law allows creating a clearer image, therefore not admitting the ignorance of international law norms, recognised universally. Or, such an approach aims at ensuring human rights and fundamental freedoms in any situation, including under the conditions of an armed conflict.[24]

We have to mention the fact that a special place has in this research the resolutions, the reports, and the communiques of the international and regional

[24] V Gamurari, and N.J. Alabduljabbar, The Obligation of States to Comply with Imperative Norms of International Law of the Context of International Security Insurance. In: *Ştiinţa juridică autohtonă prin prisma valorilor şi tradiţiilor europene*. 18 octombrie 2017, Chişinău. Chişinău, Universitatea Liberă Internaţională din Moldova, 2017, pp. 71-90. ISBN 978-9975-124-64-5.

organisations. Although they do not form the sources of law in the direct sense of this assertion, the information and the analyses of their content are extremely useful for identifying problematic and debatable aspects of the research.

1.2. Juridical regulation of the reports between the competencies of the UN Security Council and the international organisations in the light of regional crises

The normative basis of the process of international regional organisations implication in the process of preventing and combating the negative effects generated by the armed conflict or other regional crises realises by the provisions of the United Nations Charter.

Nowadays, scientists should return to the theoretical basis and the juridical sources of the current world order, the basic principles, examining it critically. As for the tackled subject, we present the following considerations.

In this sense, we consider that the responsibility of the Security Council, as the main UN body for ensuring peace in the entire world[25] does not include "the monopoly" of applying the force, but it leads to the appearance of the priority law in adopting the decision on applying the coercive measures and highlights certain juridical consequences, especially to interpret the field of actions impelling the prohibition of the violence.[26]

Generally, we have to acknowledge that the monopoly in using force characterises the states. Only the states, based on their sovereignty, possess the monopoly on using the force. UN, principle, does not possess the

[25] Charter of United Nations, signed on 26 June 1945, San Francisco, USA, https://www.un.org/en/sections/un-charter/un-charter-full-text/ (accessed 05.02.2021), art. 24

[26] Ibidem, art. 2 (4).

monopoly on using the force, as it does not represent "a world government".

The UN does not possess its own armed forces, which might be used by the UN Security Council. The Security Council may, but it is not obliged, to implicate in case the peace fails in the entire world.[27] Even in case, the majority of 15 members of the Security Council will vote the application of measures guaranteeing the peacekeeping, its implication may be doubtful, as the Security Council may be frozen by one of the five states, entitled with the right of veto.[28]

"The main responsibility" grants to the Security Council a double priority, from one hand, in the relation to the Un General Assembly, and from the other hand, toward the member states of the UN.

In relation to the General Assembly, the priority, according to the time and the technology, provides that the General Assembly is not entitled to examine a dispute since the Security Council[29] settles this matter, and *de facto* it supposes that the General Assembly is not entitled to rule orders, especially, to adopt the decision of applying the force, it is entitled to give only recommendations.[30] The recommendations may refer to the application of force to guarantee or re-establish peace in the entire world. As it has been the case of Resolution "Unity for Peace" of October 3rd, 1950 in relation to the conflict of Korea.[31]

Although no other analogic resolutions were pursued, it represents an essential precedent for how the

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[27] Ibidem, art. 34, 36, 40, 41, 42.

[28] Ibidem, art. 27 (3) and art. 23 (1).

[29] Ibidem, art. 12.

[30] Ibidem, art. 11, 13, 14.

[31] UN, General Assembly Resolution, A/RES/377(V)[AA], adopted on 3 November 1950, https://digitallibrary.un.org/record/666446 (accessed 12 December 2019)

General Assembly may fill in the juridical gap appearing following the blockade and the incapacity of the Security Council. In principle, the International Justice Court confirmed the subsidiary powers of the Geneva Assembly.[32] Hence, the relative character of the Security Council competence in respect of article 24 of the UN Charter is recognised indirectly.

If to refer to the report of the Security Council toward the member states of the UN, we ascertain that a particular importance for the juridical appreciation has the reasons and the purposes that impelled the UN states members to grant "the main responsibility for maintaining the peace in the world and the international security" to the Security Council pursuant to UN Charter. Article 24 of the UN Charter links the powers of exercising a main responsibility for maintaining peace in the world with several requirements or objectives, a fact not considered in the majority of cases, even by the literature of international law.[33]

The task executes not according to the appreciation made by the Security Council and represents a juridical obligation, and the Security Council cannot shirk from realizing this objective.[34]

Article 24 does not grant to the Security Council unlimited powers, rather it commits it to accomplish the task of maintaining the peace "quickly" and "effectively". If the Security Council does not undertake something, it disrespects this obligation, in case it adopts insufficient measures, or even more, in case of appearing a situation needing insistently the adoption of measures.

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[32] V. Gamurari, 'ONU şi securitatea internaţională la 60 de ani de la adoptarea Cartei ONU', *Analele Ştiinţifice ale USM*. Ediţie jubiliară, vol. 1, Ştiinţe socioumanistice" 2006.pp. 192-197.

[33] Ibidem.

[34] Charter of United Nations, art. 24 (1) and (2), art. 51(2).

Exercising its task, the Security Council is bound to the purposes and the principles of the UN Charter. There may be ascertained cases where the principles and the purpose of the organisation are interpreted in a manner generating inconsistencies between these elements. For example, the obligation from one side, to stop and to prevent the genocide act, and from another side, to respect the sovereignty of the state committing the genocide act, so the Security Council has to make efforts to achieve the purposes of the Charter by their practical joining, or by balancing the purposes that argue against each other, in the light of its main function.

When exercising its functions and interpreting the appropriate provisions in respect of article 24 of the UN Charter, the Security Council is empowered largely, having the possibility to act individually. In principle, it cannot be otherwise, if to analyse the complexity of conflicts established on the agenda.

If the Security Council does not exercise its obligations provided by article 24 of the UN Charter, as it cannot a common point as for "the efficiency" of measures to maintain the peace in the world, although the observers from the entire world see as obvious the need to apply the force against "the aggressor" in respect of Chapter VII of UN Charter, then given the principle of interpretation provided by the same article 24 of UN Charter, it appears the subsidiary responsibility of the UN General Assembly and of the member states of the UN in order to maintain the peace in the entire world, regardless of cause, either the Security Council is not bale to act efficiently or it is frozen in case one of the permanent members applies the right of veto.

In this case, the Security Council is not able to bear the main responsibility. If under such conditions, the UN states members, based on the prohibition of applying the

force, are bound to not take action, therefore we may face a vacuum from the responsibility point of view to maintain the peace, despite the fact that this infringement is obvious and even, it was probably established by the Security Council itself at the initial stage based on the article 39 of the UN Charter, which states: "The Security Council will ascertain the existence of a threat against the peace, a disrespect of peace or an aggression deed and will recommend or will decide what measures may be undertaken in respect of the Articles 41 and 42, for the maintenance or re-establishment of peace and international security".[35]

We consider that the lack of such norm for the conditions of applying the right of the UN member states to self-defence is based on article 51 of the UN Charter and the accomplishment of the main obligation by the Security Council which were not established deliberately in the Charter by the UN member states. An example may serve the content of article 24 of the UN Charter, which provides that the Security Council cannot only accomplish the obligations, but it may accomplish them "rapidly" and "effectively".

The non-accomplishment of the main obligations, following the self-blockage of the Security Council, opens the way of acting for the UN states members, who have the obligation to restore the peace in the world. The states, based on article 24, in such situation, when formal powers from the part of the UN or Security Council lack, otherwise said in the lack of a UN mandate, may undertake measures to restore the peace in the world by applying the force against the "aggressor".

Hence, in respect of the provisions of article 52 paragraphs (2) and (3) of the UN Charter, the agreements

[35] Ibidem, art. 39.

and the regional organisations have a priority role in the process of settling the regional conflicts. Thus, the member states have to analyse the possibility of settling the local disputes[36] within regional organisations of which they are a part of, before notifying the Security Council, hence allowing to conclude that the agreements and the international regional organisations have the priority in the process of settling the disputes on the territories of member states.

In this sense, it is important to analyse the legal instruments the regional organisations may apply to put into practice the task of preventing or settling the local disputes on the territory of states parties.

The content of these peaceful measures remains vague as they are not regulated expressly in the text of the Charter. Besides "coercive measures" which are the object of chapter VII and article 53 of the Charter, it seems that the organisations truly enjoy of "a considerable margin of discretion"[37] in the efforts they undertake to calm the conflict relations that emerged between the states parties.

The non-exhaustive list of other methods of peacefully settling the disputes provided by article 33 (negotiations, investigation, conciliation, arbitration, and juridical regulation) establishes a large range of possibilities to settle available for the regional organisations, as there is not a special reason so the states not be assisted by the regional organisations in using these other means".[38]

The majority of these fundamental actions of the regional organisations do not give additional explanations as for the legal means provided to these structures to accomplish the task established by article 52 and do no

[36] D. Alland, *Op. Cit.*, P. 262.
[37] G. Wilson, *Op. cit.*, p. 193.
[38] Ibidem, p. 194.

limit to the reaffirmation of these provisions.[39] Contrary to these incoherent trends, some regional treaties may provide clarifications as to the place an organisation may occupy in this framework.

An example in this sense might be:

a) The American Treaty on Pacific Settlement (Pact of Bogota)[40] accompanying the provisions of the constitutive act of the American States Organization;

b) The South African Development Community (SADC) that has a cooperation body for the matters of policy, defence, and security, especially created to allow the realisations of attempts to settle the disputes between the member states;

c) The Economic Community of West African States (ECOWAS), created in respect of article 17 of the Protocol on the mechanism of prevention, management and settlement of conflicts, peacekeeping and security,

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[39] North Atlantic Treaty Organization (NATO), signed on 4 April 1949 at Brussels, Belgium, http://www.nato.int/cps/en/natohq/official_texts_17120.htm (accessed 05.02.2021) art 1; Economic Community of West African States (ECOWAS) signed on 28 May 1975, of Lagos, Nigeria. accessed 05.02.2021.: https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/5560/download accessed 05.02.2021, art. 4; Treaty of Amity and Cooperation in Southeast Asia (ASEAN), signed on 24 February 1976, Denpasar, Indonesia, https://asean.org/treaty-amity-cooperation-southeast-asia-indonesia-24-february-1976/> (accessed 05.02.2021),, art. 2 (d); Charter of the Arab League, signed on 22 march 1945, https://www.files.ethz.ch/isn/125350/8005_arableaguecharter.pdf> (accessed 05.02.2021), art. 20; Southern African Development Community (SADC) signed on 17 August 1992, Windhoek, Namibia, , art. 4 (e). . https://www.sadc.int/files/9113/5292/9434/SADC_Treaty.pdf (accessed 05.02.2021

[40] American Treaty on Pacific Settlement (Pact of Bogota) signed on 30.04.1948, . https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280162ab6 (accessed 05.02.2021)

whose members play the role of mediators, counsellors and facilitators in preventing the possible disorders, together with the Mediation and Security Council.[41]

The capacity of the regional organisations to accomplish efficiently the role in settling peacefully the disputes is not easy to appreciate, as it is submitted to the political dynamic of organisation, the identity of concerned parties, and the nature of the dispute and the wider context in which they developed.[42]

Following the analysis, we may ascertain the presence of regional organisations that, from different reasons, showed a predisposition to settle peacefully the emerging local tensions, from the less active to the most efficient in certain specific situations, as the actions to facilitate the agreements of peace undertaken by OUA in Ethiopia and Eritrea (2000), those of AU in Kenya (2008), of the Intergovernmental Authority for development in the progressive secession of South Sudan, the behaviour of OAS concerning the disputes appeared in Guatemala, Belize (2005), El Salvador and Honduras (2006) or even EU in its efforts of mediating after the former of former Yugoslavia.

There are regional structures that appealed to the exclusive anti-militarism, i.e. they would use only peaceful solutions in all crises that may appear in their zone of intervention. For example, the Association of Southeast Asian Nations (ASEAN) is, in this sense, a contrasting example as it develops a certain philosophy in settling the conflicts that may appear between its members, based on the principles of discussion and consensus.

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[41] G. Wilson, *op. cit*., p. 194.

[42] L. Nathan, *The Peacemaking Effectiveness of regional Organisations*. [on-line]. London, Crisis States Research Center, 2010, 29, p. 19-20 https://www.files.ethz.ch/isn/123449/WP81.2.pdf (accessed 05.01.2021).

Article 33 provides that: "The parties in any dispute whose prolongation may jeopardize the peacekeeping and the international security has to find the solution, above everything, by …relying on regional organisations or agreements".[43]

In the same order of ideas, article 52 establishes in paragraph 1: "No provision of this Charter precludes the existence of agreements or regional organisations aimed at settling the matters related to the peacekeeping and international security…"; the text of paragraph 2 highlights: "the UN members that conclude such agreements or create such bodies have to undertake all efforts to settle peacefully the local disputes through such regional agreements or organisations before submitting them to the Security Council"; and the paragraph 3 states: "the Security Council will encourage the peaceful settlement of the local disputes through these regional agreements or organisations"[44] are arguments in the favour of the fact that the role of the regional organisations takes precedence over the Security Council when is possible a peaceful settlement of the conflicts between the member states.

It considers that these provisions may be valuable also for the conflict situation between a state member and a third state. The argument that regional organisations would be responsible only for the conflicts between the member states is nothing more than a simple incidence of an equivocal formulation. The information of preparing works of the Charter's text would not uphold in any way this restrictive theory. If the Charter's authors truly wanted to delimit the conflicts in which the regional organisations may or may not intervene, a more specified term would be used as the "coercive measures" of article 53(1)

[43] Charter of United Nations, art. 33.

[44] Ibidem, art. 52.

establishing the conditions under which the regional organisations may intervene, if necessary.[45]

There are no exceptions from centralizing the collective security system around the Security Council. This thing applies to other UN bodies as the General Assembly, and the regional organisations.

However, the regional organisations may intervene in peacekeeping and international security, notwithstanding their actions being placed under the control of the Security Council, which is responsible firstly for peacekeeping. The integration of the regional organisations in the peacekeeping and regional security may be possible only in respect of the principle of subordination toward the general framework defined by the UN Charter. Consequently, the actions of preventing the conflicts initiated by the regional organisation should not face, a priori, formal difficulties under this aspect, especially if it implicates non-coercive measures.

Any military action initiated by a regional organisation needs, consequently, in respect of article 53 of the United Nations Organisation's Charter, the approval of the Security Council. Nevertheless, it should be specified that the subordination does not limit only to the actions initiated by a regional organisation. The first link of subordination consists, in fact, in applying by the regional organisations of the measures adopted by the Security Council itself.

Given the articles 24 and 51 of the United Nations Organisation's Charter, it may be ascertained the intention to ensure the efficiency of adopted measures, determining the Security Council to delegate its competencies to certain regional organisations.

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[45] A. Abass, *Regional organisations and the development of collective security*, Oxford: Oxford University Press, 2004, p. 40.

This mechanism of delegation preserves the responsibility for using the force between the exclusive competencies ring of the Security Council, although it may divide this competence with the regional organisations.

Professor Leurdijk said that article 53 grants to the Security Council the competence "to use" the regional organisations for actions of executing under its authority. In legal terms, this competence of the Security Council is submitted to certain conditions:

a) A previous precise authorisation was issued following the appeal of the state's members and/or regional organisations for military execution;

b) Identification by the Security Council of a precise task; and

c) The respect by the regional organisations of the reporting obligation.[46]

There are many practical cases implicating a cumulative reference to the Security Council and certain regional organisations that had taken place between 1950 and 1960 as: Lebanese conflict and Arab League, Guatemala and OSA, Morocco, Algeria, Somalia, Ethiopia, Congo, and OAU. They demonstrate that the mandates granted to regional organisations by the Security Council on the basis of Article 52 have not been respected. According to G. Lind, since then cooperation seems to have been mainly "based on the advantages of cooperation between the United Nations and regional organisations, thus generating the complementarity of efforts".[47]

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[46] D.-A. Leurdijk, The UN and NATO: The Logic of Primacy. In: *The United Nations & regional security: Europe and beyond*. Boulder, Lynne Rienner Publishers, 2003, p. 68.

[47] G. Lind, Chapter VIII of the UN Charter: its revival and significance today. In: *Regional organisations and peacemaking: Challengers to the UN?* Routledge, 2015, p. 30.

The controversy over jurisdictional conflicts disappears in the post-Cold War period when the proliferation of regional organisations, combined with the emergence of local conflicts, is an indefinite priority in favour of the UN, when it comes to regional conflicts. In this regard, regional structures, despite everything, they may be able to achieve to ensure peace and security in the region, fulfil their "primary responsibility"[48] and therefore take on the mission that could be added to an already existing agenda.[49]

All these elements together show that the pre-emption matter of regional organisations would ultimately arise more in terms of the capacity of the organisations concerned than a strict legal hierarchy.

The qualification of a regional organisation within the meaning of Chapter VIII provides the necessary legal basis for the peaceful settlement of disputes between member states, even if this function has not been included in the text of its constitutive act. However, this relatively "robust"[50] role given to regional organisations is very narrow. The consensual nature of this framework prevents the expected outcome from effectively disabling security[51] threats, so tougher action can sometimes be considered involving this type of organisation.

The attention paid to Article 52 of the Charter makes it possible to define more clearly the privileged position held by regional organisations in situations that allow for a "peaceful settlement of the dispute" affecting their

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[48] G. Wilson, *Op. cit.*, p. 193.

[49] A. Abass, *Regional organisations and the development of collective security…*, p. 33-34.

[50] M. Hakimi, 'To condone or condemn? Regional enforcement actions in the absence of Security Council authorization', *Vanderbilt Journal of Transnational Law*, vol. 40, nr. 3,2007, p. 649.

[51] G. Wilson, *Op. cit.*, p. 195.

member States. However, with the need to apply force, the Security Council is the sole and supreme holder of decision-making power[52]. In this regard, it is important to analyse the practices of regional organisations in cases of use of coercion, as regulated by Article 53, and it is appropriate to identify the limits of the term "coercion" and its link to "force" in Article 2 (4) of Charter.

Although the terms used are not the same and their addressees are different, the link between the regulation of "coercive measures" in Article 53 and the general prohibition of use or threat of use of force is absolutely necessary.

Thus, the legal regime established by the Charter prohibits states from using or threatening to use force in their international relations. Four essential elements have been identified by the doctrine[53] to give substance to this principle and to determine its scope.

First of all, the prohibition of the use of force is considered in the context of "international relations", i.e. relations between states.[54] Private groups, such as terrorist groups or even a number of individuals with political claims contrary to those of a state government, have not been very clearly defined in this regard. Indeed, Article 2 (4) has the essential purpose of protecting the sovereignty of states.[55]

Consequently, the internal dimension of this sovereignty implies the possibility for each state to

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[52] B. Ntahiraja, 'The Global and the Regional in the Responsibility to protect: Where does Authority lie?', *Journal Jurisprudence*. vol. 15, p. 422,2012,; Charter of United Nations, art. 2 (4) and (7).

[53] O. Corten, *Le droit contre la guerre*, 2e éd., Paris, Pedone, 2014, p. 65-408.

[54] Ibidem, p. 195-332.

[55] J. Salmon, *Dictionnaire de droit international public*. Paris, Bruylant, 2001, p. 1045.

regulate the use of violence in its own territory, in criminal law, or through other measures. This is why non-state groups that act against their national law will be punished as a matter of priority and will not have the right to promote armed aggression and their inherent right to self-defence under article 51 of the Charter. Just as third countries will not be able to exercise this right to self-defence directly against terrorist groups without a relevant connection of the alleged aggressive acts with the state in whose territory they are established. In the same sense, in the case of a civil war, a kind of "neutrality" must be respected by states towards the parties in conflict precisely in order to not compromise the "political independence" of a state, a concept much more subjective than that of "territorial integrity".[56]

This approach is considered to be out-dated because the Security Council resolution of September 12th, 2001[57] makes the connection between the private structure and the state on whose territory the organisation is headquartered. Considering that in drafting the UN Charter, Article 51, which regulates self-defence, referred to an act of aggression by a state for the simple reason that at that time there was no provision for a possible attack on a state by a non-state structure, the Security Council was required to give a clear answer to the question of what the state's reaction should be in the event of an attack by a terrorist structure.

Thus, by this resolution, the Security Council found that the attack had taken place from the outside, which legitimises the application of Article 51 of the UN Charter,

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[56] J. Combacau, and S. Sur, *Droit international public*, 11e éd., Paris: LGDJ, 2014, p. 631.

[57] UNSC, Security Council Resolution 1373 (2001), adopted on 28 September 2001. https://digitallibrary.un.org/record/449020 (accessed 23 March 2021).

and therefore followed the causal link between the terrorist structure and the state on whose territory the respective bases are located. Several resolutions have previously been adopted, in particular by the Security Council, urging Afghanistan (the Taliban government) to react to the presence of Al Qaeda bases on its territory - either by liquidating them or by asking for help from states in the context of liquidating their military bases. Thus, the direct link between Al Qaeda and Afghanistan was found, which allowed the US to exercise its right to self-defence in relation to Afghanistan.

Meanwhile, several NATO member states have stated that they are implementing Article 5 of the Washington Treaty (1949)[58], which states that an attack on one member state is considered an attack on all NATO member states. It should be noted that Article 5 provides for the right to participate in self-defence, but does not oblige them. This theory was later developed in relation to the terrorist group "Islamic State", which can be considered as a broader interpretation of the concept of self-defence provided by Article 51 of the UN Charter.

Abstention that may be "benevolent" in practice in favour of incumbent governments[59], even if it allows the

[58] North Atlantic Treaty Organization (NATO), signed on 4 April 1949 at Brussels, Belgium.

[59] UN, General Assembly Resolution A/RES/2625 (XXV), adopted on 24 October 1970, https://digitallibrary.un.org/record/202170 (accessed 6 February 2021); ICJ, Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment of June 27.1986, ICJ. Reports, 1986,https://www.icj-cij.org/en/case/70/judgments (accessed 7 February 2021), p. 91, § 127 and pp. 126-127, § 247; ICJ, Armed activities on the territory of the Congo (Democratic Republic of the Congo v. Uganda, judgment of 19 December 2005), ICJ Reports, 2005.

recognition of the right of peoples to self-determination, cannot be the subject of coercive measures undertaken by the states.[60] In the absence of express regulations, a right of military assistance of a third country to such insurgent structures cannot be recognised as a customary rule in international law.[61]

In its external dimension, sovereignty implies the right of any state not to be subjected to any coercive measures by another sovereign state, either in general, by applying the principle of non-intervention, or militarily, by applying the prohibition of the use of force.[62]

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https://www.icj-cij.org/public/files/case-related/116/116-20051219-JUD-01-00-EN.pdf (accessed February 2021), § 162-165 and § 345.

[60] UN, General Assembly Resolution A/RES/2625 (XXV), adopted on 24 October 1970. https://digitallibrary.un.org/record/202170>, par. 7e; International Covenant on Economic, Social and Cultural Rights, New York, 16 December 1966 ,https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx (accessed 18 January.2021), art. 1; International Covenant on Civil and Political Rights, New York, 16 December 1966. https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx (accessed 18 January.2021; Additional Protocol I to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts (Protocol I), 8 June 1977,https://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolI.aspx (accessed 18 January.2021), art. 1 (4); Nolte, G. The Resolution of the Institut de droit international on military assistance on request. In: *The Belgian Review of International Law*. 2012, nr. 1, pp. 241-262.

[61] O. Corten, *Op. cit.*, p. 8-63.

[62] ICJ, Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment 26.11.1984, C.I.J. Recueil, 1984 https://www.icj-cij.org/public/files/case-related/70/070-19841126-JUD-01-00-EN.pdf (accessed 18 January.2021), p. 424-425, § 73.

Secondly, in order to apply force, acts committed by a third country must have a certain degree of gravity. There should be "no extraterritorial coercive measures". For example, a simple crossing of international maritime borders or even certain military operations will be contrary to international law in the broadest sense, but they will serve for the affected states as a possibility to qualify these actions as a violation of the general principle of sovereignty and non-intervention in the affairs of the State or a specific regime of the treaty, other than a violation of Article 2 (4) of the UN Charter.[63]

Thirdly, the criterion of the willingness of the state to coerce another state by force will be decisive when will be legally pretended the disrespect of the prohibition of using the force. This will establish the fundamental and decisive reasons when the state is involved in the claimed activities.

Fourthly, the prohibition provided by Article 2 (4) is an essential example of an imperative rule (*jus cogens*), i.e. a rule accepted and recognised by the international community of states as a whole as a rule from which no derogation is permitted, and which can only be amended by a new rule of general international law of the same nature.[64]

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[63] UN, General Assembly Resolution A/RES/2625 (XXV), adopted on 24 October 1970, par. 7e; J. COMBACAU, SUR, S. *Op. cit.*, p. 627; ICJ, Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment of June 27.1986, ICJ, Reports, 1986. https://www.icj-cij.org/en/case/70/judgments (accessed 18 January.2021), p. 108, § 205; UN, General Assembly Resolution A/RES/42/22, adopted on 18 November 1987, https://digitallibrary.un.org/record/152626 (accessed 18 January.2021)

[64] Vienna Convention on the Law of Treaties signed on 23 May 1969. https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf (accessed 2 February.02.2021), Art. 53; O. Corten, *Op. cit.*, p. 342-359.

Consequently, circumstances not provided for in the Charter to rule out the unlawfulness of the intervention[65] are inadmissible. The invocation of a state of necessity[66], urgency[67] or countermeasures[68], to justify the use of force, except in the cases provided for in the Charter, cannot be validly admitted or confirmed and the secondary conditions of liability cannot be achieved by circumventing the conditions strictly provided for in the primary rule which prohibits the use of force, as provided for in the Charter of the United Nations.[69]

Thus, we may ascertain that any exception to the analysed rule can inevitably lead to the suppression of the system ensuring the international security system based on the principle of collective security. Any kind of exception, other than those strictly established by the text of the UN Charter, from the rule of non-application of force in relations between states, could have irreversible consequences for the UN world peacekeeping system.

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[65] Draft articles of the International Law Commission on the responsibility of States for internationally wrongful acts, annexed to resolution A/RES/56/83 adopted on December 12, 2011 by the General Assembly of the United Nations (ARSIWA). https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf (accessed 2 February.02.2021), art. 26; Draft articles of the International Law Commission on the responsibility of international organisations, 9 November 2011, A.C.D.I., 2011, vol. II, (DARIO). https://legal.un.org/ilc/texts/instruments/english/commentaries/9_11_2011.pdf (accessed 2 February.02.2021), art. 26.

[66] D. Arsiwa, art. 25 (2) a).

[67] Ibidem, art. 24.

[68] Ibidem, art. 22 and 50 (1) a); DARIO, art. 22, 52, 53 (1) a).

[69] O. Corten, *Op. cit.*, p. 373; J., Combacau and S. Sur, *Op. cit.*, p. 628.

This prohibition has two exceptions expressly recognised in the Charter and which "explicitly"[70] allow the use of force: self-defence, exercised individually or collectively at the request of the state, as provided by article 51 and the "assistance of United Nations actions"[71] through decisive measures (Chapter VII, for states) or authorised by the Security Council (Chapter VIII, for regional organisations).

Another legal use resulting from Article 2 of the Charter is the state's consent[72] to the intervention of a third State, by adopting a valid internal act. In such circumstances, there would be no breach of its territorial integrity or political independence.

States, on an individual or collective basis[73], have long time used embargoes or diplomatic restrictions in their relations without recourse to the second exception. Thus, the "coercive measures" of regional organisations must be treated, in practice, in the same way as those used by states.[74]

The principle of the right of peoples to self-determination implicitly allows the use of force in the process of building the statehood of a people fighting for liberation from colonial, racist, or discriminatory subjugation, which could not be anticipated at the time of elaborating the UN Charter, but which has been interpreted extensively, abusively and repeatedly causing various regional crises.

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[70] J. Combacau, And S. Sur, *Op. cit.*, p. 632-634.

[71] Ibidem., p. 634.

[72] O. Corten, *Op. cit.*, p. 422-437.

[73] J.E. Hickey, 'Challenges to Security Council monopoly power over the use of force in enforcement actions: The case of regional organisations', *Ius Gentium*. vol. 10, 2004, p. 78.

[74] G. Wilson, *Op. cit.*, p. 197.

The exceptions, themselves, erode the essence of the rule. The more exceptions we have, the higher the probability of disrespecting the basic rule. Daily realities show us that the diplomacy of strong states uses these tools quite skilfully to achieve in practice their foreign policy objectives, interpreting extensively the provisions of some fundamental rules of public international law.

In our opinion, the priority objective in this regard would be to exclude in any form the exceptions from the regulations analysed above in order not to erode the essence of the peace system generally and the prevention and resolution of regional crises particularly.

As for the countermeasures regime adopted by international organisations, F. Dopagne emphasised the importance of their statutory work when determining the measures that can be taken by these organisations when an unlawful act disrespects their individual rights or even a common interest (*erga omnes*). The nature of the obligation and the gravity of its breach are important in determining the organisation's right of intervention.

The international organisations are subjects derived from international law that need competencies assigned by member states in order to benefit from capacities other than those resulting from their legal personality, in particular, the possibility to conclude treaties in their sphere of competence, to establish official relations with other subjects of law and participate in international liability mechanisms.

Apart from the specific documents that can be observed in relation to states[75], the conditions to which the organisation's countermeasures are subject under general international law are equally similar to those applied by

[75] F. Dopagne, Les contre-mesures des organisations internationales. Essai de transposition du régime des contre-mesures étatiques. In: *Annales de Droit de Louvain*. 2008, vol. 68, nr. 3, p. 219.

states. This strong convergence is manifested both in terms of the ability to take countermeasures and their exercise.[76]

It has to be retained the fact that the measures taken by the Security Council as a reaction to what perceives as a threat against peace and international security, established in chapter VII, do not result from the logic of countermeasures, but from ascertaining the realities in the field. The Draft on Articles related to the Responsibility of international organisations realised by the International Law Commission states that these structures do not disrespect the rules of *jus cogens* or the principles of good faith, proportionality, reciprocity, negotiation and take into account the institutional logic of sanctions, i.e. it qualifies the actions of regional organisations as "corporate reactions" adopted in accordance with the terms of the Charter and on the basis of the procedures provided for in the constitutive act of the organisation.[77]

When an organisation does not perform a precise analysis of the case of countermeasures, the logic and conditions underlying the use of force by states are similarly applicable to international organisations. International organisations are undoubtedly bound by the rule set out in Articles 2 (4) and 53 (1), which are an emanation of this principle.[78]

Thus, because the "binding monopoly which the State has, by virtue of its sovereignty, in matters falling essentially within its national competence"[79], toward non-state entities, cannot be transposed to organisations constituted of different states. Groups of states which, at the same time, are logically obliged to comply with their

[76] Ibidem, p. 224.

[77] M. Aznar, La distinction entre sanctions et contre-mesures. In: *Revue belge de droit international*. 2013, nr. 1, p. 114.

[78] O. Corten, *Op. cit.*, p. 334-335.

[79] J. Combacau, and S. Sur, *Op. cit.*, p. 629.

mandatory individual obligations (*nemo plus juris dat quam ipse habet*)[80]: Article 2 (4), in conjunction with the broad principle of prohibiting the use of force from Article 2 (7) places the use of force by international organisations in the field of "international relations".

Secondly, as various international texts confirm this evidence, such as Article 52 of the Vienna Convention on the Law of Treaties[81] or the definition of aggression adopted by the General Assembly by Resolution.

Thus, Article 1 of Resolution 3314 states: "The aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another state or in any other manner inconsistent with the Charter of the United Nations, as provided in this definition. In this definition, the term "state":

a) Uses without affecting the matters of recognition or if a state is a UN member;

b) Includes the concept "group of states", if the case.[82]

At the same time, article 3 of the resolution defines seven concrete cases of the aggression notion, without claiming to provide an exhaustive list of them.

As soon as a regional organisation uses force in a given territory, it must therefore justify its use in accordance with pre-established supporting principles.

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[80] *Nobody can grant a right (title) higher than the one possessed.*

[81] Vienna Convention on the Law of Treaties signed on 23 May 1969(accessed 2 February 2021) https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf (accessed 2 February .02.2021). , art. 52.

[82] UN, General Assembly Resolution A/RES/3314(XXIX), adopted on 14 December 1974. https://digitallibrary.un.org/record/190983 (accessed 6 February 2021), art. 1.

When diplomatic channels or economic sanctions are insufficient, a more prompt attitude on the part of regional organisations can be considered to prevent a threat from materializing or even ceasing actions that could harm international peace and security.

According to the provisions of Chapter VII of the UN Charter, the Security Council holds this "monopoly", especially the debates on this subject advanced after the invasion of Iraq in 2003, the permanent members of the Security Council interpreting differently the provisions of resolution 1441.[83] Some members considered that the resolution provides the right of states to attack Iraq if it does not "cooperate" effectively with the UN mission that verified the presence of mass destruction weapons in Iraq, others, that this resolution provides the adoption of another resolution expressly stating the application of force.

We agree with the majority on this subject, according to which, ignoring the exclusive competencies of the Security Council to apply force toward a state, can lead to the assignment of exclusive rights to states, which based on an interpretation in the national interest, undermines the entire collective security concept monitored by the UN.

The use of armed force, however, requires the authorisation of the Security Council. In general, Article 54 of the Charter stipulates that it must "be kept fully informed" about these regional peacekeeping actions.

This obligation recalls once again the decision-making supremacy that is reserved to the United Nations in the general framework of maintaining a peaceful world, especially when force is used to achieve this goal. In accordance with the provisions of Chapters VII or VIII of

[83] UNSC, Security Council Resolution 1441 (2002), adopted on 8 November 2002. https://digitallibrary.un.org/record/478123 (accessed 6 February 2021).

the Charter, when states, groups of states, or regional organisations are involved in advanced military manoeuvres to ensure peace and security, the place occupied by the Security Council is primordial.

However, cooperation between the Security Council and certain regional organisations may be established on the basis of Chapter VIII. Some margin is given to organisations that could have the vocation and potential to provide this protection at the local level or to serve as instruments for the United Nations in achieving this goal. Thus, the text of the Charter establishes the imperative to communicate to the Security Council about the measures to be taken by the regional structure, which allows monitoring the adequacy of their actions.[84]

This intention to ensure the supreme authority of the Security Council seems to be a rather ironic realisation of the potential weaknesses inherent in the Council itself, being dominated by a single state or ideological bloc[85], which could turn it into an instrument of promotion or protection of particular interests, although it is presumed to act in accordance with the purposes and principles of the United Nations.

When the Security Council was marked for almost four decades by the lack of decision-making due to the confrontation of two of its permanent members, the criticisms addressed to certain regional organisations are due to the subjective nature of decisions taken in the interest of a more influential member as: NATO, CEI, and ECOWAS. Thus, regional organisations often return to the forefront when it comes to denouncing agendas, which

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[84] K. Tshibangu, *Les résolutions de l'ONU et les destinataires non étatiques*. Bruxelles, Larcier, 2009, p. 69.

[85] T.J. Farer, The role of regional collective security arrangements, In: *Collective Security in a Changing World*. Boulder, Lynne Rienner, 1993, p. 164

would respond too easily to the interests of their American, Russian, and Nigerian iconic members, and which would consequently deviate from the goals promoted by the UN. Therefore, article 54 is the special regulatory basis when it comes to "robust" operations in the name of peace.

Ensuring the effectiveness of United Nations control or "surveillance"[86] over the action of regional organisations requires a dual willingness. First of all, it involves the function of the Security Council, which must take care both before and during the fulfilment of its observation mission.

Prior to the operation, the control is performed by issuing conditions that will facilitate the critical review of regional operations. When it uses the regional organisations as an instrument for the achievement of an objective, or when it approves a regional initiative, the Security Council must ensure that the mandate it issues is sufficiently limited in relation to the objectives assigned to it, the space-temporal framework to be respected and the specific commitments to be reported at regular intervals, and during the operation, it should be verified whether the established field of action has been observed efficiently and properly.

Another element would be the good intentions of the regional organisations, which must be prepared to allow this general examination by the Council and to remain within the limits set by the mandate. In practice, the "doubts" as for the ability of the Council to subject regional operations to its final surveillance may lead to "situations"

[86] N. Blokker, Outsourcing the use of force: towards more Security Council control of authorized operations? In: *The Oxford handbook of the use of force in international Law*, Oxford, Oxford University Press, 2015, p. 218.

in which the Council has not endorsed the coercive measures applied by the regional organisations.[87]

We believe that it would be fair to analyse whether there are types of use of force that go beyond the provisions of the UN Charter on self-defence and those set out in Chapter VII and whether they should base on an evolution of customary international law as long as there is no consensus, there is no *opinion juris* so necessary to establish, together with the practice of the state, the constituent elements of a new international custom.

Analysing the work of the author Abass A. we can observe that there is no insistence on the option of establishing a customary rule that could allow more robust actions to ensure regional collective security without the authorisation of the UN Security Council in Kosovo, instead he questions the strict interpretation of Article 2 (4), which does not allow the use of force outside the limits of the UN Charter, and he questions "whether or not the consensual interventions of regional organizations disrespect the peremptory rule of the article 2 (4)".[88]

For Abass, infringements of Article 2 (4) do not constitute infringements of an imperative rule. Instead, analysing the articles of 2001 on state responsibility, Abass notes that the International Law Commission "identified only the prohibition of aggression as an imperative rule under the article 2 (4)".[89] If this were the case, then the use of force, which was not peremptory, could be considered legal. The following argument follows: "the content of the article 2 (4) is divisible into rules which infringe mandatory rules (aggression) and rules which infringe a general prohibition but not mandatory rules (use of lesser force)

[87] G. Wilson, *Op. cit.*, p. 212.

[88] A. Abass, *Regional organisations and the development of collective security* Oxford, Hart Publishing, 2004, p. 187

[89] Ibidem, p. 195.

and that the agreement given to regional organizations by the states members may exclude the application of the article 2 (4) so far as it relates to the second category of forces".[90]

Even if such an approach presents a deep theoretical interest, the volatility of the distinction between the notion of aggression and the use of lesser forces, between the disrespect of general rules, but not the imperative ones would cause substantial difficulties in the practical application of these rules.

Author Abass A. relies on his argument that states cooperate through the UN Charter and, if the Security Council fails to take "prompt and effective action" in accordance with the mandate of the Article 24 (1), then it relinquishes its primary responsibility to ensure the peace and security, and thus the responsibility of regional organisations as a subsidiary power, to achieve this crucial goal set in the UN system. Recognising the African context in which the UN Security Council was delegitimised by its failure to act in Liberia and Sierra Leone, but in which ECOWAS succeeded, haunted by the Rwandan genocide - it is difficult to accept the generally invoked argument.

Arguably, prompt intervention through a Peacekeeping Operation under the aegis of the United Nations with the active participation of the African Union would have prevented or at least would have minimised the disastrous effects of the regional crises in Libya and Sierra Leone.

We also support the position that the intervention of the UN Security Council must be swift and effective, and that cooperation with regional organisations to settle regional crises must be proactive. The inability to make prompt and eloquent decisions for the formation of

[90] Ibidem, p. 201.

missions that would ensure the prevention of war crimes and crimes against humanity is to be an analysed to identify the necessary legal solutions.

In the sense of this controversy, A. Abass does not define aggression and does not refer to the definition of aggression of 1974 that relates to: "The first use of armed force by a state that contravenes the Charter will be evidence *prima facie* of an act of aggression".[91] Instead, the author argues that "humanitarian intervention, although it is not permitted under the article 2 paragraph (4), cannot be described as aggression because it does not concern the territorial integrity or political independence of the target state".[92] We only need to think about Kosovo and how the public authority of the Federal Republic of Yugoslavia has been treated, in order to understand that the territorial integrity and political independence of that state have indeed been targeted under the pretext of humanitarian intervention.

As interesting as this thesis may be, it is important to consider how it would be appropriate that the African signatory states of the UN Charter have established, within ECOWAS Protocol and the Constitutive Act of the African Union, parallel systems of regional peace and security that they do not need to refer to article 53 of the UN Charter, which provides that execution actions do not take place "without the authorization of the Security Council".

It could be argued that, in this case, the new provisions coming from these African intergovernmental bodies are *lex specialis*, which cancels the general laws of the United Nations Charter. However, Article 103 of the UN Charter provides: "If to consider the obligations of the

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[91] UN, General Assembly Resolution A/RES/3314(XXIX), adopted on 14 December 1974, art. 2

[92] A. Abass, *Regional organisations and the development of collective security*, Oxford, Hart Publishing, 2004, p. 198.

United Nations members under this Charter and their obligations under any other international agreement, so their obligations under this Charter shall prevail".[93] Despite this, the African states, although they have not formally renounced the UN collective security system, have in fact done so repeatedly.

However, in reality, the Economic Community of West African States has agreed to allow the member states to use force without the authorisation of the UN Security Council to maintain peace and security, while the African Union has gone further by sanctioning the use of force not only to maintain peace and security but also in terms of "serious circumstances, namely war crimes, genocide and crimes against humanity, as well as a serious threat to the legitimate order to restore peace and stability".[94]

The AU is not the only regional security organisation. Several similar institutions have been set up in other regions, such as NATO in Europe, the League of Arab States (LAS) and the Central Treaty Organisation (CENTO) in the Middle East, the Organization of American States (OAS), and the Caribbean Community (CARICOM) in America, the Southeast Asia Treaty Organization (SEATO) and the Association of Southeast Asian Nations (ASEAN) in Asia, in Australia, there is the Commonwealth and Australia, New Zealand, United States Security Treaty (ANZUS).[95]

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[93] Charter of United Nations, art. 103.

[94] African Union Constitutive Act of the African Union. 11.07.2000, Lome, Togo. https://au.int/sites/default/files/pages/34873-file-constitutive-act_en.pdf (accessed 28 December 28.12.2020).

[95] L. Fawcett, *Regional Security. Security Studies an Introduction*, London, Routledge, 2013, p. 356.

The creation of such international organisations confirms the urgent need for security in each region. The objectives of creating such an organisation are to prevent social, political, and economic conflicts in certain zones because the security of a state is influenced by both the external security environment and the level of internal security.[96]

This position is inspired by the definitions of regional security given by B. Buzan, who says that regional security is the state of affairs in which a group of states have a common concern about the security problems of the region, because they realise that the security of a nation cannot be separated from other nations. In the African context, there are several examples of an intra-state conflict that then spread to one of the neighbouring countries, such as Somalia and Sudan, Ethiopia and Sudan, Sudan and Uganda, Uganda and Rwanda, Rwanda, and Zaire / the Democratic Republic of Congo (DRC), Zaire / DRC and Angola.[97]

The statute of the League of Arab States was adopted before the UN Charter comes into force and does not make express reference to this international normative act. However, both the member and non-member states of the organisation have signed and ratified the Charter, which bounds them to respect the supremacy of the Security Council in the case of military interventions to ensure peace and security in the region.

Unlike the constitutive act of the African Union and the Statute of the League of Arab States, the North Atlantic Treaty stipulates that in the process of an individual or collective self-defence of its members within the meaning

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[96] Ibidem, p. 356.

[97] B. Buzan, and O. Wever, *Regions and Powers, the structure of international security*, Cambridge, Cambridge University Press, 2003, p. 232.

of Article 51 of the UN Charter: "Any such armed attack and all measures adopted as a result of this, must be reported immediately to the Security Council. These measures shall cease after the Security Council has taken the necessary measures to restore and maintain international peace and security".[98] Based on the analysis of these provisions, we should conclude that NATO can take robust intervention measures in the sense of maintaining and ensuring peace in the region, only after the express consent of the UN Security Council.

[98] North Atlantic Treaty Organization (NATO), signed on 4 April 1949 at Brussels, Belgium, art. 5.

1.3. Conclusions to Chapter I

The United Nations and its internal structures are the main mechanism for ordering and codifying the rules of international security law, and the United Nations Security Council, in strict accordance with the provisions of the UN Charter, is the structure responsible for ensuring effective and rapid world peace and security.

The definition of aggression is a crucial element of the matter-object of the analysis and forms the triggering mechanism for cooperation procedures between the Security Council and regional organisations in the process of settling the regional crises. The content of Resolution 3314 on the definition of aggression has a universal character from a theoretical point of view, and the Statute of the International Criminal Court defines the crime of aggression. However, so far this provision has not come into force and the Statute can be amended at 7 years after its entry into force, but this matter was not addressed within Kampala meeting in 2009, nor was it subsequently addressed.

The structure and specificity of the decision-making process, which is manifested by the veto right of the five states, imprints a note of delay in the decision-making process, and reducing the speed of decision-making may be crucial for the implementation of the United Nations purpose.

The regional international organisations are entitled to intervene in the settlement of disputes between states in respect of articles 52-54 of the United Nations Charter and the provisions of the constituent acts of such organisations.

Following the analysis of the constitutive acts of the most important international organisations in the zones-subject of analysis, we may observe that only the North Atlantic Treaty expressly establishes in the text of Article 5 the priority of the Security Council regarding the use of force in individual or collective self-defence of NATO members. The statute of the League of Arab States does not refer to the competencies of the Security Council, and establishes in the organisation's set of competencies the ensuring of peace and security of the member states.

The case, which represents interest for our research, is the constitutive act of the African Union which establishes the right and correlatively the obligation of the organisation to intervene promptly in settling regional crises on the territory of states member, without expressly establishing an obligation to coordinate these robust actions with the UN Security Council, which allows some broad interpretations and the hypothesis that if the Security Council does not act quickly and effectively to settle a regional crisis, this structure could institute military operations to ensure peace and security in the region.

Although we can ascertain an increase in the degree of cooperation between the UN Security Council and the regional international organisations within the peace and security process, this delegation mechanism preserves the responsibility for using the force within the Security Council's exclusive sphere of competence, even whether it can share this competence with the regional organisations.

The regional organisations may and must also intervene within the limits set by article 52 of the UN Charter in both conflicts between the states members and between them and third countries, and non-coercive actions must not be coordinated by the Security Council of the United Nations organisation. Moreover, the role of

regional organisations takes precedence over the Security Council when a peaceful settlement of conflicts between the member states is possible, and conflict prevention actions initiated by the regional organisation should not face, a priori, formal difficulties in this regard, especially if it involves non-coercive measures.

The regional organisations may and must be involved in respect of the United Nations Charter in the plenary and complex process of ensuring peace and security as a matter of priority on the territory of its member states. They are called either by their nature, or on the basis of the normative provisions of the Charter, or on the basis of the provisions of the constitutive act or on the basis of all the arguments cited cumulatively to use all legal instruments, which do not involve the application of force or a "robust" reaction to prevent or to combat any threat against the regional peace and security.

2. ROLE OF THE INTERNATIONAL REGIONAL ORGANISATIONS IN REGIONAL PEACEKEEPING

2.1. Place and role of the North Atlantic Treaty Organization in the process of preventing and settling the regional crises

The North Atlantic Treaty Organization (NATO) is an organisation with states of different dimensions that grant assistance worldwide and is created to promote democracy, to ensure crises management, as well as security and collective defence.

NATO was created in 1949 to "discourage Soviet expansionism, to forbid the rebirth of nationalist militarism in Europe through a strong North American presence on the continent, and encourage European political integration."[99] During the recovery of European states after World War II, the Soviet threat was constantly felt. Thus, the US through the Marshall Plan provided economic aid to Western European states, and the affected nations needed guaranteed security during the reconstruction processes.[100]

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[99] NATO History, North Atlantic Treaty Organization, http://www.nato.int/history/nato-history.html (accessed 11 November 2020).

[100] L. S. Kaplan, *NATO Divided, NATO United: The Evolution of an Alliance*. Westport, Praeger, 2004. 176 p. ISBN 978-0275983772

The negotiations with the United States and Canada have led to the creation of a single North Atlantic Alliance, based on security guarantees and joint commitments between Europe and North America. Denmark, Iceland, Norway, and Portugal have been invited by the Brussels Treaty powers to join this process. These negotiations culminated in signing the Washington Treaty in April 1949, establishing therefore a common security system based on a partnership between the 12 countries. In 1952, Greece and Turkey acceded to the Treaty. The Federal Republic of Germany joined the Alliance in 1955, and in 1982 Spain became a member of NATO. The Czech Republic, Hungary, and Poland joined NATO in 1999, Bulgaria, the Baltic States, Romania, Slovakia, and Slovenia in 2004, Albania and Croatia in 2009, Montenegro[101] in 2017, and Northern Macedonia in 2020.

Besides the combat operations, NATO has been involved in several humanitarian missions, including providing support to affected areas in 2005: after Hurricane Katrina, which resulted in between 1,200 and 1,800 deaths and the displacement of more than 400,000 people from the New Orleans Zone and the Mississippi Gulf Coast and, after the earthquake in Pakistan of 2005, which killed about 53,000 Pakistanis and injured another 75,000[102]. Both within and outside the North Atlantic

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[101] V. Morelli, *NATO Enlargement: Albania, Croatia, and Possible Future Candidates*, Washington, DC: Congressional Research Service, 14.04.2009 https://fas.org/sgp/crs/row/RL34701.pdf (accessed 18 October 2020).

[102] J. Brunkard, G. Namulanda, and R. Ratard, 'Hurricane Katrina Deaths, Louisiana 2005' *Disaster Medicine and Public Health Preparedness,* 2008, vol. 2, nr. 4, pp. 215-223. ISSN 1938-744X; Operations and Missions: Past and Present, North Atlantic Treaty Organization 9.11.2015. http://www.nato.int/cps/en/natohq/topics_52060.htm (accessed 16 October 2020).

region, the Alliance fulfils its main tasks. NATO continues to be ready to "protect the freedom and security of its members through political and military means"[103] and does so by ensuring that all members of the Alliance respect the North Atlantic Treaty. This commitment to comply with the treaty has been a significant adjustment for many states, including the United States, which has sparked various controversies among isolationists.

The parties to this treaty reaffirm their confidence in the purposes and principles of the United Nations Charter and their willingness to live in peace with all the nations and governments of the world. The members of the organisation are determined to protect the freedom, common cultural heritage, and civilization of their nations, based on the principles of democracy, individual liberty, and the rule of law, seek to promote stability and well-being in the North Atlantic zone and are determined to join their forces for collective defence and the maintenance of peace and security.[104]

The North Atlantic Treaty is the founding and main document of NATO and all the member states of the Alliance. The fundamental reason behind the treaty was to form a group of nations that agreed to defend each other in the event of an external threat. The treaty is also a peace and cooperation agreement between the members of the Alliance. The 14 articles of the treaty describe its purpose and members' expectations, as well as how they should be implemented. Curious is the fact that the international normative act has a concise character, and most articles have only one or two sentences.

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[103] L. S. Kaplan, *NATO Divided, NATO United: The Evolution of an Alliance*, Westport, Praeger, 2004. 176 p. ISBN 978-0275983772.

[104] North Atlantic Treaty Organization (NATO), signed on 4 April 1949 at Brussels, Belgium, Preamble.

The North Atlantic Treaty governs the decisions of the North Atlantic Council, the main decision-making body of NATO established under Article 9 of the Treaty. Its decisions shall be taken by common agreement, i.e. unanimously. The Council shall be composed of representatives of each state member and all members "shall have the equal right to express their views and to participate in obtaining the consensus on which the decisions are based."[105] Their collective decisions shape the Alliance's current and future operations. These decisions include outlining the basic tasks of the organisation, as established in the NATO Strategic Concept of 2010.

The strategic concept is a document that helps to focus the Alliance's efforts during the implementation of the treaties. Specifically, it describes NATO's long-term goal and objectives and its core security tasks.

This document reflects the main tasks of the Alliance: collective defence, crisis management, and cooperative security. As agreed by the North Atlantic Council, crisis management focuses on prevention as well as crisis management that occurs and affects different zones around the world.

Cooperative security "focuses on promoting international security through cooperation."[106] The main final task, collective defence, focuses on discouraging aggression against threats and defending NATO members from these threats. Each of these tasks requires dedicated resources and commitment from Alliance members.

The collective defence stands out as NATO's main goal, starting with the treaty and continuing as one of the

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[105] Ibidem, art. 10.

[106] NATO's Strategic Concept, Republic of Albania, Ministry of Defence, http://www.mod.gov.al/eng/index.php/security-policies/relations-with/nato/85-nato-s-strategicconcept (accessed 16 October 2020).

three essential tasks of the strategic concept. Each state member has promised to defend the other states from threats, and this brings collective strength to the Alliance. The security environment changes as threats change. The terrorist attack of September 11th, 2001 remains the only time when the commitment to collective defence[107] provided by article 5 has been invoked. Despite its limited history of use, this provision forms an "umbrella" of protection over the Alliance.

The two articles that shape the Treaty and the Alliance are Articles 2 and 5. Article 2 sets out the non-violent means by which the Alliance wants to operate by strengthening institutions to bring peace, stability, and economic cooperation among its members.

For the purposes of article 2: "The Parties shall contribute to the further development of peaceful and friendly international relations by strengthening their free institutions, by better understanding the principles on which those institutions are based and by promoting conditions of stability and well-being. They will seek to eliminate dissent in their international economic policies and encourage economic cooperation among members of the organisation."[108]

The political aspect is considerably important to the Alliance and its practices and premises begin with article 2. Essentially, this article is a brief reformulation of the purpose and objectives of the United Nations established for the North Atlantic region.

Article 5 ensures that the members of the Alliance will be protected by each other as if they were a single body under the auspices of the principle of collective defence and states that: "The Parties agree that an armed attack

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[107] North Atlantic Treaty Organization (NATO), signed on 4 April 1949 at Brussels, Belgium, art. 5.

[108] Ibidem, art. 2.

against one or more of them, in Europe or North America, will be considered an attack on all and, consequently, they agree that, if such an armed attack takes place, each of them, in the exercise of the right to individual or collective self-defence recognised by the article 51 of the Nations United Charter, shall support the attacked Party or Parties by taking immediately, individually or in agreement with the other Parties, any action it deems necessary, including the use of armed force, to restore and maintain security in the North Atlantic. Any such armed attack and all measures taken as a result of it shall be reported immediately to the Security Council. These measures shall cease after the Security Council has taken the necessary measures to restore and maintain international peace and security."[109]

Article 5 is the core of the Alliance's military side. It states, in specific terms, the commitment of the Allies to help each other in combating aggression.

The collective defence is a continuation of what the UN Charter provides in its core and apparently causes cognitive dissonance, as long as all NATO member states are also UN member states, and the obligation to exclude war from the list of instruments for settling conflicts between states and the principles of public international law are in line with the concept of collective security.

The analysis of historical events explains the need to build and develop NATO. The concept of collective defence is a paradigm applied in practice by the UN. In this regard, it is important to note that all NATO coercive measures, which would involve the use of the military element, must be coordinated, in strict accordance with the provisions of article 5 of the Treaty, both in case of self-defence and in the case of establishing peacekeeping

[109] Ibidem, art. 5.

missions in which NATO could actively participate under the provisions of the UN Charter.

Crisis management is an essential task that has been frequently exercised since the early 1990s, with remarkable beginnings in the Balkans. A specific case has taken place in Albania since 1997, during a period of significant internal unrest. In August 1997, a NATO team travelled to the country to help repair Albania's police system, banking institutions, and economic situation.[110] As Albania continued to face internal and external problems, it contacted NATO again in March 1998. Due to the low level of security caused by the conflicts in Kosovo, Albania became the first partner to exercise its rights of emergency consultation.

NATO's effective intervention in a crisis, defined here in a very broad sense as a violent political dispute, is an idea that must be seen as a kind of "black box". In most reports and other official documents, but also in most studies conducted by scientists, it is undeniable that the implementation of crisis management measures has an impact on the concerned territory and that this impact can be very positive for local people.[111]

The matter lies in the nature of NATO's crisis management ideal itself, which tends in particular to provide technical solutions to political problems. The doctrine of crisis management involves actions that go mainly in one direction - from NATO members to a target region. Thus, the technical aspect of crisis management requires those who intervene to question the existing

[110] D.S. Yost, *NATO Transformed: The Alliance's New Roles in International Security*. Washington, DC, United States Institute of Peace Press, 1998, p. 235.

[111] B. Pouligny, *Ils nous avaient promis la paix: Opérations de l'ONU et populations locales*, Paris, Presses de Sciences Po, 2004. 356 p. ISBN 2-7246-0947-6

international order. According to this concept, the settlement of the crisis depends on adjusting the other needing to adapt and negotiating change between all stakeholders.

The idea of crisis management, gradually developed through repetition, has become a kind of technical and professional truth so common to those debating NATO's role that it appears today as an indisputable common mechanism. When a crisis seems difficult to manage, experts tend to assert that the necessary means and measures need to be adapted.

So, NATO should not be treated as a rigid, fixed organisation, but as an interpretive community that affirms, disseminates, and legitimises the idea that post-war international crises can be managed and settled technically with an often-decisive military component. This organisation through reports, manuals, statements, etc., is the generator of an ideology or a culture of crisis management.[112]

This community is based on the belief that crises can be settled and will serve as the absolute necessary point of support for any decision to engage effectively in crisis management actions.

It cannot be about identifying a mythical moment in NATO's crisis management interpretation initiative. However, it is interesting to note that this structure has ramifications that have their roots in the past. Specifically, these ramifications cross unmistakably what is now considered classical strategic thinking.[113]

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[112] S. Fish, *Is There a Text in the Class? The Authority of Interpretive Communities*, Harvard University Press, 1982. 408 p. ISBN 978-0674467262.

[113] A. Gat, *A History of Military Thought from Enlightenment to the Cold War.* Oxford, Oxford University Press, 2001. 890 p. ISBN 978-0199247622

Therefore, strategic thinking has gained official status. This becomes evident with the publication of tactical, operational, and other regulatory manuals. This process must certainly be understood in the light of the movement towards total war.

The strategic documents drawn up by NATO's highest military body, the Military Committee, since the 1950s, contribute in some way to this development, taking into account the possibility of major inter-state conflagrations.[114] They are placed in the continuity of the classical strategic structure and argue that the use or threat of force may be technically useful in settling international disputes.

According to the London Declaration of 1991 and the Strategic Concept of 1991, the alliance should be concerned not only with wars but also with crises and the guarantee of peace, and the strategic nuclear dimension has been decreased. *The Massive Concept* 400 (MC) is considered today as the act that marked the end of the Cold War for NATO.

However, the above-mentioned document left room for interpretation on the nature of the crisis management process, and the actions taken in Bosnia and Herzegovina did not follow a doctrine considered sufficiently articulated.[115] For this reason, in mid-1996, it was decided to develop an MC 400/1. This act expresses a consensus on the importance of crisis management. This last point is even stronger in the positions adopted as a result of the

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[114] B. Heuser, *NATO, Britain, France and the FRG: Nuclear Strategies and Forces in Europe 1949-2000*. London, MacMillan, 1997. 256 p. ISBN 978-0-230-37762-2

[115] J. Sperling, and M. Webber, 'NATO: from Kosovo to Kabul', *International Affairs*. vol. 83, nr. 3, 2009, p. 493; J. Roper, NATO's New Role in Crisis Management, The *International Spectator*, vol. 34, nr. 2, 1999, p. 51-61.

Kosovo conflict of 1999, which eventually led to a new strategic concept in 1999.[116]

Generally, let's remember that the security offered by the North Atlantic Alliance is largely based on a form of textual coding that underlies the interpretive community.[117] These are the texts that legitimise and maintain NATO in its role of security. It is a codification performed by MC 400/2 and is a stage of codifying the strategic experience, which amends some previous provisions to broaden its meaning and applicability.

Cooperative security is the last basic task and is achieved partly by enlarging the Alliance, which is included as part of security in the Strategic Concept.[118] This task allows the Alliance to enlarge its activities in zones that were previously misaligned or hostile. These activities include several locations in which military resources deploy, depending on the need, facing potential threats. It should be noted that cooperative security involves efforts in addition to the NATO enlargement process. These activities include the collaboration with international organisations and the conclusion of arms control agreements.

The cooperative security may be successful only if all partners speak the same language and the right balance

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[116] The Alliance's Strategic Concept, 24 April 1999. [on-line] Last updated: 25.06.2009
www.nato.int/cps/en/natolive/official_texts_27433.htm
(accessed 16 October 2020); W. K. Clark, *Waging Modern War - Bosnia, Kosovo and the Future of Combat*. New York, Public Affairs, 2001. 479 p. ISBN 9781586480431

[117] C. Coker, *Globalisation and Insecurity in the Twenty-first Century: NATO and the Management of Risk*. London, Routledge, 2005, p.120 ISBN 978-0-198-51671-2.

[118] D.S. Yost, *NATO's Balancing Act*. Washington, DC, United States Institute of Peace Press, 2014, p. 480ISBN 978-1601272027

between investment and benefits identifies. The cooperative security like a double-edged sword requires NATO and its partners to find the right balance and use the sharpness of this weapon to reduce security challenges.[119]

The declaration of the Riga Summit in 2006 was the first official NATO document to address the Alliance's so-called comprehensive approach to "out-of-area" conflicts and crises. Based on the experiences of Afghanistan and Kosovo, NATO's global approach has been conceived as a way to better respond to crises by involving a wide range of civilian and military instruments, while fully respecting the mandates and decision-making autonomy of all those involved.

As the need for adequate mechanisms for cooperation with other international actors and civilian agencies was considered particularly acute at the early planning stage of an operation, NATO adapted its operational planning to improve support for reconstruction and civilian development.[120]

Developing tighter links with the EU, the UN and other international organisations have been a critical part of this approach, and a better assignment of mandates would help NATO function better in the intervention theatre. NATO's strategic concept of 2010 states that the Alliance will commit itself, "where possible and necessary, to prevent and manage the crises, to stabilize post-conflict situations and to support the reconstruction" and that "a

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[119] Cooperative Security as NATO's Core Task, North Atlantic Treaty Organization, https://www.nato.int/cps/en/natohq/topics_77718.htm?selectedLocale=en (accessed 15 December 2019).

[120] A. Gheciu, 'Communities of Security Practices in the Age of Uncertainty' *Journal of Regional Security*, vol. 7, nr. 2, 2012, p. 151–162.

comprehensively political, civilian and military approach is needed for effective crisis management."[121]

The organisation intensifies political consultations between allies, forms a civilian crisis management capacity to cooperate more effectively with civilian partners, improve integrated civil-military planning and develop the capacity to train local forces in crisis zones.[122]

A plan has been developed to stimulate the transformation of NATO's military mentality into a comprehensive operational mode, with a clear focus on effective multilateralism both inside and outside the organisation and combined with local government. In the context of a rapidly evolving security environment, the Warsaw Summit of 2016 called for a review of the strategic concept and an action plan with new elements for conflict prevention, combating hybrid threats, cyber security, and operational cooperation at sea and in the field of migration.

That being said, military culture remains overwhelmingly predominant in the Alliance. In the field, NATO remains the first *inter pares* to support or engage in military engagement in crisis situations.

Initially set on a goal of collective self-defence against the Soviet threat to Western Europe, the activities that NATO was able to manage in the former Yugoslavia at the end of the last century and, more recently, in Afghanistan and Libya, have nevertheless distorted the image of the organisation focused on protecting its members from external aggression, and the only relevant

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[121] NATO, Active Engagement, Modern Defence: Strategic Concept for the Defence and Security of the Members of the North Atlantic Treaty Organization, Adopted by Heads of State and Government at the NATO Summit in Lisbon, 19–20.11.2010. https://www.nato.int/cps/en/natohq/official_texts_68580.htm (accessed 15 December 2019).

[122] Ibidem.

legal reference for these interventions is the article 51 of the United Nations Charter.

Indeed, it is clear that when it comes to identifying which of Chapters VII or VIII serves as the legal basis for the actions of the organisation that is often described as the "armed arm" of the UN, the doctrine does not provide a unanimous answer.

On the one hand, NATO would only serve as an institutional justification for a number of states called upon, on behalf of the UN, to use force to respond to events that UN structures consider being acts that compromise international peace and security.

On the other hand, a part of the doctrine argues that, even if NATO had been considered long time an exclusively military structure, in a pragmatic way, nothing would prevent its attachment to the agreements in Chapter VIII, since the recognition of such a status by the United Nations is, in fact, a matter of legal interpretation and political interests.[123] Its recent actions, sometimes without the explicit authorisation of the Security Council, would suggest a broad interpretation of the powers contained in Chapter VIII of the UN Charter.

Thus, when during the "Cold War", the USSR consistently refused to recognise the Atlantic organisation's status as a regional organisation, to prevent the possibility of US intervention in European conflicts, neither its member states nor the United Nations questioned a NATO intervention in the former Yugoslavia, when the organisation responded favourably to the call of the Security Council to take "necessary measures" in the airspace of Bosnia and Herzegovina during the conflict that led to the disintegration of the Socialist Federal Republic of Yugoslavia.

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[123] A. Abass, *Regional organisations and the development of collective security, Oxford, Oxford University Press, 2004* p. 8-9.

On April 29th, 1999, the Federal Republic of Yugoslavia lodged at the Registry of the International Court of Justice a request for the initiation of proceedings against Belgium, Canada, France, Germany, Italy, the Netherlands, Portugal, Spain, the United Kingdom, and the United States of America for the alleged infringements of their obligation to not use the force against another state.

Despite the fact that the Republic of Yugoslavia became a member of the UN on November 1st, 2000, the Court did not admit the request under article 35 (1)[124] because at the time the request was lodged. i.e. on April 29th, 1999, that State was not a member of the United Nations and had not acceded to the Statute of the International Court of Justice through other legal proceedings.[125]

The Security Council, in its Resolution 816 (1993)[126], could indeed have declared that it was acting on the basis of Chapter VII, but the provisions of Chapter VIII were previously recalled and NATO members states had decided to act, not as independent states, but "within international organisations or arrangements", which is nothing more than a more or less direct reference to the provisions of Chapter VIII.[127]

And, indeed, NATO seems to have evolved from a single-centred defence role to a range of more diverse

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[124] Statute of the International Court of Justice, https://legal.un.org/avl/pdf/ha/sicj/icj_statute_e.pdf (accessed 5 February 2021).

[125] Legality of Use of Force (Yugoslavia v. United States of America). https://www.icj-cij.org/en/case/114 (accessed 21 April 2020).

[126] UNSC, Security Council Resolution 816 (1993), adopted on 31 March 1993. https://digitallibrary.un.org/record/164634 (accessed 21 April 2020).

[127] G. Wilson, *Op. cit.*, p. 192.

tasks, which may include peacekeeping operations over enlarged territories.[128]

The UN also adopts a flexible attitude shaped by political demands and specificity when initiating a relationship with a specific "region". Thus, when it was allowed the NATO intervention in Bosnia and Herzegovina, this would not reflect a value judgment of the United Nations on the legal status that should be given to this organisation, but rather neglect imposed by the political imperatives of the moment.

In addition to the declaration of typological affiliation through its constituent instrument, therefore, political factors seem to be decisive in defining the character and type of the organisation: collective defence organisation in respect of the article 51 of the UN Charter or a regional collective security organisation as provided in chapter VIII. A modification of the original "*casus foederis*"[129] could be the solution to overpass the legal formalism that provides a useless picture of the possibilities established by the constitutive act of an international organisation, which is a living tool able to adapt to changes in practice.[130]

The states may have expressed the willingness to not accept military alliances in respect of Chapter VIII of the

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[128] NATO, Active Engagement, Modern Defence: Strategic Concept for the Defence and Security of the Members of the North Atlantic Treaty Organization, Adopted by Heads of State and Government at the NATO Summit in Lisbon, 19–20.11.2010. https://www.nato.int/cps/en/natohq/official_texts_68580.htm (accessed 15 December 2019).

[129] A. Abass, Op. cit., p. 21.

[130] E. De Wet, 'The relationship between the Security Council and regional organizations during enforcement action under Chapter VII of the United Nations Charter', *Nordic Journal of International Law*, vol. 71, 2002, p. 8-9.

UN Charter and NATO could be perceived as a collective self-defence organisation in respect of article 51 of the Charter and in accordance with article 5 of the Atlantic Treaty, resulting in the non-application of the "regional agreement" on the obligations arising from the article 53 of the UN Charter on coercive action. None of the provisions of the Charter limits the right of the regional organisation to make use of these provisions of the Charter, if it is found that its members support the extension of its tasks in this regard.

It should also be noted that, although regional organisations do not explicitly benefit from the content of article 51, it is clear that the insertion of self-defence was intended to protect regional organisations and since no provision in Chapter VIII prevents a regional organisation from acting effectively in respect of this article, the "inherent", "natural" right of all states, this can be done, which does not preclude the qualification of this organisation as part of the scope of Chapter VIII once it cooperates with the United Nations in maintaining peace.

Thus, we may observe the distinction between military alliances and regional organisations that are affected by obsolescence.[131] Some exegetes in the field consider this distinction to be "out-dated", because organisations traditionally qualified as falling within the scope of Chapter VIII have assumed functions of collective self-defence, and military alliances have been able to

[131] M. Liegeois, Le rôle des organisations régionales dans le maintien de la paix et de la sécurité internationales. Eléments pour une approche comparative. In: *La sécurité internationale après Lisbonne. Nouvelles pratiques dans l'Union européenne.* Louvainla-Neuve, Presses universitaires de Louvain, 2013, pp. 170-171; B. Moller, *European security: the roles of regional organisations*. Farnham: Ashgate, 2012, p. 85.

assume the functions of the planned regional organisations in Chapter VIII.[132]

In practical terms, the Security Council also had the opportunity to deal with NATO accordingly when entrusted it these military execution mandates, the purpose of which attests the fact that it acts sometimes as a partner of the United Nations in maintaining international peace and security, once they include the management of conflicts and crises with neighbouring countries. In the same vein, the constituent instruments of the Organization of American States (OAS)[133] and the Economic Community of West African States (ECOWAS) provide a collective self-defence function, which does not prevent them from being perceived as regional organisations within the meaning of Chapter VIII.[134]

Another interpretation of these military interventions by NATO can be made in view of the logic behind the implementation of Chapter VII and, especially, the reference to "local conflicts" in paragraphs 2 and 3 of article 52 of the UN Charter.

Certainly, in addition to the clear territorial separation between two of its members (the United States and Canada) and the rest of them (concentrated in the European zone), NATO is not an organisation whose main vocation is to see its activities concentrated and limited to a certain geographical zone and to disputes control that may arise between its members.

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[132] M. Hakimi, *Op. cit*., p. 650

[133] Charter of the Organization of American States. https://www.oas.org/en/sla/dil/docs/inter_american_treaties_A-41_charter_OAS.pdf (accessed 18 January 2021), art. 2

[134] H. Kelsen, 'Is the North Atlantic Treaty a regional arrangement?', American *Journal of International Law*, vol. 45, nr. 1, 1951, p. 162.

Consequently, its mandate can certainly be interpreted extensively regarding the activities carried out and supported by its member states in the former Yugoslavia, Afghanistan, and Libya[135] to represent, in reality, a broader concept of collective security than traditional defence objectives, which were initially assigned, only that, unlike organisations whose inclusion in Chapter VIII seems indisputable, this extended role of crisis management "crystallized only outside the borders of its members".[136]

Erika de Wet argues that article 53 does not prohibit coercive actions without the authorisation of the Security Council, a relevant legal basis that would allow it to send its troops "out of the area" as it would not act as an organisation engaged in military action in its geographical zone or against one or more of its members. Article 42, which allows the Security Council to assign the member states that will participate in the provision of military troops, and article 48, which makes it possible to take such decisions "directly" or through "appropriate international bodies", would therefore be the sufficient regulatory basis for NATO involvement in such operations. The authorisation granted by the Council to states to use force

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[135] UNSC, Security Council Resolution 1244 (1999), adopted on 10 June 1999. https://digitallibrary.un.org/record/274488 (accessed 18 January 2021); UNSC, Security Council Resolution 1386 (2001), adopted on 20 December 2001. https://digitallibrary.un.org/record/454998 (accessed 18 January 2021); UNSC, Security Council Resolution 1973 (2011), adopted on 17 March 2011. https://digitallibrary.un.org/record/699777 (accessed 18 January 2021).

[136] E. De Wet, Regional organizations and arrangements: authorization, ratification, or independent action. In: *The Oxford handbook of the use of force in international Law*. Oxford, Oxford University Press, 2015, p. 317.

in Libyan regional organisations or structures based exclusively on Chapter VII confirms this approach.[137]

Attempts to include this organisation within the normative limits set by Chapter VIII of the UN Charter and its broad interpretation are futile, as it is not even possible to ascertain that there is the willingness to react to tensions that appeared amongst its member states if it is conditioned by the presence of the agreement of the Security Council. The relevant legal basis for peacekeeping operations in cooperation with the United Nations is Chapter VI or VII of the Charter.

What seems decisive is not so much the nature of the organisation as the nature of the action taken by this organisation. When NATO uses force in Bosnia and Herzegovina, Afghanistan, or Libya, it may not act as a reaction to an external armed aggression against one of its member states. Finally, it does not matter whether some authors see Chapter VIII as the relevant legal basis for its involvement, as long as, above all, there is an authorisation from the Security Council to provide it with the necessary legal basis.[138] The assumption that NATO was established based on the provisions of Article 51, rather than based on Chapter VIII, does not in any way allow it to neglect the other provisions of the Charter governing the use of force.

The prior authorisation of the Security Council is not required in the case of the implementation of collective self-defence provided for in article 51 of the Charter and in accordance with its content. The finding of an armed attack on one or more members of the organisation does not

[137] UNSC, Security Council Resolution 1973 (2011), note 4.

[138] I. Johnstone, When the Security Council is divided: imprecise authorizations, implied mandates, and the "unreasonable veto", In: *The Oxford handbook of the use of force in international Law*, Oxford, Oxford University Press, 2015, p. 230.

impose an obligation to notify measures taken under this "natural right".

The priority tasks in accordance with the provisions of the NATO Concept are collective defence, crisis management, and cooperative security. The collective security forms the core of NATO and is based on the provisions of article 5 of the Treaty, under which each state undertakes to support and defend any member of the organisation in the event of an attack.

Despite being a regional military structure, NATO has proven itself able to intervene in crisis prevention and resolution situations in respect of Chapter VIII of the UN Charter, and classifying and dividing regional organisations based on competencies indirectly established by Chapters VII and VIII proves to be out-dated by daily realities.

In daily realities, the classification of regional organisations is to be carried out according to the capacities and capabilities of intervention to prevent regional crises and intervention mechanisms and instruments to settle them and to ensure peace and security in the region.

Thus, the regional military organisations or those with powers to intervene in the process of settling regional crises under the mandate of the Security Council, based on the provisions specified in the texts of the constitutive acts may, and must take measures other than those of a military nature to help ensure peace and security, and the non-military regional organisations that do not set such objectives in their constitutive act should refrain from such activities.

However, the involvement of various regional organisations is proving to be an instrument for the practical application of the willingness and the interests of states that can dominate the decision-making process

within them, which requires the application and the respect without exception of the Security Council's monopoly in issuing mandates and the establishment of peacekeeping missions worldwide. Any exception to this rule could lead to the collapse of the collective security system established by the UN Charter.

2.2. Experience of African Union and other regional structures in the process of settling the regional crises

Africa has a long history of conflicts, either civil war, qualified as non-international armed conflicts, or international armed conflicts. In the last 50 years, armed conflicts have taken place in about 30 countries or 65% of the states on this continent. The periods of these conflicts were different, two-thirds of which lasted no more than 5 years, while 22%of the total ended after 11 or more years of war.[139]

The recent trends and evolutions clearly reflect this dynamic on the African continent. Today, almost 75% of all peacekeeping personnel are deployed in Africa, which also hosts the vast majority of peacekeeping operations[140]. In addition, the new operational and regulatory evolutions in peace operations, such as increasingly robust and incisive mandates and the use of modern technologies, tend to materialise in Africa.

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[139] A. Vines, 'A decade of African Peace and Security Architecture', *International Affairs*, vol. 89, nr. 1,2013, p. 93-94.

[140] J. Van Der Lijn, T. Smit, and T. Höghammar, Peace operations and conflict management. In: *SIPRI Yearbook 2016: Armaments, Disarmament and International Security*, Oxford, Oxford University Press, 2016, p. 269-319.

The longest-running armed conflicts took place in Sudan, which began in 1983 and was settled only in early 2005[141], Angola, Somalia, and the conflict in Ethiopia.[142]

From 1955 to 2009, it is estimated that about 40% of the world's armed conflicts took place in Africa, including inter-ethnic conflicts and civil wars. In 2000, 67% of all non-international armed conflicts in the world took place on this continent.

In the second decade of the 21st century, Africa continued to be affected by armed conflict, for example in 2011 there were three armed conflicts, and in 2012 there were 4 wars, including two coups d'état provoked by the militaries.[143] The vast majority of these conflicts are non-international however, some of these crises have spread to neighbouring countries. For example, the conflict in Rwanda has affected other conflicts in Burundi, the Democratic Republic of the Congo, Tanzania, and Uganda.[144]

The African Union (AU) is a continental organisation mandated to act to prevent and address peacekeeping and security issues. Although national interests seem to prevail over common values and continental benefits, it would seem that the AU is more than the sum of all member states. This organisation has its own institutions, budget, policies, and agreements, indicating a certain degree of independence and despite being founded by the leaders of African states; it has followed its own path of development. On the one hand, the AU cannot dictate changes in the peace and security policies of African states;

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[141] S.M. Makinda andF.W. Okumu, *The African Union, challenges of globalisation, security and governance*, New York, Routledge, 2007, p. 75.

[142] B. Buzan andO. Wever, *Op. cit.*, p. 245.

[143] A. Vines, *Op. cit.*, p. 93.

[144] S.M. Makinda and F. W. Okumu, *Op. cit.*, p. 75.

on the other hand, its role can no longer be ignored in the continent's peace programmes.

The Constitutive Act of the African Union considers peace and stability as pillars of the continental project. Article 3 describes, inter alia, the objective: "to promote peace, security, and stability on the continent".[145]

The African Union emerged in the period when the African space was devoured by conflicts, and their prevention and settlement was the main function of the organisation. The prevailing hope is that the African Union will do better in this mission than the OAU. In situations where peaceful intervention failed, the AU resorted to military intervention.[146]

The new structure has the right to intervene in the internal affairs of a member state, including the use of military force, if necessary, to protect the population from flagrant human rights abuses. For the AU, sovereignty is conditioned and based on the state's ability and willingness to protect its citizens.[147]

The history of the African Union would not be described under all aspects if we did not begin this analysis with the Organisation of African Unity (OAU). Thus, the OAU was created on May 25th , 1963, in Addis Ababa, when representatives of 32 African states signed a charter to form

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[145] African Union Constitutive Act of the African Union. 11.07.2000, Lome, Togo. (accessed 28.12.2020). https://au.int/sites/default/files/pages/34873-file-constitutive-act_en.pdf (accessed 28.12.2020).

[146] S.U. Agu, and V. O. Okeke, 'The African Union (AU) and the challenges of conflict resolution in Africa', *British Journal of Arts and Social Sciences*, vol. 14, no.11,2013, p.280–288.

[147] K. Powell, *The African Union's emerging peace and security regime opportunities and challenges for delivering on the responsibility to protect*, Pretoria, Institute for Security Studies, 2005. 90 p. ISBN 9781919913896

the organisation. Over time, 21 other African countries became members, and the number of member states increased to 53.[148]

The AU was formally established in 2002 on the principles adopted by the OAU, namely: sovereignty, equality, and interdependence, as well as respect for existing borders.[149] This principle is linked to the traditional definition of security, in which security refers to the matter of territory, state borders, and national security.[150]

This definition seems to be limited to the notion of military security, but after the end of the Cold War, the OAU began to use a broader explanation of security, including non-military aspects.[151]

As a result of the colonial system that generated a number of negative consequences for the entire African continent, the OAU had the responsibility to free the continent from European colonialism, racism, and apartheid, and decolonisation became one of the OAU's priority tasks. In addition to its role in liberating African countries, at that moment under colonialism, the OAU also faced numerous interstate and intra-state conflicts, which affected many countries on the continent shortly after their independence, from the Great Lakes region to The Horn of Africa and practically the entire continent.

Many of these conflicts came from struggles for political power, religious supremacy, and ethnic domination; others were caused by the impossibility of

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[148] S. J. Joshua and F. Olanrewaju, 'The AU's Progress and Achievements in the Realm of Peace and Security', *India Quarterly*, vol. 73, nr. 4, 2017, p. 458

[149] S.M. Makinda, and F.W. Okumu, *Op. cit.*, p. 37.

[150] F. Soderbaum and R Tavares. Problematizing regional organisation in African security, p. 76.

[151] Ibidem, p. 76.

popular participation in government and the truncation of the democratic process through military intervention in political affairs.[152]

The OAU was very successful in its main mission to liberate the continent from colonialism with the help of international actors when on April 27th, 1994; a new government led by Nelson Mandela became a reality in South Africa. Contrary to expectations, the OAU has failed to monitor and control the facts in its member states. This has become apparent due to its inability to reduce violent conflicts, poor governance, poor economic management, gender inequality, human rights violations, and poverty in the region.[153]

Although in 1993 in Cairo, the OAU established a mechanism for conflict prevention, management, and settlement, this instrument was ineffective due to its failure to settle disputes on the continent. It is tragic to find that the Rwandan genocide, which began in April 1994, took place shortly after this mechanism became operational. In the same vein, the situation in the conflict that led to the collapse of Somalia and the violent conflicts that killed millions of Africans in Angola, the Democratic Republic of Congo, Liberia, and Sierra Leone took place. These catastrophic events have revealed the OAU's weakness as an instrument or mechanism for preventing and settling conflicts.[154]

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[152] K. Shinkaiye, Nigeria and the African Union: Roles and expectation. In: *Nigeria and the development of the African Union*. Ibadan, Vantage Publishers, 2005, pp. 76-97.

[153] T. Murithi, 'Proactive interventionism: The African Union, Peace and Security Councils engagement in the Horn of Africa,' Journal *of Conflict Resolution*, vol.12, 2012, pp. 87–111.

[154] T. Murithi, 'The African Union's evolving role in peace operations: The African Union Mission in Burundi, the African Union

The inefficient governance, violence, and insecurity results in a high risk of creating regional challenges, affecting political and economic stability. The scourge of conflicts in Africa is the major impediment to socio-economic development. This makes the AU's peace and security policy a precondition for implementing the development and integration agenda.[155]

This well-defined purpose is legally grounded. The political instruments and mechanisms, monitoring missions, and military interventions are all available to the AU. This structure was the first international actor to adopt the principle of Responsibility to Protect (R2P)[156]. For African scientists and political leaders, this decision indicated a shift from a sphere of non-intervention to non-indifference. Article 4 (h) was amended in 2003 to add other rights to intervene in the event of "serious threats". However, this amendment to the constitutive act of the African Union is not ratified by all members.[157] The states member had reservations about these provisions and feared a possible interference of the Peace and Security Council (PSC) in domestic policy. A permanent break of the non-intervention tradition realised by the Organisation of African Unity (OAU) has not yet been achieved.

Mission in Sudan and the African Union Mission in Somalia', *African Security Review*, vol. 17, nr. 1, 2008, p. 70–82.

[155] African Union Constitutive Act of the African Union. 11.07.2000, Lome, Togo https://au.int/sites/default/files/pages/34873-file-constitutiveact_en.pdf accessed 28.12.2020.

[156] M. R., Freire, P. D Lopes and D. Nascimento, 'Responsibility to Protect and the African Union: Assessing the AU's Capacity to Respond to Regional Complex Humanitarian and Political Emergencies', *African Security Review*, vol. 25, nr. 3, 2016, pp. 223-241.

[157] R. A. Peen, The African Union Mission in Burundi. In: *Civil Wars*. 2012, vol. 14, nr. 3, pp. 373-392.

One of the main findings was that despite the overwhelming consensus on the concepts and principles applied to peace operations, as well as the critical importance given to peace operations in settling global conflicts, the number and scope of operations are likely to stagnate in some regions, considered as confluence spaces of the interests of the great powers. However, Africa, and especially sub-Saharan Africa, will be a clear exception.[158]

To implement its principles and objectives, the AU has a special structure called the Peace and Security Council (PSC) officially formed in 2004. The relations between the members of the PSC are based on equality and there is no permanent member with a veto.[159] The PSC has the task to promote peace and security among the member states of the Union, as expressly set out in article 3 (f) of the AU Charter. In line with article 5 (2), a common defence and security policy has been established for the mainland states to support the PSC.[160] The Peace and Security Council has the following basic functions:

a) To anticipate and to prevent the conflicts;

b) To manage the existing tensions and to promote peace and security.

To implement these objectives, the AU has a structure and mechanism called the African Peace and Security Architecture (APSA)[161]. It is the platform for

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[158] J. Van Der Lijn, and X. Avezov, *The Future Peace Operations Landscape: Voices from Stakeholders Around the Globe, Final Report of the New Geopolitics of Peace Operations Initiative*. Stockholm: SIPRI, 2015, p.90https://www.sipri.org/publications/2015/future-peace-operations-landscape-voices-stakeholders-around-globe (accessed 5 January 2021)

[159] P. D. Williams, *War and conflict in Africa*, p. 158.

[160] S.M. Makinda, F.W. Okumu, *Op. cit.*, p. 87.

[161] A. Vines, *Op. cit.*, p. 97

cooperation between the PSC and several AU bodies, including the political and economic council, such as:

a) African Standby Force (ASF) - this tool is designed to supply troops whenever military ground action is needed;

b) Continental Early Warning System (CEWS) - monitors and observes, as well as analyses the political, economic, social, and security situation collects the necessary data for the PSC. Therefore, this early warning information can be used to prevent conflicts;

c) Panel of the Wise - is a structure of five honourable people who give more recommendations and opinions on the conflict situation;

d) African Peace Fund (APF) is a council that provides funding for the peace mission.[162]

Constituting the African Union is a response to several challenges regarding security matters and the identification of a solution to these matters. Several factors have influenced the formation of the AU, such as the end of the Cold War, the need to ensure the application of human rights, some tension among states on the African continent to identify the leader among them. In addition, the AU is the regional structure that will continue the activities of the Organisation of African Unity, a structure that is aimed at protecting the sovereignty and the security, as well as the integrity of the member states, in order to build a network of solidarity between members.[163]

Under the auspices of the OAU, several peacekeeping missions were carried out. For example, in 1991 there was a peacekeeping operation in Western Sahara-Morocco, in 1991-1993 a team of military observers and a monitoring group was sent to Rwanda, in 1993-1996 an observer mission in Burundi, in 1999-2000 an observer

[162] S.M. Makinda and F.W. Okumu *Op. cit.*, p. 87.

[163] Ibidem, p. 23.

mission in the Republic of the Congo and 2001-2002 a military mission in Comoros, and from 2000 to 2008 a connection mission in Ethiopia-Eritrea.[164]

So, AU achieves its goal of maintaining peace and security in Africa, a set of conflict management mechanisms and instruments are established. The basic instruments for conflict management include: peaceful negotiations, mediation initiatives, consensual peacekeeping interventions, peacekeeping operations, minimizing the occurrence of conflicts through peacekeeping actions, and a system of sanctions.[165]

Unlike the OAU, which supported the principle of non-interference in the internal affairs of its members, the PSC, since its first meeting in 2004, has conducted AU missions in conflict zones, for example, Comoros, Burundi (2003-2004), Sudan, Darfur (2004-2007), the Democratic Republic of Congo, Ivory Coast, and Somalia, etc. The AU sent observers to monitor the elections in several African countries, such as Sudan and Somalia. PSC has settled the post-election violence in Kenya and Ivory Coast.

It is remarkable how, especially in the early years of the AU, the African states and the state leaders were praised for their efforts. PSC "expresses its appreciation to His Excellency Professor Faustin Archange Touadera, for his leadership and vision, as well as for the leaders of the armed groups for patriotism and commitment".[166] After

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[164] P. D. Williams, *War and conflict in Africa*, p. 151.

[165] P. D. Williams, *The African Union's conflict management capabilities* (Working Paper), New York, International Institution and Global Governance Program, 2011, p. 29 https://www.files.ethz.ch/isn/146220/IIGG_WorkingPaper7.pdf (accessed 21 December 2019).

[166] African Union Peace and Security Council, Communiqué. Peace and Security Council 826th meeting Addis Ababa, Ethiopia

the forced abdication of Mugabe, which caused instability in Zimbabwe, the president of the council said he would be "remembered as a fearless pan-African liberation fighter" and his removal "was a coup d'état".[167] This illustrates how the legacy of African leaders, their position in the network, cannot be denied by the AU. It is noteworthy that the older decisions of the PSC mentioned African leaders nominally.[168] Thus, the success of the AU in its early years was determined more by the availability of states and the support of African leaders than today.

A complex mechanism for ensuring security, specific to the African continent is APSA.[169] It was created in the early 2000s to help peace and security structures better

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http://www.peaceau.org/uploads/psc.826.meeting.comm.car.9.02.2019.pdf (accessed 15 October 2019).

[167] African Union Peace and Security Council, Statement of the Chairperson of the Commission of the African Union on the Situation in Zimbabwe, 2017,http://www.peaceau.org/uploads/auc-statement-zimbabwe-21nov2017english.pdf (accessed 21 October 2019).

[168] African Union Peace and Security Council, Communiqué. Peace and Security Council 87th meeting, 13 August 2007, Addis Ababa, Ethiopia,2008, http://www.peaceau.org/uploads/communiqueeng.pdf (accessed 21 December 2019).

[169] I. A. Badmus, *The African Union's Role in Peacekeeping: Building on Lessons Learned from Security Operations*. London: Palgrave Macmillan, 2015, p. 277 ISBN 978-1-137-42661-1; W. Lotze, *Strengthening African peace support operations: Nine lessons for the future of the African Standby Force*, Center for International Peace Operations (ZIF) Policy Briefing, déc. 2013, p. 4 https://reliefweb.int/sites/rliefweb.int/files/rsources/ZIF_Policy_Briefing_Walter_Lotze_Dec_2013.pdf (accessed 5 January 2021); P. D., Williams and A. Boutellis, Partnership peacekeeping: challenges and opportunities in the United Nations-African Union relationship, *African Affairs*, vol. 113, nr. 451, 2014, pp. 254-278. ISSN 1468-2621.

protect civilians and to respond to human rights violations and abuses during armed conflict.[170] Since then, however, the security environment has changed considerably in many parts of Africa, which has implications for the future development of the APSA, including the African Standby Force (ASF), postponed several times, and the African-led peacekeeping operations.[171] In particular, experts and practitioners highlighted that APSA needs to be improved and that it has the means to tackle the challenges associated with terrorism, disaster management, piracy, and post-conflict reconstruction, as well as transnational organised crime, climate change, and food insecurity.[172]

The Union has established a legal and institutional peace and security architecture to monitor and respond to threats, including the mandate to deploy troops on the territory of sovereign states.[173] The existence of the Peace

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[170] U. Engel, and G. D Porto,. *Towards an African Peace and Security Regime: Continental Embeddedness, Transnational Linkages, Strategic Relevance*, Burlington, Ashgate, 2013. p. 276 ISBN 9780754676041.

[171] K., Aning and M. Abdallah, Confronting hybrid threats in Africa: improving multidimensional responses. In: *The Future of African Peace Operations: From the Janjaweed to Boko Haram*. London, Zed Books, 2016, pp. 20-38. ISBN 978-1-78360-710-5; S. A. Dersso, Confronting hybrid threats in Africa: improving multidimensional responses. In: *The Future of African Peace Operations: From the Janjaweed to Boko Haram*. London, Zed Books, 2016, pp. 38-52. ISBN 978-1-78360-710-5; A. Leijenaar, *Africa can solve its own problems with proper planning and full implementation of the African Standby Force,*21.01.2004. https://www.issafrica.org/iss-today/africa-can-solve-its-ownproblems-with-proper-planning-and-full-implementation-of-the-african-standby-force (accessed 25 September 2019).

[172] African Union Constitutive Act of the African Union. 11.07.2000, Lome, Togo. https://au.int/sites/default/files/pages/34873-file-constitutiveact_en.pdf (accessed 28 December 2020), Art. 4 (j) and 9(g)

[173] Ibidem, Art. 4 (j) and 9(g)

and Security Architecture in Africa and the normative and legal framework offers the possibility for the AU to become an independent actor from the members of the African state, emancipated, and discovered new ways to influence the attitudes of the states and to achieve African solidarity.[174] Williams P.D. calls the PSC an embryonic international institution: "even in its suboptimal state it has had a significant impact on the security dynamics in Africa".[175] This evolution of the AU as a peace actor illustrates its conception and core - to behave as a powerful generator of peace, becoming an important actor in a region affected by conflicts and eruptions of violence.

The AU's approach to the post "Cold War" peace process reflects the member states' preference for consensual decisions between the parties to the conflict and the Peace and Security Council. A good example is the power-sharing agreement and the deployment of 462 troops to support the Comoros elections in May 2006.[176] The sharp decrease of coups d'état and conflicts, as well as the increase in the number of elections organised within the limits of requirements established in Africa in the last decades, demonstrate that the AU has managed to balance

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[174] M. Barnett and L. Coleman, 'Designing Police: Interpol and the Study of Change in International Organizations' *International Studies Quarterly*, vol. 49, no. 4pp. 593-619. ISSN 1468-2478.

[175] P.D. Williams, 'The Peace and Security Council of the African Union: Evaluating an Embryonic International Institution', *Journal of Modern African Studies*, vol. 47, nr. 4, 2009, pp. 604; P. D. Williams, 'The "Responsibility to Protect", Norm Localisation, and African International Society', *Global Responsibility to Protect*, vol. 1, nr. 3, 2009, pp. 392-416. ISSN 1875-984X.

[176] C. N. Oguonu and C. C. Ezeibe, African Union and conflict resolution in Africa, *Mediterranean Journal of Social Sciences*, vol. 5, nr. 27, 2014, pp. 325–332.

the actions of the states and to imprint new performances and political values on them.[177]

Other cases where the AU has monitored power-sharing agreements include Sudan, Ivory Coast, Chad and Zimbabwe (2008-2009), Libya and Liberia (1994-2003), Côte d'Ivoire (2002-2007), and the Central African Republic. 1996-2007).[178]

Sovereignty, even if it has lost its "presumption of innocence", is still distinguished by its resistance. This formula of Jürgen Habermas taken over by Professor Dodzi Kororoko shows that in the face of state sovereignty, this sacrosanct principle, which constantly opposes foreign interventions and is further strengthened by the rules of intangibility of borders inherited from colonisation, a right to peace and security prevails, which, in the end, must be imposed.[179]

The peace-building process in Africa is no exception to this finding. The AU's African peacekeeping and security architecture was inspired by the logic of peacekeeping adopted within the UN's centralised collective security system. Under this security system, nothing, not even the principle of non-interference in matters falling within the national jurisdiction of States,

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[177] F. Lisk, *The African Union after 10 Years: Successes and challenges*, http://www2.warwick.ac.uk/newsandevents/expertcomment/the_african_union/ (accessed 5 January 2021).

[178] A. Mehler, *Not always in the people's interest: Power-sharing arrangements in African peace agreements*. [on-line]. Hamburg: GIGA Working Papers, vol. 83 2008, 6-44 p. https://gsdrc.org/document-library/not-always-in-the-peoples-interest-power-sharing-arrangements-in-african-peace-agreements/ (accessed 5 January 2021)

[179] D. Kokoroko, Avons-nous encore besoin du droit international de la démocratie? In: *Entre les ordres juridiques; mélanges en l'honneur de François Hervouët.* LGDJ, 2015, p. 621-627.

prevents the Security Council from using the enforcement measures provided in Chapter VII of the Charter of the United Nations.[180]

This implies that the rule of peaceful settlement of conflicts should not be absolute in a context where the parties to the conflict dissociate themselves from the adopted peaceful solutions. Therefore, the AU has not failed to offer, beyond the right to humanitarian intervention inspired from a doctrinal point of view, a real right of intervention[181] that can be implemented when the parties to the conflict explicitly or tacitly express their unwillingness to contribute to the peaceful peace process initiated by African architecture for the maintenance of peace and security.

The enlargement of the AU's role and the influence it wants to have on local communities is in contrast to the image of a global continental body. PSC declarations and decisions approach the African societies as sources of conflict and are partners in providing solutions. The AU is working to build a "People-Centered Union"[182] that involves subsidiarity.

The distinct position and principles of complementarity and subsidiarity of the PSC are often

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[180] Charter of United Nations, article 2 (7)

[181] S. Fopy, Ch. *Le droit d'intervention de l'Union Africaine*. [on-line]. Mémoire de DEA en Droit Communautaire et comparé CEMAC, Université de Dschang, 2006, p. 128 https://www.memoireonline.com/10/09/2747/m_Le-droit-dintervention-de-lUnion-Africaine.html (accessed 30 January 2021).

[182] African Union High Level Retreat, On the Promotion of Peace, Security and Stability "Strengthening African Union's Conflict Prevention and Peacemaking Effort", 2018, http://www.peaceau.org/uploads/2018-1026-au-hlr-9-declarationlatest.pdf (accessed 25 November 2021).

mentioned in the recent work of this institution.[183] The states demand the Council to have a coordinating role for regional organisations. These regional economic communities and regional mechanisms are familiar to states and have had experience in the peacekeeping process in recent years. The PSC considers them partners in the pan-African ideal and takes advantage of their local position to implement the AU peace policy.

The AU, as a union of African states in peace activities, cannot deny smaller peace actors, which are less complex and enjoy the confidence of states. The regional organisations are perspective or agenda-executing instruments.

The development of relations between the AU and the Regional Economic Communities (RECs) of Africa /regional mechanisms (RM) and in accordance with the principle of subsidiarity, important issues should be addressed at the nearest level, including local level, compatible with their approach, a key issue affecting even the future of peace operations in Africa.[184]

For example, Ndiaye M. argues that while the principle of subsidiarity is fundamental to the relationship between the UN, the AU, and the RECs/RM, it has often become an obstacle when it comes to providing strategic

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[183] African Union High Level Retreat, Third African Union High-Level Retreat of Special Envoys and Representatives on the Promotion of peace, Security and Stability in Africa. Cairo Declaration,2012, http://www.peaceau.org/uploads/auc.declaration.cairo.pdf (accessed 23 December 2021).

[184] L.M. Fisher, *African Peace and Security Architecture (APSA): 2010 assessment study, commandé par le Département paix et sécurité de l'Union africaine*, https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3CF6E4FF96FF9%7D/RO%20African%20Peace%20and%20Security%20Architecture.pdf (accessed 30 January 2021).

and rapid responses to concrete crises. The disputes over the core of this principle and the different principles on how to interpret it, tend to slow down the action when a rapid response is needed.[185] Gebrehiwot B.M. and A. de Waal emphasise the importance of clarifying the content of the principle of subsidiarity and the need to establish a stronger agreement between the AU and the RECs/RM to define the cooperative relationship between these entities.[186]

The states support the role of the AU as a major peace actor, especially, due to cross-border crime and international and global developments affecting the African states. The Sahelo-Saharan States, in the Nouakchott Declaration of 2014: "reiterate the imperative need for further capacity building" of the PSC and "encourage the Commission to step up its efforts to mobilize the necessary resources for this purpose".[187]

And in the Declaration on the Tenth Anniversary of the PSC, the leaders of states emphasised the importance of staying close to their promises in setting up APSA and

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[185] M. Ndiaye, The relationship between the AU and the RECs/RMs in relation to peace and security in Africa: subsidiarity and inevitable common destiny. In: *The Future of African Peace Operations: From the Janjaweed to Boko Haram*. London, Zed Books, 2016, p. 52.

[186] B. M Gebrehiwot and., Waal, DE A. *Peace missions in Africa: constraints, challenges and opportunities. Preliminary Report to the African Union*, World Peace Foundation, March 2015, p p. 19-40. https://sites.tufts.edu/ihs/files/2018/07/Peace-Missions-in-Africa-Prelimary-Report-Carnegie-article.pdf (accessed 30 January 2021).

[187] UNSC, Nouakchott Declaration (Letter dated 22 December 2014 from the Permanent Representative of Mali to the United Nations addressed to the President of the Security Council). 23.12.2014, point 11, Available on Internet: https://digitallibrary.un.org/record/786549 (accessed 30 January 2021)

that: "The Council should make more use of its mandate, as defined in the Protocol."[188] The Assembly's analysed statements on the activities of the PSC show how the state leaders urge and underline the importance of providing the PSC with sufficient resources and note with satisfaction the peace and stability achieved by the AU.[189]

In respect of the Constitutive Act[190] and the Protocol on establishing the AU Peace and Security Council[191], the African Union has "the right to intervene in a state member at the decision of the Assembly, in certain serious circumstances, namely: war crimes, genocide, and crimes against humanity".

The Protocol on Amendments to the Constitutive Act enlarged the scope of the African Union's intervention in cases of "serious threat to the internal affairs of States".[192] By adopting such a standard in the AU, the biggest challenge has been to identify a legal mechanism that would allow African architecture to circumvent the

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[188] Protocol Relating to the Establishment of the AU Peace and Security Council. 26.12.2013, art. 4 https://www.peaceau.org/uploads/psc-protocol-en.pdf (accessed 15 October 2019).

[189] African Union Assembly, Solemn Declaration of the Assembly of the Union on the Situation in Mali, http://www.peaceau.org/uploads/au.ahg.solemndeclaration.mali.pdf (accessed 15 October 2019).

[190] African Union Constitutive Act of the African Union. 11.07.2000, Lome, Togo, art. 4. (h) https://au.int/sites/default/files/pages/34873-file-constitutiveact_en.pdf (accessed 28 December 2020),

[191] Protocol Relating to the Establishment of the AU Peace and Security Council. 26.12.2013, art. 4 https://www.peaceau.org/uploads/psc-protocol-en.pdf (accessed 15 October 2019),.

[192] African Union Constitutive Act of the African Union. 11.07.2000, Lome, Togo, art. 4. (h) https://au.int/sites/default/files/pages/34873-file-constitutiveact_en.pdf (accessed 28 December 2020),

principle of non-intervention, which is generally presented as an obstacle to peaceful solutions.

Moreover, this option played a crucial role in disrespecting the prior agreement of the parties to a conflict, which is a *sine qua non* condition for the peaceful settlement of disputes. The essential thing we can remember from this normative amendment[193] of the legal regime within the African Union is that beyond the purpose of settling conflicts, its vocation consists in suppressing systematic violence against the civilian population, as well as enforcing democratic principles in cases of unconstitutional change of governments. These are the coercive measures that have been carried out, or that will be used in the context of the conflicts generated by the struggles for political power in the CAR, Mali, and South Sudan.

The urgent question is how the AU approaches the sovereignty of the states for which the OAU has been blamed. Direct political interventions are rare, but when they happen, the PSC "reiterates its commitment to the unity, sovereignty and territorial integrity" of the state member.[194]

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[193] J.-Ph. Derosier, 'Qu'est-ce qu'une révolution juridique? Le point de vue de la théorie générale du droit'. *Revue française de droit constitutionnel*, vol. 2, nr. 102, 2015, pp. 391-404; D. Kokoroko, 'Révolution et droit international' *Revue Togolaise des Sciences Juridiques*, nr. 2, 2012, p. 7-21.

[194] African Union Peace and Security Council, Communiqué. Peace and Security Council 69th meeting, 19 January 2007, Addis Ababa, Ethiopia,2007, http://www.peaceau.org/uploads/communiqueeng-69th.pdf (accessed October 2019); African Union Peace and Security Council, Communiqué. Peace and Security Council 87th meeting, 13 August 2007, Addis Ababa, Ethiopia, 2008, http://www.peaceau.org/uploads/communiqueeng.pdf (accessed 21 December 2019) African Union Peace and Security Council, Communiqué. Peace and Security Council 826th

If to analyse the provisions of the United Nations Charter on this subject, the coercive measures taken by regional organisations such as the AU, must be authorised by the United Nations Security Council. The AU has not neglected this rule, even if, on the one hand, no provision of its statute formally obliges it to comply with this condition and, on the other hand, we note the crystallization of a legal custom in the right to peace and international security, which lies in the fact that regional organisations act using coercive measures without the prior authorisation of the United Nations Security Council.

This is a remarkable evolution in this respect, as, in principle, an international organisation does not intervene in cases where the matter under analysis falls within the national competence of the member states. However, by establishing in article 4 (h) of its Constitutive Act that it may intervene in a state member in certain serious circumstances, the African Union is operating a real innovation. The question is whether these military interventions, caused by the urgent need to reduce or stop serious violations of state peace and security, can be carried out without the authorisation of the United Nations Security Council.

James Mouangue Kobila asserts that: "in this regard, we could propose the idea of an amendment through the legal custom of the articles 52 and 53 of the UN Charter. Thus, it would no longer be a question of vertical collaboration between the UN and regional organisations, but of a multifaceted cooperation, giving alternative

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meeting Addis Ababa, Ethiopia, February 2019, http://www.peaceau.org/uploads/psc.826.meeting.comm.car.9.02.2019.pdf (accessed 15 October 2019).

priority, depending on the operational efficiency of the means used to achieve the established objective. "[195]

However, the lack of financial means resulting from Member States' non-compliance with their financial obligations to the continental organisation has been regularly mentioned to justify this AU's loyal position on the Security Council's conventional primacy principle regarding regional legal orders.

It is easy to understand why, in the CAR and Mali, the AU resorted to the use of force in the context of peace support operations without the consent of states after the signed peace agreements were intentionally disrespected. As regards the CAR, the mediation efforts of the AU and ECCAS, following the coup d'état, did not prevent the situation from escalating to the point where the PSC had no choice but to find "serious human rights violations".[196] Meanwhile, it was authorised the deployment of the African-led International Support Mission to the Central African Republic (MISCA) consisting of ECCAS (MICOPAX) and other African troops, whose mandate was intended to contribute to:

"i) restoring security and public order by implementing appropriate measures,

ii) stabilizing the country and restoring the authority of the Central African state;

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[195] M. L. Kobila, 'Afrique et les juridictions pénales internationales', *African Yearbook of International Law Online / Annuaire Africain de droit international Online*, vol. 17, nr. 1, 2009, p. 49- 51.

[196] African Union Peace and Security Council, Communiqué 13.12.2013. https://reliefweb.int/sites/reliefweb.int/files/resources/Communiqu%C3%A9%20de%20la%20408%C3%A8me%20r%C3%A9union%20du%20CPS%20sur%20la%20situation%20en%20Guin%C3%A9e-Bissau.pdf (accessed 20 December 2019).

iii) reform and restructuring of the defence and security sector."[197]

Therefore, the military intervention in question is strictly aimed at implementing a peaceful solution using coercion. In the same spirit, the AU has authorised the deployment of the international support mission in the Central African Republic. We note in these two interventions that the "restoration of the legal order" conditions the restoration of peace undermined by the unconstitutional changes of government that provoke violent conflicts of political struggle. Therefore, African architecture for maintaining peace and security is part of the list of instruments for popularizing culture and respecting democratic principles.

However, the imposition of peace by the African peacekeeping architecture is generally insufficient to fully settle the conflict. Thus, from a broad perspective, the use of multifunctional operations involving in addition to military forces and a civilian structure on the humanitarian and political dimensions becomes inevitable. These are operations for the reconstruction of the state after the conflict.

The AU is involved in many actions on the continent and tries to intervene especially by supporting the priority directions of development and community leaders. Its peace policy begins with gathering information and brainstorming with local leaders before the AU opens up the possibility of using various means, including the military ones. "To this end, the Council emphasised the

[197] African Union Peace and Security Council, Communiqué, 13 December 2013, https://reliefweb.int/sites/reliefweb.int/files/resources/Communiqu%C3%A9%20de%20la%20408%C3%A8me%20r%C3%A9union%20du%20CPS%20sur%20la%20situation%20en%20Guin%C3%A9e-Bissau.pdf (accessed 20 December 2019)

importance of popularizing the work of the AU, especially as regards the promotion of peace, security, and stability on the continent."[198]

The PSC, therefore, organises campaigns to celebrate the anniversary of human rights, demands to state members to implement Amnesty Month in Africa (in November), and to support awareness-raising initiatives, such as African Refugee Day.

The relationship between the AU and the African states is very dynamic. The PSC does not want to disrespect the sovereignty of the state and the feeling of autonomy intervenes through civil society to ensure peace from the bottom up. The AU uses its specific *soft power* instruments to increase its influence on the development of African states and national peace policy, to prevent states from undermining and resisting AU peace efforts.

Other peace building actions carried out by the AU include the protection of demobilisation centres overseeing the disarmament, demobilisation, and reintegration (DDR) process, the integration of former members of insurgent organisations into society, the protection of politicians returning to transitional governments, and the security of demobilisation centres.

The organisation has managed to intervene in cases of unconstitutional seizure of power by military forces, to restore and to strengthen democratic regimes and good governance in Africa. Some of the successful cases are: Guinea and Mauritania in 2008, Madagascar in March 2009, and Burkina Faso in 2015.

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[198] African Union Peace and Security Council, Press Statement. Peace and Security Council, 824th meeting, Addis Ababa, Ethiopia, 5 February 2019, http://www.peaceau.org/uploads/psc.824.press.statement.silencing.the.guns.5.02.2019.pdf (accessed 23 December 2020).

The states members, where a flagrant violation of human rights and constitutional provisions, is found may be sanctioned by suspending the membership of the organisation for a period of up to 6 months. If these actions do not remedy the situation, coercive measures may be taken and sanctions may be used to ensure compliance with legal rules.

The sanctions, such as travel bans and the freezing of the regime's assets were applied to people qualified as instigators of conflict. The sanctions must bring about a positive change in political behaviour, lead to the cessation of military action and ensure compliance with legal norms. An example of this is the suspension of the Central African Republic from AU membership between March 2003 and June 2005 due to the coup d'état by military structures. However, when the sanctions were lifted in 2005, the military horde retained its power.

Eritrea was also suspended between April 2009 and January 2011 due to support for insurgents in Somalia. Between December 2010 and April 2011, Ivory Coast was suspended, but the regime refused to hand over power after its defeat in the elections. However, the UN-France-AU force forced the current regime to resign and the rule of law took over.[199]

Firstly, it is clear that there is unequal support from AU members for its peacekeeping operations. The mass of troops for AU peacekeeping missions comes from a very small number of African states. From the 55 AU members, the main contributing states include Ghana, Rwanda, Senegal, South Africa, Ethiopia, Benin, Nigeria, and Egypt.

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[199] P. D. Williams, *The African Union's conflict management capabilities* (Working Paper). [on-line]. New York: International Institution and Global Governance Program, 2011, p. 29 p. https://www.files.ethz.ch/isn/146220/IIGG_WorkingPaper7.pdf (accessed 21 December 2019)

Thus, South Africa provided the majority of troops deployed for missions in Burundi (2003-2004) and Comoros between 2006 and 2008. In early 2008, Uganda supplied all troops deployed under the AMISOM platform to the Somali peace operation (2007-2012), and South Africa, Rwanda, Nigeria, and Senegal were the main contributors of the troops for the AU operation in Sudan (2004-2007).[200]

Although the AU has its own peace fund to finance its operations, the AU has been financially supported by donors such as the EU, the US, China, and various agencies for most of the peacekeeping missions that have been carried out.

The EU has allocated around € 299 million and provided a large number of troops for peacekeeping actions in Chad between 2008 and 2009 and provided both military training and funding for the mission in Somalia with around € 7 million since 2010.[201]

Despite the rhetoric of supporting states, the AU remains dependent on their material contribution. A perpetuating difficulty is the lack of support and political willingness of states to build APSA and empower PSC. Examples are the statements on military interventions in Mali (AFISMA) and Somalia (AMISOM). PSC urges "to contribute generously, in a spirit of pan-African solidarity

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[200] L. Bergholm, *The African Union, the United Nations and civilian protection challenges in Darfur,* Oxford, Refugee Studies Centre, Working Paper Series, 2010, nr. 63, p. 34 https://www.peace-palacelibrary.nl/ebooks/files/338479716.pdf (accessed 15 October 2020)

[201] A. Siradag, 'The EU'S security policy towards Africa: Causes, rationales, and dynamics', *Insight Turkey*, vol. 14, nr. 4, 2012, p. 177-178.

and shared responsibility, financial, logistical and other support to AFISMA and the MDSF".[202]

The text of the AU Assembly Decision on PSC highlights the reservations and the problematic nature of the role of sates members in supporting military interventions: "PSC" … encourages the AU states members to provide the necessary military and police personnel to enable AMISOM to reach its tribute to AMISOM and the countries contributing to the troops, namely: Burundi and Uganda; demands to states members that have promised to provide troops to ensure that AMISOM fulfils these promises as soon as possible and expresses its gratitude to all states members and partners that support AMISOM."[203]

PSC acknowledges that the lack of deployed troops is not just a matter of availability. The military capacity and qualified troops require high financial investment from states members. The AU advocates expanding this budget, changing the defence policy of the member states, and emphasising the mutual influence between these intervention operations and the states. The core of the AU is not to be a communication platform or to support only civil society initiatives, but to be a potential military power. The lack of support from the member states substantially affects its ability to achieve the established goals, being the main peace actor in Africa.

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[202] African Union Assembly, Solemn Declaration of the Assembly of the Union on the Situation in Mali, 2013 http://www.peaceau.org/uploads/au.ahg.solemndeclaration.mali.pdf (accessed 15 October 2019).

[203] African Union Peace and Security Council, Press Statement. Peace and Security Council, 824th meeting, Addis Ababa, Ethiopia, 5 February 2019, http://www.peaceau.org/uploads/psc.824.press.statement.silencing.the.guns.5.02.2019.pdf (accessed December 2020).

The donors and how the peace operations are financed in Africa is a recurring theme.[204] Most of the peace operations costs in Africa are covered by external partners, in particular China, the EU (including its state members), the UN, and the United States, which have major implications for African sustainability and capability, as well as for partnerships with these actors.[205] Gebrehiwot and de Waal, for example, argue that the main reason why the AU addresses the UN Security Council is financial.

They also point to the gap between Africa's political willingness to make ambitious political decisions, on the one hand, and the financial resources needed to implement them, on the other. Thus, the AU will not be able to make its own decisions independently as for the mandate, framework, size, and duration of peace operations, as long as it depends on external partners to finance them.[206] At the same time, L. Darkwa points out that, although the AU has failed to independently finance its peace operations, the

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[204] C. Jentzsh, 'Opportunities and challenges to financing African Union Peace Operations', *African Conflict and Peacebuilding Review*, vol. 4, nr. 2,2014, p. 86-107.

[205] S. Desmidt, *Peacebuilding, conflict prevention and conflict monitoring in the African Peace and Security Architecture*. [on-line]. European Centre for Development Policy Management Background note, August 2016, p16 https://ecdpm.org/wp-content/uploads/African-Peace-Security-Architecture-Background-Note-ECDPM-2016.pdf (accessed 5 January 2021).

[206] C. De Coning, Adapting the African Standby Force to a just-in-time readiness model: improved alignment with the emerging African model of peace operations, In: *The Future of African Peace Operations: From the Janjaweed to Boko Haram*. London, Zed Books, 2016, pp. 123-124.

AU states members have provided vital troops on the ground for new types of peace operations in Africa.[207]

The strategic partnerships and cooperation between the AU and its external partners represent a crucial matter. The AU and African states have already established and experienced multilateral partnerships with organisations such as the European Union (EU) and the North Atlantic Treaty Organization (NATO), as well as bilateral partnerships with states such as India, Japan, Russia, China, and Turkey.[208] There is a broad consensus that a strong strategic partnership remains essential to support and strengthen African peace operations in the near future.[209] According to De Coning, the continuous development of existing partnerships and the establishment of new partnerships will be important.[210]

The urgency of certain situations and the rapid reaction they require demands of the AU to avoid any

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[207] L. Darkwa, The strategic relationship between the African Union and its partners. In: *The Future of African Peace Operations: From the Janjaweed to Boko Haram*. London: Zed Books, 2016, p. 71.

[208] C. De Coning, L. Gelot, and J. Karlsrud, African peace operations: trends and future scenarios, conclusions and recommendations, p. 136.

[209] A. Boutellis and P.D. Williams, *Peace Operations, the African Union, and the United Nations: Toward More Effective Partnerships*. [on-line] International Peace Institute: New York, Apr, 2013, p. 22, https://www.ipinst.org/wp-content/uploads/publications/ipi_rpt_peace_operations_revised.pdf (accessed 15 October 2020); WILLIAMS, P.D. *Enhancing US support for peace operations in Africa. Council on Foreign Relations,* Council Special Report Nr. 73, 2015, p.56, https://cdn.cfr.org/sites/default/files/book_pdf/Peacekeeping_CSR73%20%282%29.pdf (accessed 5 January 2021)

[210] C. De Coning, L.Gelot, and J. Karlsrud, African peace operations: trends and future scenarios, conclusions and recommendations, pp. 135-136.

institutional procrastination, but also a possible veto of the UN Security Council. Article 17 of the Protocol establishing the Peace and Security Council (PSC) regulates the responsibility of the Security Council for the maintenance of international peace and security, but addresses the relations between the two entities as cooperation and not of subordination. The prior authorisation of the Security Council is not expressly regulated, as it is mentioned in Chapter VIII of the UN Charter.

The autonomy of the Peace and Security Council is so prominent that the United Nations is reduced to a mere financial, logistical, and military assistant for the Union's activities in maintaining peace, security, and stability in Africa. However, the lack of unambiguous provisions governing relations between the UN and regional organisations through Chapter VIII of the Charter favours the autonomous nature of these regional organisations in terms of peacekeeping, which in some cases can be limited to simply informing the Security Council about its actions in accordance with Chapter VII of the Charter.

With regard to the AU, the provisions of article 17 of the Protocol concerning the establishment of the Peace and Security Council do not create difficulties, as it recognises the main responsibility of the Security Council in the field of peacekeeping. However, article 4 (h) of its Constitutive Act, which grants to the Union the right to intervene in the territory of one of its state members to prevent or to combat war crimes, genocide, or crimes against humanity, admits, to a certain extent, the competence of the continental organisation with regard to intervention. However, the implementation of this provision is limited.

If this option given to the Union is perfectly in line with its objectives of maintaining peace and security on the continent, it seems to be limited only to the case where

unconstitutional governance does not cooperate with the Union's bodies in restoring constitutional order.

The embryonic action of early prevention and early warning mechanisms does not allow early detection of coups d'état. In its decision to prevent unconstitutional changes in state power, the Union warns states that are tempted to reform their constitution to get gains in favour of local leaders over the risks of tension or even armed conflict that this could cause.[211]

In the same decision, the Conference "emphasizes the need to strengthen the anticipation capacity of the AU, through a more dynamic direct preventive action".[212] To the extent that acts (electoral fraud, unlawful constitutional amendment) that could provoke coups d'état are not necessarily unknown to the Union, it may exercise the right to intervene in certain states to prevent their occurrence and to prevent escalation of violence. It could also rely on ACDEG in this regard.[213] The goal of ensuring peace and security would have been met more effectively.

For the time being, the AU has only intervened militarily in the Comorian Republic at the request of the central government to exclude the illegitimate government led by Mohamed Bacar on Anjouan Island. This local leader decided to retreat and to maintain power on the island, by disrespecting all decisions issued by the central government of the Comoros Union and the AU Electoral

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[211] AU, Decision on the prevention of unconstitutional changes to manage such situations. Assembly/AU/Dec.269(XIV), https://www.peaceau.org/uploads/assembly-au-dec-269-xiv-e.pdf (accessed 12 January 2020).

[212] Ibidem.

[213] African Charter on Democracy, Elections and Governance ACDEG, 30.01.2007, http://archive.ipu.org/idd-E/afr_charter.pdf (accessed 25 October 2021)

Assistance and Security Mission in Comoros (MAES).[214] This preventive AU intervention immediately made it possible to keep the peace on Anjouan Island and made it possible to end the secessionist ambitions of the Anjouan government.[215]

AU non-aggression and joint defence pact. The AU's non-aggression and joint defence pact is based on the draft originally proposed by Congolese President Denis Sassou N'guesso[216] and temporarily rejected in favour of the solemn declaration on a common defence and security policy in Africa. Following tough negotiations, the AU Non-Aggression and Joint Defense Pact were adopted.[217] Believing that the time had come for Africa to prevent and manage conflicts through African collective, diplomatic or

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[214] AU, Peace and Security Council, Communiqués on the situation in the Comoros, 87e, Rév. 1 PSC/PR/Comm(LXXXVII), 13 august 2007, https://www.peaceau.org/uploads/communiqueeng.pdf (accessed 24 November 2019) AU, Peace and Security Council, Communiqués on the situation in the Comoros, 102e, PSC/PR/Comm(CII), 26 November 2007, https://www.peaceau.org/uploads/communiquy-comores-102e-fr.pdf (accessed 24 November 2019); AU, Peace and Security Council, Communiqués on the situation in the Comoros, 124e, PSC/PR/Comm(CXXIV), 30 April 2008, https://oau-aec-au-documents.uwazi.io/en/document/qb4f0yu2jxavqr652h54p9zfr (accessed 24 November 2019).

[215] F. Taglioni, L'île d'Anjouan figure de la balkanisation de l'archipel des Comores. In: *EchoGéo* http://echogeo.revues.org/7223 (accessed 12 January 2021).

[216] D. S. N'Guesso, 'Pour un Pacte panafricain contre l'agression', *Géopolitique africaine*, vol. 4, nr. 10, 2003, p.29.

[217] Non-Aggression and Common Defense Pact, 4th Ordinary Session, Abuja (Nigeria), January 31, 2005, https://au.int/sites/default/files/treaties/37292-treaty-0031_-_african_union_non-aggression_and_common_defence_pact_e.pdf (accessed 12 January 2021).

military measures, the Congolese president proposed an exclusively African response to intra- and extra-state aggression.

Based on the AU Constitutive Act[218] and the Protocol establishing the PSC,[219] the Pact will be adopted in 2005 by the Assembly of the Union. It defines aggression as "the use by a state, a group of states, an organisation of states or any foreign or external entity, the armed forces or any other hostile act, incompatible with the Charter of the United Nations or the Constitutive Act of the African Union against the sovereignty, political independence, territorial integrity and human security of a state's people party to this Pact".[220] Developing the concept of mutual defence, the states parties to the Pact have committed themselves to react individually or collectively against any aggression or threat of aggression.[221] Expecting an African army and the successful political and economic integration of the continent, the states parties have committed themselves to combine their efforts to create and operationalise, as soon as possible, the African standby force.

Very ambitious, the pact treats security in its broadest sense, not being limited to the traditional state approach by placing the individual at the centre of peacekeeping and turning human security into a fundamental goal of the pan-African agenda.

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[218] African Union Constitutive Act of the African Union. 11.07.2000, Lome, Togo, https://au.int/sites/default/files/pages/34873-file-constitutiveact_en.pdf (accessed 28 December 2020).

[219] Protocol Relating to the Establishment of the AU Peace and Security Council, 26.12.2013, art. 7(h), https://www.peaceau.org/uploads/psc-protocol-en.pdf (accessed 15 October 2019),

[220] Non-Aggression and Common Defense Pact, 4th Ordinary Session, Abuja (Nigeria), January 31, 2005, art. 1 (c)

[221] Ibidem, art. 4.

As APSA is based on a principle of subsidiarity that makes the Regional Economic Communities a pillar in peacekeeping and recognises their competence in certain conflict situations, their involvement in collective security is important in sharing the tasks between the African Union and these structures.

The collective security within the Economic Community of West African States (ECOWAS). ECOWAS quickly expressed its concern for the maintenance of peace and security in its state members. Established in 1975, it adopted in 1977 a framework Agreement on Non-Aggression and Defence Assistance (ANAD).[222] The states members of the former West African Economic Community (ECOWAS) and Togo undertake to exclude any use of force in their mutual relations and to offer mutual assistance and support against any form of external aggression, subject to the principle of state sovereignty specific to the process of ensuring the security in the zone.[223] A protocol for the implementation of ANAD was subsequently signed on December 14th, 1981.

The second stage in the development of the common approach to security within ECOWAS was achieved by signing on April 22nd, 1978 a defence agreement specific not only to French-speaking states but to all West African states and united under the auspices of the ECOWAS.[224] As an extension of ANAD, this new agreement called the Non-Aggression Protocol adopted in Lagos (Nigeria) will

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[222] Non-aggression and Defence Assistance Agreement of 9 June 1977 concluded in Abidjan (Ivory Coast) on June 9, 1977 by the Heads of State and Government of CEAO and Togo, p. 215https://www.yumpu.com/fr/document/view/21436675/non-aggression-and-defence-assistance-agreement-of-9-june-1977 (accessed 25 January 2021)

[223] Ibidem, art. 1.

[224] Burkina Faso, Ivory Coast, Mali, Mauritania, Niger and Senegal

be supplemented by the Mutual Assistance Protocol concluded in Freetown (Liberia) on May 29th, 1981.

These few initiatives generated by the irreducible willingness of the sub-regional leaders to limit the intervention of the colonial powers by developing a "strategic convergence"[225] will be quickly counteracted by the sovereign policies of state leaders who did not want to make soldiers of their armed forces available to the community. Thus, this community army, which must protect the interests of any state member against any external aggression, could hardly have intervened to prevent any conflict because article 1 of the ANAD provides a double consultation, first ministerial and then at the level of state and government leaders to decide on the possibility of a joint military force, which would have limited any action.

However, these multiple defence agreements can be seen as precursors to ECOWAS's preventive military policy. The end of the Cold War and the regressive involvement of Western powers in Africa forced ECOWAS to revise its passive intervention policy. The civil wars in Liberia, Sierra Leone, and Guinea Bissau have led to a preventive deployment of the West African armed forces (ECOMOG).[226]

This instrument will be enshrined in the Protocol on the mechanism for the prevention, management,

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[225] Th. S. Possio, *Les évolutions récentes de la coopération militaire française en Afrique*, Paris, Publibook, 2007, p. 357.

[226] C. I. Obi, 'Economic Community of West African States on the Ground: Comparing Peacekeeping in Liberia, Sierra Leone, Guinea Bissau, and Côte d'Ivoire', *African Security*, vol. 2, nr. 2-3, 2009, p. 119; G.O. Yabi, *Le rôle de la CEDEAO dans la gestion des crises politiques et des conflits: cas de la Guinée et de la Guinée Bissau*, Abuja, Friedrich-Ebert-Stiftung Bureau Régional, 2010,. p 61, ISBN 978-978-909-600-8.

settlement of conflict, peace, and security to be adopted by ECOWAS in 1999.[227]

This is, in particular, the case of ECOWAS, whose constitutive act provides a mechanism for conflict prevention and information to the Security Council on any military intervention it wishes to initiate. According to Chapters VII and VIII of the Charter, mere information in this respect constitutes a restrictive interpretation of the provisions of Chapters VII and VIII of the Charter, as any intervention by a regional organisation requires, *a priori*, the prior authorisation of the Security Council.

In the opinion of the author A. Abass: "Now, the ECOWAS obligation is to inform the UN only about the military actions already undertaken and nothing more".[228] The operations launched by the ECOMOG force in 1990 in Liberia and in 1997 in Sierra Leone attest to the ECOWAS's autonomous character in terms of initiating peacekeeping operations, as there was no authorisation from the Security Council on these interventions. Although at the strictly legal level, these operations can be considered illegal, their legitimacy at the technical level cannot be questioned, as they have limited the massive human rights violations committed in these two states.

The Collective Security Program of the South African Development Community (SADC). Created in 1992 as the successor to the South African Development Coordination Conference (SADCC), the South African Development

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[227] Protocol relating to the Mechanism for Prevention, Management, Conflict Resolution, Peacekeeping and Security, ECOWAS Executive Secretariat, December 10, 1999, Lomé (Togo), https://brill.com/view/journals/hrao/1/1/article-p653_.xml (accessed 24 January 2021)

[228] A. Abass, 'The new collective security mechanism of ECOWAS: innovations and problems', *Journal of Conflict and Security Law*, vol. 5, nr. 2, 2000, pp. 221.

Community (SADC) was originally dedicated to an objective of economic development through integration, even though article 5 of the revised constitutive act provided for maintaining peace and security.

To achieve this goal, SADC will successively constitute an inter-regional committee on security matters in September 1995, a body responsible for defence policy and security cooperation initiated on June 28th, 1996, but which will not be operational than after the signing of the Protocol on Political, Defence and Security Cooperation on August 14th, 2000 in Blantyre, Malawi. Adopted at the Windhoek Summit, this Protocol will not enter into force until March 3rd, 2004. Article 2 of the Protocol provides especially the promotion of regional coordination and cooperation in the field of peace and security,[229] coercive measures where circumstances require, in accordance with Chapter VII of the UN Charter,[230] actions to develop a collective security system and the conclusion of a mutual defence pact to respond to external military interventions.[231]

This Mutual Defence Pact was adopted in 2003 in Dar-es-Salaam, Tanzania, to put in place the necessary mechanisms to achieve the goal of mutual cooperation in defence and security matters.[232] The operationalisation of this Defence Pact and the implementation of the Protocol, a Strategic Indicative Plan of the Organ (SIPO) to identify

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[229] Protocol on Politics, Defense and Security Cooperation, SADC, 14.08.2001, art. 2.d, https://www.droitafricain.net/files/SADC-Protocol-on-Politics-Defence-and-Security-Cooperation-14-August-2001.pdf (accessed 25 January 2021),

[230] Ibidem, art. 2.f.

[231] Ibidem, art. 2.h.

[232] SADC'S Mutual Defence Pact, 08.2003, art. 2, https://www.sadc.int/files/2913/5333/8281/SADC_Mutual_Defence_Pact2003.pdf (accessed 18 January),

political and security challenges in the region and provide adequate operational responses to them, were subsequently implemented.

The collective security program of the Intergovernmental Authority on Development (IGAD). The Agreement establishing the Intergovernmental Authority on Development (IGAD) adopted on March 21st, 1996 in Nairobi, Kenya, was originally designed to coordinate the efforts of states members to combat drought and desertification, the main objective of its predecessor, the Intergovernmental Authority on Drought and Development. (IGADD), created in 1986 by the six East African countries (Djibouti, Ethiopia, Kenya, Somalia, Sudan, and Uganda) affected by the drought. The recurrent conflicts in the Horn of Africa have led the sub-regional organisation, concerned with the development of its member states, to rethink its priorities, especially in the field of peace and security.

The agreement of the IGAD foundation, in article 18A, establishes the competence of the Organisation in matters of peace and security.[233] In fact, state members have committed themselves to take all necessary collective measures to eliminate any action that would compromise peace and security, to create a mechanism responsible for the peaceful settlement of their dispute, and to accept IGAD's priority competence in settling these disputes. The launch in October 2005 of a peace and security strategy that had to enable the development and harmonisation of national security initiatives made it possible to develop a certain collective security structure in the Horn of Africa,

[233] Agreement Establishing the inter-governmental authority on Development, Nairobi, 21 March 1996, https://www3.nd.edu/~ggoertz/rei/rei475/rei475.01tt.pdf (accessed 2 January 2021)

despite the lack of a concrete agreement on mutual defence.

The defence program of the Economic Community of Central African States (ECCAS). Established by the Treaty of Libreville signed on October 18th, 1983, following the Lagos Plan, by its ten founding members, the Economic Community of Central African States firstly promoted the goal of regional integration as a factor of economic performance.[234] Entered into force on December 18th, 1984, the ECCAS Treaty has been limited for a long time to its vision of economic integration.

Inoperative between 1992 and 1997 due to the many conflicts in the sub-region that undermined its activity, the ECCAS resumed its activities after the 1998 Libreville Summit. Realizing the negative impact of the many conflicts on development and integration, the ECCAS revised its objectives taking into account the maintenance of regional peace and security. The 1999 Malabo Summit made it possible to identify key axes related to security and, tangentially, conflict prevention, and facilitated the emergence of the foundations for a sub-regional architecture of peace and security favourable to the development of collective security in the region.

The establishment of a Council for Peace and Security in Central Africa (COPAX) under the Protocol adopted by the ECCAS states members on February 24th, 2000 reflects the willingness to effectively combat insecurity for states members and particularly to prevent possible conflicts.

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[234] Groupe de recherché et d'information sur la Paix (GRIP), Architecture et contexte sécuritaire de l'espace CEMAC-CEEAC. In: *Observatoire pluriannuel des enjeux sociopolitiques et sécuritaires en Afrique équatoriale et dans les îles du golfe de guinée*, 25.02.2014, p. 32[https://grip.org/architecture-et-contexte-securitaire-de-lespace-cemac-ceeac/ (accessed 25 January 2021)

The technical and political surveillance bodies provided by this Protocol enable the ECCAS to develop an institutional structure through which states members may provide political and military responses to new crises and contribute to conflict prevention.[235] Two military means are used to implement this prevention objective in Central Africa: the Central African Early Warning System (MARAC) and the Multinational Force for Central Africa (FOMAC).[236]

Since July 8th, 1996, the ECCAS states members have committed themselves, through the Non-Aggression Pact, to cooperate with the United Nations in settling security matters in Central Africa. The purpose of this pact was to prohibit the use of force in their mutual relations. However, the Pact for Mutual Assistance between ECCAS states members[237] serves as an instrument for preventive military cooperation in the field of collective security. Adopted at the same time as the Protocol on the creation of COPAX, it contributes to the operational establishment of FOMAC.

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[235] International Crisis Group, Implementing the Peace and Security Architecture: Central Africa, Africa Report, Nr. 181, 07.11.2011, https://www.crisisgroup.org/africa/central-africa/implementing-peace-and-security-architecture-i-central-africa (accessed 25 January 2021).

[236] Groupe de recherché et d'information sur la Paix (GRIP), Architecture et contexte sécuritaire de l'espace CEMAC-CEEAC, In: *Observatoire pluriannuel des enjeux sociopolitiques et sécuritaires en Afrique équatoriale et dans les îles du golfe de guinée,* 25.02.2014, p. 32, https://grip.org/architecture-et-contexte-securitaire-de-lespace-cemac-ceeac/ (accessed 25 January 2021).

[237] Mutual Assistance Pact between Member States, CEEAC, 24.02.2000, https://www.droitcongolais.info/files/0.42.02.00-Pacte-d-assistance-mutuelle-du-24-fevrier-2000-entre-les-Etat-membres-de-la-CEEAC.pdf (accessed 25 January 2021).

The solemn declaration on a common African defence and security policy. The idea of an Africa-specific defence mechanism is not the work of the AU. Since 1958, Kwamé Nkrumah proposed the establishment of an African high command and an African military legion. This proposal remained intact, to the point where, faced with state sovereignty, jealously defended by members of the late OAU, the common embryonic defence policy was limited to a Commission for Mediation, Conciliation, and Arbitration[238] as well as a Defence Commission.[239]

Gradually engaged in a peace and security process in Africa and facing renaissance conflicts in some of its sub-regions, the OAU has developed a symbolic institutional framework through the creation of the Central Body and integrated it into the Mechanism for Conflict Prevention, Management, and Resolution in 1993. The functional weakness of this mechanism may be diminished by a strong political will and a lack of adequate financial, structural, material, and human resources. This structural weakness will be addressed by the structural change operated by the AU by transforming the PSC into the central body of the mechanism adopted in Cairo.[240]

Reaffirming "their determination to equip the Union with the necessary decision-making capacity to ensure effective management of political-military crises to protect peace and strengthen the security of the African continent at all levels, including the elimination of conflicts", the leaders of state and government states members of the

[238] Charter of the Organization of African Unity, Addis Ababa, Ethiopia, 25.05.1963, art. XIX, https://au.int/sites/default/files/treaties/7759-file-oau_charter_1963.pdf (accessed 28 December 2020),

[239] Ibidem.

[240] D. Leconte, 'Le Conseil de paix et de sécurité de l'Union Africaine, clef d'une nouvelle architecture de stabilité en Afrique?', *Afrique Contemporaine*, vol. 4, nr. 212, 2004, p. 131-162.

Union will solemnly adopt a common African defence and security policy in 2004[241] to harmonise their collective efforts to prevent conflicts and to avoid the continued fragmentation of regional non-aggression pacts.

The African Capacity for Immediate Response to Crises (ACIRC). The French intervention in Mali in 2012 greatly influenced the AU in its approach to conflict prevention and its ability to deploy an autonomous peacekeeping force. The establishment of an African Capacity for Immediate Response to Crises (ACIRC) was thus approved by the Leaders of State and Government meeting in Addis Ababa on the occasion of the fiftieth anniversary of the AU. Responding to numerous failures in the operationalisation of the FAA, ACIRC aims to be simpler, but more reactive in its action and objectives.

The ACIRC concept thus aims to make the African Union "more reactive, more capable and more coherent, making possible the rapid response to crises with military means at the service of a political decision". Unlike the FAA, which consists of civilian and military components,[242] ACIRC is intended to be exclusively comprised of military personnel (1,500 out of a total contingent of 5,000 soldiers) ready to be deployed within 10 days and with a functioning autonomy of 30 days. The objective for this desired efficient, robust and credible force is to carry out long-term operations with limited objectives

[241] Solemn Declaration on a Common African Defense and Security Policy, Ext/Assembly/AU/3/(II), Syrte (Libye), 27-28.02.2004, https://www.peaceau.org/en/article/solemn-declaration-on-a-common-african-defence-and-security-policy (accessed 28 December 2020).

[242] Protocol Relating to the Establishment of the AU Peace and Security Council. 26.12.2013. [on-line]. [accessed 15.10.2019) https://www.peaceau.org/uploads/psc-protocol-en.pdf>, art. 13.1.

or to help carry out sustainable operations under the auspices of the AU and/or the UN on a larger scale.[243]

By creating ACIRC, the AU finally returns to the initial idea that had been developed in the Framework Document, namely the establishment of a rapid deployment capacity (RDC) in an emergency situation. Less expensive, less demanding in terms of the working force, it could not suffer from the same defects as the FAA[244] and is designated for the observation centres of the different sub-regional structures, for each determined operation. Strictly speaking, only the reluctance of states to contribute with national troops could hinder the proper functioning of ACIRC.

The major brake on the inherent cost of establishing regional collective security certainly suffers from external constraints strongly marked by programs initiated in Africa, but it seems now impossible for Africa to give it up and the AU seems to have found a transitional measure to provide Africa, in the short term, an operational tool for collective security[245] and the prevention of armed conflict.

In the sense of our research, it is important to analyse the most important regional crises on the African continent

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[243] AU, Report of the Chairperson of the Commission on the operationalisation of the Rapid Deployment Capability of the African Standby Force and the establishment of an "African Capacity for Immediate Response to Crises", 29.04.2013. Available on Internet: <URL: https://au.int/sites/default/files/speeches/25318-sp-auc-report-cp-cdr-faa-26-04-2013-rev30.pdf>, p. 7.

[244] GNANGUENON, A. La mise en œuvre de la force africaine en attente, à l'épreuve de la relation UA/CER. In: *L'Architecture de paix et de sécurité en Afrique*. *Bilan et perspectives*. L'Harmattan, 2014, p. 189.

[245] AU, Report of the Chairperson of the Commission on the operationalisation of the Rapid Deployment Capability of the African Standby Force and the establishment of an "African Capacity for Immediate Response to Crises", p. 8

that have posed serious challenges to the process of ensuring regional peace and security.

Following the analysis, we may observe that the Organisation of African Unity could not meet the specific challenges resulting from armed conflicts on the African continent, which led to the formation of the African Union. This new structure had to identify the characteristic solutions for overcoming relational crises and ending conflicts in the area.

The African Union, generally and the Architecture for Peace and Security in Africa, especially have been increasingly involved in preventing and combating violations of African peace and security and have proven their efficiency in the field, modelling approaches, instruments, and methods of intervention in respect of the specifics and colouring of the zone.

Over the two decades of the 21st century, the African Union has demonstrated its status as an effective regional organisation capable of intervening. Despite the financial, communication, and divergence of interests between the involved states, this structure is proving to be inherently necessary to ensure peace and security on the African continent.

2.3. League of Arab States and other regional security structures in the Middle East

Relations between Arab states in the first half of the twentieth century are characterised by a particularly complex system of economic, social, political, and ideological controversies. The need to build a regional international structure that would serve as a platform for cooperation for all Arab states was a unanimously accepted idea. However, approaches to the basic form and principles of the future structure ranged from the idea of federalisation, i.e. the construction of a federal state based on all Arab states to cooperation based exclusively on the idea of religious unity.

The main purpose of the future League was defined as strengthening inter-Arab connections and the activities of Arab countries for the benefit of the people and for the realisation of their aspirations. Membership has been limited to independent Arab states wishing to join the organisation.

The objectives of the League of Arab States were: to coordinate the political plans of the Arab countries and to defend the independence and sovereignty of the member states. Furthermore, it was stipulated that in no case should be permitted the elaboration of a foreign policy that could affect the policy of the League or that of a member state.[246]

The League Council decided to become binding on those who adopted them unless the dispute between the

[246] The Alexandria Protocol. October 7, 1944, http://avalon.law.yale.edu/20th_century/alex.asp (accessed 24 December 2019).

two states members was submitted to the members of the Council, whose role was to arbitrate.

The protocol described the signatories' desire to cooperate closely in all non-political fields. A political subcommittee has also been set up to prepare a draft League Council charter. Thus, the emphasis was on cooperation between Arab countries, maintaining the sovereignty of each state.

The protocol contained resolutions on Lebanon and Palestine. In the resolution on Lebanon, the delegates reaffirmed their support for the country's independence and sovereignty within its existing borders, which the governments of the Arab states had already recognised following the Lebanese decision on an independent policy, the implementation of which had been announced by the government in its program on October 7th, 1943 and which was approved unanimously by the Lebanese Chamber of Deputies.[247]

The Arab countries had different forms of government, each of which developed its own internal political system, were separated by interstate contradictions so that the only problem that united them was Palestine's destiny. At the meetings of the Preparatory Committee, all Arab states voted unanimously against Jewish migration to Palestine.

Although delegations tried to stay away from the Palestinian matter from the very beginning of the conference, it was clear that societies in Arab countries were waiting for the discussion on the Palestinian matter and decision-making. The Alexandria Protocol contained a special resolution on Palestine, adopted unanimously.[248]

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[247] Ibidem.

[248] A. Eden, 'Notes on the meeting of the Preparatory Committee of the Arab Unity Conference in Alexandria 25 September - 6

The League Charter also contained a special annex for this territory.

When founding the Arab League, Egypt played an important role due to its historical and political weight in the Arab world. The Arab League was established in 1945 in Cairo under the auspices of the Egyptian government. Initially, the League was made up of seven founding states that signed the founding pact: Egypt, Iraq, Saudi Arabia, Lebanon, Syria, North Yemen, and Jordan. Gradually, the organisation developed through the accession of other Arab states. To join the league, the candidate states had to comply with the conditions of accession provided in the League Charter, especially article 1, according to which each independent Arab country has the right to join. Today, the League is made up of twenty-two states, including the Palestinian Authority. With the creation of the Arab League, the pan-Arab idea became institutionalised. Pan-Arabism, the maximum dimension of the consciousness of collective identity, is kept as an objective.[249]

Like all international organisations, the League has institutions that contribute to its stability. The central body is the League Council. The Defense Council, the Economic Council, the specialised standing committees (economy, culture, politics, etc.) and the specialised and autonomous agencies created in 1964 (the Arab Labor Organisation, the

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October 1944. 24th October 1944', In: *The Arab League: British Documentary Sources, 1943-1963*. *Vol. 3*. Cambridge, 1995, p. 530.

[249] J. P. Henry, Système régional interarabe et système international, In: *Le Système régional arabe*. Paris: Les Éditions du CNRS, 1989, p. 76.

Postal Union, the Telecommunications Union), complete the institutional framework.[250]

In this regard, the Pact of the League of Arab States: "The Council has the mission to decide the means by which the League will collaborate with international organisations that will be created in the future to ensure peace and security and to solve economic and social matters."[251]

Therefore, were put the foundations for close cooperation between states members, in particular in the fields of economy and finance, trade relations, customs, foreign exchange, agriculture and industry, communications, cultural issues, nationalities, social issues, and healthcare. The charter also contained two special resolutions: one on the situation in Palestine and the other on the Arab states that had not yet joined the League of Arab States. The relations between states members had to be governed by the principle that each participant undertakes to respect the internal political system of other members of the League and to refrain from any action aimed at changing that system.

An important principle, enshrined in the charter of the organisation, was the non-binding nature of compliance with the decisions taken by the League Council. Only states that have voted for a decision are required to implement it. In case of aggression or threat of aggression against a state member, the League Council may be called at the request of that state to take protective measures.

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[250] M. Flory, and T. Mahjoub, La coordination entre les organisations arabes spécialisées, In: *Le Système régional arabe*, Paris, Les Éditions du CNRS, 1989, p. 115.

[251] Pact of the League of Arab States, March 22, 1945, art. 3 (3) https://avalon.law.yale.edu/20th_century/arableag.asp (accessed 25 December 2019)

Since its creation, the main objectives of the League of Arab States were:

a) To protect the independence of the Arab states;

b) To contribute to the unity of the Arab states;

c) To promote the cooperation between the states members and the coordination of their political, economic, and cultural actions;

d) To defend its interests in the international society and to contribute to peace between the Arab nations.

The Arab League aspires to contribute to political cohesion between Arab countries, especially in international affairs. But the reality of Arab societies, marked by the diversity of political systems and the absence of a democratic structure, showed the limits of the dynamics of this policy. Despite different economic and military cooperation, the Arab League has not been very successful politically.[252]

The Muslim world includes Arab-Muslim countries and countries that are Muslim without being Arab. During the Cold War, the integration policy in this region was not very successful due to the division between the Arab countries and especially between Egypt and Saudi Arabia.

However, the Arab League and the Islamic Conference played a positive role in institutionalizing relations between their members: "despite the crises it experienced during this period, the Arab international institutions demonstrated a great capacity for survival and no state member has not sought to endanger it to achieve its own objectives."[253]

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[252] H. Alvi-Aziz, Regional *Integration in the Middle East*, New York, The Edwin Mellen Press, 2007, p. 150.

[253] Ibidem.

Despite its stated objectives, the Arab League has often faced tensions and conflicts for both internal and external reasons. During the Cold War, it was marked by both unity and division, especially because of the Israeli-Palestinian conflict. The appearance of the Jewish state in 1948 and the defence of the Palestinian cause by the member states of the League is a factor generating unity among Arab countries, and the legitimacy of Arab involvement often comes from the intention to defend the great causes of the Arab world, especially Palestine.[254]

From this perspective, the feeling of belonging to the same family emphasised the need for Arab solidarity, making the goal of unity both desirable and necessary. The Arab League has faced the Palestinian matter since its inception, calling on Palestinian structures to coordinate their efforts to deal with Zionist conspiracies.

Despite solidarity with the Palestinian cause, the League of Arab States was first divided because of the bipolarity of the international system that divided countries between pro-Americans and pro-Soviets. Then, because of the ideological and political rivalries between the Arab states that competed for the exercise and control of power within this structure.

From the late 1950s and throughout the 1960s, the Syrian-Egyptian pole took the lead, and Arabism with a socialist and anti-imperialist content formed the dominant ideology. The League of Arab States is seen as an instrument in the hands of the Egyptian foreign minister.[255]

Several political factors in the Middle East have contributed to the deepening of the crisis within the League. In 1979, due to the peace treaty signed on March

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[254] K. Bichara, La Ligue arabe et la question palestinienne. In: *Le système régional arabe,* Paris, Les Éditions du CNRS, 1989, p. 321-322.

[255] Ibidem, p. 336.

26th, 1979 in Washington by Egypt and Israel, Egypt was suspended from the organisation by the other member states and the League's headquarters were transferred from Cairo to Tunis, until 1990 when it was returned to Egypt. Moreover, in 1991, Chedli Klibi, Secretary General of the League, resigned following the Gulf War: the attack on Kuwait by Iraq in 1990 led to the intervention of the international community under the auspices of the UN, but the Arab countries had distinct positions against this intervention.

Thus, the main axes of the League's political actions lie in the matters: Palestinian, Lebanese, and Iraqi. In this perspective, the League has adopted many positions hostile toward Israel. In 1997, the League passed a resolution recommending that the 22 members freeze the normalisation of relations with Israel protesting against the policies of B. Netanyahu government. In March 2000, the League Ministerial Council of Beirut demonstrated its solidarity with Lebanon as for Israel. In the same year, in Cairo, the League condemned the violence of the Jewish state in the Palestinian territories.

During the Cold War, pan-Arabism played an important role in the League's functioning, but since the USSR's collapse and the emergence of political Islam, this role has diminished.

Since the beginning of 2011, some of the Arab League countries have been affected by riots and revolutionary phenomena, which have surprised most political experts. Led by dictatorial regimes, Tunisia, Egypt, Libya, Yemen, Bahrain, and Syria are facing massive protest movements by populations demanding democratic change and economic reform. The Arab League did not hesitate to condemn the bloody repression of the population by the Libyan regime. This exceptional situation may represent a historic opportunity for the Arab League to include the

defence of democratic values and human rights in its charter and to demand that they be respected by member countries.

In terms of member countries' domestic policy, the Arab League has made little effort to contribute to economic, social, and political progress. In 2004, League leaders pledged to promote political and economic reform in their states. But in practice, these reforms have not been carried out in most states members, and recent events have shown how much the concerned countries need structural change in political and economic matters.

One of the most important aspects of the activities of the League of Arab States was and remains the idea of creating a common military alliance. The 1950 Common Security Pact for the Arab States sets out the main provisions for the collective security of the Arab States. In 2015, the leaders of the Arab League countries agreed to create a joint military force. This force will include about 40,000 elite troops, supported by military aircraft, warships, and light artillery.[256]

The league actively intervened to strengthen Arab security, but its efforts were hampered by inter-Arab rivalries. The League facilitated the peaceful settlement of disputes between its members, especially between Morocco and Mauritania; between groups in states members such as Lebanon or Somalia and between members of the League and external forces such as between Libya and the United States. In this sense, we can say that the League acted as a regional analogue of the UN.

The league has demonstrated its limits of intervention due to the division between its members and the absence of an effective collective willingness. No major

[256] Arab League agrees to create joint military force, http://www.bbc.com/news/world-middle-east-32106939 (accessed 28 December 2019)

Arab leader has been prepared to relinquish some of its sovereignty in favour of a common pan-Arab coercive body. In order to create an integrationist political structure, the representatives of one state member must have a minimum of consideration for others.[257] This division forms a major handicap for the efficiency of the League and without democratic management; it will not be able to contribute to inter-Arab political integration. Consequently, the cultural factor cannot be the only condition for pursuing a policy of regional integration in the Arab world.

Thus, the Arab countries have managed to create a regional organisation in which the interests of the member states are not disrespected. So far, the League of Arab States is the only organisation that unites all Arab countries, developing common approaches to the urgent problems of the Arab community, first and foremost, the matter of Palestine.

The Organisation for Islamic Cooperation (OIC), called until 2011 the Organisation of the Islamic Conference is a religious organisation, founded in 1969 to contribute to the solidarity between Arab and Muslim countries that constitute the Muslim community. According to the Islamic theory of international relations which is inspired by the Qur'an and the words of the Prophet of Islam, the world is divided into two contradictory universes: "dar al-Islam" which includes the territory of Islam where Muslims form a single community (UMMA) and "dar al- harb" composed of non-Muslim countries.[258]

The Organisation for Islamic Cooperation is not limited to the Arab countries, and it is important to

[257] M. Feki, L'axe *irano-syrien: Géopolitique et enjeux*, Paris, Studyrama, 2007, p. 51.

[258] M.-R. Djalili, *Diplomatie islamique.* Genève, PUF, 1989, p. 17-18.

emphasise the decisive role of Saudi Arabia in founding the OIC, which is made up of 57 states, including the Palestinian Authority. This integrationist structure is open to all Muslim countries that respect the conditions and objectives of the organisation elaborated in 1972. The indispensable condition lies in the Islamic character of the state, which can be achieved by the presence of a predominantly Muslim population and a constitutional recognition of Islam.[259]

It is headquartered in Jeddah, Saudi Arabia, and is the largest organisation in the Muslim community. The OIC is marked by the political, cultural, and social diversity of its member countries. As for Islam, it is the driving force of this organisation from a political perspective, even if Islam's relations with institutions and international relations are complex because they involve the parallelisation of two phenomena of a deeply contradictory nature - a religion that has an extramundane essence based on a transcendental relationship and international relations that emanate from an order of terrestrial and profane realities that translate into a nation-state, institutions, nations, and people.

The OIC main objectives are defined in its Constitutive Act. According to it, the Organisation must contribute to the respect of the following principles:

a) To promote the strengthening of the Islam solidarity amongst Muslim countries;

b) To contribute to the economic, political, social, and scientific cooperation between the member states;

c) To fight in order to defend the dignity, the independence of the Muslim people and their national rights;

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[259] M. Flory, Régimes arabes et environnement international, In: *Les régimes politiques arabes*, Paris, PUF, 1990, p. 102.

d) To undertake the measures necessary for the strengthening of the world peace and security based on justice;

e) To participate in the coordination of the actions for the protection of holy places, and

f)To support the fight of the Palestinian people.[260]

Despite its religious vocation, the OIC's actions have a political purpose which is to defend the interests of the Muslim world in international society. In 1979, Egypt was expelled from the organisation as a result of the David Camps agreements but was reinstated in 1984. The expansion of the OIC takes place according to the international context. Thus, after the collapse of the Soviet Union in 1991, Azerbaijan, Kazakhstan, etc. became members, and Russia, the Central African Republic, etc. were admitted with observer status.

The Islamic Conference comprises eleven specialised institutions, including the Islamic Development Bank, the Union of Economic Chambers, and the Institute for Cultural Cooperation between the Islamic States. In the OIC structure, a distinction must be made between the Conference of Kings, leaders of state and government, and the conference of foreign ministers. The latter meets, in principle, once a year. The Conference of Kings and leaders of state and government is the supreme authority of the OIC, which meets every three years to determine the policy of "organisation for the Muslim world." The OIC has a permanent secretariat based in Jeddah, and its executive body is the General Secretariat. It also has a permanent delegation to the United Nations and is the largest organisation in the world after the UN.

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[260] A. Ishtiaq, The organization of the Islamic Conference: From ceremonial politics toward politicization? In: *Beyond regionalism? Regional cooperation, regionalism and regionalization in the Middle East,* London, Ashgate, 2008, p. 137.

The OIC's actions, positions, and political statements are intended to achieve this goal, even if in practice they do not have an effective influence on political change in the concerned zones. Thus, it supports the Palestinians and is in favour of creating a Palestinian state. The OIC supports the Palestinian struggle under the Palestine Liberation Organisation (PLO). OIC members believe that Muslims have a deep attachment to the Palestinian people and their right to an independent state.[261]

Continuing its solidarity with Muslim causes, in 1980 the Organisation condemned the occupation of Afghanistan and called on the Soviet Union to retreat. The OIC suspended its relations with the new Afghan government and conditioned the resumption of diplomatic relations with the total retreat of the Soviet Union. It also demanded to its members to not recognise the Afghan government.[262]

After the collapse of the Soviet Union, some states members of the organisation faced the rise of Islamist movements. That is why, in 1994, in Casablanca, the OIC condemned religious extremism, and to combat these movements, member countries adopted a code of ethics to improve the image of Islam in the world.

Since the Iranian revolution of 1979, the relations between the Tehran regime and the Organisation for Islamic Cooperation have deteriorated. With the victory of the "reformists" in 1997, Iran's foreign policy has changed and, since then, there has been an evolution of diplomatic relations between Iran and Saudi Arabia. That is why the 8th OIC Summit in 1997 took place in Tehran, which allowed the country to break out of regional isolation.

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[261] A. Al-Ahsan, The *organization of the Islamic conference: An Introduction to an Islamic Political Institution*. Hendon, International Institute of Islamic Thought, 1988, p. 58-59.

[262] Ibidem, p. 64.

Meanwhile, the OIC adopted a statement condemning the policies of the Jewish state in the occupied territories and reaffirming its support for the Palestinians' right to an independent state. With regard to the peace process with Israel, the member states member confirmed in 2002 in Khartoum the Middle East peace plan adopted in Beirut at the Arab League summit. In 2003, the OIC condemned US policy against Iraq, and member states pledged not to take part in an armed intervention against Baghdad.

Through all these positions and statements, we note that, despite the weaknesses and differences between the OIC member states, the organisation is active on the international stage in defence of Muslim countries. Even though it is an inhomogeneous structure, made up of a relatively large number of states, the Organisation for Islamic Cooperation is one of the main regional actors, which expressly proposes in the text of the constitutive act to strengthen peace and security at a regional level, allowing member states to use the internal mechanisms and procedures for cooperation and negotiation to achieve the established objectives. However, the religious factor, which was the basis for the founding of this regional international structure, is not decisive in the process of regional integration due to the limited nature of its dynamism.

The Gulf Cooperation Council (GCC) is a regional organisation created in 1981 in a local context marked by the victory of the Iranian revolution. The founding countries of this organisation are: Saudi Arabia, Kuwait, Bahrain, Qatar, the United Arab Emirates, and Oman. Saudi Arabia, which played an important role in the creation of the GCC, is hosting the organisation's headquarters in Riyadh.

Since its inception, the GCC has been characterised by the greed caused by oil wealth, the approach of the

Iranian revolution, the Iraq-Iran war that makes this region particularly fragile and explains this need for regrouping with two main goals: maintaining security and stability, ensuring economic development to achieve a whole in an unpredictable future.[263]

The objectives of the Organisation, set out in its Charter, are "the establishment of a common market between states members, the progressive harmonization of banking regulations, the elimination of customs barriers, the free movement of workers, the coordination of the six states' industrial and agricultural policies", the contribution in states members' security and the encouragement of private sector cooperation.[264]

Unlike an organisation such as the Arab League, marked by crisis and division, the GCC seems less divided, more coherent, and more stable in its functioning for the following reasons: affinity between monarchical political regimes, relatively homogeneous socio-economic structure, geographical proximity, and linguistic unity.[265]

The GCC is composed of a supreme council, a ministerial council, and a general secretariat. The leaders of a state are part of the supreme council where they meet twice a year and determine the general policy of the Organisation. The second body is made up of foreign ministers who implement GCC policies. As for the General Secretariat, headed by a Secretary General appointed by the Ministerial Council, is responsible for the finances of the GCC and performs administrative tasks in the sense that it manages the preparation of the work of the two Councils. On December 31st, 2001, the GCC leaders approved the creation of a new institution, the Supreme

[263] M. Flory, Op. *cit.*, p. 111.
[264] H. Alvi-Aziz, Op. *cit.*, p. 166-167.
[265] M. Flory, Op. *cit.*, p. 111.

Defense Council, made up of defence ministers from the member states.

As mentioned, the security factor played an important role in founding this body. The Persian Gulf monarchies felt threatened by the regional effects of the Iranian Revolution, on the one hand, and the Iraqi regime, on the other. The subversion of the Iranian regime in 1979 and the outbreak of the war between Iran and Iraq in 1980 generated a series of suspicions in the security sector among the leaders of the Gulf regimes. This led them to join forces to create the GCC.[266]

Military cooperation between the member states of the organisation has gradually increased and, in terms of security, several agreements have been signed between the member states. Following an attempt of coup d'état in Bahrain in 1981, an internal security agreement was reached the following year. From a military point of view, the armies of the Council states organize joint manoeuvres and, since 1984, it has been decided to "form a joint deployment force under the command of a Saudi general".[267] This cooperation also includes industrial activities consisting of the manufacture of weapons and ammunition under the responsibility of the GCC's defence ministers.

Since the attacks of September 11th, 2001, the GCC states have increased their security cooperation and approved a pact to combat Islamist terrorism in December 2003. In addition, the organisation opposes the Iranian nuclear project for regional security reasons. Indeed, on several occasions, especially in 2010, GCC members have

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[266] H. Abe, Regional *integration in the Gulf: The background to the formation of the Gulf Cooperation Council*, Tokio, The institute of Middle Eastern Studies, Working papers series. 1987, nr. 9, p. 30.
[267] F. A Clements, *Arab regional organisations,* Oxford: Clio Press, 1992, p. 14.

called on the United States and the European Union to put pressure on Iran to abandon its plan.

In economic and energy matters, the cooperation between the GCC states has increased to create a common market with a single currency. To achieve this, the GCC states needed to harmonise their tax and customs systems. After several years of efforts, the common market opened in 2008, but the single currency has not yet entered into force due to differences between states members. Thus, the creation of this common market is an example of trade integration in the Arab world, which distinguishes this organisation from other regional integration institutions in the Arab world.

The Arab Maghreb Union (AMU) is a regional organisation founded in 1989 by the five Maghreb countries: Algeria, Libya, Morocco, Mauritania, and Tunisia. This organisation has an economic purpose. This structure also aims at contributing to economic development through a policy of regional integration: "the long-term goal of this process is to establish a common market by gradually establishing the free movement of people, goods, services, and capital."[268]

Although this regional structure with integration purposes does not have a clearly defined objective of contributing to regional security, its structure, functions, and objectives reflect the indirect contribution and the clear desire of states members to ensure regional security as a precondition for achieving the primary objective, economic development, and integration of the region.

The AMU founders were inspired by the European model of the European Economic Community to set up this organisation. Its creation was a response to the economic matters of the member countries. Another factor that also

[268] D.-E. Guechi, L'Union *du Maghreb arabe: Intégration régionale et développement économique*, Alger: Casbah Editions, 2002, p.13

contributed to the creation of the AMU was the inadequacy of the Arab nationalism dynamics within the Arab League. It was observed that Maghreb's nationalism and the unitary inspiration of the people were strong and important assets, but not decisive.[269]

The conflict in Western Sahara seems to be the main blocking factor in the construction of the AMU. It illustrates the inability of Algeria and Morocco to emerge from a relationship of mistrust, sometimes even hostility, since the "sand war" of 1963.[270]

Due to this obstacle, AMU remains in a symbolic and theoretical stage. By this example, we observe that there is a close link between regional integration and political cohesion between the states of a regional organisation. Therefore, the settlement of the conflict in Western Sahara is the necessary condition for the AMU unblocking. The experience of European construction shows that economic cooperation in a regional integration policy can contribute to peace and economic prosperity between nations. But the basis of this cooperation is democracy, which ensures the success of regional integration and security.[271]

The religious factors of cultural, traditional, and ideological origin contributed decisively to the

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[269] P. Balta, Le *grand Maghreb*. Paris: La découverte, 1990, p. 236.

[270] L. Martinez, L'Algérie, l'Union du Maghreb Arabe et l'intégration régionale. In: *Euro Mesco.* [on-line] 2006, nr. 59. 41 p. [cited 05.01.2021]. Available on Internet: <URL: https://spire.sciencespo.fr/hdl:/2441/f5vtl5h9a73d5ls9752ci8m8p/resources/art-lm.pdf>, p.7

[271] K. Bayramzadeh, Le rôle des organisations internationales dans le processus d'intégration régionale: le cas du monde arabe, In: *Fédéralisme Régionalisme,* vol. 11, nr. 2 2011, - Le régionalisme international: regards croisés. Europe, Asie et Maghreb, https://popups.uliege.be/1374-3864/index.php?id=1096 (accessed 13 January 2021).

materialisation of the idea of building a pan-Arab structure. Due to the divergent social, economic, and political interests of the Arab world states, the process of building the League of Arab States proved to be quite difficult.

The effectiveness of the mechanisms and instruments for implementing the objectives set for ensuring peace and security has been adversely affected by the lack of unity of the member states, divergent political and financial interests, deeply permissive internal decision-making procedures, and the intervention of structures and interests of other states in the zone subject to analysis.

2.4. Challenges on the international regulatory framework in the process of settling regional crises

Characterizing various aspects of international security, we need to consider the specifics of the collective security system, in particular the interdependence with other law enforcement institutions, both at a national and international level, such as the fight against terrorism, the fight against torture, or national reconciliation through mechanisms of transitional justice. However, only such an approach will allow the creation of an image in the context of a pragmatic vision of the matters related to ensuring international security, including through the diversification of the instruments offered by contemporary international law.

If to examine the widespread application of torture in the context of arguing for ensuring security, including in times of armed conflict, then we must recognise that the level of applicability of torture by state organs depends largely on the level of "civilization" of society, to which joins the level of tolerance for cases of torture by decision-makers in each case, although we have some reservations about this. Who would have guessed, for example, that the German nation, whose level of "civilization" never raised doubts, would have admitted a Nazi regime in the middle of the twentieth century? Another example is the case of the former Yugoslavia. At the end of the 20th century, terrible crimes were committed in central Europe, comparable only to those of the medieval period, characterised by religious, inter-ethnic wars, inquisition, etc. What would be, for example, the arguments in the case of the Srebrenica massacres of 995?!

That is why this criterion cannot be a sure one. Another argument would be the jurisprudence of the ECtHR, following the examination of which we can observe the commission of cases of torture not only in the "new" independent states and those that have recently escaped communist totalitarian regimes but also in countries such as France, Britain, Italy, etc., states considered the cradle of democracy and in which human rights are ensured at the highest level.[272]

The new conditions in which states awoke at the beginning of the 21st century have led to the need for an appropriate approach to the "rules of the game" applicable in the context of ensuring security at a regional and global level. The fact that the main actors, who were traditionally the states, have changed, have generated several discussions regarding the need to review the normative framework that regulates the international security system.

At the same time, there was a tendency to interpret the rules of international law, especially those applicable in times of armed conflict, to their detriment. Or, in our opinion, the derogation from the normative framework that regulates, for example, the status of prisoners of war, the prohibition of the application of torture, etc., on the contrary, makes international security system more fragile. It is in the light of these trends that we will try to approach the proposed topic. In addition, we will briefly refer to the institution of transitional justice, which comes with certain mechanisms for reconciling those societies that have gone

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[272] V. Gamurari, Rolul mecanismelor justiției tranziționale în procesul de prevenire şi combatere a torturii. În: *Materialele conferinței internaționale ştiințifico-practice „5 ani de la crearea Mecanismului Național de Prevenire a Torturii în Republica Moldova"*, Chişinău, 29.07.2012, Chișinău, Tipografia „Elan Poligraf",2013, p. 63.

through a state of war, regardless of the term used by state or even international authorities.

Different reactions from the states. The USA, for example, has implemented an exceptional legal framework - *Global War on Terror*. This expression has provoked much discussion, including the difficulties that this expression creates for the norms of international humanitarian law.[273] If we refer to its construction and research purposes, we find that they are contrary to the principles on which international human rights law and international humanitarian law are based.[274]

The exceptional conditions introduced by those states, far from being a temporary suspension of the rules of common law, are in fact aimed at rebuilding national and international law in the conditions of the need to combat terrorism. We warn that what is a tacit acceptance of the state of emergency is, in principle, an annoying situation that disrespects at least one rule in force.[275]

We must also take into account the standards created in Western Europe, the USA, Eastern Europe, the Middle East, which cannot be considered identical, although they have the core of human rights which is universal and imperative. For example, the US Supreme Court has applied international law, and in particular international humanitarian law, in several cases that reflect *Global War on Terror* in a somewhat unusual way. For example, from the point of view of international law, the discussion on Guantanamo detainees focused on two points. Firstly, the

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[273] M.E. O'Connell, *International Law and the „Global War on Terror"*, Paris, Pédone, 2007, p.93 ISBN 9782233005106.

[274] V. Gamurari, ‚Statutul prizonierului de război în contextul conflictelor armate contemporane: studiu în baza conflictelor din Afganistan, Irak, Ucraina și Siria (PARTEA II)', *Studii Juridice Universitare*, nr. 1-2(33-34),2016, p. 11.

[275] Ibidem, p. 12.

refusal to apply the Geneva Convention III and, secondly, the constant refusal by the Presidential Administration to apply international human rights law. Thus, the Supreme Court, examining the mechanisms at Guantanamo, uses international humanitarian law in an original but also debatable manner. Moreover, it ignores international human rights law, which has raised many questions from European experts, accustomed to the standards set by the European Convention on Human Rights and ensured by the European Court of Human Rights.

In 2004, the Supreme Court ruled a series of important decisions allowing Guantanamo detainees, among other categories of detainees in the war on terror, to refer to federal jurisdictions. But it did not comment on the status of the prisoners. Only with the adoption of the judgment in the *Hamdan* case on June 29th, 2006, the Court will bring the first elements framing the "war" against terrorism.

A few years after the United States transferred to its military base from Guantanamo Bay, Cuba, about 130 people were detained in Afghanistan following Operation "Liberté Immuable", and their number had at one time risen to 625 people.[276] After a period of uncertainty, the US authorities clarified their position on the legal status of detainees and judicial treatment.[277]

Thus, without going into details, the US administration preferred to qualify these persons as detained under the *President's Military Order* of September

[276] Communiqué de presse Guantánamo, 13 ans après, 08.01.2015, http://www.amnesty.be/je-veux-m-informer/actualites/article/guantanamo-13-ans-apres (accessed 2 January 2017).
[277] V. Gamurari, Statutul prizonierului de război în contextul conflictelor armate contemporane: studiu în baza conflictelor din Afganistan, Irak, Ucraina și Siria (PARTEA II), *Studii Juridice Universitare*, nr. 1-2(33-34), 2016, , p. 13.

13th, 2001.[278] According to the text, the US President is the one who determines which individuals are suspected of being members of Al-Qaeda can be captured and transferred to Guantanamo. On February 7th, 2002, the US authorities stated that they had two categories of detainees: the Taliban members of the Afghan armed forces and the terrorists of Al Qaeda. The United States has announced that although they are not prisoners of war, Taliban fighters will be able to benefit from some provisions of the III Convention on the Treatment of Prisoners of War of 1949, Geneva. On the contrary, al-Qaeda members, according to the Washington administration, are not prisoners of war or people who could benefit from the provisions of the mentioned convention. Thus, for the USA, Al-Qaeda is a foreign terrorist group, whose members are "enemy fighters", a term that is not used in principle by international humanitarian law. Subsequently, on March 21st, 2002, the U.S. Department of Defense adopted *Military Commission Order No. 1,*[279] which provided the implementation of military commissions empowered to judge not only members of Al-Qaeda, but also anyone involved in committing acts of international terrorism against the United States, including those who provide assistance to terrorists.

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[278] Military Order of November 13, 2001, Detention, Treatment and Trial of Certain Non-Citizen in the War Against Terrorism, 66FR57833 (November 16, 2001), https://fas.org/irp/off-docs/eo/mo-111301.htm (accessed 15 October 2017).

[279] Military Commission Order Nr. 1, Procedures, for Trials by Military Commissions of Certain Non-United States Citizens in the War Against Terrorism, March, 21, 2002. Secrétariat d'Etat a la Défense, https://www.esd.whs.mil/Portals/54/Documents/FOID/Reading%20Room/Detainne_Related/10-F-0341_Doc_1.pdf
(accessed 15 October 2017).

Despite clarifications from the US authorities on the legal status of these people at the Guantanamo base, several experts have begun to question the legal basis of the situation, including the effects that will follow. The situation was all the more complicated when it was found that among the detainees were and still are citizens of Western states, such as France or the United Kingdom, their fate remains uncertain. The subject of an article published by a French expert reviewed the political, diplomatic, and legal actions taken by the French authorities, as well as other stakeholders, in relation to his nationals detained at a US military base by the US armed forces.[280]

The attacks of September 11th, 2001 in New York, Washington, and Pennsylvania deeply marked the spirits. Everything agreed to be the zero point, from which it is said "until September 11th" and after "September 11th". The involvement of these attacks has influenced international law, especially in terms of the US government's position.

The very day after the tragic events of September 11th, 2001, several experts met to express their disagreement with the American position that the terrorist acts were considered acts of war. Subsequent evolutions have indeed diminished the intensity of speeches in this direction. This is due to the position of the UN Security Council, which by adopting resolution 1368 of 12.09.2001, described terrorist acts as a "danger to international peace and security", thus recognizing the right to self-defence

[280] N. Benbekhti, Les actions entreprises à l'égard des ressortissants français détenus a Guantanamo Bay. In: *Actualité et Droit International*, March 2004, http://www.ridi.org/adi/articles/2004/200403ben.htm (accessed 2 February 2021).

individually or collectively according to article 51 of the UN Charter.[281]

In response, US military intervention in Afghanistan followed, with several UN General Assembly and Security Council resolutions confirming the direct link between al-Qaeda and the Taliban government in Afghanistan, which convinced experts that the created situation was an international armed conflict, governed consequently in respect of the Geneva Conventions of 1949.

We must note from the beginning that uncertainties related to anti-terrorism measures and torture are previous to the attacks of September 11th, 2001. At the same time, what were original about the reactions to the attacks were the efforts undertaken to create an international legal regime to fight terrorism.

Consequently, all states had been mandated to adopt anti-terrorism measures and legislation in accordance with UN Security Council Resolution no. 1373 of 2001.[282] This resolution and the national evolutions undertook in parallel revised the security systems and led to the adaptation and revision of the legislation on security and the fight against terrorism in several states.[283] These evolutions have weakened guarantees and protections,

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[281] UNSC, Security Council Resolution 1386 (2001), adopted on 20 December 2001, https://digitallibrary.un.org/record/454998 (accessed 2 February 2021).

[282] UNSC, Security Council Resolution 1373 (2001), adopted on 28 September 2001. https://digitallibrary.un.org/record/449020 (accessed 2 February 2021).

[283] REDRESS. *Extraordinary measures, predictable consequences: security legislation and the prohibition of torture*, September 2012, p. 87,https://redress.org/wp-content/uploads/2018/01/Sep-12-Extraordinary-Measures-Predictable-Concequences.pdf (accessed 5 May, 2020)

thus leading to an increased vulnerability of people suspected of participating in terrorist acts.

Especially, the US administration's response to the attacks of September 11th, 2001 caused uncertainty and gave a negative example, compromising the absolute ban on torture, being attempted to argue the denial of this ban. This attempt is characterised by:

- questioning the absolute prohibition of torture, wondering whether it can be applied to persons suspected of terrorism;

- revising the definition of torture, excluding the sad practice of *waterboarding* from the concept of torture, arguing that some obligations, such as non-refoulement, would not apply to this category of persons;

- the intention to evade detainees from the protection of justice (especially in Guantanamo Bay detention centres);

- limiting the critical position of public opinion and access to justice, in particular by making information confidential and focusing on ensuring national security;

- the implementation of a sophisticated program in agreement with other states, to which persons suspected of terrorism will be redirected for interrogation and subjected to cruel treatment, in particular, torture for the same acts;

- granting effective impunity to those responsible for torture, thus allowing them to apply it.[284]

The first major category of the objectives of transitional justice is in the form of prosecution, in other

[284] Human Rights Committee. Concluding Observations: United States of America, UN Doc. EN CCPR/C/USA/CO/3, September 15, 2006, https://www.refworld.org/docid/45c30bb20.html (accessed 5 May, 2020), par. 11-21; Committee Against Torture (CAT). Conclusions and Recommendations: United States of America, Doc. UN CCPR / C / USA / CO / 3, July 25, 2006, https://www.refworld.org/docid/453776c60.html,, par. 25-26.

words, of criminal proceedings before a court against persons suspected of committing international crimes. The forms, functions, and mandates of the pursuits vary significantly. These pursuits can have a wide margin, targeting the pursuit of people for international crimes or a smaller segment, focused on the most important leaders or responsible people.

The international human rights law obliges states not to allow impunity and states that governments "shall establish comprehensive, independent and impartial investigations that will examine disrespects of human rights and international humanitarian law and take concrete action against perpetrators, especially in the field of criminal justice, ensuring that those responsible for serious crimes from the point of view of international law are prosecuted, judged and convicted".[285]

The criminal conviction as an instrument of prosecution is considered to be the most effective provision against future crimes against human rights. These procedures aim at producing an intimidating effect, providing a public denunciation of criminal behaviour and bringing a direct and individual form to the responsibility of the guilty persons. They also contribute to restoring public authorities' confidence in the application of the legal framework.

At the same time, the achievement of these objectives may encounter certain difficulties due to several factors. In post-conflict situations, prosecutions as a measure of transitional justice may face specific obstacles: insufficient financial or human resources, a corrupt judiciary sector, the application of "justice of the winners", and the simple difficulty of a large number of potential victims and guilty

[285] V. Gamurari, Rolul mecanismelor justiției tranziționale în procesul de prevenire şi combatere a torturii, p. 64.

persons, arising to hundreds, thousands or even hundreds of thousands.

The Amnesties could play a critical role, either by eliminating prosecution as an option or by assigning a form to the prosecution strategy. The amnesties grant some immunity to a group of people for a certain type of crime. Amnesty is seen as a useful instrument to persuade parties to the conflict to accept the negotiations and to persuade combatants to disarm and demobilise.

There are several types of amnesties, as:

- the one providing for a large-scale general amnesty for all crimes and violations of human rights, for all combatants;

- or amnesties that are more restricted, that grants immunity for less serious crimes, such as illegal possession of weapons. The large amnesties can play a role in minimizing the legal framework, giving the impression that international crimes can be committed without responsibility.

In the view of the victims, these amnesties are considered cynical and in order to meet expectations, they can encourage victims to implement their own justice. In his report on transitional justice of 2004, Kofi Annan, the United Nations Secretary-General, noted that "there is a tendency within the international community to move from tolerance of impunity and amnesty to the creation of principles of international law."

The Secretary-General's report rejects "any amnesty for acts of genocide, war crimes or crimes against humanity, including those attributed to international, ethnic, sexual crimes, and ensures that no previously granted amnesty constitutes an obstacle to prosecution

performed by a legal authority created or recognised by the United Nations ".[286]

The efforts undertaken by the national prosecuting bodies can play an important role in the implementation of the institution of individual criminal liability concerning serious crimes against human rights and are preferable in this respect, as they are able to set in motion local capacities and generally be more responsible and credible at the local level. The international and internationalised (hybrid) tribunals are another important source in the prosecution process for international crimes.

We note that in international criminal law the principle of immunity and amnesty lacks. Any person suspected of having committed a crime on the orders of a political regime or ideologically motivated groups is likely to be prosecuted. Or, as experts often say, these notions are not taken into account by national law.

However, despite the fact that at the national level, the law often incriminates the attacks on physical integrity, the states being parties to several international conventions that protect fundamental human rights and freedoms, therefore the application of these texts is insignificant under a totalitarian regime.

That is why many experts insist on the need to reform justice. In their view, it is impossible to establish a transitional justice system without first ensuring a transparent and impartial justice system and training the respective judges. The authorities must be able to provide the necessary elements and sufficient means to ensure a proper investigation. As a matter of principle, there is a broad body of jurisprudence in several states, which could help the legal body of transition states to improve their competencies.

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[286] Ibidem, p. 65.

We must recognise that all these discourses are nullified in the conditions in which the new power does not want the establishment of a true transitional justice, being satisfied only with taking over the criminal schemes of the previous regime, camouflaging the so-called reforms by wanting a political quarrel with the former administration.

The practice of torture is especially marked when the level of tension is high or when law and order have been jeopardised. These situations deserve a special approach, reflecting on the nature of torture and talking about providing evidence and protection.[287]

The jurisprudence of international criminal tribunals, the reports from several inquiry commissions and NGOs, as well as other sources, show that torture and other forms of inhuman treatment are widespread during armed conflicts. The facts reported by experts from countries that are or have gone through armed conflicts, such as Afghanistan, Colombia, Libya, DR Congo, and Russia (the case of Chechnya), confirm this reality.[288] While

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[287] REDRESS, *Justice for torture worldwide Law, Practice and Agendas for Change*. October 2013, p. 96 https://redress.org/wp-content/uploads/2017/12/Aug-Torture-in-the-Middle-East-and-North-Africa-Region-The-Law-and-Practice.pdf (accessed 5 January 2020).

[288] REDRESS, *Torture in Africa: The Law and Practice Regional Conference Report*. September 2012, p 42 https://redress.org/wp-content/uploads/2018/01/Sep-12-Torture-in-Africa.pdf (accessed 5 May 2020); REDRESS. *Torture in the Americas: Law and Practice*. June 2013, pp. 14-15, https://redress.org/wp-content/uploads/2017/12/130626-torture-in-the-americas.pdf (accessed 5 May 2020),; REDRESS, *Torture in Europe: Law and Practice*. September 2012, p. 44, https://www.ecchr.eu/fileadmin/Publikationen/Torture_in_Europe_2012-09.pdf (accessed 5 May 2020) ,; REDRESS, *Torture in the Middle East: the Law and Practice*. August 2013, pp. 8-9, https://redress.org/wp-content/uploads/2017/12/Aug-Torture-in-the-

the Truth and Reconciliation Commissions in countries such as Sierra Leone have sought to draw lessons from past experience, in other countries, regretfully, the violence does not cease.

The increasing participation of the armed forces in operations outside the origin country, whether on the basis of an individual mandate or a collective within the multinational forces, has led to an increase in the number of abuses by the militaries. Thus, there are multiple examples, when peacekeeping forces are involved in acts of sexual exploitation and sexual abuse, foreign forces have participated in the torture of civilians, etc.

The large number of complaints made by Iraqi nationals against British forces, as well as concerns that reflect the behaviour of other forces, such as US forces, show that the cases are not isolated, as they are trying to be presented.[289]

These evolutions have led to legal action both nationally and internationally. Efforts to obtain justice for violations committed by the armed forces abroad must face considerable difficulties, as well as complex legal matters related to jurisdiction, responsibility, and relevance of implementation. Finally, legal action has been globally effective in establishing that human rights obligations apply extraterritorially, under the jurisdiction of a state, especially where a person is subject to effective control by the armed forces, and/or during the period of occupation.[290]

Middle-East-and-North-Africa-Region-The-Law-and-Practice.pdf (accessed 5 May 2020),.

[289] MoD pays out millions to Iraqi torture victim, 20 December 2012, https://www.theguardian.com/law/2012/dec/20/mod-iraqi-torture-victims (accessed 21 April 2017)

[290] ERHR, Al-Skeini et autres c. Royaume-Uni, July 7, 2011, https://casebook.icrc.org/case-study/echr-al-skeini-et-al-v-uk (accessed 21 April 2017).

2.4. Conclusions to Chapter II

The role of public international law rules is proving to be of particular importance both in the formation of international organisations and domestic institutional systems, and in regulating the process of cooperation between the United Nations and regional organisations in the process of preventing the negative effects of crises and the process of ensuring regional peace and security.

The UN Charter, the constitutive acts of regional organisations, the normative acts developed and adopted by these organisations constitute the normative basis in the process of cooperation and coordination of common objectives in order to ensure the construction of the collective security system and rapid and effective actions to prevent and regional crises.

The systematisation of knowledge, skills, and experiences of NATO states members of joint contingents delegated to battlefields, ordered by international security experts, is an indisputable legal instrument for all security stakeholders generally, and members of the organisation especially, and realised progress in terms of transmitting these experiences to delegated forces in the field.

The most difficult challenge in the peace and security process seemed to be the specific relations between the states of the African continent, which campaigned for the priority of the sovereign equality principle in relations with regional and international organisations to the detriment of identifying and applying common regional mechanisms and instruments to achieve the established objectives.

Only in the case of open cooperation, based on mutual trust and the proportionate contribution of all stakeholders, including the African states, a substantial reduction in the number of armed conflicts or military riots, improving the fate of those affected by these atrocities and preventing the emergence of new situations of conflict could ensure the long-expected state of peace and security in Africa.

The regional organisations such as the Organisation for Islamic Cooperation (OIC), the Gulf Cooperation Council (GCC), and the Arab Maghreb Union (AMU) are important elements in promoting and supporting various forms of cooperation between the Arab states to promote and ensure cooperation between states members, including in the field of peace and security.

Despite the fact that several regional cooperation platforms have been built in this zone, the most relevant in terms of promoting and ensuring respect for peace and security remains the League of Arab States.

The internal legal mechanisms for the intervention of regional organisations in order to achieve the objectives set out in the founding treaties are in full coordination with those specific to the United Nations.

Providing negotiating platforms for states members to overcome possible regional crises, providing conciliation and mediation services at the request of states members or at the initiative of the regional organisation are the basic mechanisms that are provided to states to prevent regional crises. All these mechanisms and legal instruments are proving to be effective only if states members involve openly and proactively, which are coagulating their efforts to achieve in practice the objectives set out in the constitutive acts.

A difficult topic is the mechanisms and legal instruments that enable regional organisations to intervene

by setting up humanitarian and even military missions to ensure peace and security either within or outside a state member.

In this respect, only the North Atlantic Treaty expressly establishes in the text of article 5 the obligation to coordinate these actions with the Security Council. Despite the fact that the constitutive acts of the African Union, the League of Arab States, and other regional organisations do not expressly provide this obligation, their states members and the organisations concerned are obliged to comply with the provisions of the UN Charter and coordinate with the Security Council all actions involving directly or indirectly the use of force, even in the case of invoking the right to self-defence.

We can also ascertain that the most important challenges in the international normative system whose priority objective is to ensure international peace and security would be: the phenomenon of the fight against terrorism, the fight against torture, including in missions of settling regional and national reconciliation through mechanisms of transitional justice. We do not claim to enunciate an exhaustive list of such challenges, but we believe that these phenomena crucially affect the effectiveness and credibility of military interventions aimed at ensuring regional peace and security.

The International Humanitarian Law does apply to Peacekeeping Forces and especially to Peace building Operations, a situation similar to an international armed conflict, and members of these forces may be qualified as combatants, provided that the provisions of the international humanitarian law are met. The UN has finally recognised the applicability of the principles and spirit of international humanitarian law to the peacekeeping contingent.

Much remains to be done to strengthen the implementation of the provisions of international humanitarian law on Peacekeeping Forces, both formally and operationally, within on-going and future operations. The International Committee of the Red Cross (ICRC) is currently examining the most effective means and is counting on the input of the United States and the United Nations.

3. PEACEKEEPING OPERATIONS: FROM ENSURING THE SECURITY TO IMPELLING THE PEACE DIALOGUE

3.1 Applicability of the International Humanitarian Law rules on peacekeeping operations within regional crises

The mandate and the rules of engagement are two essential components of a UN peacekeeping mission. The mandate of a peacekeeping operation determines the extent to which members of the peacekeeping operation should take an active attitude on the ground. An important difference should be made between a mandate under Chapter VI or under Chapter VII. Under a mandate based on the provisions of Chapter VI, the use of force is strictly limited. Mandates issued under Chapter VII require stronger interventions.

When we talk about the mandate, we also refer to the objectives expressed in it. These objectives must be clear, appropriate, and feasible. A mandate is always based on a diagnosis of conflict. In other words, a successful mandate is determined by a good diagnosis. Poor diagnosis can lead to a vague mandate with vague objectives. The disagreement within the Security Council can also lead to a vague mandate, with various interpretations. A too

liberal interpretation of a mandate can have catastrophic consequences.

In addition, problems arise when the situation on the ground does not match the assigned mandate or if there are insufficient resources to fulfil the mandate. The reason why the mandate is not always adapted to the situation on the ground is determined by the difference between the political and military components in maintaining peace. The mandate and the rules of engagement should not only be robust enough, but troops and especially their leaders must also have the willingness to fulfil the given mandate. Otherwise, a peacekeeping operation based on Chapter VII risks becoming an observation mission.[291]

Peacekeeping Operations (PKO) - are actions taken by the United Nations with armed forces in regions where military conflicts have erupted with the mission of placing itself as a buffer between the warring parties and thus promoting the peaceful settlement of the dispute. Unlike the military actions planned to be undertaken by the Security Council for the repression of acts of aggression (according to Chapter VII of the Charter of the United Nations), these operations are not provided by the Charter, constituting an ad-hoc creation, demanded by the need for intervention of the United Nations even if the Council did not ascertain that it was an aggression.[292]

Since the early 1990s, the UN has organised more peacekeeping operations than during the first 40 years of its existence. In fact, the Nobel Peace Prize jury awarded the distinction to the Blue Helmets. Today, classical peacekeeping operations give way to so-called *Pace Making* (operations aimed at maintaining the peace), in which

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[291] P. Cammaert, 'A peacekeeping commander's perspective', *The RUSI Journal.* vol. 153, nr. 3, 2008, p. 70.

[292] V. Rusu, O. Balan, and GH, Neagu, *Dicţionar de Drept Internaţional Umanitar.* Chişinău, Pontos 2007, p. 195.

United Nations forces monitor the ceasefire between belligerents, dismantle military structures, etc., as was the case in Namibia in 1989 and 1990; then it went to an additional stage, with missions called *Pace Building* (UN missions empowered to "*build*" peace), during which the Blue Helmets must restore namely the foundations of peace, becoming peacekeepers, administrators, diplomats, teachers.[293]

In this context, PKO members, especially those in the *peace building* format, are directly involved in the hostilities. Whether or not these forces are party to the armed conflict and what causes them to militate is a matter for the study of public international law generally and international security law, as a branch in the process of formation, especially. Thus, the participants or members of the Peacekeeping Forces are equipped with:

- distinctive elements, i.e. military form,

- the person responsible for their actions, i.e. the High Command of the Mission,

- carry the weapon openly, i.e. they are equipped with weapons.

According to the Geneva Convention III, they may be assigned combatant status provided that the provisions of international humanitarian law are met.[294]

In these operations, the members of the Peacekeeping Forces participate directly in hostilities, fact generating a complex problem of their status in terms of combatant status and a controversial controversy between UN representatives and representatives of the International Committee of the Red Cross.

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[293] Ibidem, p. 196.

[294] Geneva Convention relative to the treatment of prisoners of war, august 12, 1949, art. 4, https://www.icrc.org/en/doc/assets/files/publications/icrc-002-0173.pdf (accessed 5 February 2021),

This is certainly the whole ambivalence of the human being in a phenomenon that consists in the use of violence in the name of humanity[295], but this phenomenon is specific to international relations in the difficulty of remedying the effects of armed conflicts through a life-saving international intervention. If it cannot guarantee the success of the planned operation, international intervention is difficult to qualify as an effective instrument in the context of conflict prevention.

For the institution that legitimises it, the UN Security Council creates a paradox between the responsibility to protect and responsible protection.[296] The responsibility to protect, to strengthen the mechanism of preventive diplomacy, should therefore be considered in the primary stage of conflict prevention. This instrument should address the administration of solutions to the causes of conflicts such as ethnic, religious, or economic factors, which may provoke or degenerate into military action. The responsibility to protect, in the context of the regionalisation of the peacekeeping process, could be recognised absolutely and exclusively by regional organisations, even if the need to comply with the provisions of Chapter VII of the Charter of the United Nations will lead to *de facto* cooperation with the Security Council.

The United Nations Peacekeeping Force (UNPKF) does not belong to the armed forces that could be

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[295] J.-B. Jeangene Vilmer, *La guerre au nom de l'humanité: tuer ou laisser mourir*, Paris, PUF, 2012, p. 1.

[296] K. Bannelier, and T. Christakis, Lost in translation ? Le Conseil de sécurité entre «responsabilité de protéger» et «protection responsable». In: *70 ans des Nations Unies: quel rôle dans le monde actuel?: journée d'études en l'honneur du Professeur Yves Daudet*. Paris, Pedone, 2014, p. 47.

constituted by the Security Council under the articles 43 and 47 of the Charter of the United Nations, nor to those created by states members at the invitation of the United Nations Security Council (as in Korea, 1950) or authorisation (the Gulf case of 1990 and Somalia, in 1992), these forces are able to use coercive measures to restore international peace and security (or adequate security conditions) in the region.[297]

Therefore, the question of the applicability of international humanitarian law to the UNPKF includes two aspects:

a) the observance by the contingent of these forces of the international humanitarian law through the prism of the combatant status and

b) the contribution of these forces to the application of international humanitarian law.[298]

On several occasions, the International Committee of the Red Cross and the International Conference of the Red Cross and Red Crescent have expressed their views on the applicability of international humanitarian law to Peacekeeping Forces. Some examples of such statements, expressed in several lines and in various forms, could be cited.

At the official level, the Memorandum "Implementation and Dissemination of Information on the Geneva Conventions" of November 10th, 1961, should be mentioned. The document is addressed to the states party to the Geneva Conventions of August 12th, 1949 and members of the UN, through which The International Committee of the Red Cross drew the attention of the

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[297] A. Cauia, 'Statutul juridic al participanților în cadrul operațiunilor de menținere a păcii prin prisma statutului de combatant', *Revista Moldovenească de Drept Internațional şi Relații Internaţionale*, no. 3, 2009, p. 70, ISSN 1857-19999

[298] Ibidem, pp. 69-76.

Secretary-General of the United Nations to the need to ensure the implementation of the conventions by the forces made available to the UN. Given that the UN is not a party to the conventions, the ICRC argues that each state member remains individually responsible for the implementation of the provisions of these conventions when providing a contingent under the management of the United Nations, and therefore it should be ensured, in the form of elaborating and disseminating instructions concerning the application and observance of the basic provisions of international humanitarian law within the concerned contingent, before the troops made available to the UN have left the country of origin.

The Memorandum also emphasises that in accordance with the first common article for the four Conventions, which requires the High Contracting Parties to ensure compliance with the conventions, states members contributing with troops "... undertake to respect and enforce this convention in all circumstances."[299]

Resolution XXV "Implementation of the Geneva Conventions by United Nations Emergency Forces", adopted by the XX International Conference of the Red Cross (Vienna, 1965), made three recommendations:

1. The text of the agreements concluded between the United Nations and the member states, which makes military forces available to the organisation, shall stipulate that this military contingent will meet the Geneva Conventions of August 12th, 1949.

2. To expressly mention in the texts of these agreements that the Peacekeeping Forces will benefit from the protection guaranteed by the provisions of international humanitarian law;

[299] Geneva Convention I-IV, common Article 1, august 12, 1949, https://www.icrc.org/en/doc/assets/files/publications/icrc-002-0173.pdf (accessed 5 February 2021)

3. The authorities responsible for the military contingent shall be obliged to take all measures necessary to prevent and repress the infringements of the aforementioned Conventions provisions.[300]

In the absence of a definition of peacekeeping forces in the texts of international documents relating to international humanitarian law, their members could be classified as combatants, based on the arguments cited above, provided that they comply with the provisions of international humanitarian law. It must also be determined whether or not the UN can be considered a "power" (full party) to accede to the conventions.

A difficult problem arises when the PKF contingent consists of both members of the armed forces of the member states to Additional Protocol I and those of states that have not ratified this Protocol. In such cases, it would be appropriate for the members of the PKF, nationals of states which have not ratified Additional Protocol I, be trained in its content before proceeding directly with their duties, and the sanctions related to the disrespect of provisions be applied by making abstraction from the aforementioned criterion, which is to be expressly provided in the text of the mandate to enable PKF actions.

In the light of the opinions expressed by UN representatives, the current rules of international humanitarian law are not sufficient to guarantee effective protection of the peacekeeping forces contingent in the context of contemporary armed conflicts.[301]

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[300] U. Palwankar, 'Applicabilité du droit international humanitaire aux Forces des Nations Unies pour le maintien de la paix', *Revue internationale de la Croix-Rouge*, 1993, nr. 801, p.250.

[301] A. Bouvier, Convention sur la sécurité du personnel des Nations Unies et du personnel associé: présentation et analyse, In: *Revue internationale de la Croix-Rouge*, nr. 816, p.697.

Thus, the elaboration, adoption, and application of an international convention are absolutely necessary to create a special system for the protection of the UN military forces members during such asymmetric situations. However, the exponents of the ICRC's official position have repeatedly stated that international humanitarian law cannot provide differentiated and consequently discriminatory treatment for UN forces in relation to their potential opponents, based on the fact that the rules of international law are directly applicable to all Parties to the conflict without exception.[302]

In interpreting the provisions of the Convention,[303] we can state that in some cases and *mutatis mutandis*, the international humanitarian law is fully applicable to actions of the Peacekeeping Forces and not only within the limits of its principles and spirit. This would argue the qualification of the Peacekeeping Forces as a party to the conflict.

A substantial evolution has taken place since 1992, which has materialised through the involvement of the UN's direct responsibility for enforcing the provisions of international humanitarian law by the peacekeeping forces members. A similar clause was inserted in the text of the "Model Agreement - on the status of peacekeeping forces", so later it is to be an integral part of several such agreements.[304]

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[302] Ibidem, p. 698.

[303] Convention on the Safety of United Nations and Associated Personnel, 9 December 1994, New York, https://www.un.org/law/cod/safety.htm (accessed 5 February 2021)

[304] D. Shraga andR. Zacklin, The Applicability of International Humanitarian Law to United Nations Peacekeeping Operations: Conceptual, Legal and Practical Issues, *Report to the Symposium on Humanitarian Action and Peacekeeping Operations*, 22-24 June 1994, Genève: CICR, 2004, p. 47.

Such an evolution of events at the UN is welcomed, although in most cases the initiative and the need to apply international humanitarian law in peacekeeping operations come from the International Committee of the Red Cross and a large number of exegetes of the field.

The formal provisions of international humanitarian law, and especially those of customary origin, apply to this situation from the moment of the effective application and use of force by the UN Peacekeeping Forces. Even if the status and structure of the United Nations do not allow the implementation and observance of all provisions of international humanitarian law, then it would be sufficient for them to be observed selectively in accordance with the Latin adage *mutatis mutandis*, i.e. situation practically identical to the international armed conflict.

Such an interpretation is in the spirit of the principle of the distinction between *jus ad bellum and jus in bello* - the basic principle of international humanitarian law, from which results that the warring parties are equal as for the obligation to apply its rules. By virtue of this principle, the rules of international humanitarian law are to be applied by the regulating forces of the Parties to the conflict, regardless of the nature or origin of the conflict, the legality of using the force, or the conflict generating cause.[305]

A related matter lies in determining the category of rules applicable to situations in which the UN Peacekeeping Forces are involved: either the rules applicable in an international armed conflict or a non-international armed conflict.

At present, the position of the majority of exegetes in the field is in favour of assessing the situations related to

[305] Additional Protocol I to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts (Protocol I), 8 June 1977, alin. 5 of preamble.

the direct involvement of the Peacekeeping Forces in conflict situations, with the effective use of military force to achieve the provisions of UN Resolutions establishing their mandate, equally for all Parties involved in the conflict, as situations are practically similar if not identical to those of international armed conflict.[306]

In view of all the above observations, we may carry out an analysis of the UN decision to send PKF to the former Yugoslavia and Cambodia. The idea is to identify the gaps and the challenges (existing or foreseeable) both in general (ICRC - UN – States members supplying troops) and in operational terms, namely: the implementation and observance of the provisions of international humanitarian law by PKF, the role of these forces in the process of implementing the norms of international humanitarian law in the territories where they are deployed and the cooperation between PKF and ICRC in order to achieve the aforementioned goals.

In general, it can be noted that the sending of the PKF to the former Yugoslavia and Cambodia was not preceded by official United Nations procedures aimed at recalling the role and importance of international humanitarian law, as achieved through the forms cited above. This represents a gap to be filled, especially for other operations that were initiated later (Somalia, Mozambique).

It should be remarked that the primary responsibility at the operational level for ensuring the implementation of the rules of international humanitarian law by the PKF is carried out by the United Nations. The ICRC has had the opportunity to recall its readiness to assist and to contribute to the dissemination of international humanitarian law amongst PKF, to the best of its

[306] C. Emanuelli, *Les actions militaires de l'Organisation des Nations Unies et le droit international humanitaire*. Ottawa, Université d'Ottawa, Montréal, Wilson et Lafleur liée, 1995, p. 24-41.

capacities, including by providing a training framework plan in international humanitarian law, which may be adapted to the requirements specific to each PKF. Especially, the ICRC may undertake various dissemination activities in cooperation with supplying states and the United Nations.

An important aspect would be the training of the contingent before departure, in particular by the ICRC's regional offices.

It would also be useful to take into account the information provided by the ICRC delegation in New York to the contingent of commanders during their visit to UN headquarters.

Finally, it is of the utmost importance to disseminate information on the need and importance of respecting international humanitarian law in the country where PKF troops are deployed by specialists who could be delegated by the ICRC. The emphasis could be placed on the fact that the applicability and observance of international humanitarian law are in the interests of PKF members as, in specific situations, they could be involved in military operations due to the intensity of an armed conflict and fall into captivity of the opposing warring party, and compliance with the rules of international humanitarian law would allow them to enjoy the combatant status and, consequently, that of a prisoner of war, which would allow them to take advantage of a wide range of guarantees stipulated in the Geneva Conventions of August 12th, 1949 and of the Additional Protocols of July 8th, 1977.

An effective way to do this would be to ascertain infringements in zones where PKF operates. Thus, both UNPROFOR and UNTAC mandates provide that some of their components (civilian police forces in the former Yugoslavia, the human rights component in Cambodia) have the task of investigating complaints on human rights

violations, and the military ones (in the case of the former Yugoslavia) on alleged violations in the demilitarised zone segment. The UN Secretary-General is responsible for monitoring the infringements of international humanitarian law, some of which include human rights violations committed in the segment nominated in the PKF's mandate, and reports prepared for this purpose should be communicated to the parties involved in the conflict and/or the Security Council to put an end to the wrongdoing and to sanction appropriately the persons responsible for committing them.

In this context, both the states involved, and the UN could effectively contribute to the application of article 89 of the Additional Protocol I and to promoting the role of the International Humanitarian Fact-Finding Commission (IHFFC).[307]

It should be noted that any appeal to the services of the International Humanitarian Fact-Finding Commission is not automatically generated by an international conflict because, at the constituent meeting of March 12th and 13th, 1992 in Bern, the Commission expressed its initiative to act even in the event of a civil war if the parties so request.

Finally, the PKF could play a preventive role, particularly in establishing control over military or paramilitary forces operating in their surveillance sector.

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[307] Additional Protocol I to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts (Protocol I), 8 June 1977, art. 89

3.1. Regulatory basis for peacekeeping operations in Europe (Districts from the Left Bank of Dniester, Nagorno-Karabakh, Abkhazia, South Ossetia, Kosovo)

The activity of peacekeeping operations is governed by a series of resolutions adopted by the General Assembly on the basis of the UN Charter. The General Assembly regularly examines matters related to peacekeeping operations. The UN Operations means operations carried out by the competent UN body in accordance with the Charter and carried out under the direction and control of the Organisation in two cases:

1. When they are carried out for the purpose of maintaining or restoring international peace and security.

2. When the Security Council or the General Assembly has declared that there is a serious threat to the security of personnel participating in operations. In this case, humanitarian or military operations are carried out.[308]

As operations provided in Chapter VII of the UN Charter, the peacekeeping operations are collective actions that are decided and carried out by UN bodies. These are contingent operational actions provided by states members and under the command of the United Nations General Staff.[309]

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[308] *И.И. Лукашук, Международное право, Оссобенная часть*. Москва Волтерс Клувер, 2005, p.292-295.

[309] *Drept Internaţional public*. Ed. Alexandru Burian, Oleg Balan, Natalia Suceveanu [et al.] USM, USEM, Asoc. de Drept Intern. din RM. Ed. a 3-a (rev. şi adăug.), Chișinău, 2009, p. 602.

Unlike the system provided in the Charter, the peacekeeping operations are not coercive, in other words, their mission is only to intervene between the belligerents, but without persecuting the aggressor. This mission is strictly defined by the body that creates the peacekeeping operation. In any case, the aggressor is not destroyed, but the recognition of several parties involved in the conflict.[310]

The concept of peacekeeping operations emerged with the Suez Crisis of 1956. The Security Council was paralyzed by the double veto of France and Britain. To justify the new formula for operations, not provided in Chapters VI and VII, the UN Secretary-General Dag Hammarskjöld referred to a chapter "VI bis" or "VI and a half". The application of such an operation involved the expression of consent from the belligerents. The references made to the title of Chapter VII allow, in the opinion of some authors, the imposition of coercive measures in the absence of the agreement of the parties.[311]

In this paragraph, we aim at analysing the normative basis for the process of establishing and the effectiveness of peacekeeping operations under the auspices of the UN and the mechanisms and procedures of intervention of regional organisations in settling regional crises on the European continent.

The conflict on the left bank of the Dniester. The events of 1991-1992 in the Dniester River zone are a crucial stage in the process of building the statehood of the Republic of Moldova. During this period, the population of this state fought to defend the country independently. At that time, the Republic of Moldova was a young state

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[310] C. Roche, *L'essentiel du droit international public et du droit des realtion internationales*, 2e edition, Paris: Gualino, 2003, p. 113.

[311] Y. Petit, *Droit international du maintien de la paix*, Paris, L.G.D.J., 2000, p.7.

that had declared independence on August 27th, 1991 and did not have regulated well-organised armed forces.

In early 1992, as the pressure between a group of separatists and the Moldovan government continued, the separatist leader Igor Smirnov launched a "harassment campaign" to force police officers to leave the east of the country.[312]

According to the information presented during the ECHR hearings, on December 3rd, 1991, the 14th Army occupied Grigoriopol, Dubasari, Slobozia, Tiraspol, and Ribnita cities from the eastern districts of the Republic of Moldova.[313]

Thus, we are facing an armed occupation, under conditions where on August 27th, 1991 the Republic of Moldova became a subject of international law. Under such conditions, if the legal authorities of the Republic of Moldova would introduce their forces in the region, there was a danger of an international armed conflict. We note that the challenges continued, we especially refer to those of March 2nd, 1992, the day the Republic of Moldova became a member of the UN.

Subsequently, immediately after the signature on April 1st, 1992 by the President of the Russian Federation of decree no. 320 based on which the units of the 14th Army on the territory of the Republic of Moldova were declared part of the Russian armed forces under the new name of

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[312] J. CH. Borgen, *Thawing a frozen conflict: legal aspects of the separatists crisis in Moldova. A report from the Association of the bar of the city of New-York*, p. 98 https://gov.md/sites/default/files/thawing_a_frozen_conflict.pdf (accessed 13 January 2020)

[313] ECtHR, Ilascu and others v. Moldova and Russia, 8 July 2004, para. 53, http://www.rulac.org/assets/downloads/Ilascu_v_Moldova_and_Russia.pdf (accessed 25 January 2020)

the "Operational Group of the Russian Forces (OGRF) in the Transnistria region of the Republic of Moldova", and the commander of this operative group, on April 2nd, 1992, issued an ultimatum to the Moldovan authorities, demanding the retreat of Moldovan forces near the town of Tighina/Bender city, while declaring that the OGRF units were ready to "retaliate" in the event of non-compliance.

The tensions gradually escalated until a real conflict broke out in the summer of 1992, when the number of victims rose to 1,000. The 14th Army intervened on the side of the illegal paramilitary forces and, largely due to the intervention and position of the 14th Army, the constitutional structures of Moldova failed to take control of the cities of Bender and Dubasari.[314]

Accepting the armistice on July 21st, 1992, the Republic of Moldova signed with the Russian Federation the "Agreement on the principles of peaceful settlement of the armed conflict in the Dniester zone of the Republic of Moldova."[315] The negative effects of this conflict have been mentioned by various experts, including in terms of the rule of law.

Despite the fact that the armed forces of the Russian Federation cannot be considered occupying forces in the strict sense of the term as interpreted by this institute by the public international law, certain criteria allow us to note that the presence of the armed forces of the Russian Federation on the territory of the Republic of Moldova went beyond any argument from a legal point of view, not to mention the moral side of the matter.

Immediately after the signature of the agreement on July 21st, 1992, several actions began to be carried out to

[314] J. CH. Borgen, *Op. cit.*, p. 16

[315] A. Gvidiani, *Documente și acte normative referitoare la procesul de reglementare transnistreană*. Sibiu: Techno Media, 2020, p. 71-74

peacefully settle this regional crisis. Despite high expectations, the attempts to involve Romania, the Russian Federation, and Ukraine in the so-called "four" mechanism and the intention expressed by President Mircea Snegur in a letter addressed to UN Secretary-General Boutros Boutros-Ghali on May 23rd, 1992 to officially notify the Security Council if the Russian Federation does not cease "the act of aggression against the Republic of Moldova and does not retreat its armed forces engaged in the conflict on the left bank of the Dniester" have not received adequate development, they remain in essence at the stage of intentions.[316]

This fact shows us that at the beginning of this conflict, the legal authorities of the Republic of Moldova had the initiative to call on the mechanisms and legal instruments within the UN to settle the conflict in the districts on the left bank of the Dniester. Unfortunately, these initiatives have failed to materialise, and over the past 30 years, the constitutional authorities from Chisinau have not formally addressed UN structures to establish a peacekeeping mission in the area.

The lack of progress in settling the conflict is largely due to the fact that the Russian Federation from the beginning, since the early 1990s, imposed, and the governments from Chisinau accepted, a scheme for perceiving the conflict, which allows it to block the reunification process of the Republic of Moldova. Subsequently, given the passivity of the Republic of Moldova, this approach was taken by other actors (OSCE, USA, EU, etc.).[317]

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316 I. Stăvila, and G. Bălan,'Conflictul transnistrean: eşecul reglementării unui conflict care poate fi soluționat',*Revista Militară. Studii de securitate şi apărare*, vol.2, nr. 4, 2010, p. 6

317 V. Țarălungă, Conflictul Transnistrean: cauze, esență, particularități, In: *Traditie și inovare în cercetarea științifică*. Ediția

In the sense of our research, it is important to analyse the legal status of the factual situation in the districts on the left bank of the Dniester to determine legal norms of international law applicable to this regional crisis.

As for the involvement of a third party in a conflict, the Chamber of Appeal in the *Tadić* Decision stated that: "The state control over subordinate armed forces or militias or paramilitary units may be of a general nature, and control established by the rules of international law may be considered to exist when a state or party to the conflict has a role in organizing, coordinating or planning the military actions of the military group, rather than financing, training and equipping or providing operational support to that group."[318]

This judicial precedent establishes the criteria on the basis of which we can determine whether it is a direct involvement of a third state in a conflict on the territory of another state by the insurgents.

The military occupation is a state of fact and not a state of law, as it is hit by the vice of violence, by the effect of which the occupier came into possession of the territory. As such, the occupied territory continues, in principle, to be governed by the laws of the sovereign state. This rule is enshrined both in article 43 of the Hague Regulation of 1907, as well as in article 64 of the Fourth Geneva Convention of 1949.[319] The occupier does not exercise power in the name of the legal government, but in its name.

7, 12 octombrie 2017, Bălți. Bălți: Universitatea de Stat „Alecu Russo" din Bălți, 2018, p. 150-160.

[318] Prosecutor vs Tadić, Appeal Chamber Decision, (Case No. IT-94–1-A), 14 December 1995, Tadić Jurisdiction Decision, http://www.unhcr.org/refworld/docid/40277f504.html (accessed 24 January 2019)

[319] Geneva Convention relative to the Protection of Civilian Persons in Time of War, august 12, 1949, art. 64.

It results that, not having the right of sovereignty over the occupied territory, implicitly the occupier has no right: to annex it, to proclaim it independently or autonomously, to create state bodies to invest with sovereign prerogatives.

This principle has also been reconfirmed by the UN Security Council in connection with the territories occupied by Israel,[320] in the event of the conflict between Iran and Iraq and in the case of the war in Kuwait.[321]

In the case of the Republic of Moldova we cannot talk about the applicability of an occupation regime in the classical sense, given that the stationing of Russian forces from the beginning represented the effects of the ex-USSR disintegration, and subsequently no legal document was signed between the Republic of Moldova and the Russian Federation, which would provide the retreat of the armed forces of the Russian Federation from the territory of the Republic of Moldova, including the terms of this retreat.[322]

Lately, we have witnessed a new phenomenon, when an organ takes over some competencies, the main function of which is not to apply sanctions for infringements of international humanitarian law.[323]

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[320] UNSC, Security Council Resolution 242 (1967), adopted on 22 November 1967, https://digitallibrary.un.org/record/90717 (accessed 12 January 2019); UNSC, Security Council Resolution 267 (1969), adopted on 3 March 1969, https://digitallibrary.un.org/record/90766 (accessed 12 January 2019)

[321] UNSC, Security Council Resolution 662 (1990), adopted on 9 August 1990, https://digitallibrary.un.org/record/94573 (accessed 12 January 2019)

[322] V. Gamurari, *Statutul forțelor pacificatoare în dreptul international, Cazul Republicii Moldova,* p. 29.

[323] X. Philippe, 'Les sanctions des violations du droit international humanitaire : problématique de la répartition des compétences entre autorités nationales et entre autorités nationales et internationales', *Revue internationale de la Croix-Rouge*, no. 870, p.360.

The European Court of Human Rights has been repeatedly called upon to sanction human rights infringements, which at the same time constitute infringements of international humanitarian law.[324] However, we must pay attention to the specific position of the High Court, which prefers to refer only to the infringement of the European Convention on Human Rights, even if it also rules on actions that constitute serious infringements of international humanitarian law.

In the decision in the *Ilascu* case, the ECtHR ruled: "In the light of all these circumstances, the Court considers that the responsibility of the Russian Federation is obvious in relation to the illegal acts committed by the Transnistria separatists, taking into account the military and political support it granted them in establishing the separatist regime through the participation of its military personnel in the fighting. In doing so, the authorities of the Russian Federation contributed both militarily and politically to the creation of a separatist regime in the Transnistria region, which is part of the territory of the Republic of Moldova. The Court further notes that even after the ceasefire agreement of July 21st, 1992, the Russian Federation continued to provide military, political and economic support to the separatist regime, thus allowing it to survive by consolidating itself and gaining a degree of autonomy from Moldova."[325]

The only international structure officially involved in the conflict settlement process in the districts on the left bank of the Dniester is the Organisation for Security and Cooperation in Europe (OSCE).

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[324] H. Tigroudja, La Cour européenne des droits de l'homme face au conflit en Tchéchénie, In: *Revue trimestrielle des droits de l'homme*, 2006, p.128.

[325] ECtHR. Ilascu and others v. Moldova and Russia, 8 July 2004, para. 382.

This organisation had to contribute to the implementation of the process of the Russian Federation armed forces retreat from the territory of the Republic of Moldova. Despite the fact that this organisation is not subject to international law, its authority allows it to be an active player in the process of ensuring security on the European continent.

The quality of a subject of international law for an international organisation is conditioned by the presence at its foundation of the constitutive act in the form of an international treaty. The Helsinki Final Act of 1975, which formed the foundation of the OSCE, is not an international treaty in the strict sense of the term, but rather in it is political nature. That is why the obligations assumed within this organisation have a political character and not of international law.[326]

The OSCE is directly responsible for organizing, conducting, and assisting the negotiation process. The organisation has offices in Chisinau, Tiraspol and Bender, where rounds of negotiations of various levels are held periodically.

The Representatives of the OSCE Mission participate as observers in the meetings of the Joint Control Commission, which is the surveillance body of the Joint Peacekeeping Forces, created from delegations from the Russian Federation, Moldova and Transnistria, and Ukraine as additional observers.

The mission's collaborators are involved in settling the conflicts that appear periodically in the Security Zone. The OSCE is helping to create a favourable negotiating

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[326] V. Gamurari, *Statutul forțelor pacificatoare în dreptul internațional: Cazul Republicii Moldova*, p. 21

environment by launching various initiatives that help increase confidence and regional security.[327]

The Law of the Republic of Moldova defines international peacekeeping operations as: "collective security actions, authorized by the competent international bodies, carried out with the consent of the belligerent parties and intended to ensure the observance of a negotiated armistice and to contribute to the creation of diplomatic efforts in order to establish a lasting peace in the conflict zone and preventing new international or internal conflicts, as well as to ensure the security of citizens, respecting their rights and providing assistance in settling the consequences of armed conflict."[328]

Thus, the format of the peacekeeping operation imposed by the Russian Federation in the Transnistria region contradicts OSCE and UN standards, as it provides the participation of Russia, Transnistria, and Moldova with their troops. The decisions within the Unified Control Commission are to be taken by consensus, which means that the Republic of Moldova is permanently in the minority. In addition to the fact that this model legislates the existence of the Transnistria army, it turned the peacekeeping troops into a protective shield, behind which the "Dniester Moldavian Republic" strengthened.[329]

What is certain is that if the given territory had been recognised under the occupation of foreign forces, a situation created *de facto*, the Republic of Moldova would

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[327] Gh. Căldare and C. Corman, 'Poziția actorilor internaționali în reglementarea conflictului transnistrean la etapa actuală', *Administrarea Publică*, vol. 1, no. 85, 2015, pp. 118-119.

[328] Legea Nr.1156 din 26.06.2000 cu privire la participarea Republicii Moldova la operațiunile internaționale de menținere a păcii (art.1). Publicat: 30.11.2000 în Monitorul Oficial al Republicii Moldova Nr.149.

[329] V. Țarălungă, *Op. cit.*, p. 159.

not have been condemned by the ECHR for human rights infringements in this region, the responsibility being attributed to the state that *de facto* controls this zone, as required by international humanitarian law.[330]

In the same context, we consider that the Russian Federation can be considered, rather, as part of the Transnistria conflict, than a mediator and guarantor. The evolutions related to the Transnistria settlement process highlight quite clearly the support of separatism by the Russian Federation, which has, in fact, a triple status: a state that encouraged the outbreak of separatism and which actually controls the Transnistria region of Moldova under military, economic, financial aspect, etc., as a mediator in the negotiation process and guarantor of the agreements reached and as a direct stakeholder in the final way of settling the conflict.[331]

The examples allow us to ascertain that Russia is directly involved in this conflict, a fact confirmed by the Ceasefire Agreement signed by the Republic of Moldova and the Russian Federation on July 21st, 1992. In turn, ensuring the security of the administrative border with the "Transnistria" region can take place by introducing effective checkpoints, but which in turn require additional argumentation, including from the point of view of international law, whether is under occupation regime, whether it is controlled by insurgents.

In such circumstances, the review of the Agreement provisions can also be argued by the doctrine *rebus sic stantibus*, which supports that the unilateral refusal of a treaty may take place as a result of essential changes in conditions. The state of affairs over the past thirty years, including the effects of the presence of the armed forces of

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330 V. Gamurari, *Statutul forțelor pacificatoare în dreptul internațional: Cazul Republicii Moldova*, p. 37

331 V. Țarălungă, *Op. cit.*, p. 159.

the Russian Federation and the critical situation in Ukraine, especially with the armed intervention of the Russian Federation on the territory of this state (thus two states parties to the process of settling "Transnistria" conflict are de facto in the state of war), makes the doctrine in question quite current.[332]

It is absolutely regrettable that from the series of regional crises analysed in this work, the crisis in the eastern districts of the Republic of Moldova is the only one in which we cannot observe the slightest involvement of peace and security mechanisms and instruments that are available to the United Nations.

The involvement of the Organisation for Security and Cooperation in Europe proved to be insufficient to settle the crisis and the uneven nature of the actions taken contributed to the perpetuation of the crisis and the formation of artificial notions incompatible with public international law such as Transnistria, Transnistria's people, Moldovan aggression.

The presence of the armed forces of the Russian Federation, as well as the specifics of the 5 + 2 format, prove to be the factors that do not allow the settlement of the conflict, do not contribute to the conciliation process and the realisation in practice of the transitional justice concept.

Address to the United Nations Security Council with the initiative to establish a peacekeeping operation in the eastern districts of the Republic of Moldova, denunciation of the Agreement of July 1992, and referral to the International Court of Justice to confirm the status of the occupied districts of the to the left of the Dniester are the specific actions that are necessary and that depend exclusively on the political willingness of the Government from Chisinau.

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[332] V. Gamurari, *Statutul forțelor pacificatoare în dreptul internațional: Cazul Republicii Moldova*, p. 40

Nagorno-Karabakh. The current stage of the Nagorno-Karabakh matter has its origins in the last years of the USSR's existence and has become a conflict due to the use of force by Azerbaijan in response to the realisation of the right of self-determination by the people of Nagorno-Karabakh. The Nagorno-Karabakh conflict is different from other conflicts in the former Soviet Union because, from a legal point of view, the Karabakh clan exercised impeccably its right to self-determination until the collapse of the Soviet Union.

The Karabakh conflict was the bloodiest conflict in the post-Soviet space - with tens of thousands dead, hundreds of thousands of refugees, and great destruction. The military phase of the conflict ended in May 1994 with an unlimited truce.

Three of the five-member states of the UN Security Council with the right of veto - Russia, the United States, and France - are intermediaries in the negotiation process on the Nagorno-Karabakh matter.[333]

The Nagorno-Karabakh conflict is one of the unsettled conflicts between the two states in the South Caucasus region. This conflict is the result of the Armenian-Azerbaijani conflict of the late twentieth and early twenty-first centuries. Both states - Armenia and Azerbaijan - are using historical facts to try to justify their right to Nagorno-Karabakh.

The Azerbaijani and Armenian historians have made nationalist claims based on historical and religious memory, and both sides, in turn, using historical facts, are trying to justify their claims to the region.

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[333] C. Kotcharian, Pourquoi le conflit du Haut-Karabagh n'est toujours pas regle? In: *Prevention des crises et promotion de la paix (volume III), Determinants des conflits et nouvelles formes de prevention*. Ed. J.-P. Vettovaglia. Bruylant, 2013, p. 569-593.

The first attempt to settle the Nagorno-Karabakh conflict in 1991 was made by Russian President B. Yeltsin and Kazakh President N. Nazarbayev.

The proposed conditions were: a ceasefire, new elections, the return of refugees, and the creation of a state in Nagorno-Karabakh. In August 1992, N. Nazarbayev made another attempt, but this attempt was unsuccessful, as the Armenian side accused Nazarbayev of supporting the territorial integrity and advocating for the preservation of borders.[334]

After the first attempts of negotiations on the Nagorno-Karabakh conflict, the international organisations also paid special attention to it. Since 1992, when the post-Soviet states joined the OSCE, a mediation process for conflict settlement has been initiated within the CSCE (under the name "Minsk Group").

At a meeting of the CSCE Council of Ministers on March 24th, 1992 in Helsinki, it was decided to convene a conference on Nagorno-Karabakh in Minsk, under the auspices of the CSCE, as a permanent forum for peaceful settlement of the crisis based on concrete principles, commitments, and provisions.[335]

The first negotiations took place in Rome on May 31st, 1992, and consisted of several stages, and until that moment, on May 8th, 1992, the Armenian armed forces occupied Shusha, captured the entire Nagorno-Karabakh, and deported 50,000 people from the Azerbaijani population.

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[334] F. Ismailzade, The OSCE Minsk Group and the Failure of Negotiations in the Nagorno Karabakh Conflict, In: *Caspian Brief*, 2002, nr. 23, p. 93.

[335] И. М. Маммадов, and Т.Ф. Мусаев, *Армяно-азербайджанский конфликт: история, право, посредничество*, 2-е изд. Тула: Гриф и К, 2007, p. 115.

Negotiations in Rome have not been successful, as the Armenian side, infringing the Helsinki agreement of 1992, has submitted a request to participate in the negotiation process equally with other states participating in the Minsk Conference of Armenians representatives from Nagorno-Karabakh.

At the same time, the Armenian side did not agree with the new variations in the proposals, which, of course, caused discontent to the part of Azerbaijan. As a result, the "package approach" has not fulfilled its task.[336]

In November 1998, an approach called the "Common State" was presented. Based on this, Nagorno-Karabakh should become a state and a territorial entity in the form of a republic and form a common state with Azerbaijan within its internationally recognised borders.

Azerbaijan immediately opposed the proposal because it feared that this approach would disrespect its sovereignty and territorial integrity. The concept of a common state is the latest proposal of the co-presidents of the Minsk group, then the solution to the Nagorno-Karabakh matter came to a standstill.[337]

Following the elections in Azerbaijan and Armenia, since 2004, in the framework of the "Prague Process" at four meetings of the two countries' foreign ministers, all mechanisms for a future settlement have been systematically drawn up.

Moreover, despite the optimistic atmosphere of the negotiations, the separatists held a referendum to adopt their own Constitution on December 10th, 2006. The text of the Constitution states that Nagorno-Karabakh is an

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[336] F. Ismailzade, *Op. cit.*, p. 95

[337] Б. Офлаз, Роль международных организаций в решении проблемы Нагорного Карабаха, В: *Известия РГПУ им. А. И. Герцена*, 2013, №160, p. 191.

independent, sovereign, democratic, secular, and of law state.

The Russian-Georgian conflict of 2008 affected adjacent conflict zones in the South Caucasus. In September 2008, President D. Medvedev announced that the Caucasus region for Russia - is a zone of major interest.[338]

This position can be systematically observed and noted in all that is called political speech on the segment of the Russian Federation strategic interest in this zone even at the end of the second decade of the 21st century.

The Nagorno-Karabakh conflict still occupies a significant place in the foreign policy of Armenia, Azerbaijan, and regional powers such as Russia and Turkey. In this conflict, the UN and the OSCE have repeatedly demonstrated their willingness to settle the crisis. But despite all attempts, unfortunately, the conflict between Azerbaijan and Armenia continues.

Thus, both people in their subconscious associate the land of Karabakh with their history and culture. The second obstacle is the unconstructive position of the states and the international organisations outside the South Caucasus region.

One of the participants in the settlement of the conflict is the Council of Europe. The Committee of Ministers of the Council of Europe in March 1992 stated that the process of overcoming the Nagorno-Karabakh crisis should be based on the rule of law, democracy, human rights, respect for the rights of minorities, and respect for the inviolability of all borders that can be changed only peacefully and by mutual agreement.[339]

To settle the conflict, the OSCE had perhaps the greatest contribution or, rather, the "Minsk Group", which

[338] Б. ОФЛАЗ, *Op. cit*., p. 192.

[339] И. М.Маммадов and Т.Ф. Мусаев, *Op. cit.,* p. 106.

participated for a long time in settling the conflict and established important principles such as: maintaining the territorial integrity of Armenia and Azerbaijan, the legal status of Nagorno-Karabakh and the security guarantee of Nagorno-Karabakh and its entire population. Although we accept the importance of the presented principles, it should be remarked the inadequacy of the actions in implementing the principles. The Minsk Group tried to settle the matter on the basis of international law, but at the same time was unable to take into account the specific requirements of both people.[340]

As for the individual attempts of the world powers, not even these have led to positive results. As with other conflicts in the world, all parties have tried to promote their positions.

The mediators defended their interests or tried to maintain their position in the international arena. In this regard, mediating countries are, among other things, under pressure one against each other and must constantly coordinate their interests with their negotiating partners, instead of achieving solutions already developed or accepted in the event of other similar international conflicts.[341]

This horrifying conflict has a strong influence not only on the foreign policy of Armenia and Azerbaijan, but also on the foreign policy of Russia and Turkey.

The conflict is based on the exclusively reciprocal claims of both countries regarding Nagorno-Karabakh. The acute situation in Nagorno-Karabakh has forced mediators such as the UN and the OSCE to take part in it. Attempts to settle the conflict have diminished the severity

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[340] Б. Офлаз, *Op. cit*., p. 192-194.

[341] O. Tranca, 'What Causes Ethnic Conflict Diffusion? A Study of Conflicts in Azerbaijan and Macedonia'*Journal of Peace, Conflict and Development Issue,* vol. 12, 2008. Av

of the conflict to some extent, but have not been able to settle it completely. Moreover, during the negotiation processes, it became clear that the internal political situation in Azerbaijan and Armenia plays an active role in settling the conflict. Nagorno-Karabakh has already become a part of everyday life for societies in both countries, provoking strong emotional feelings for both Armenians and Azerbaijanis.

Due to the mutually exclusive positions of the parties and the strong general emotional tension, the negotiations for settling the conflict have reached a standstill. It should be noted that intermediate states and international organisations are inconstant with the Nagorno-Karabakh matter due to the presence of their own conflicting interests.[342]

In these circumstances, the role of the United Nations as a universally international structure responsible for ensuring international peace and security, as well as regional structures and organisations, is crucial. Despite the very sensitive nature of relations between Armenia and Azerbaijan, despite the divergent interests of the permanent member states of the Security Council and despite the precarious situation in the conflict zone, ensuring peace and security in the Nagorno-Karabakh region is an indisputable priority not only for the actors directly targeted but also for the whole region.

Since the ceasefire agreement in 1994 with several periods of intensified clashes, including in 2016, which resulted in casualties on both sides, the international armed conflict between Armenia and Azerbaijan began on September 27th, 2020.

The situation is very complicated because the Russian Federation during this period sold weapons to

[342] Б. Офлаз, *Op. cit.*, p. 195.

both involved states. Armenia has a strategic partnership with the Russian Federation and a Russian military base is deployed on its territory.

Russia wants to stay out of the military conflict. Moscow has always insisted that both countries are its partners. Russian President Vladimir Putin has made it clear that he does not see the need to act as long as Armenia itself has not been attacked.[343]

The "Minsk Group" format proved insufficient to ensure the prevention of military conflict and to ensure peace in the zone. The divergent interests of the states with the right of veto in the UN Security Council, as well as the diametrically opposed positions of the regional powers of Turkey, which supports Azerbaijan and Iran, which is on the side of Armenia, are the real factors that prevent from instituting a peacekeeping operation under the aegis of the UN, as well as the specific intervention of regional organisations to ensure peace and security in the zone.

Abkhazia and South Ossetia. In respect of the Sochi Agreement of 1992, joint peacekeeping forces operated in South Ossetia. The peacekeepers, although they remain neutral and do not take part in hostilities, are considered civilians and must be protected from attacks.[344] In some cases, they may need to use force, but this should be strictly limited to the interests of self-defence or protection of civil objects, which they are obliged to protect in accordance

[343] Armenia și Azerbaidjanul acceptă încetarea focului în Nagorno-Karabah, https://www.dw.com/ro/armenia-%C8%99i-azerbaidjanul-accept%C4%83-%C3%AEncetarea-focului-%C3%AEn-nagorno-karabah/a-55228367, (accessed 15 October 2020)

[344] J.-M. Henckaerts and L. Doswald-Beck, *Customary International Humanitarian Law*, ICRC, Cambridge University Press, 2005, p. 112 (Rule 33).

with their mandate. The force used in such cases must strictly comply with these objectives.

Attacks on non-hostile peacekeepers are a serious infringement of international humanitarian law. If peacekeepers cease to maintain neutrality, helping, for example, the armed forces of one of the parties or open hostile fire, they lose their status as protected persons and can serve as the target of a legitimate attack. However, such an attack must be carried out in compliance with the requirements of humanitarian law on the means and methods of conducting war and the treatment of enemy combatants. The peacekeepers who use their status to carry out attacks, act treacherously, which is a war crime.

Between 1993 and 2009, both the United Nations and the Organisation for Security and Cooperation in Europe had an active presence in the region, including monitoring the respect of human rights.

During 2006-2011, a special representative of the European Union was in charge of the investigation of security incidents in the South Caucasus. His mandate also supposed active involvement in the process of settling the conflict. At the end of 2008 and the beginning of 2009, the Russian Federation managed to suspend the OSCE mission in Georgia and the Observation Mission in Georgia. In February 2011, the European Union terminated the mandate of its Special Representative in this zone.

The UN, the OSCE, and the European Union continue to send high-level delegations to the region to monitor the situation, but none of them has officially extended its mandate in the segment of monitoring the respect of human rights. Thus we can see a consistent gap in this field.

Since 1993, when the United Nations Observer Mission in Georgia (UNOMIG) was established; the United Nations has been the main international mediator. The

function of the mission was to monitor cases of breaches of the ceasefire agreement and to report to the UN Secretary-General.[345]

Since 1994, the mission's mandate has also included the monitoring of compliance with the ceasefire agreement signed at Moscow the same year, based on which the collective peacekeeping forces of the Commonwealth of Independent States (CIS) were deployed in the zone.

Every six months, the United Nations Security Council reviews the Secretary-General's report on the situation in Abkhazia and extends the mandate of the mission for the next six months. The report included a description of the negotiation process as well as the situation in the zone. The mission was suspended after the Russian Federation exercised its right of veto over the proposed extension of the mission's mandate in 2009.

In 1996, UNOMIG created a structure to monitor the respect for human rights in Suhumi, composed of OSCE staff and the Office of the United Nations High Commissioner for Human Rights.[346]

The mandate also included protective functions, including collecting information from victims and witnesses and collecting individual complaints about procedural infringements, impunity, ill-treatment of detainees, forced disappearances, disrespect of property rights, etc. The department also provided technical

[345] UNSC, Security Council Resolution 858 (1993), adopted on 24 August 1993, https://digitallibrary.un.org/record/171724, (accessed 5 January 2020)

[346] UNSC, Security Council Resolution 1077 (1996), adopted on 22 October 1996, https://digitallibrary.un.org/record/222758, (accessed 5 January 2020).

assistance and information to beneficiaries on their rights.[347]

The opening of a branch of this section in Gali to work with the Georgian residents that returned has always been blocked by the Abkhaz side, despite repeated calls from the Security Council.[348] In 2003, a civilian police component[349] was added to the UNOMIG component, having the purpose to assist local law enforcement in the fight against crime. Although it was planned to deploy civilian police forces on both the Abkhaz and Georgian sides, the Abkhaz authorities did not consent to send them to the Gali district.[350]

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[347] Human Rights Watch. Living in Limbo The Rights of Ethnic Georgian Returnees to the Gali District of Abkhazia, July 2011, https://www.hrw.org/sites/default/files/reports/georgia0711LR.pdf (accessed 15 December 2019).

[348] UNSC, Security Council Resolution 1615 (2005), adopted on 29 July 2005, https://digitallibrary.un.org/record/554435 (accessed 5 January 2020); UNSC, Security Council Resolution 1582 (2005), adopted on 28 January 2005, https://digitallibrary.un.org/record/540242, (accessed 5 January 2020); UNSC, Security Council Resolution 1554 (2004), adopted on 29 July 2004, https://digitallibrary.un.org/record/527004, (accessed 5 January 2020); UNSC, Security Council Resolution 1524 (2004), adopted on 30 January 2004, https://digitallibrary.un.org/record/514457 (accessed 5 January 2020); UNSC, Security Council Resolution 1494 (2003), adopted on 30 July 2003, https://digitallibrary.un.org/record/499977, (accessed 5 January 2020)

[349] UNSC, Security Council Resolution 1494 (2003), adopted on 30 July 2003, https://digitallibrary.un.org/record/499977 (accessed 5 January 2020).

[350] UN, Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin - Addendum, Mission to Georgia. December 21-24, 2005, E/CN.4/2006/71/Add.7, March 24, 2006, para. 25https://digitallibrary.un.org/record/571975 (accessed 5 January 2020).

However, after the forced departure of UNOMIG from Abkhazia, this region remains without sufficient monitoring and public reflection on the human rights situation.[351]

Ensuring the right of return has been and remains a key element of all conflict settlement efforts. The General Assembly adopted a series of resolutions recognizing the right of all displaced persons to return to Abkhazia.[352]

The Office of the United Nations High Commissioner for Refugees, which maintains a presence in the region, facilitates the return of displaced persons to Abkhazia. UNHCR operates on both sides and has offices in Zugdidi and Gali. Its activities include restoring housing and infrastructure, providing shelter for displaced persons, repairing schools, supporting employment programs, and assisting other humanitarian organisations.[353]

Any amendment to the Moscow and Sochi agreements governing peacekeeping in Abkhazia and South Ossetia, or the conduct of a new peacekeeping mission, would require the adoption of a UN Security Council resolution. Georgia has officially left the Moscow-led CIS, calling into question the presence of any Russian peacekeeping force in Georgia under the auspices of the CIS. A UN Security Council resolution may empower a

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[351] T. Hammarberg, *Report on human rights issues following the August 2008 armed conflict in Georgia*, October 7, 2010, sec. 2.6. https://rm.coe.int/16806db812 (accessed 5 January 2020),

[352] UN, General Assembly Resolution A/RES/64/296, adopted on 13 October 2010, https://digitallibrary.un.org/record/689411 (accessed 5 January 2020).

[353] Georgia: UNHCR Hopes to Improve Conditions for Returnees to Abkhazia in 2009, https://reliefweb.int/report/georgia/georgia-unhcr-hopes-improve-conditions-returnees-abkhazia-2009 (accessed 13 November 2020)

traditional UN mission or mandate another organisation, such as the EU or the OSCE. In order to answer the question of which organisation is best suited to the implementation of this mission and what the format of the mission should be, it must start with preparation for immediate action.

But there are many objective obstacles. Russia's dominance over militarily, politically, and economically divisive territories is so great that it would be very difficult to persuade Moscow to accept any control over its actions. So the peacekeeping mission is implemented, to the full agreement of Russia's own needed. Moscow believes that, with its operations in Georgia, it is pursuing certain important strategic interests, including the protection of the rights of its citizens, its resistance to NATO enlargement, and demanding for itself a suitable place among the great powers. The western states have an advantage that they could use if Russia showed too much intransigence.[354]

By 2006, the European Union had become the largest donor of funding projects to improve the living conditions of people affected by the conflict and create the conditions for the return of displaced persons. From a political point of view, a notable event was the appointment in July 2003 of the EU Special Representative for the South Caucasus, whose mandate included "facilitating conflict settlement and ... facilitating the implementation of such a solution in close cooperation with the UN and the OSCE."[355]

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[354] Россия против Грузии: последствия. *Доклад* N°195 Европа 22 августа 2008 г, https://www.ref-world.org.ru/pdfid/545cb9474.pdf (accessed 15 October 2020)

[355] Council joint action 2006/121/CFSP of 20 February 2006 appointing the European Union Special Representative for the South Caucasus, art. 3 (d)

Following the Russian-Georgian war of August 2008, the EU Monitoring Mission (EUMM) was deployed in Georgia, consisting of more than 200 unarmed civilian observers called upon to monitor compliance with peace agreements reached through EU mediation.

The main task of the EUMM is to prevent a new armed conflict and to promote the safety of residents in border zones. The mandate of the mission extends across Georgia to internationally recognised borders, but neither the authorities in Abkhazia nor South Ossetia allows observers to enter their territory. At the same time, the EUMM shall participate in the regular meetings of the Parties' representatives in Gali as part of a common mechanism of preventing and responding to incidents.

The EU Delegation in Georgia has been working in Tbilisi since 1995 and has implemented a number of programs in the Gali district. As part of its mandate, it supports humanitarian, economic, and civil projects implemented by several international and local organisations, both in Georgia itself and in South Ossetia and Abkhazia. The European Commission's financial assistance, which is provided under the "European Neighborhood" policy, includes 4 million euros to support the restoration of housing and infrastructure and other projects for the development of housing and communal services in Gali and west of West Georgia, which are implemented by UNHCR, the UN Development Program, and several non-governmental organisations.[356]

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https://www.europarl.europa.eu/meetdocs/2004_2009/documents/dv/afet_021007_jamandate/afet_021007_jamandateen.pdf, (accessed 25 January 2021)

[356] European Union Delegation to Georgia. Overview of EC Assistance to People Affected by the Conflict in Georgia, December 2010, p.4-5,

The OSCE mission to Georgia was launched in 1992 with a broad mandate that included democratisation matters and did not directly participate in settling the Georgian-Abkhaz conflict, but played a prominent role in the South Ossetian negotiation process. It has already been mentioned above that the OSCE participated in the work of the Sukhumi Human Rights Office under UNOMIG, as well as in the evaluation mission to Gali District in November 2000.[357]

The peace agreement signed on August 15th-16th, 2008 between Georgia and the Russian Federation is extremely short:

1) Do not use force.

2) Permanently stop all military operations.

3) Free access to humanitarian aid.

4) The Georgian Armed Forces return to their places of permanent deployment.

5) The armed forces of the Russian Federation are brought to the line preceding the outbreak of hostilities. Prior to the establishment of international mechanisms, the Russian peacekeeping forces are taking additional security measures.

6) Start an international discussion on matters related to the future status of South Ossetia and Abkhazia and how to ensure their lasting security.

In December 2008, Russia blocked the mandate prolongation of the OSCE mission, referring to the

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http://ec.europa.eu/delegations/georgia/documents/projects/overview_post_conflict_ec_assistance_dec2010_en.pdf, (accessed 23 December 2020)

[357] UNOMIG. Report of the Joint Assessment Mission to the Gali District. November 20-24, 2000,2009, https://www.europarl.europa.eu/meetdocs/2004_2009/documents/dv/afet_021007_jamandate/afet_021007_jamandateen.pdf, (accessed 25 January 2021)

changing realities on the ground, but the OSCE continues to participate in the Geneva discussions on security and stability in the Caucasus and the common mechanism for preventing and responding to incidents in Abkhazia.

In February 2010, OSCE High Commissioner on National Minorities Knut Vollebaek visited Gali, Sukhumi, and Tbilisi. He personally raised the matter of pressure on the Georgian people in Abkhazia from the Abkhaz authorities and said the closure of the border on Abkhazia has created unreasonable obstacles for those who want to connect with relatives in Georgia and receive medical care there.[358]

In 2009-2010, Georgia was visited four times by EC Commissioner for Human Rights Thomas Hammarberg. In a report published in October 2010, he called for respect for the right of displaced persons to return (including support), to protect the population from explosive remnants of war (mine guards), to improve the security situation in highly tensioned zones, and to refuse detention and imprisonment for crossing the border, as well as ensuring free access for all international organisations and human rights observers. The commissioner also criticised the forced cessation of the OSCE mission to Georgia and UNOMIG.[359]

The Commissioner tackled the matters faced by those returning to the Gali district in a previous report in 2009. It was discussed also about security, freedom of

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[358] OSCE Commissioner on Georgians in Gali, Civil Georgia, 14.04.2009, http://www.civil.ge/eng/article.php?id=20730, (accessed 15 October 2020);
Organization for Security and CoOperation in Europe, Annual Report 2009, p. 80, http://www.osce.org/secretariat/67759 9 (accessed 15 October 2020)

[359] T. Hammarberg, *Op. cit*.

movement, passports, restriction of teaching in Georgian, and the need to maintain an international presence in the region.[360]

In April 2010, a report from the European Commission against Racism and Intolerance (ECRI) was published, expressing concern about the limited teaching of the Georgian language in schools in Gali district.[361]

Georgia's official position at the time is reflected in the letter from the state's permanent representative to the UN. "In an attempt to support the recognition *de jure* of Georgia's infringement of its territorial integrity, Russia unilaterally blocked the OSCE Mission in Georgia and vetoed the Security Council, ending UNOMIG's 16-year presence. In doing so, Russia has isolated itself from the international arena and, at the same time, undermined Georgia's sovereignty by undermining territorial integrity and supporting its aggression and military occupation."

Shortly after the Russian-Georgian war in August, the Georgian parliament adopted the Occupied Territories Act, which introduced restrictions on travel to Abkhazia and South Ossetia and economic activity in those regions. In particular, third-country nationals are only allowed to enter the territory of Georgia and economic activities are prohibited, if such activity, in accordance with Georgian law, requires obtaining an appropriate license or permit,

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[360] T. Hammarberg, *Report on human rights issues following the August 2008 armed conflict in Georgia*, 8-12 February, 2009, https://lib.ohchr.org/HRBodies/UPR/Documents/Session10/GE/COE_CommissionerforHumanRightsoftheCouncilofEurope-eng.pdf, (accessed 21 December 2019).

[361] European Commission on Racism and Intolerance. ECRI Report on Georgia, CRI (2010). 17, April 28, 2010, p. 32, https://rm.coe.int/third-report-on-georgia/16808b5770, (accessed 15 October 2020),

authorisation, or registration. In reality, these rules are largely symbolic, as Tbilisi does not control Russia's Abkhaz border.

Several aspects of this law have been criticised by the Venice Commission of the Council of Europe, including the incrimination of illegal entry and unauthorised economic activity.[362] The local and international NGOs wishing to work in Abkhazia must obtain Tbilisi's prior consent. This applies equally to international organisations such as the United Nations Development Program.

The local and international organisations are concerned about the possibility of state interference in their activities in Abkhazia and South Ossetia.[363] Until the present day, Tbilisi has issued permission to all organisations and agencies requesting it, but the Georgian authorities have the theoretical capacity to use legal grounds to restrict the work of international organisations in the conflict regions.

The main responsibility for punishing those responsible for the most serious international crimes and settling wider matters of community reconciliation falls on both Moscow and Tbilisi, especially to stop the new spiral of hatred that can divide future generations of Georgians, Ossetians, Abkhaz, and Russians.

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[362] European Commission For Democracy Through Law (Venice Commission). "Opinion On the Law on Occupied Territories of Georgia", Adopted by the Venice Commission at its 78th Plenary Session, Venice March 13-14, 2009, https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2009)015-e, (accessed 15 October 2020)

[363] New Regulatory Legislation: A Threat to Peace-building in Georgia, http://humanrightshouse.org/Articles/15513.html, (accessed 15 October 2020).

The International Criminal Court (ICC) can also play a useful role. Georgia is a state party to the Statute of the Court and provides the international court with the power to investigate and prosecute perpetrators of genocide, war crimes, and crimes against humanity committed by citizens of Georgia or other countries in Georgia. Russia is not a party to the statute, but its citizens can be prosecuted for crimes committed in Georgia. The ICC prosecutor's office has already confirmed that it is "studying in detail all the information on the situation in Georgia, starting with the outbreak of violence in South Ossetia in early August" and especially is studying "information attesting acts of violence against civilians".[364]

After Russia, Abkhazia's independence was recognised by Nicaragua, Venezuela, and Nauru. From the point of view of international law, Abkhazia remains an unrecognised state. In any case, as they effectively control the territory of Abkhazia, the current Abkhaz authorities are responsible for ensuring guarantees of respect for human rights. As Georgia's obligations under international human rights treaties continue to apply to Abkhazia, the Abkhaz authorities are obliged to ensure that they meet them.[365]

An essential source of international law on internally displaced persons is the UN Guide on Internal Displacement, based on international human rights law and international humanitarian law which specify the

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[364] Россия против Грузии: последствия. *Доклад* N°195 Европа 22 августа 2008 г, p. 38, https://www.refworld.org.ru/pdfid/545cb9474.pdf (accessed 15 October 2020)

[365] A. Cauia, and N. J.Alabduljabbar, 'Normative Doctrinal Analysis of Peacekeeping Operations in Europe (Transnistria, Nagorno-Karabakh, Georgia, Kosovo)',: *Studii Juridice Universitare*, vol 3-4, no. 47-482019, p. 37

rights of internally displaced persons. Without being strictly legally binding, they reflect established international customs, international standards in the field of human rights and humanitarian law, and are therefore universal.[366] Georgia, at least in part, relies on them when drafting national legislation on internally displaced persons.

The right of people forced to leave their homes due to the war and to return to their place of residence or "voluntary repatriation" is guaranteed by a number of international treaties.[367]

Internally displaced persons enjoy the same rights as the rest of the population.[368] The main duty and responsibility in ensuring these rights and freedoms lie with the national authorities.[369] However, the UN Guide

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[366] *Handbook for Applying the Guiding Principles on Internal Displacement*., The Brookings Institution, Project on Internal Displacement, 1999, https://www.refworld.org.ru/pdfid/545cb9474.pdf (accessed 15 October 2020)

[367] Universal Declaration of Human Rights, 10 December 1948,art. 13 (2),https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf (accessed 5 February 2021),; International Covenant on Civil and Political Rights, 16 December 1966, art. 12 (4), https://www.ohchr.org/documents/professionalinterest/ccpr.pdf, (accessed 5 February 2021), International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965, art. 5 (d) (ii). https://www.ohchr.org/Documents/ProfessionalInterest/cerd.pdf, (accessed 5 February),

[368] W. Kälin, *Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons*. Addendum, Mission to Georgia. December 21-24, 2005, para 4, https://digitallibrary.un.org/record/564661
(accessed 15 October 2020)

[369] Guidelines on Internal Displacement, Principle 3,

also applies to non-state actors who effectively control a particular territory, in terms of the rights of internally displaced persons.[370] These authorities *de facto* must respect the rights of internally displaced persons in their control zone, and this action does not affect the legal status of any affected authority, group, or person.

In this regard, we note that the Abkhaz authorities are responsible for ensuring the rights of those who return to the zones they effectively control. The Special Representative of the UN Secretary-General notes that this "should not be limited to ensuring the survival and physical security of internally displaced persons, but should also apply to all relevant guarantees, including civil and political rights, as well as economic, social and cultural rights, recognized by international human rights law and humanitarian law".[371]

Kosovo. Initially, the Security Council authorised the Secretary-General, by its resolution 1244 of June 10th, 1999, to establish an international civilian presence in Kosovo - the United Nations Interim Administration Mission in Kosovo (UNMIK) – aiming at establishing an interim administration for Kosovo under the leadership of which the citizens of Kosovo will be able to enjoy substantial autonomy. Its task was unprecedented in its complexity and scale. The Council empowered UNMIK with regard to the territory and population of Kosovo, giving it all legislative, executive, and judicial powers.

Subsequently, after the Kosovo authorities declared independence and the new constitution entered into force on June 15th, 2008, the mission's tasks were significantly

https://www.unhcr.org/protection/idps/43ce1cff2/guiding-principles-internal-displacement.html (accessed 15 October 2020)

[370] W. Kälin, *Op. cit.*, para. 4.

[371] Ibidem, para. 5.

adjusted to focus on promoting security, stability, and respect for human rights in Kosovo.

In line with its strategic framework, the mission contributes to ensuring the conditions for a peaceful life for the entire population of Kosovo and to advancing regional stability in the Western Balkans.

The Special Representative ensures the coordination with the Head of the European Union Rule of Law Mission in Kosovo (EULEX), who has operational responsibility for the rule of law. EULEX is implemented on the basis of Security Council resolution 1244[372] (1999) and operates under the general authority of the United Nations. The mission is headquartered in Pristina and is supported by field offices in Mitrovicë and Pejë.

In addition, the UN Office in Belgrade plays an important political and diplomatic role and stays connected with Serbia's political leadership.

Kosovo declared independence on February 17th, 2008 and has been recognised by more than 100 UN states members. UNMIK continues to implement its mandate neutrally and operates based on the Security Council's resolution.[373]

On June 8th, 2018, the Council decided to reorient the mandate of the EU mission to support the supremacy of law, EULEX Kosovo. The mission, established 10 years ago, had two operational objectives: on the one hand, an objective of monitoring, guidance, and counselling, providing support for the functioning of institutions that ensure the rule of law in Kosovo and for the dialogue between Belgrade and Pristina, and on the other hand, an

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[372] UNSC, Security Council Resolution 1244 (1999), adopted on 10 June 1999, https://digitallibrary.un.org/record/274488 (accessed 15 October 2020).

[373] UNMIK Mandate, https://unmik.unmissions.org/mandate, (accessed 15 October 2020)

executive objective, supporting the achievement of constitutional and civil justice, as well as prosecuting and judging a number of criminal cases.

Starting with June 14th, 2018, the mission will focus on:

- monitoring a range of cases and trials in Kosovo's criminal and civil justice institutions;

- monitoring, guiding, and advising the correctional service in Kosovo;

- continue operational support for the implementation of EU-facilitated dialogue agreements aiming at normalizing relations between Serbia and Kosovo.

The mission will retain certain limited executive responsibilities in the field of witness protection and the support of specialised courts and the specialised prosecutor's office, as well as the responsibility to ensure the maintenance and promotion of security as a secondary factor in ensuring security.

In February 2020, the self-proclaimed authorities of the Republic of Kosovo interrupted any communication with the UN Mission (UNMIK) to regulate the situation in the province. The Prime Minister of Kosovo, Ramush Haradinaj, came up with the announcement after UN Secretary-General Antonio Guterres had said in a report that the biggest problem in relations between Belgrade and Pristina was 100% tariffs on Serbian goods, introduced in November last year by the Kosovo government. According to the Prime Minister of Kosovo, Pristina officials have discontinued the connections with the UN mission in the region because it would provide "misinformation to the UN".[374]

[374] Kosovo și-a întrerupt relațiile cu misiunea ONU din provincie, 06 December 2019

Both the precedent of Kosovo created by the declaration of its recognition and recognition by more than 100 states and the role of the UN mission in forming this entity, generate consistent problems in the field of public international law.

We consider the European Union's contribution to be crucial in the process of building Kosovo's statehood, and the created precedent as one of the most dangerous precedents for analysing the regional crises caused by separatist tendencies both on the European continent and globally.

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https://ro.sputnik.md/International/20190206/24553849/Kosovo-i-a-ntrerupt-relaiile-cu-misiunea-ONU-din-provincie.html, (accessed 15 October 2020)

3.2. International legal instruments for settling regional crises in the East (Lebanon, Israel/Palestine, Iraq, Syria, Yemen)

The United Nations (UN) ensures that several important goals are achieved in the context of global governance. As peoples and states become more interconnected, more effective international management is needed. Global aspects such as terrorism, refugee movements, climate change, and economic crises are evidence of the undeniable need for international management.

The Middle East is facing problems that cover the entire list mentioned above, plus many other aspects. The United Nations is constantly criticised by actors of the international community, whether they are citizens, on all forms of media platforms, or official governing bodies.[375]

The UN is not a perfect system that would represent a global governing body. As an institution, the UN does everything it can with what it has. Whether it is the provision of peacekeeping forces or the provision of humanitarian or development aid, the UN is working to protect the lives of millions of people in the Middle East. Occasionally, it comes in the form of peacekeeping, but it can also be in the form of providing the necessary medical equipment, providing training to local residents in conflict zones to increase resilience, or providing education to children whose lives have been affected by the conflict. It

[375] T.G. Weiss, *What's Wrong with the United Nations and How to Fix It*, Cambridge, Polity Press, 2016. 320 p. ISBN 978-1-509-50743-6

is certainly better for the UN to intervene in any possible form than not to intervene at all.[376]

One of the ways in which the regimes in the region have strengthened their power and tried to ensure their survival, even before 2011, is by instrumentalising sectarian identities. By manipulating fears of political exclusion, claiming to protect certain groups of the population from others, or using fanaticism to discredit their political opponents and rivals, political actors and leaders have strengthened their power and deviated from the idea of reform.[377]

Some authors[378] consider that sectarianism is not new in the region. It is firmly institutionalised in Lebanon's political system and patronage networks, and since the US invasion in 2003, it has been an important feature of Iraq's highly divided politics and society. The same is valid in the Gulf monarchies, where the Al-Khalifa family in Bahrain and the Al-Saud family in Saudi Arabia have exercised power for decades over their Shiite populations through divisive tactics.

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[376] A.Miller, The United Nations and Middle Eastern Security, In: *Conflict and Diplomacy in the Middle East External Actors and Regional Rivalries*. E-International Relations, 2018, p. 128.

[377] N., Hashemi and D. Postel, Introduction: The Sectarianization Thesis. In: *Sectarianization. Mapping the New Politics of the Middle East,* London, Hurst, 2017, p. 5

[378] F. Haddad, *Sectarianism in Iraq. Antagonistic Visions of Unity*, London, Oxford Press, 2011. 256 p. ISBN 978-0199327386; B. F. SALLOUKH, 'Overlapping Contests and Middle East International Relations: The Return of the Weak Arab State', *Political Science and Politics*, vol. 50, nr. 3, 2017, pp. 660-663. ISSN 1537-5935; K. Moore-Gilbert, Sectarian Divide and Rule in Bahrain: A Self-Fulfilling Prophecy? In: *MEI Articles*, https://www.mei.edu/publications/sectarian-divide-and-rule-bahrain-self-fulfilling-prophecy, (accessed 30 January 2021)).

According to another group of authors[379], until recently, fanaticism was largely rejected and refused in an official speech, and political leaders and government officials often had a delicate balance between engaging in subtle sectarian strategies while seeking to subdue and suppress any obvious sectarianism.

Thus, depending on the circumstances and the socio-political, economic, and security situation in the zone, depending on the interest of the leaders or governing groups, this element of mobilisation is used cynically and treacherously to camouflage the true goals and objectives of political actors in the region. A crucial element for understanding the current situation in the Middle East is the phenomenon of "Arab Spring".

Since its inception, a new type of regionalisation based on increasing the number of refugees, non-state armed groups and cross-border sectarian identification has taken off in the region. At the beginning of the Arab insurgencies throughout the region, there was hope for a better situation, the adoption of international liberal order for people of all social categories, including young activists, trade unionists, middle-class members, women, students, and Islamists, to unite to raise their voices against economic deprivation, political repression, corruption, and injustice. The slogans approaching bread and freedom in Tahrir Square were almost identical to those in the main markets of other Arab countries. The polls conducted at the peak of the demonstrations of 2011showed that the vast

[379] C.H. Salamandra, 'Sectarianism in Syria: Anthropological Reflections', *Middle East Critique*, vol. 22, nr. 3, 2013, pp. 303-306. ISSN 1943-6157; H. Malmvig, 'Allow Me This Time to Speak as a Shi'i: The Sectarian Taboo, Securitization and Identity Politics in Hezbollah's Legitimations of Its War in Syria', *Mediterranean Politics*. vol. 26, nr. 1, 2021, pp. 1-24. ISSN 1743-9418.

majority of respondents believed in "the existence of a unity of the Arab nation."[380]

Arab Spring was not the work of a particular political or ideological orientation, and the eruption of Arab Spring was not a moment of victory for either the Pan-Arab or Islamist tendencies.[381]

It is also important to note that this insurgence was a bottom-up phenomenon, which was quite different from previous insurgencies led by certain authoritarian leaders or military officers. In addition to the classic organised forms of civil society, such as well-known NGOs in the zone, throughout the Arab protests of spring 2011, new forms of civil society activism were observed, symbolically called "active citizens" structures.[382]

The traditional civil society has not been so active in anti-regime demonstrations. The emergence of civil society activism in the Middle East in the 1990s was seen as a positive sign of democratisation, but such activism remained ineffective in the fight against state authoritarianism. The civil society organisations have either remained under the direct control of their governments as government-organised NGOs, or operate under strict government surveillance, or constitute a new

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[380] Y.M. Sawani, 'The 'end of pan-Arabism' revisited: reflections on the Arab Spring', *Contemporary Arab Affairs*, nr. 3, 2012, p. 382-397

[381] S. Al-Azm, 'Arab Nationalism, Islamism and Arab Uprisings', *The New Middle East: Protest and Revolution in the Arab World*, Cambridge, Cambridge University Press, 2014, p. 276.

[382] F. Cavatorta, 'Arab Spring: The awakening of Civil Society. A General Overview', *IEMedObs Dossier* 2012, pp. 75-81, https://www.iemed.org/observatori-en/arees-danalisi/arxius-adjunts/anuari/med.2012/Cavatorta_en.pdf, (accessed 30 January 2021)

"Arab public sphere" such as young people, women, and ethnic minorities in the region.[383]

Unfortunately, the widening of the Arab space that was enthusiastically welcomed during Arab Spring has not become a generally valid and negotiated form of regional cooperation for a common cause. The Arab demonstrations did not have a common leadership, means, and even a common vision with which to create a real transformation. In contrast, following Arab Spring, the conflict has also become an important cause of the increasing emigration of individuals from all classes and social professions.

For example, post-Arab Spring evolutions have forced a new form of regionalisation through the growing number of refugees. The neighbouring countries in the conflict-ridden regions of the Middle East have faced a large number of forced migrants, as happened after the Syrian civil war. In addition, regionalisation in the form of the expansion of cross-border radicalisation is on the rise.

Both cooperating and conflicting regional dynamics are at stake simultaneously. All political and military evolutions in almost all critical regions are strongly influenced by several non-state armed actors, including Hamas, Hezbollah, and ISIS. The proliferation of non-state actors and transnational armed groups and the growth of tribal, ethnic, and sectarian multi-layered identities across the state have led to the search for new forms of organisation and cooperation for the Middle East.

Increasing the new ways of regionalisation caused by civil wars led by transnational armed groups and unprecedented refugee flows pose additional challenges to the security of Middle Eastern nation-states. The on-going civil wars and their regional repercussions have made the

[383] E. Gheytanchi and V. N., Moghadam, 'Women, Social protests, and the New Media activism in the Middle East and North Africa',: *International Review of Modern Sociology,* nr. 1, 2014, p. 6.

region more interconnected in a negative way, as these repercussions are deeply felt and observed not only in the region but also worldwide.[384]

The traditional approach to peacekeeping in the Middle East has now evolved into an approach that also seeks to move towards regional security, emphasizing human security. This reformulation has led to the provision of humanitarian aid for development by the UN in various ways.[385]

The treacherous use by local leaders of religious differences, sectarianism to settle their political problems and interests, "Arab Spring" as a phenomenon that has profoundly affected the stability, peace, and security in the zone and the inefficiency of regional structures to prevent and combat the challenges to peace and security in the Middle East have generated the current situation. Thus, we intend to analyse below the place and role of regional and international structures in the process of ensuring peace and security in the zone by enforcing respect for public international law.

Lebanon. The United Nations Interim Force in Lebanon (UNIFIL) has been present since its inception by the UN Security Council in March 1978.[386] Headquartered in Naqoura, southern Lebanon, the mission includes monitoring the cessation of hostilities, providing support to the Lebanese army, and providing humanitarian assistance to civilian populations.

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[384] L. Vignal, Introduction: Transforming geographies of the Middle East in times of globalization and uprising. In: *The Transnational Middle East-People, Places, Borders,* London, Routledge, 2016. 302 p. ISBN 978-1315535654.

[385] A. Miller, *Op. cit.*, p. 129.

[386] The United Nations Interim Force in Lebanon, https://peace-keeping.un.org/en/mission/unifil, (accessed 14 January 2021).

In April 2000, the UN Secretary-General received formal notification from the Government of Israel, outlining their plan to retreat Israeli forces from southern Lebanon. Since then, an important role of UNIFIL has been to monitor the Israeli-Lebanese border and to report any infringements committed by either the Israeli Defense Forces (IDF) or the Lebanese army. The zone monitored by UNIFIL is best known as the Blue Line, which is a 120-kilometer stretch from Ras al-Naqoura in southwestern Lebanon to Shab'a in southeastern Lebanon.[387]

The Lebanese Armed Forces (LAF) and UNIFIL are coordinating with each other to ensure the security of the Blue Line - which faces many security problems. LAF and UNIFIL conduct joint military and training exercises, exchange experiences through a joint training program, and run checkpoints and patrols together.[388] Through these types of coordinated efforts, the UN has successfully implemented a long-term security protection dimension.

UNIFIL regularly mediates tripartite meetings between LAF and IDF high officials, which serve as an essential method for addressing conflict management and building bridges of trust between the parties.[389] UNIFIL has largely succeeded in creating a positive relationship with LAF which increases the physical security of the Blue

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[387] T. Pokharel, Lebanese soldiers join UN peacekeepers in peace relay march, 03 October 2016, https://unifil.unmissions.org/lebanese-soldiers-join-un-peacekeepers-peace-relay-march (accessed 14 January 2021).

[388] UNIFIL Operations, https://unifil.unmissions.org/unifil-operations, (accessed 14 January 2021)

[389] UNIFIL Head chairs regular tripartite meeting with LAF and IDF officials, https://unifil.unmissions.org/unifil-head-chairs-regular-tripartite-meeting-laf-and-idf-officials, (accessed 20 April 2017)

Line and holds both parties accountable for any breach of mandate.

In addition to cooperating with LAF, UNIFIL also recognises the importance of supporting the local population. UNIFIL does this by informing local civilians about UNIFIL's mandates and activities, providing assistance where possible, engaging in the promotion of local culture, customs, and concerns, and actively participating in community events. The civil-military cooperation serves as the main tool for interaction between UNIFIL and local communities. Through these actions, UNIFIL interacts with government and community leaders, key religious figures, civil society groups, and international organisations involved in development initiatives.

Creating a cohesive environment between UNIFIL and the local communities in which it operates is a key aspect in maintaining security along the Blue Line. Understanding and getting involved in promoting local culture and activities provide a unique platform for UNIFIL to do this successfully. UNIFIL also provides free basic services to local people, such as medical and veterinary services. This helps to build a level of trust that is necessary to ensure the security of local people, as they deal with the daily concerns that arise from positioning in a zone where personal security is a concern.[390]

The Taif agreement ended the Lebanese civil war (1989), as well as its participation in the Second Gulf War (1990), allowed Syria to play an important role on the Lebanese scene. In 2004, the Syrian occupation faced strong criticism, both from foreign powers such as France and the United States and from Lebanese politicians.

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[390] A. Miller, *Op. cit.*, p. 130.

At an international level, this is reflected in Security Council Resolution 1559 of September 2nd, 2004.[391] The parliament is asked not to amend the Constitution to allow the extension of the presidential term of Émile Lahoud, close to Damascus, it calls for the retreat of Syrian troops, and the disarmament of Hezbollah and Palestinian camps, and the deployment of the Lebanese army along the border with Israel.

A difficult resolution to implement. The French activism in this situation can be explained both by the desire to get closer to the United States after the Iraqi episode (2003) and by the personal friendship between President Chirac and former Lebanese Prime Minister Rafic Hariri, in conflict with President Lahoud. Resolution 1757 (2007) authorises the establishment of a special tribunal to prosecute those responsible for the assassination of the former Lebanese Prime Minister on February 14th, 2005.[392]

The most sensitive matters generated by the creation of this ad hoc tribunal were: the diminution of Lebanese sovereignty and the destabilisation of the political class, legal inconsistencies, and the incongruent use of Chapter VII. Finally, there is no justification for the *a priori* use of Chapter VII. The procedure that established the establishment of tribunals for Yugoslavia and Rwanda, where international crimes (crimes against humanity and genocide) were committed, should not be applied in the case of Lebanon either.

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[391] UNSC, Security Council Resolution 1559 (2004), adopted on 2 September 2004, https://digitallibrary.un.org/record/529421, (accessed 20 April 2017).

[392] UNSC, Security Council Resolution 1757 (2007), adopted on 30 May 2007, https://digitallibrary.un.org/record/600560, (accessed 24 April 2017).

In fact, this is an extension of the jurisdiction of international criminal courts in cases of terrorism, as defined by the Lebanese Criminal Code, in the absence of an international text on the subject.

Lebanon hosts also a large population of Syrian refugees as a result of the on-going war in Syria. The United Nations High Commissioner for Refugees (UNHCR) is tasked with meeting the needs of Lebanon's refugee population, which is about 1.5 million.

The Syrian refugee population in Lebanon should be considered extremely vulnerable, as a large number fail to complete the necessary documents, which makes it difficult to work, send children to school or receive medical care, and the impossibility of registering births, which puts tens of thousands of Syrian children born in Lebanon at risk of statelessness. This means a growing security concern, both in the sense that vulnerable population groups are not meeting basic needs and vulnerable children who do not obtain citizenship in any country. The residency problems Syrian refugees face, create a culture of fear and cause concerns about labour exploitation and sexual abuse.[393]

UNHCR plays an active role in trying to meet the needs of Syrian refugees in Lebanon, but they do not have the opportunity to address them to the required capacity. For example, in 2017, only 170,000 Syrian refugees received winter support from UNHCR.[394] The refugees have to

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Human Rights Watch, 14.02.2017, https://www.hrw.org/news/2017/02/14/lebanon-new-refugee-policy-step-forward (accessed 15 December 2019).

[394] UNHCR, Lebanon, http://reporting.unhcr.org/node/2520#_ga=2.243109633.20243646.1495141721-1178618403.1494353381, (accessed 25 January 2021).

endure the harsh weather in winter or even die if basic needs are not met. The international community should play a more active role in providing UNHCR funding for such basic needs. The appropriate approach to basic human needs is a critical element for security, as the concerned population is already vulnerable and susceptible to human rights abuses.[395]

Ensuring compliance with the rules of public international law generally and international humanitarian law especially in the context of the Lebanese crisis is proving to be a difficult task, and the establishment of a special tribunal is at least questionable in terms of the rules of public international law.

Thus, it is strictly necessary to take all measures to ensure the continuation of the dialogue between the Lebanese and Israeli armed forces on the perimeter of the "blue line" in order not to allow the conflict to escalate in any way, which could substantially worsen not only the situation in the zone, it could also negatively affect the fate of Syrian refugees from Lebanon's territory.

Israel/Palestine. In the context of the Israeli-Palestinian conflict, we are dealing with two significantly different national legitimacies. In the case of the Palestinians, it is above all a matter of status - that of the state. The legal arsenal mobilised by the Palestine Liberation Organization (PLO), then by the Palestinian Authority, aims at achieving this status, which has an extremely symbolic dimension and some practical provisions.[396]

Founded in 1964, the PLO is primarily a national liberation movement. The Arab defeat of 1967 exacerbated the Palestinian dimension of the struggle, and the PLO gradually emerged as a key Palestinian player. In 1974 it

[395] A. Miller, *Op. cit.*, p. 131.

[396] A. Mohammedi, *Op. cit.*, p. 171.

became an observer at the United Nations General Assembly, and in 1988 it took on the name "Palestine".

By a resolution of December 15th, 1988, the General Assembly took "note of the proclamation of the Palestinian state by the Palestinian National Council".[397] A wave of bilateral reconnaissance followed - about 90 states by February 1989. In September 1989, Palestine became a member of the non-aligned movement. Following the Oslo Accords and the establishment of the Palestinian Authority, the General Assembly grants Palestine permanent observer status, with a permanent mission to New York and Geneva. As a permanent observer, Palestine already enjoys a special status.

According to some exegetes of the field,[398] the pan-Arabism and the idea of Arab unity reached their peak in the 1950s and 1960s, when they were a strong force for structuring inter-Arab and regional policies in the Middle East. In reality, of course, the idea that "Arab interests" prevailed over the interests of territorially defined Arab states and that eventually, all Arabic-speaking territories should merge into a single Arab nation-state gave rise to heated disputes.

The merger of Egypt and Syria in 1958 in the United Arab Republic illustrated the aspirations for territorial unity, but the experience lasted only three years. The idea

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[397] UN, General Assembly Resolution, A/RES/43/175 adopted on 15 December 1988, https://digitallibrary.un.org/record/192622, (accessed 25 January 2021).

[398] J. Jankowski and I. Gershoni, *Rethinking Nationalism in the Arab Middle East*, New York, Columbia University Press, 1997. 408 p. ISBN 978-0231106955; M. N. Barnett, *Dialogues in Arab Politics. Negotiations in Regional Order*, New York, Columbia University Press, 1998. 376 p. ISBN 9780231109192; A. Dawisha, *Arab Nationalism in the Twentieth Century. From Triumph to Despair*, Princeton, Princeton University Press, 2003. 368 p. ISBN 978-0691169156

of a single Arab nation-state, backed by the theoretically socialist republic led by Egyptian Gamal Abdel Nasser, clashed with the preferences of Arab monarchies, as analysed by Malcolm Kerr, who later promoted the famous phrase of the "Arab Cold War."[399] Most Arab kingdoms have subscribed to a lighter form of Arab nationalism, limited to cooperation and solidarity between Arab states.

In fact, in the Arab political arena of the time, pan-Arabism served as an instrument to legitimise the ambitions of leadership in the Arab state system and to justify regional aspirations for hegemony. The struggles for pan-Arab leadership have masked the inherent fragility of states, led to conflicts, justified mutual attacks on sovereignty, and perhaps, paradoxically, weakened the Arab state system.[400]

However, the idea of pan-Arab solidarity in which the Palestinian cause has an important position has found wide resonance with the Arab public, thus conditioning the foreign policy of many states in the region, often against much more modest national interests.[401] The history of the Israeli-Palestinian conflict shows that the commitment of Arab leaders to the Palestinian cause was generally more rhetorical than factual.[402]

The Palestinian activism takes on a new dimension when the Palestinian Minister of Justice submits on

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[399] M. H. Kerr, *The Arab Cold War. Gamal 'abd Al-Nasir and His Rivals, 1958-1970*, 3e éd, Oxford, Oxford University Press, 1971. 166 p. ISBN 0195014758.

[400] E. Solingen, 'Pax Asiatica versus Bella Levantina: The Foundations of War and Peace in East Asia and the Middle East', *American Political Science Review*, nr. 4, 2007, p. 757-780.

[401] M. N. Barnett, *Op. cit.*, p. 158.

[402] M. Tessler, A *History of the Israeli-Palestinian Conflict*, Indianapolis, Indiana University Press, 2009. 1040 p. ISBN 978-0253220707.

January 22nd, 2009, pursuant to Article 12 (3) of the Statute of the International Criminal Court,[403] a statement by which the Palestinian Government agrees to exercise the Court's jurisdiction over acts committed on Palestinian territory since July 1st, 2002.[404] In April 2012, the Court Prosecutor's Office states in its reply that the practice of the Secretary-General of the United Nations follows in order to determine whether or not Palestine is a state.[405]

Indeed, the summary of the UN Secretary-General's practice as depositary of multilateral treaties includes in the list of states that have the right to accede to the treaties the member states of specialised institutions. Palestine, as a state member of UNESCO, a specialised agency, could therefore legitimately, following this practice invoked by the Prosecutor's Office, accede to the ICC Statute. Instead, the prosecutor simply asked the Security Council of the United Nations General Assembly to settle the status of Palestine first. As in the case of the effectiveness argument mentioned above, this cowardice of the Prosecutor's Office illustrates the limit of the perspectives offered by international law on the Palestinian matter.[406]

Gaza is a major security concern in the Middle East in terms of living conditions, economic stability, and security. It is a zone that has experienced a high level of violence due to decades of conflict as a result of territorial disputes. Hamas maintains control over Gaza, and Gaza citizens are often prevented from leaving due to restrictions on Israeli and Egyptian borders. The

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[403] Statute of the International Criminal Court, 17.07.1988, https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf (accessed 25 January 2021).

[404] J. Salmon, La proclamation de l'État palestinien, In: *Annuaire Français de Droit International*, 1988, nr. 34, p. 37-62.

[405] Ibidem.

[406] A. Mohammedi, *Op. cit.*, p. 176.

infrastructure collapsed due to wars, artillery exchanges, and a lack of resources to repair them.

Israel's victory over the Arab armies after the war of 1967 marked the beginning of the end of secular pan-Arabism.[407] The subsequent events, such as Egypt's separate peace agreement with Israel in 1979 and Iraq's invasion of Kuwait in 1990, seem to indicate that Arab regimes no longer feel guided by the idea of pan-Arabism. The Arab unity and solidarity are lacking, despite the interest shown occasionally. The three wars waged by Israel in the Hamas-led Gaza Strip have led to the return of these inter-Arab divisions, with Egypt and Saudi Arabia accusing Hamas of being a pawn of Iran. At the same time, however, after 1967, the matter of Palestine will continue to have an impact on regional policy, as it will involve reconfiguring state and non-state actors who have defined themselves as part of the "axis of resistance" formed against Israeli control over the Palestinians. Often described by the West as "radical" or "extremist" states or groups, members of this axis included Iran, Syria, various Palestinian factions, and Lebanese Hezbollah.

After the Arab insurgencies, the fragmentation of the Arab state system continued, with a low emphasis on mastering Arab unity and solidarity, with the Syrian civil war and the crisis between Qatar and Saudi Arabia being perhaps the most eloquent examples. The Israeli-Arab conflict, and in particular the matter of Palestine, "the main topic of regional concern in the Middle East for over a

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[407] F. Ajami, *The Dream Palace of the Arabs. A Generation's Odyssey*, New York, Pantheon Books, 1998. 368 p. ISBN 978-0-375-70474-1; DAWISHA, A. *Op. cit*.

century",[408] is no longer a major factor in the political structuring of the Middle East.

At one point Israel began building a wall that would separate Israel from the territories under the jurisdiction of the Palestinian Authority. The problem, however, is that Israel began building the wall on the territories occupied after the Arab-Israeli wars, which broke out after 1948, in order to ensure the security of its citizens from terrorist attacks.

As a result of these events, the International Court of Justice was notified of the legality of the construction of the wall by Israel on the Occupied Palestinian Territories. On July 9th, 2004, the UN International Court of Justice issued an advisory opinion[409] to the UN General Assembly on the legal effects of Israel's construction of the wall in the Occupied Palestinian Territories.

In this regard, the Court ascertained that the construction of the wall under the established regime constitutes an infringement of international law, Israel undertakes to reimburse all damage caused by the construction of the wall, the States commit not to recognise the illegal situation created as a result of the construction of the wall and choose to not provide help or support in maintaining this situation, and the states participating in the IV Convention of Geneva are equally obliged, in

[408] K. Makdisi, Palestine and the Arab-Israeli Conflict: 100 Years of Regional Relevance and International Failure, In: *MENARA Working Papers*, https://www.iai.it/sites/default/files/menara_wp_27.pdf, (accessed 5 January 2021).

[409] ICJ, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Request for advisory opinion), Summary of the Advisory Opinion of 9 July 2004, https://www.icj-cij.org/public/files/case-related/131/1677.pdf (accessed 5 January 2021).

compliance with the UN Charter and international law, to require Israel to respect the international humanitarian law provided by this Convention.

The common Arab positions on how to settle the Arab-Israeli conflict, such as those expressed in the Arab Peace Plan of 2002, are no longer relevant. The consequences of the US invasion of Iraq in 2003, and especially the growing antagonism between Saudi Arabia and Iran, have intensified the division between Sunnis and Shiites. At the same time, the agitation of sectarianism in Saudi Arabia can be seen as the kingdom's counter-revolutionary preventive strategy in response to the Arab insurgencies.[410] Meanwhile, anti-Zionism has ceased to be one of the characteristic elements of Arab politics. Rather, common hostility to Iran and its allies has allowed for a new rapprochement between Israel and several Arab states in the region, including Saudi Arabia, Egypt, the United Arab Emirates, and some small Gulf monarchies.

Gaza is one of the first humanitarian crises not only in the Middle East but also in the world. The UN is present in Gaza and offers help through various channels to citizens who need it. However, there are no peacekeeping forces in Gaza. According to the Middle East Monitor news agency, the Israeli government recommended the presence of UN peacekeepers in Gaza, but this proposal was rejected by Hamas. Thus, the UN can address security concerns in Gaza only through a humanitarian approach and not through a protectionist approach. The United Nations Office for the Coordination of Humanitarian Affairs (OCHA) is present in Gaza. This UN body says Palestinians living in Gaza are "imprisoned" because they

[410] M. Al-Rasheed, Sectarianism as Counter-Revolution: Saudi Responses to the Arab Spring. In: *Sectarianization, Mapping the New Politics of the Middle East.* London, Hurst, 2017, p. 143-158.

face severe restrictions on movement that have intensified since Hamas took power in 2007.[411]

Indeed, Israel has benefited greatly from regional evolutions provoked by the Arab insurgencies. Apart from improving its relations with Saudi Arabia and the Gulf monarchies (and their common antagonism towards Iran), the Assad regime is no longer a threat to Israel. For now, Hezbollah is fighting in Syria, and Egypt shares Israel's aversion to Hamas. Of course, Israel is concerned about the presence of Hezbollah and Iranian forces in neighbouring Syria, especially near its borders, as well as the vast combat experience that Hezbollah has gained in Syria.

But overall, Israel's position in the regional system has undoubtedly strengthened. The popular attraction to the "axis of resistance" has weakened, mainly due to the involvement of Iran and Hezbollah in the Syrian civil war and the conflict in Syria itself. Last but not least, the policies of the right-wing Israeli government enjoy the full support of the US administration.[412]

Continued tensions between Hamas and the Palestinian Authority have led to a serious humanitarian crisis that must be addressed urgently to avoid human casualties. In mid-April 2017, the Gaza power plant ceased operations due to a dispute between Hamas and the Palestinian Authority over tax rates for fuel used at the plant. The results of the fuel and electricity crisis in Gaza forced the closure of hospitals and prevented some citizens living in tall buildings from accessing drinking water. This crisis also goes beyond the security of Gaza's borders, as

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411 OCHA, Gaza Strip, https://www.ochaopt.org/location/gaza-strip, (accessed 14 January 2021).

412 J. Quero and A. Dessì, 'Unpredictability in US Foreign Policy and the Regional Order in the Middle East: Reacting vis-à-vis a Volatile External Security-Provider', *British Journal of Middle Eastern Studies*.

the lack of energy to treat sewage causes poorly treated sewage waste to flow daily into the Mediterranean Sea.

But even if today the plans for pan-Arab unity that could lead to major changes in the existing state system are no longer a goal of Arab leaders, it would be premature to completely reject the Arab dimension of regional policy.[413]

Firstly, the references to the "Arab cause" are still relevant to Arab leaders, to Iran and to Turkey, the non-Arab states, which enter the struggle of Arab-regional policy by presenting themselves as true defenders of the Palestinians. Secondly, the non-state actors, especially Hezbollah and Hamas, have taken on the role of defenders of the Palestinian cause. Thirdly, contrary to the secularist tradition of pan-Arabism of the 1950s and 1960s, the Arab dimension of Middle Eastern politics is increasingly rooted in religious and pan-Islamist discourse. Finally, the rule of Arab solidarity and the Palestinian cause still resonate strongly with the Arab public. The strong reaction of the Arab people against the war waged by Israel against Lebanese Hezbollah in 2006 and against the Gaza Strip, led by Hamas, in 2008-2009 proves this. If we analyse the role of the Arab media, we observe that the Arab insurgencies and their consequences were additional evidence of the social and cultural interdependence of the Arab populations.[414]

Tensions in Gaza have erupted recently, especially after the United States announced it would move its embassy to Jerusalem. Starting with March 2018,

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[413] M., Valbjørn and A. Bank 'The New Arab Cold War: Rediscovering the Arab Dimension of Middle East Regional Politics', *Review of International Studies*, vol. 38, nr. 1, 2012, p. 3-24.

[414] P. Noble, From Arab System to Middle Eastern System? Regional Pressures and Constraints, In: *The Foreign Policies of Arab States. The Challenge of Globalization*, 3e éd., Cairo, American University Press, 2008, p. 67-167.

Palestinians in Gaza began demonstrating in the "Great March of Return" to mark al-Nakba (the Catastrophe), in which Palestinians commemorate the mass movement that took place during the war of 1948-1949. The demonstrations, which continued every Friday, led to mass violence on May 14th, when at least 60 people were killed and more than 1,300 injured. Israeli forces used live ammunition, rubber bullets, and tear gas against protesters who had gathered along the Gaza-Israel border fence.

The disproportionate use of force against the protesters, most of them unarmed, was condemned. The UN Special Coordinator Nickolay Mladenov notified the Security Council and requested the cease of the violence in Gaza with the support of the international community, arguing that support would be essential to prevent war. The US Ambassador Nikki Haley spoke on the matter, arguing that the move of the US Embassy to Jerusalem reflects the "reality" and that Jerusalem has been Israel's capital since the state's founding.[415] She said also that there would be no plausible peace agreement in which Jerusalem would not be the capital of Israel.

Palestine's initial ambition was to become a full member of the United Nations. However, the procedure required a recommendation from the Security Council, followed by a two-thirds vote of the General Assembly. Faced with a probable standstill, especially the American one, in the Security Council, Mahmoud Abbas was persuaded to give up his original idea.

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[415] UN News. Security Council calls for calm following deadly Gaza clashes; diplomats debate US embassy move, https://news.un.org/en/story/2018/05/1009792 (accessed 14 January 2021).

Thus, Palestine achieves a "hybrid status" by becoming a non-member observer state,[416] after a vote of more than two-thirds, when only a simple majority was needed. According to Ghislain Poissonnier, although this "hybrid status" has no legal effect on bilateral recognitions, it gives weight to the idea that the state meets the above criteria.

However, a resolution of the General Assembly does not create a state, at most it gives weight to a political process. The famous General Assembly Resolution 181 of November 29th, 1947[417] on the partition plan serves mainly to legitimise unilateral approaches (1948 for Israel, 1988 for Palestine).[418]

More specifically, however, this status makes it possible to overcome the obstacle highlighted by the ICC Prosecutor's Office, Palestine can become a party to major international conventions. This refers to most international conventions based on conventions whose depositary is the UN. This includes the ICC, but also the International Court of Justice (ICJ). Article 35 (1) of the Statute of the ICJ provides the full membership to the United Nations states members. However, Switzerland and Italy were able to become parties to the Statute before becoming members of the United Nations.

Article 35 (2) of the Statute provides that the conditions for non-member states shall be determined by

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[416] UN, General Assembly Resolution A/RES/67/19, adopted on 29 November 2012, https://digitallibrary.un.org/record/739031, (accessed 20 December 2020).

[417] UN, General Assembly Resolution A/RES/181(II)[B], adopted on 29 November 1947, https://digitallibrary.un.org/record/667161, (accessed 20 December 2020).

[418] GH. Poissonnier, 'La Palestine, État non-membre observateur de l'Organisation des Nations Unies', *Journal du droit international*, vol. 140, nr. 2, 2013, p. 427.

the Security Council. However, the Security Council Resolution 9 of October 15th, 1946 authorises the non-states parties to file at any time a declaration of acceptance of the court's jurisdiction.[419] Therefore, Palestine may declare that it accepts the jurisdiction of the Court to be able to prosecute it for disrespect of international law committed against it. However, this possibility is limited by the fact that Israel does not accept the binding jurisdiction clause.

It is clear that the UN has a vital role to play for the future of Gaza and Israel. As long as Gaza and Israel continue their tense relationship, the UN must continue its active presence. Given the potential conflict, the UN must be as proactive as possible in securing support from the international community to put pressure on all parties to refrain from committing acts of violence and to work for a peaceful solution.[420]

The popular support for the Palestinians continues despite the evolution of regional alignments at the state level.[421] The persistent importance that Arab populations attached to the Palestinian cause show a growing disconnect between Arab regimes and their populations, an increase in the "division between regimes and the people" identified by some scientists.[422]

The weakening of the rule of Arab unity, the low importance given to regional policy at the state level, the

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[419] UNSC, Security Council Resolution 9 (1946), adopted on 15 October 1946, https://digitallibrary.un.org/record/111947 (accessed 20 December 2020)

[420] A. Miller, *Op. cit.*, p. 132.

[421] K. Makdisi, Palestine and the Arab-Israeli Conflict: 100 Years of Regional Relevance and International Failure, In: *MENARA Working Papers*,2018, nr. 27. 25 p, https://www.iai.it/sites/default/files/menara_wp_27.pdf, (accessed 5 January 2021).

[422] M. Lynch, Power Ploy. In: *The American Prospect*, https://prospect.org/article/power-ploy/, (accessed 14 January 2021).

Arab-Israeli conflict in general and the issue of Palestine particularly, and the evolution of the positions of several Arab states on their relations with Israel are significant changes in the regional current order. The institutionalised relations between Israel and a growing number of Arab states, which are not Israel's immediate neighbours, could indicate a change in the regional order. In other words, we would see a rather radical transformation of the regional order if official relations with Israel became the norm or if Palestine no longer mobilises the Arab public opinion.

The Arab-Israeli conflict and the crisis caused by the hostile Israeli-Palestinian relationship are certainly a serious challenge to international peace and security. Thus, this crisis in which states (Israel, the Arab states) are involved on the one hand as subjects of public international law and non-state actors (Hamas, Hezbollah) is a real challenge for both the UN as a major player in the peace process on worldwide, as well as for regional organisations in the Middle East.

The conflict between Israel and Palestine is a potential challenge to the security of the entire globe, as well as a factor of mobilisation and unity among the Arab states. However, recent evolutions indicate that the interests of Arab states and the "unity of pan-Arabism" are in dissonance due to divergent attitudes towards Iran's position and its nuclear program, the armed conflict in Syria, and other security threats in the region.

Iraq. With the destruction of the Iraqi state following the US invasion, fanaticism became institutionalised in the new Iraqi political system. When the Iraqi state collapsed, it left room for a mix of transnational jihadist groups, Shiite militias backed by Iranians, and a number of other foreign actors. Finally, as R. Hinnebusch observes, the Iraqi conflict

has spread to the region, trans-nationalised the sectarian conflict, and encouraged a new sectarian discourse.[423]

The United Nations Assistance Mission for Iraq (UNAMI) is one of the UN's primary presences in Iraq. Founded in 2003 and expanded in 2007, it remains active today. UNAMI has a goal that is focused on supporting both the government and the people of Iraq and is responsible for many initiatives that are essential to promoting increased security. They work with the government and civil society to coordinate humanitarian efforts for UN agencies, funds, and programs across the country.

In Iraq, the government is widely seen as sectarian (even by some Shiite parties and religious leaders) and therefore lacking legitimacy. Moreover, ensuring ethnic and religious identities creates antagonism and provokes fear in society, which is incompatible with the ideas of individual rights, citizenship, and inclusion and ends up harming ethnic and religious minorities.

The lack of security of sectarian identities, perceived as a threat[424], thus legitimises the use of exceptional means such as violence and fierce repression.[425] While ensuring the sectarian identities are deliberate, once triggered, it builds solid social facts and the illusion of fulfilled prophecy. The campaigns based on fear and sectarian alteration end up creating dynamics of self-sustaining

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[423] R. Hinnebusch, 'The Sectarian Revolution in the Middle East', *Revolutions: Global Trends & Regional Issues*, vol. 4, nr. 1, 2016, p. 120-152.

[424] M. Darwich, and T. Fakhoury, 'Casting the Other as an Existential Threat: The Securitization of Sectarianism in the International Relations of the Syria Crisis', *Global Discourse*, vol. 6, nr. 4, 2016, p. 712-732.

[425] O. Waever, Securitization and Desecuritization, In: *On Security*, New York, Columbia University Press, 1995, p. 46-86.

groups and social realities that are becoming difficult to dismantle, as is the case in Iraq and Syria.[426]

UNAMI does not provide humanitarian or development programs, but rather raises the profile of development by engaging in things such as political dialogue, assistance in electoral processes, and facilitating regional dialogue between Iraq and its neighbours. The UN's role in Iraq is strongly focused on the political arena and humanitarian aid - mainly on the refugee population or displaced people whose numbers have increased following the conflict with the Islamic State in Iraq and Syria (ISIS). ISIS has occupied Iraq and Syria since 2014 and has remained a major security concern due to its ruthless violence, financial resources, and innovative ways of using social media.[427]

A major focus of the UN is on Mosul, following the recovery of the city from ISIS and the finding of numerous human rights infringements, and the UN refugee agency has opened its 12th camp outside Mosul to assimilate the growing number of displaced people, because the previous camp, which can accommodate 30,000 people, was full.

The families arriving at the camps report that the situation in Mosul is getting worse, with no water, food, , and fuel or basic services. In addition, traveling outside the city in an attempt to reach a camp is a dangerous journey. The situation in Iraq caused by ISIS is a security matter in several different areas: the infrastructure has been destroyed by brutal fighting, hundreds of thousands of people have been displaced, and the brutality of ISIS will

[426] CH., Phillips and M. Valbjørn, '"What Is in a Name?" The Role of (Different) Identities in the Multiple Proxy Wars in Syri', *Small Wars & Insurgencies*, vol. 29, nr. 3, 2018, p. 414-433.

[427] S. Mabon and S. Royle, The Origins of ISIS: *The Collapse of Nations and Revolution in the Middle East*, London, I.B. Tauris, 2017. 248 p. ISBN 978-1784536961

have persistent effects on the Iraqi people. Funding for humanitarian efforts is not approaching the required level, only 17% of the 985 million dollars requested by the Humanitarian Response Plan for Iraq was provided.[428]

The lack of funding from the international community jeopardises the UN's ability to properly address the humanitarian crisis, which would not contribute to alleviating the security concerns. In addition to the necessary basic goods that the UN provides, they are building also field hospitals to help the victims. These field hospitals provide essential services that are needed for the people of Iraq to gain access after suffering such a high level of violence from ISIS.

During a trip to Baghdad in March 2017, UN Secretary-General António Guterres engaged to continue his commitment for providing assistance and support for the reconstruction of Iraqi institutions and reiterated the importance of ISIS being responsible for human rights infringements, although he was not very explicit about the role that the UN will play in that process.[429]

Even though ISIS seems to have been defeated in Iraq, the UN still has a long way to go to help ensure security in the region. Providing healthcare to citizens to deal with the trauma they have suffered is a strictly necessary step. Rebuilding infrastructure and political institutions will lead to a stabilisation that will also contribute to increasing the level of security.

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[428] UN News. DR Congo: UN seeks $64 million to tackle humanitarian crisis in Kasaï region, https://news.un.org/en/story/2017/04/556042-dr-congo-un-seeks-64-million-tackle-humanitarian-crisis-kasai-region (accessed 14 January 2021).

[429] UN News, News in Brief, 2.03.2017, https://news.un.org/en/audio/2020/03/1058431 (accessed 18 January 2021).

Marta Ruedas, UNDP's resident representative for Iraq, stressed that roads in Iraq are being repaired, the hospitals are becoming operational, the electricity is being restored, and people can finally return to work. She also said that more than 60% of the nearly 6 million displaced people were able to return home. All of these are steps in the right direction, but there is still a long way to go to ensure stability in Iraq. The international community has a responsibility to provide the necessary assistance to the UN to ensure that this goal is put into practice.[430]

The international armed conflict between US-led allied forces and Iraq is the biggest challenge to the system of rules of public international law in the first decade of the 21st century. The intervention of the allied forces was carried out before the adoption of the UN Resolutions and led not only to the collapse of the dictatorial regime of Saddam Hussein, but also generated a humanitarian catastrophe both for the Iraqi people and for the entire region.

The role and place of the UN and the system of rules of public international law and international humanitarian law in the process of mitigating the consequences of war are of major importance. It will take a long time and resources for Iraq's state institutional system to recover and be capable to have the sovereignty of the Iraqi people in the light of new realities.

Syria. The Syrian conflict that erupted in 2011 compromised security across the country and displaced millions of Syrians. There have been widespread human rights infringements during the Syrian crisis, and the UN has responded by calling for an immediate end to violence, the release of political detainees, impartial investigations to end impunity, ensuring accountability, and bringing the

[430] A. Miller, *Op. cit.*, p. 133.

perpetrators to justice, and protecting victims of the conflict. Each of these steps is essential in trying to restore Syria's security. Since the conflict began, Syria has transformed from a middle-income country into one in which four out of five residents live in poverty.

The displacement of Syrians has strained the economies of neighbouring countries, which are trying to accommodate a growing number of Syrian refugees. This creates an external security concern for neighbouring states, as their own development is affected by the absorption of a large number of people, which their infrastructure and economies are unable to support. The UN is addressing this security concern by working to build bridges between humanitarian responses to the crisis, supporting increased resilience of the most affected communities in Syria and host countries, by strengthening livelihoods, encouraging social cohesion, and rebuilding infrastructure.

In Syria, since 2011, the Assad regime has categorised protesters and the opposition as Islamists and Sunni sectarian terrorists eager to establish a majority Sunni regime, while the regime delivers sandbags to Alawite villages to protect them from Sunni anger, thus instilling sectarian fear to minority groups and re-creating self-fulfilling prophecies.[431] The classic security dilemma led to more violent forms of sectarianism with more Sunni massacres in 2012,[432] as a spiral of sectarian violence was set in motion. Today, the younger generation of soldiers and militiamen who have fought in Syria for years are more flexible on the subject and seem to have forgotten the

[431] CH. Salamandra, *Op. cit.*, p. 303-306.

[432] CH. Phillips and M. Valbjørn, '"What Is in a Name?" The Role of (Different) Identities in the Multiple Proxy Wars in Syria', *Small Wars & Insurgencies*, vol. 29, nr. 3, 2018, p. 414-433.

official statements of a Syrian national "mosaic" of ethno-sectarian identities.

In the case of Syria, the use of international law has not gone beyond the rhetoric stage. The Russian and Chinese vetoes were firmly established to avoid the adoption of any resolution under Chapter VII that could lead to the use of force against the Syrian regime. The language of international law in the Syrian conflict has been expressed at four levels: at the level of principles, at the level of invoking international conventions, at the level of international humanitarian law, and the level of the functioning of the Security Council.

With regard to the principles of public international law, Russia has promoted the principles of sovereign equality and non-interference. For Moscow, the international law serves to prevent rather than allow for foreign intervention in state affairs and regime change by force, it has strongly supported this principle and has not made concessions to the Security Council. With regard to the invocation of international conventions, we should mention in particular the Convention on the Prohibition of Chemical Weapons,[433] invoked after the chemical attack of August 21st, 2013.

It is quite interesting to note here that the Syrian state was not a signatory at the time of the crime, and the convention could not be opposed to Syria, but conversely, the facts were used to persuade Damascus to sign it. As for the international humanitarian law, we can quote France's recent motion for a resolution to the Security Council to

[433] Convention concerning the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and of Their Destruction of 13.01.1993.
https://ihl-databases.icrc.org/ihl/INTRO/553
(accessed 18 January 2021).

refer war crimes committed in Syria to the International Criminal Court. Finally, the role of the Security Council was diminished by not being able to "act" or "intervene" this time.

The threats of intervention made by Washington, Paris, and London, after the August 21st chemical attack, independent of the United Nations framework, cause a real dilemma for international law. In this case, the role given by the Charter to the Security Council could be described as a simple instrument in a set of instruments intended to act.

In December 2014, the UN launched the Regional Refugee and Resilience Plan (3RP) to respond to the growing crises in Syria. The 3RP initiative of 2016-2017 is a combined effort of the UN and more than 200 partners with purposes that are not limited to the Syrian border. Examples of what 3RP aims at achieving are the creation of strong national leadership in planning the response by the Lebanon Crisis Response Plan, the Jordan Response Plan, and the 3RP chapters in Turkey, Iraq, and Egypt.

It also aims at providing a regional protection framework, as well as at promoting education for young people. One of the most important aspects of security that 3RP addresses in countries absorbing Syrian refugees is food security - a fundamental human right that must be fulfilled before other concerns can begin to be addressed. In January 2017, the rebel groups and a Syrian government delegation participated in discussions in Astana, Kazakhstan. The meeting, which was attended by Russia, Turkey, Iran, and the UN special envoy for Syria, resulted in a ceasefire agreement in Syria.

The result of the fourth round of discussions in Astana was the signing of an agreement to create four "security" zones in Syria, which the UN special envoy said was a step in a promising direction.

Funding is needed for both Syrians and refugees from the countries neighbouring Syria, where tensions are rising and at risk of spiralling out of control in places like Lebanon. What is most obvious about the relationship between the UN and Syrian refugees is that there will continue to be a desperate need for funding to ensure that basic needs are met.[434]

While sectarian regimes and leaders can use the security of sectarian identities to increase their power base, these identity manipulations can paradoxically undermine their power and legitimacy in the long run.[435] In Syria, for example, the Assad regime may have difficulty limiting the influence of Shiite militias in the post-conflict and reconciliation phase that will follow.

In Bahrain and Syria, the acting leaders have managed to deepen sectarian divisions because it is unclear whether they are able to overcome a situation characterised by the presence of fractured and unstable communities, haunted by suspicion and unrest.[436]

The armed conflict in Syria has all characteristic elements of an international armed conflict, and the provisions of international humanitarian law regarding the regulation of methods and legal means of conducting war and the protection of protected persons are fully required.

The civil war in Yemen is one of the most complex matters in the Middle East today. In 2011, the Houthis

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[434] A. Miller, *Op. cit.*, p. 135.

[435] R. Del Sarto, A. Identity and Insecurity: The Rise of Ethno-Religious Politics in Israel and the Broader Middle East, *Shifting Global Politics and the Middle East',* vol. 34, 2019, pp. 56-62. >.

[436] K. Moore-Gilbert, Sectarian Divide and Rule in Bahrain: A Self-Fulfilling Prophecy? In: *MEI Articles*, 19.01.2016, https://www.mei.edu/publications/sectarian-divide-and-rule-bahrain-self-fulfilling-prophecy, (accessed 30 January 2021).

gained significant power in Yemen as anti-government demonstrations and sentiments spread across the country. By the end of 2011, President Ali Abdullah Saleh had agreed to resign and allow his vice-president, Abdrabbuh Mansur Hadi, to replace him.

Beginning in 2013, the Hadi-led government and opposition groups began the process of engaging in a national dialogue, which created the basis for drafting a new constitution that would divide Yemen into six provinces. The United Nations was hopeful at the time, with the UN special envoy for Yemen arguing that the agreement would lead to a democratic government that upheld human rights and equal citizenship.[437]

The Houthi opposition rejected the agreement, which can be seen as a catalyst for what was to happen. Throughout 2014, many Houthi supported anti-government protests that erupted throughout Yemen. In September, the Houthis captured the capital Sanaa, leading to the dissolution of parliament, Hadi's forced resignation, and a new revolutionary committee to replace the government.

In February 2015, the UN Security Council called on Houthi rebels to retreat "immediately and unconditionally" from all government institutions, to release President Hadi, and to engage in UN-mediated negotiations to organise the democratic transition. The most notable events were the heavy clashes on March 19th between the Central Security Forces and the people's committees and the bombings that took place on March 20th in Sanaa, which killed up to 140 people. He reported that on March 21st and 22nd, Houthi militia and Yemeni

[437] A. Orkaby, 'Yemen's Humanitarian Nightmare: The Real Roots of the Conflict', *Foreign Affairs*, vol. 96, nr. 6, 2017, p. 93-101.

army units gained control of Taiz, which had geographical significance as a gateway to Aden.[438]

The Security Council met again on April 14th to discuss the importance of addressing the situation in Yemen. The topics discussed at the meeting highlighted the potential humanitarian crisis, the importance of human security and human rights, and the matter of Saudi Arabia's involvement in the crisis. The Security Council acknowledged that President Hadi had requested the assistance of Saudi Arabia, by any means necessary, including military intervention, which eventually happened.[439]

This series of events provides a framework for understanding what led Yemen to a brutal war. The Security Council condemned Houthis' actions and imposed sanctions, but their effectiveness was limited. At this time, the Houthis were not interested in engaging in democratic peace discussions and did not recognise the legitimacy of President Hadi.

Yemen is one of the biggest security risks in the international community for several reasons. An estimated 8.3 million people depend on foreign food aid, while 400,000 children suffer from severe acute malnutrition. Virtually, all children in Yemen are in desperate need of humanitarian assistance, as exemplified by UNICEF estimates that 25,000 children in Yemen died at birth or before they were one month old.[440] In addition to severe

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[438] UNSC, Provisional agenda for the 7411th meeting of the Security Council (2015, March 22), https://digitallibrary.un.org/record/790438, (accessed 30 January 2020).

[439] UNSC, Provisional agenda for the 7426th meeting of the Security Council (2015, April 14), https://digitallibrary.un.org/record/791436 (accessed 30 January 2020).

[440] S. Nebehay, *UN hopes imports will help stave off famine in Yemen as diphtheria spreads*, https://www.reuters.com/article/us-yemen-

food shortages, there is a lack of medical supplies. An outbreak of diphtheria has spread rapidly since December 2017 in areas of Yemen, with nearly 700 cases and 48 associated deaths.[441]

Cholera has been a significant problem in Yemen, with more than 1 million cases since early 2017, resulting in 2,300 deaths.[442] Less than 50% of hospitals in Yemen are operational, 18% of districts do not have doctors, and 56% of the population does not have regular access to basic health care. There are currently no UN peacekeeping forces in Yemen to ensure that millions of vulnerable people are protected and given the help they urgently need.

The United Nations Development Program (UNDP) has identified and subsequently built a method of addressing immediate humanitarian concerns, hoping to alleviate some of the general security concerns created by this conflict. UNDP approaches its operations in Yemen from a community perspective and aims at creating programs that increase the level of resilience. These programs are designed to encourage economic autonomy and resilience.[443]

By unanimous resolution 2452,[444] the UN Security Council established in 2019, for an initial period of six

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security-un/u-n-hopes-imports-will-help-stave-off-famine-in-yemenas-diphtheria-spreads-idUSKBN1F516M (accessed 25 January 2021)

[441] Ibidem.

[442] Yemen Cholera Response. Weekly Epidemiological Bulletin, 07.07.2018, http://www.emro.who.int/images/stories/yemen/week_26.pdf?ua=1 (accessed 14 January 2021).

[443] A. Miller, *Op. cit.*, p. 135

[444] UNSC, Security Council Resolution 2452 (2019), adopted on 16 January 2019, https://digitallibrary.un.org/record/1660551, (accessed 14 January 2021)

months, the United Nations Mission to Support the Hodeidah Agreement (UNMHA), responsible for facilitating the implementation of the City and Ports Agreement in Hodeidah, Salif, and Ras Issa established by the Stockholm Agreement of December 13th, 2018.

The mission is mandated to lead the Steering Committee, to monitor the parties' compliance with the ceasefire in Hodeidah province, to work with stakeholders to ensure that the security of the city and the ports of Hodeidah, Salif, and Ras Issa are ensured by local security forces and to facilitate and to coordinate United Nations support to assist the Parties in implementing the Hodeidah City and Ports Agreement.[445]

On July 14th, 2020, the Security Council extended until July 15th, 2021 the mandate of the United Nations Mission to Support the Hodeidah Agreement (UNMHA), by the unanimous adoption of Resolution 2534.[446] The Council maintains the mandate of UNMHA, which will chair the Steering Committee and ensure its operation, to supervise the ceasefire and demining operations throughout the province of Hodeidah.[447]

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[445] Yémen: le Conseil de sécurité crée, pour une période initiale de six mois, la Mission des Nations Unies en appui à l'Accord sur Hodeïda (MINUAAH), https://www.un.org/press/fr/2019/cs13664.doc.htm, (accessed 14 January 2021)

[446] UNSC, Security Council Resolution 2534 (2020), adopted on 14 July 2020, https://digitallibrary.un.org/record/3872059, (accessed 14 January 2021)

[447] Yémen : le Conseil de sécurité proroge de douze mois le mandat de la Mission des Nations Unies en appui à l'Accord sur Hodeïda, https://www.un.org/press/fr/2020/cs14250.doc.htm, (accessed 14 January 2021).

3.3. International regulatory provisions applicable to regional crises in Africa (Congo, Mali, Libya)

The collective security system, despite the lack of a clear and precise legal text on the competencies of the various peacekeepers, is mainly based on the United Nations and the Security Council. Although the AU and the Regional Economic Communities sometimes mention in their constitutive act the priority and permissive institutional role of the UN and the Security Council in the field of peacekeeping, they tend autonomy in maintaining peace. This autonomy is essential in terms of conflict prevention. Thus, we intend to analyse the attempts to develop and implement international normative provisions at regional and sub-regional levels to ensure peace and security of the African continent.

A particular attention was paid to the African Union (AU) and sub-regional African entities, indicating the key role they should continue to play in organizing future peace operations on the continent.[448] However, despite improved African skills and capabilities for peace operations and strong demands for greater African intervention capability, the African Peace and Security Architecture (APSA) will not reach its full operational capability as long as the continent could not assume all

[448] UN, General Assembly, Report of the High-level Independent Panel on Peace Operations on uniting our strengths for peace: politics, partnership and people A/70/95–S/2015/446, 17 June 2015, https://digitallibrary.un.org/record/795940, (accessed 15 January 2021).

military, development, and civil imperatives of multidimensional peace operations, at least not for a short and medium-term. It is therefore relevant and appropriate to consider how to improve international cooperation in peace operations in Africa.

Although the African Union has its own peace and security mechanism for Africa (APSA), during peacekeeping operations, this body cannot be separated from the intervention of other relevant international organisations in this field.

Thus, the African Union contributes significantly to the conflict resolution process in several zones of Africa. From 2003 to 2008, the AU sent about 15,000 troops to the fighting zone in Burundi, Sudan, the Comoros, and Somalia.[449]

Some of these contingents have actively cooperated with international actors responsible for ensuring peace. For example, the first peace mission that was initiated before the creation of the Peace and Security Council (PSC), carried out by the AU, was in Burundi (AMIB-African Union Mission in Burundi) from 2003 to 2004. This mission consisted of deploying troops from South Africa, Ethiopia, and Mozambique with a mandate for two years and then was taken over by the UN. After that, this African operation was under UN command and was funded by the UN.[450] This mission was later called Operation UN in Burundi (ONUB), and later in 2007, the AU sent a military contingent to Burundi to help achieve the Dar es Salaam

[449] F. Soderbaum and R. Tavares Problematizing regional organizations in African security, p. 78.

[450] K. Sturman and A. Hayatou, The Peace and Security Council of the African Union: from design to reality. In: *Africa's New Peace and Security Architecture; Promoting Norms, Institutionalizing Solutions*, UK, Ashgate, 2010, p.70-71.

peace agreement between the government and the opposition.[451]

The next mission was to Darfur Sudan (AMIS-African Union Mission in Sudan). In this operation, the AU sent 100 observers to Darfur in 2004. Then, in 2005, the AU sent 7,000 troops to the country.[452] This operation was almost entirely sponsored by external donations, such as from 2003 to 2007 the European Union (EU) donated 250 million euros for this mission. Subsequently, AMIS became the UN-AU Mission in Darfur (UNAMID), and in 2008 the EU awarded another grant for the mission of around 300 million euros.[453]

The Republic of Togo was suspended from membership between February and May 2005 and Comoros, when Mohamed Taki Abdoulkarim died in office and his son fraudulently retained power by manipulating the elections since then and won other elections in 2010. In Madagascar, Guinea, and Niger, some members of the military horde were not allowed to participate in the elections. There are cases in which the presidents of African states such as Uganda and Algeria have suppressed the normative provisions related to the procedures for electing the president and maintained power by manipulating the election results. In these cases,

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[451] F. Soderbaum, and B. Hettne, Regional security in a global perspective, Africa's *New Peace and Security Architecture; Promoting Norms, Institutionalizing Solutions*, UK, Ashgate, 2010, p. 22

[452] S.M. Makinda and F.W. Okumu, *Op. cit.*, p. 118.

[453] E., Ulf and J. Gomes Porto, Africa's New Peace and Security Architecture: Promoting Norms, Institutionalizing Solutions. In: *Africa's New Peace and Security Architecture; Promoting Norms, Institutionalizing Solutions*. UK: Ashgate, 2010, p. 4

the AU did not have the capacity to impose sanctions against such infringements.[454]

For the purposes of this analysis, events in Congo can be conventionally differentiated into four periods. The first period, from March 1993 to June 1996, was the last years of President Joseph-Désiré Mobutu's power, in which infringements were committed due to the failure of the democratisation process and the devastating consequences of the Rwandan Genocide, especially in the provinces of North Kivu and South Kivu. The second period, which runs from July 1996 to July 1998, deals with infringements committed during World War I and in the first fourteen months of the regime established by President Laurent-Désiré Kabila. The third period runs between the outbreak of World War II in August 1998, and the death of President Kabila in January 2001. Finally, the last period of progressive respect for the ceasefire along the front line and the acceleration of peace negotiations for the launch of the transition was June 30th, 2003.

In order to intervene to ensure peace and security within the Congolese state, the UN Security Council has issued a series of resolutions which have been the basis for building and shaping the mandate and rules of engagement depending on the situation on the ground in the peacekeeping operation in Congo (MONUC-United Nations Organisation in the Democratic Republic of Congo).[455]

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[454] E.Y. Omorogbe, 'A club of incumbents? The African Union and coups d'etat', *Vanderbilt Journal of Transnational Law,* vol. 44, nr. 1, 2008, pp. 123-154. ISSN 0090-2594, p. 127.

[455] UNSC Resolution 1279 (1999), adopted on 30 November 1999, https://digitallibrary.un.org/record/384901, (accessed 17 January 2021); UNSC Resolution 1289 (2000), adopted on 7 February 2000,https://digitallibrary.un.org/record/407322 , (accessed 17 January 2021); UNSC Resolution 1291 (2000), adopted on 24

Throughout its development, MONUC's mandate has been regularly adapted due to changes in the national political context. Although MONUC has gradually evolved into a peacekeeping, peace-building, and peace-building mix, with civil protection as an absolute priority, the mission has come a long way. In 1999, the Security Council authorised the deployment of MONUC to restore peace, as a new war threatened the Great Lakes Region. With only 500 military observers (MILOB) at its disposal,

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February 2000, https://digitallibrary.un.org/record/408364, (accessed 17 January 2021); UNSC Resolution 1304 (2000), adopted on 16 June 2000, https://digitallibrary.un.org/record/416322 , (accessed 17 January 2021); UNSC Resolution 1484 (2003), adopted on 30 May 2003, https://digitallibrary.un.org/record/495989, (accessed 17 January 2021); UNSC Resolution 1493 (2003), adopted on 28 July 2003, https://digitallibrary.un.org/record/499812 , (accessed 17 January 2021); UNSC Resolution 1565 (2004), adopted on 1 October 2004, https://digitallibrary.un.org/record/531854, (accessed 17 January 2021) ; UNSC Resolution 1592 (2005), adopted on 30 March 2005, https://digitallibrary.un.org/record/544704, , (accessed 17 January 2021); UNSC Resolution 1596 (2005), adopted on 18 April 2005, https://digitallibrary.un.org/record/546261, (accessed 17 January 2021); UNSC, Security Council Resolution 1794 (2007), adopted on 21 December 2007, https://digitallibrary.un.org/record/614752, (accessed 17 January 2021); UNSC Resolution 1797 (2008), adopted on 30 January 2008, https://digitallibrary.un.org/record/617918, (accessed 17 January 2021); UNSC Resolution 1843 (2008), adopted on 20 November 2008, https://digitallibrary.un.org/record/641977, (accessed 17 January 2021); UNSC Resolution 1856 (2008), adopted on 22 December 2008, https://digitallibrary.un.org/record/644491, (accessed 17 January 2021); UNSC Resolution 1906 (2009), adopted on 23 December 2009, https://digitallibrary.un.org/record/673858, (accessed 17 January 2021); UNSC Resolution 1925 (2010), adopted on 28 may 2010,https://digitallibrary.un.org/record/683422, (accessed 17 January 2021).

MONUC was set up as a traditional peacekeeping mission to ensure compliance and monitor the Lusaka Ceasefire Agreement.

UN Security Council Resolutions 1289 (2000) and 1291 (2000) tend to be considered as the foundations of a new peacekeeping doctrine, providing more robust mandates for UN peacekeeping operations. These resolutions gave the United Nations Mission in Sierra Leone (UNAMSIL) and the United Nations Mission in the Democratic Republic of the Congo (MONUC) the power to use violence to protect its mandate. Both resolutions were innovative, in that the Security Council introduced the notion of "imminent threat", which allowed members of the mission to protect civilians "from the imminent threat of physical violence". However, it remained unclear under what circumstances these actions apply and what level of force should be used to protect civilians. In this regard, the inclusion of the phrase "imminent threat" has increased the level of security of civilians.

Like UN Resolutions 1289 and 1291, the Brahimi Report, named after Algerian diplomat Lakhdar Brahimi, triggered the evolution toward more robust UN peacekeeping operations. Thus, the group established that traditional peacekeeping operations have become out-dated, referring to previous failed operations. Therefore, Brahimi suggested the following: "There are situations in which the peacekeeping forces not only should have the right but are even morally obliged to use force."[456]

Due to the complex conflict environment in which the peacekeeping mission operated, MONUC rapidly evolved into a more robust operation based on Chapter VII. Although the Second Congo War officially ended in

[456] UNSG, Report of the Secretary-General on United Nations Peace Operations, "Brahimi Report". 21 August 2000, https://digitallibrary.un.org/record/420963, (accessed 17 January 2021).

April 2003 with the signature of the Sun City Agreements and a transitional government was installed, the conflict continued in the east of the country.

Indeed, in 2003 and 2004 MONUC faced two serious protection crises around Bunia (Ituri) and Bukavu (South Kivu). Although the mission was mandated to "protect civilians from the imminent threat of physical violence", the peacekeeping forces failed to protect the population and this led to the first anti-MONUC protests. However, both crises have served as a challenge, as the international community has realised that the elections of 2006 will not take place unless the mandate of the mission has been adapted.

In 2007, the Security Council repeatedly reiterated its call on the Congolese authorities "to implement a verification mechanism that takes into account, when selecting candidates for official positions, in particular for important positions in the armed forces, the police national security, and other security services, the actions of those who have disrespected the provisions of international humanitarian law and international human rights law".[457]

Similarly, in March 2009, the seven special thematic procedures on technical assistance to the Government of the DRC stated in reports that: "The Government should without delay sanction those who have committed serious human rights infringements. In addition, the Government and its main partners in the security reform should establish a comprehensive verification mechanism with sufficient resources, by which each officer will be subjected to a thorough investigation related to human rights compliance until the present day and his/her capacity to command, in accordance with the principles of

[457] UNSC, Security Council Resolution 1794 (2007), adopted on 21 December 2007, https://digitallibrary.un.org/record/614752, (accessed 17 January 2021).

international humanitarian law and the values set out in the DRC Constitution. The candidates who have not passed this test will be excluded and their names will be blacklisted which would prevent them from accessing military, police, and intelligence services, and the international community must provide technical assistance in this process by providing specialized international staff and the necessary resources".[458]

The expert group for the DRC mentioned in the text of the issued recommendations that the DRC government should institute "a mechanism for individual investigations as for FARDC officers in the field of human rights".[459]

The construction of such a process is strongly supported by Congolese civil society. The Security Council considers that such a measure is necessary to break the cycle of impunity that has always surrounded the security forces in the DRC and that a real Security Sector Reform (SSR) cannot lead to lasting results if the security forces are not cleaned up.

Unfortunately, no discussion has been officially initiated by the Congolese authorities so far, as part of these reforms, on a possible consolidation process, neither for the police nor for the army. The proposal by some international partners to include verification in police

[458] UN, General Assembly, Human Rights Council, Technical Assistance and Capacity-Building. Combined report of seven thematic special procedures on technical assistance to the Government of the Democratic Republic of the Congo and urgent examination of the situation in the east of the country A/HRC/10/59, 05 March 2009, https://digitallibrary.un.org/record/650564 , (accessed 17 January 2021).

[459] UN, Interim report of the Group of Experts on the Democratic Republic of the Congo. S/2009/253, 18 May 2009, https://digitallibrary.un.org/record/655082, (accessed 17 January 2021).

reform has met with strong opposition from Congolese actors.

In response to the situation in the country, the UN Security Council announced on March 28th, 2013 that it would adopt a regional initiative to deploy an intervention brigade in the DRC to conduct offensive operations and to neutralise and disarm the rebel groups.[460] The Council authorised the deployment of the first combat force and a change in peacekeeping operations. Although not the first lethal force permit, it is a shift from peacekeeping operations to peace enforcement or peace-building operations in the region.

The strategy of deploying a military force to engage offensively against rebel groups in the eastern DRC was conceived and agreed upon by African regional powers at the International Conference of the Great Lakes Region (ICGLR) in July 2012. The group was planned as a neutral intervention force of about 3,500 soldiers, mostly from the South African Development Community (SADC), which conducts offensive operations to defend civilians and neutralises and disarms the rebel groups, as agreed by the ICGLR.[461]

However, it was not feasible for the operation to be conducted only by ICGLR countries. The cost of deployment has been estimated at approximately 100 million dollars, the regional body has no experience in

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[460] UN Security Council, 'Intervention Brigade' Authorized as Security Council Grants Mandate Renewal, https://www.un.org/press/en/2013/sc10964.doc.htm, (accessed 23 December 2020)

[461] O. Nkala, Uganda Pleads for UN Support for Deployment of 4000 Strong Neutral Force in Eastern DR Congo. In: *The Daily Journalist*, http://thedailyjournalist.com/world/uganda-pleads-for-un-support-for-deployment-of-4000-strong-neutral-force-in-eastern-dr-congo/, (accessed 28 December 2020)

deploying at this scale, and observers believe it is still far from being able to implement an intervention force of this level in the region.

The current political context in the DRC is unprecedented, as we can observe the first political transition in the DRC since the country's independence in 1960 and the election of Congo's first president, Joseph Kasa-Vubu. The presidential elections in December 2018 gave rise to a political alternation with the accession to power of Félix-Antoine Tshisekedi in January 2019, after 18 years of the regime of Joseph Kabila, the former president of the DRC.

Since January 2019, positive signs have been observed to calm the political situation and initiate democratic reforms, with the release of several political prisoners. A coalition government made up of members of Félix Tshisekedi's coalition, CACH and the Common Front for Congo (FCC) of former President Joseph Kabila, was invested at the end of August 2019.[462]

Qualifying the situation in Mali. The political and security situation in Mali was marked by the signature of the Peace and Reconciliation Agreement in Mali in 2015. However, the Agreement did not put an end to all armed confrontations, they intensified in certain regions and new belligerents emerged. Only certain armed confrontations effectively ceased.

Thus, from 2012 to 2015, the regular army in Mali was engaged in a non-international armed conflict against

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[462] Rapport d'analyse, MONUSCO, 20 ans de présence en République démocratique du Congo. Quelles priorités pour son prochain mandat? 40 p., https://www.fidh.org/IMG/pdf/rapport_rdc_20_ans_mandat_monusco_no746f_fr_v2_pdf_print_au_12_de_c_2019.pdf, (accessed 13 November 2020)

the National Movement for the Liberation of the Azawad (NMLA). Considering the military operations carried out by the NMLA and, in particular, its takeover of some localities in northern Mali in 2012, the conditions for the existence of a non-international armed conflict between the regular state army and the NMLA were met.

After the signature of the Peace Agreement, there was virtually no confrontation between the Malian army and the NMLA,[463] so the conflict seems to have ended. On the other hand, several armed actors are still involved in armed confrontations whose intensity seems high enough to justify the applicability of international humanitarian law. The essence of these violent acts puts the Malian forces and their supporters (especially the Barkhane forces and some of the signatories to the Peace Agreement) against the various radical Islamist groups present in northern and central Mali.

The Malian context is also marked by inter-community violence. Based on publicly available information, none of these confrontations appear to correspond to an international armed conflict, as they do not take place between states as belligerent parties.

Consequently, the situation in Mali is characterised by the existence of several non-international armed conflicts, as well as by violence that does not reach this threshold necessary to be qualified as an armed conflict. It should be noted that, as in many other situations, achieving the legal status of the situation in Mali is complicated by at least three factors relating to the establishment of the facts. Firstly, it is difficult to assess the degree of organisation of certain armed groups. Secondly,

[463] UN, Final report of the Panel of Experts established pursuant to Security Council resolution 2374 (2017) on Mali, S/2018/581, https://digitallibrary.un.org/record/1639171, (accessed 13 November 2020).

it is often difficult to identify the perpetrators of violent acts when they are not claimed and therefore to attribute them to a belligerent party. Thirdly, the targets of certain groups are multiple: they are not only Malian or international forces but also traditional authorities and local leaders or members of the civilian population.[464]

In these circumstances, it is not always easy to determine who the target entity is in the end and therefore to qualify as a belligerent party within the meaning of International Humanitarian Law.

The peace agreement of 2015 did not end clashes between all signatory armed groups. Thus, in 2016 and 2017[465] there were numerous acts of hostility, which led the UN Secretary General to note, in early 2018, the existence of frequent tensions between the two signatory coalitions, which sometimes led to infringements of the ceasefire agreement and armed clashes.[466] Thus, in July 2017, there were heavy clashes between GATIA (Groupe Armé Touareg Imghad et Alliés) and a group identified as belonging to the CMA (Coordination des Mouvements de l'Azawad), which caused loss of life and injuries on both sides. In May 2019, rivalries for control of the city of Talataye in the Gao region, a strategic crossroads for these movements, would have led to clashes between the MSA

[464] A. Tobie, Le Centre Mali: Violences et Instrumentalisation croisées. In: *SIPRI Insights on Peace and Security*, p. 5, https://www.sipri.org/sites/default/files/2017-12/sipriinsight_1712_mali_3_fra_1.pdf, (accessed 5 January 2021),

[465] A. Bencherif, 'Le Mali post 'Accord d'Alger': une période intérimaire entre conflits et négociations', *Politique africaine*, vol. 2, nr. 150, 2018, p.198.

[466] UNSG, Report of the Secretary-General on children and armed conflict in Mali, 21 February 2018, note 64, https://digitallibrary.un.org/record/1477495, (accessed 28 December 2020).

(Mouvement pour le Salut de l'Azawad) and CMA groups.[467]

The intensity of the violence is measured by the loss of human lives on sides, significant property damage, and the displacement of local people in the city of Ménaka. These incidents led to the CMA taking over a part of Talataye. There are reports that CMA and MSA clashed again in June 2019 in the same zone, causing deaths.[468] There are other acts of violence attributed to these groups, which do not necessarily lead to direct confrontations.[469]

Implications of intervention in Libya. While the African Union has made various calls for dialogue and been accepted by the Libyan regime, it seems that the international community has begun a seemingly impossible process of reconciliation with Colonel Gaddafi. This divergence of choice and action demonstrates one of the taps of this "responsibility to protect" (R2P) and doubts its necessity. The term "responsibility to protect" was first addressed in December 2001 in a special report requested by the UN Secretary-General's International Commission for Intervention and State Sovereignty realised by the Canadian government.[470]

Adopted on September 16th, 2005 at the United Nations World Summit, the Responsibility to Protect

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[467] Armed Conflict Database de l'International Institute for Strategic Studies (IISS), https://acd.iiss.org/member/default.aspx, (accessed 28 December 2020).

[468] Ibidem.

[469] UNHCR, Rapport mensuel de monitoring de protection Nr. 04, Avril 2019, https://reliefweb.int/report/mali/rapport-mensuel-de-monitoring-de-protection-n-04-avril-2019, (accessed 13 November 2020)

[470] G., Evans and M. Sahnoun, La *responsabilité de protéger: Rapport de la Commission internationale de l'intervention et de la souveraineté des États*, CIISE: 2001, 410 p. ISBN 0889369615

appears to be the key exception to the inability of the international community to act due to the principle of state sovereignty. First, all states members have recognised their obligation to protect their populations from violent crime, genocide crime, war crime, and crimes against humanity.[471]

In accordance with the provisions of the Report of the International Commission on State Intervention and Sovereignty, sovereignty thus appears as an inherent right of states, but which entails various responsibilities, in particular that of protecting its population against the aforementioned categories of crimes.[472]

In the case of Libya, R2P had as its main objective the protection of international morality and legality and provided for a zone that excluded over-flight and compliance with the arms embargo.[473]

This clearly calls into question the objectives of R2P and all the more the underlying principles. If in the case of Libya, the threshold of just cause[474] cannot be proven, the precautionary principles that are to ensure the prevention of mass atrocities have not been respected. Neither the "good intention", the general objective that should motivate any military intervention for protection, nor the

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[471] UN, General Assembly, 2005 World Summit Outcome Document, A/60/L.1, 20 September 2005, p. 33. https://digitallibrary.un.org/record/556532, (accessed 13 November 2020)

[472] G., Evans and M. Sahnoun, La *responsabilité de protéger: Rapport de la Commission internationale de l'intervention et de la souveraineté des États*, CIISE, 2001, p.410 ISBN 0889369615.

[473] UNSC, Security Council Resolution 1970 (2011), adopted on 26 February 2011, https://digitallibrary.un.org/record/698927, (accessed 13 November 2020)

[474] Rapport de la Commission internationale de l'intervention et de la souveraineté des États, La responsabilité de protéger, CIISE, 2001, 120 p.

other crisis prevention options that must precede the military intervention, the so-called "last resort"[475] were discussed and applied. Therefore, Gaddafi's death imposed the end to the escalation of violence and a change in military intervention through dialogue as a means of settling the Libyan conflict.[476]

The responsibility to protect, except for the principle of non-intervention in the internal affairs of states, can only be valid if it does not generate abuses. The use of a certain violence to end violence is contrary to its essence. The military intervention, whatever the need it generates, can hardly bear the zero risk of causing deaths among civilians. The intervention to save and protect civilians has the effect of killing these civilians.[477]

The illegal military intervention under the guise of a responsibility to protect does not meet the needs of early warning. In the worst case, it foreshadows an even more alarming situation than it should have prevented. The question of the appropriateness of authorised humanitarian intervention in Libya is really worth considering when looking at the current state of crisis in this country.

When the prevention of mass crime, which legitimises the use of responsibility to protect, generates an even more violent conflict that lasts over time, this precaution does not really serve to prevent conflicts. The fall of the leader of the Libyan revolution generates much more uncertainty about the peace and security of Libya and the Sahel-Saharan sub-region. The settlement of the

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[475] Ibidem p. XII

[476] R. Harvin, Guerre de Libye et légalité international. In: *Responsabilité de protéger et guerres 'humanitaires': le cas de la Libye*. L'Harmattan,2012, pp. 63-86. ISBN 978-2-296-56022-2.

[477] M. Canto-Sperber, *L'idée de guerre juste. Éthique et philosophie morale*, Paris, PUF, 2010, p. 108-109.

post-Gaddafi conflict was not addressed in the military intervention decreed by the United Nations Security Council,[478] while the AU continued to call for a diplomatic solution to the crisis, respect for territorial integrity, and the right to self-determination of the Libyan people.[479]

This military position of the United Nations Security Council, supported by France, the United Kingdom, and the United States, was against the diplomatic action proposed by the African Union.

The difficulties on the ground and the need for new international intervention, despite the expansion of the United Nations Support Mission in Libya (UNSMIL)[480], are therefore highlighted in a crisis situation that was predictable.

The concept of "humanitarian intervention" is a formidable intellectual trap. As Susan Marks[481] points out, while the adjective "humanitarian" encourages membership, the term "intervention" discourages the idea of analysing the role of power that intervenes before this

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[478] UNSC, Security Council Resolution 1970 (2011).

[479] AU, Peace and Security Council, PSC/PR/COMM.2(CCLXV), 265th meeting, AddisAbeba (Ethiopia), 10 March 2011, https://oau-aec-au-documents.uwazi.io/en/document/fa0mtdhxp76uzfyddxbn75jyvi, , (accessed 13 November 2020); African Union Peace and Security Council, PSC/PR/BR.1(CCLXVIII), 268th meeting, Addis Ababa (Ethiopia), 23 March 2011, https://www.alwihdainfo.com/PRESS-STATEMENT-OF-THE-268TH-MEETING-OF-THE-PEACE-AND-SECURITY-COUNCIL_a4030.html, (accessed 13 November 2020).

[480] UNSC, Security Council Resolution 2009 (2011), adopted on 16 September 2011, https://digitallibrary.un.org/record/710980, (accessed 13 November 2020).

[481] S. Marks, 'State-Centrism, International Law, and the Anxieties of Influence', Leiden *Journal of International Law,* vol. 19, 2006, pp. 339-347.

process begins. If it intervenes, it is because it has not been there and does not bear any responsibility for the ailments it wants to cure.

Between February and March 2011, the civil war that struck Libya gave rise to two United Nations Security Council resolutions.[482] Beyond the particular nature of the military operation, the resolutions themselves are of undeniable interest. By default, it is about the "responsibility to protect", as set out in the outcome document of the World Summit of 2005, which appears in these resolutions.

Resolution 1970 (2011), adopted unanimously, was the first step. It establishes a reference to the ICC and, acting in accordance with Chapter VII of the Charter of the United Nations, the Security Council "urges the Libyan authorities to exercise the utmost restraint, respect human rights and international humanitarian law and to grant access immediately to the human rights international observers in the country. "[483]

But while recalling its attachment to Libya's sovereignty and independence, the Security Council also recalls that it is the responsibility of the Libyan authorities to protect the Libyan people and impose an arms embargo. As these efforts have failed, Resolution 1973 (2011) goes further. It provides a "no-fly zone" and authorises states members which have notified the Secretaries-General of the United Nations and the League of Arab States in this sense, acting in their capacity as independent states or within regional organisations or arrangements, to take all necessary measures to impose a flight ban.

It should be noted that the legal basis for this resolution is broad enough for various forms of

[482] UNSC, Security Council Resolution 1970 (2011); UNSC, Security Council Resolution 1973 (2011)

[483] Ibidiem, art. 2 a).

intervention without the deployment of ground forces. Extensively interpreting the normative provisions, the military coalition carried out airstrikes beyond the combat zones. However, *a priori*, the Resolution does not aim in any way at the physical elimination of Colonel Gaddafi or the overthrow of his regime.[484]

This abuse of power, intended to be limited, causes a real crisis of confidence, which makes it difficult to return the "responsibility to protect" to the UN Security Council's task.

As for Libya, it continues to be affected by chaotic security and a democratic situation that is not adequate for its development. The intervention in Libya, on humanitarian grounds, in addition to being illegal because it did not meet the preconditions for "responsibility to protect", was therefore counterproductive in terms of conflict prevention.

In his Report on Early Warning, Assessment and Responsibility to Protect,[485] the Secretary-General of the United Nations addressed the usefulness of the structure of the United Nations inter-institutional and inter-departmental mechanism for coordinating preventive action, consisting of 21 United Nations agencies, funds, and departments, in the circulation and analysis of information for the prevention of genocide, war crimes, ethnic cleansing or crimes against humanity.

On the other hand, in some situations, such as Libya's "hasty" warning had priority over early warning.

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[484] B. Nabli, L'intervention *en Libye à l'épreuve du principe de légalité, Institut de relations internationales et stratégiques*, www.iris-france.org/43198-linterventionen-libye-a-lepreuve-du-principe-de-legalite, (accessed 13 November 2020)

[485] UNSG, Report of the Secretary-General on Early warning, assessment and the responsibility to protect. 14.07.2010. Available on Internet: <URL: https://digitallibrary.un.org/record/686468>

This does not preclude the outbreak of such conflicts in the future and requires African states to consider building a continental military force, supported by the international community, which would be integrated into the African architecture of peace and security and conflict prevention.

3.4. Conclusions to Chapter III

The analysis of legal instruments and mechanisms available to regional organisations for settling crises in various zones is the subject of research in this chapter. Thus, the regional crises that turned into armed conflicts in different periods without those on the territory of the former USSR have practically the same scenario. With the support of the foreign element, in our case it is about the Russian Federation, treacherously exploiting the secessionist feelings and tendencies characteristic of the period, these regional crises are provoked and managed with the involvement of the Russian military factor on the territory of the former USSR member states to defend their geostrategic interests in the zone of Georgia (Abkhazia and South Ossetia), Armenia and Azerbaijan (Nagorno-Karabakh) and the Republic of Moldova (eastern districts of the Republic of Moldova).

All these crises have been provoked and managed by the same director and are taking place with its consistent involvement despite the express provisions of public international law. In the sense of the research carried out, we should mention that the Organisation for Security and Cooperation in Europe has failed to achieve its goal of settling these crises.

Thus, the crises in Georgia and Nagorno-Karabakh have degenerated in different periods, into international armed conflicts with all their characteristic consequences. Even though the period of these armed conflicts was not very long, the humanitarian consequences on the population of the region were dramatic and the challenges

on the normative system of international humanitarian law were disastrous.

Another important crisis on the European continent in the sense of our research is the crisis in Kosovo and its consequences on the normative system of public international law. The Kosovo precedent created by the declaration and recognition of its independence by more than 100 states, as well as the role of the UN mission in forming this entity, raises consistent problems in public international law, and the situation created as one of the most dangerous precedents in analysing regional crises provoked by separatist tendencies both on the European continent and globally.

Thus, the UN intervention in the Lebanon crisis through the peacekeeping operation (UNIFIL) has played a crucial role in reducing the negative effects of the conflict on the civilian population and has ensured the process of building peace and security in the region, including through programs initiated under Lebanon within UNHCR for the protection of refugees.

Palestine has long been the unifying element of the Arab states in their fight against Israel. In this case, too, the involvement of the UN through the legal instruments and legal mechanisms of action established by the Charter has repeatedly ensured the cessation of active military operations and the return to a dialogue of the warring parties.

The PLO's intention to be recognised as a state and implicitly as an entity capable of referring to the International Criminal Court on crimes committed in the area generated divergent positions among members of the UN Security Council, which did not allow the development of an unambiguous solution. At present, this structure is the only organisation of a people fighting for

liberation recognised by the UN that benefits from a special status.

Despite the prominent element of ethnic and religious division at the beginning of the Israeli-Palestinian conflict, over time, the sectarian element that has always united the Arab states in their struggle against Israel yields to the cynical and pragmatic interests of the region leaders and states.

In this extremely complicated and complex situation, the role of UN structures and instruments of intervention is of undeniable utility and importance, and negotiations on various platforms and strict compliance with the provisions of international law in general and the texts of regional agreements, in particular, are the only mechanisms, which could avoid a return to hostile military action in the region.

The intervention of the United States of America and the Coalition formed at their initiative in Iraq has generated a whole series of challenges and rhetorical questions about the essence of the principles of public international law and the mechanisms for ensuring their observance. The UN has intervened *post factum* to reduce the negative effects on security in the region through its specific instruments which have proved insufficient to restore legal order and the rule of law in Iraq in particular and in the eastern area in general.

The same elements of sectarian division, between Shiites and Sunnis, as well as the divergent interests of actors in the Middle East, provoked an armed conflict in Syria, and the unequivocal positions of permanent members of the UN Security Council did not allow for prompt peacekeeping intervention under the auspices of the UN in the context of the conflict, which could have substantially reduced the suffering of the population and the devastating effects on Syria's economic and social

system. Even though hostilities in Syria have virtually ceased at the moment, the challenges of restoring the state at all levels are just beginning, which is to be achieved with the participation of regional organisations and states in the region under effective UN control.

More recent, in terms of the start of military operations, is the armed conflict in Yemen. Despite strict UN monitoring of the situation on the ground, the Hodeidah Agreement (UNMHA) is to intervene in strict accordance with its mandate to ensure peace and security in the zone of Hodeidah and the ports of Hodeidah, Salif, and Ras Issa.

The initiative of African states to assume the settlement of the Congo crisis has failed, and the establishment of an intervention force at a regional level is proving to be unfeasible at this time. In this sense, MONUC has rapidly evolved towards a more robust operation based on Chapter VII of the UN Charter.

The situation in Mali is characterised by the existence of several non-international armed conflicts, as well as by violence that does not reach this threshold necessary to be qualified as an armed conflict. Under these conditions, the Secretary-General and other UN structures are closely monitoring the peace and security process in this state.

The armed conflict in Libya, which is a legally unlawful military intervention under the guise of a responsibility to protect, does not meet the needs of early warning, and the opportunity for authorised humanitarian intervention in Libya is urgently needed in view of the on-going crisis in this state.

GENERAL CONCLUSIONS AND RECOMMENDATIONS

The purpose of the paper is to investigate the place, role, and position of the regional organisations in the process of ensuring regional peace and security and to conduct comprehensive research on the international legal mechanisms and instruments to ensure the active and effective involvement of regional structures, within the limits set by the UN Charter and the UN Security Council in settling regional crises, thus contributing to ensuring international peace and security. Therefore, we have reached the following general conclusions:

1. The analysis of specialised works allows us to find that there is a sufficient volume of scientific papers on general subjects related to the international normative system that regulates the process of ensuring international peace and security. At the same time, we cannot observe the existence of fundamental work on the interaction between the regional organisations and structures and the United Nations Security Council in the process of preventing harmful effects and effective settlement of the regional crises, and the work of some authors proves to be a reflection of subjective positions depending on their position on either side of the conflict. However, we conducted a study of relevant works that allowed us to achieve the objectives of this paper and the theoretical basis of the role and place of the international organisations in the process of settling the regional crises in accordance with the rules of the public international law.

2. The monopoly on the coercive action to ensure international security is held by the UN Security Council,

which may delegate certain tasks to a regional organisation in strict accordance with established procedures and the text of the mandate issued, and the regional organisations have priority in the case of procedures for preventing and combating the harmful effects of regional crises. In the event of a real need to intervene forcefully to ensure peace and security in the zone, the regional organisations are obliged, in accordance with the provisions of articles 52-54 of the UN Charter, to coordinate these actions with the Security Council.

The constitutive documents of the international organisations subject to analysis allow us to find that only article 5 of the North Atlantic Treaty expressly sets out the priority of the UN Security Council with regard to the use of force in the individual or collective self-defence of NATO members. The statutes of the League of the Arab States, the African Union, and other regional organisations do not refer to the competencies of the Security Council, but establish in the set of competencies of the organisation the ensuring of the peace and security of the member states All states members of regional organisations and structures are states members of the United Nations, which obliges them to fully comply with the provisions of the UN Charter, including the obligation to coordinate in advance the interventions in the regional crisis settlement process with the Security Council. The use of coercive actions to ensure regional peace and security must be carried out in strict accordance with the provisions of the UN Charter, and the exceptions established in favour of states (self-defence and collective intervention) are also valid for the regional organisations.

3. What we must note is that NATO has intervened in situations that have occurred outside the territories of the Member States, which is strictly legal in breach of the provisions of the Charter, but this exception has proved to

be imposed by the realities of the moment and tacitly accepted by the UN Security Council, and the opinion of this structure, in accordance with international normative provisions, is absolutely mandatory in the case of military interventions carried out by regional organisations in order to ensure peace and security. NATO intervention outside the territories of the Member States is a dangerous example of the international security system. In theory, each regional structure should take all necessary measures to provide a platform for cooperation between the Member States, including in the field of resolving regional crises between them. As long as the articles of association of the international organisation do not expressly regulate the conditions under which States allow the intervention of the regional organisation outside the territories of the Member States, such intervention may not take place legally.

4. The place and role of Kosovo's precedent in the process of preventing and settling the separatist regional crises cannot be overrated. This has generated a wide range of actions among self-proclaimed structures in the international arena generally and on the European continent especially. The Kosovo precedent demonstrates a double-standard approach in analysing the relationship between the right of peoples to self-determination and separatism. From a theoretical point of view, separatist tendencies and initiatives are inadmissible and should not be supported by third countries under the principles of public international law and the provisions of the UN Charter. This precedent is used in the case of separatist tendencies and initiatives on the European continent and is a defiance of the rules of international law.

Following the analysis of the regional crises in South-Eastern Europe, we can observe that in all these regional crises (Georgia (Abkhazia and South Ossetia), Armenia and Azerbaijan (Nagorno-Karabakh), and the Republic of

Moldova (Eastern districts of the Republic of Moldova) are not present or planned for UN peacekeeping operations, due to the veto power of the Russian Federation in the UN Security Council in the case of Abkhazia, South Ossetia and Nagorno-Karabakh, and in the districts of the Left Bank of Dniester this initiative did not even exist. Even if such operations do not exist in the zone subject to research, this does not mean that all the normative provisions of public international law regarding the prevention and settlement of regional crises are not perfectly applicable to these processes.

4. The African Union has set a real precedent in its relations with the United Nations Security Council through the robust and concrete interventions in the field to ensure peace and security and by inserting express provisions in the constitutive act which effectively provide the extension of the mandate without being expressly conditioned by the agreement of the Security Council. In this regard, we must note that in the case of Congo, the UN peacekeeping operation (MONUC) proved to be crucial for the cessation of violence and the escalation of the conflict; in Mali, we cannot observe the presence of such a peacekeeping mission, which generates a whole series of violent incidents that result in casualties among civilians, and the situation is monitored by UN structures, which do not intervene; and in the case of Libya, even today we cannot see the presence of a UN peacekeeping mission. Thus, in countries where peacekeeping missions are present, the degree and extent of the crisis are much smaller than in states where these missions are completely lacking and the regional organisations are unable to meet these challenges due to a lack of sufficient material resources and interests and divergences of states members.

6. The Middle East has been the scene of war of at least two international armed conflicts (Iraq, Syria), an

armed conflict with a contested international character, but with a similar negative impact both on the affected population and on the international normative system to ensure the settlement of regional crises (Israel/Palestine) and several other regional crises that have degenerated into either non-international armed conflicts or large-scale humanitarian crises.

The proliferation of terrorist acts, the activity of ISIS and the effective control of the sovereign territory of Iraq and Syria by this structure, the rise of sectarianism on the background of this action incompatible with the provisions of the public international law are the main challenges of the legal system of public international law and the UN, as a universal international organisation responsible for ensuring international peace and security and demonstrates the potential consequences of war in general and the lack or inability of the state institutional system to ensure its normative and legal responsibilities that can be replaced at any given time by insurgent structures. The situation in Syria is an eloquent example of demonstrating the harmful effects of the divergent interests of the states concerned on the process of achieving the goal of the United Nations, namely ensuring peace and security in the Middle East especially and in the world generally. Due to the veto of Russia and China, a UN mission is not active in Syria even today, which could effectively contribute to ensuring peace and security in the zone.

7. From a strictly theoretical point of view, the main matter is to establish the status of a subject of the public international law of the Palestine Liberation Organisation and the rules of the public international law and the international humanitarian law to be applied in the event of the Israeli-Palestinian conflict. In reality, this conflict is the most sensitive point in the Middle East region and generates a series of challenges and disputes, both

theoretical and practical. In this regard, we must note that the opinion of the International Court of Justice establishes the illegal construction of the wall and the impossibility for Israel to invoke article 51 of the UN Charter, and the lack of a peacekeeping mission under the auspices of the UN and with the effective support of the regional organisations is one of the basic impediments in the process of settling this crisis. In the countries where the UN peacekeeping missions are present, Lebanon and Yemen the escalation of conflicts and the number of civilian casualties is much lower, which further demonstrates the effectiveness of the use of these mechanisms in settling the regional crises and ensuring international peace and security.

8. The fight against terrorism, the fight against torture, including in the regional crisis settlement missions are only some challenges to the international normative system of peace and security, and the national reconciliation through transitional justice mechanisms is proving to be an effective mechanism to improve the post-conflict situation. In this regard, the United Nations and the regional international organisations are to undertake coordination actions that would exclude the production of harmful precedents that could adversely affect the system of the international legal norms aimed at ensuring international peace and security, and a commitment assumed by the United Nations to increase the applicability of the international humanitarian law to its forces would be an excellent contribution to promoting its application and observance by the states providing military contingents, by the state in whose territory these forces are deployed, and by all parties to the conflict.

The scientific solved problem is to elucidate and to argue the need and importance of cooperation between the United Nations as a universal actor in the process of ensuring international peace and security and the regional

organisations especially in Europe, the Middle East, and Africa describing the situation and identifying the regulatory gaps and the international legal cooperation for the security of regional peace and security, disregarding the circumstantial interests of states and adjusting the intervention mechanisms of regional structures to establish the international regulatory framework in the context of settling the regional crises.

Following the formulation of the general conclusions of the research, we intend to advance some recommendations on making efficient the process of settling regional crises.

1. We consider imperatively making every effort to not allow the perpetuation of practices identified in the interventions of the regional structures on the African continent such as the AU and ECOWAS, which have taken intervention measures with tacit acceptance or even with post-factum information from the UN Security Council. Any exception will diminish the applicability of the express provisions of the Charter and will potentiate the erosion of the international normative system that regulates the settlement of the regional crises, including through military interventions.

The practice of exceeding the provisions of the constitutive act and intervening in the territory of other sovereign non-member states of the organisation for the purpose of ensuring the regional peace and security, without having the mandate of the Security Council and without following the procedures established by the UN Charter could generate a number of extensive interpretations of competence of some regional structures to deal with regional crises and could irreversibly affect the international regulatory system that regulates relations between states based on the principles of the public international law.

It is therefore proposed to put an end to such precedents in any form and to review the procedure for cooperation between the Security Council and the regional organisations in the field of ensuring the regional security, which would ensure a faster rate of intervention and the conformity to the methods and means used by the regional intervention structures that would not in any way disrespect the provisions of the Charter. Disrespecting the rules set out in article 53 shall lead to the erosion of the content of this procedure and their permanent infringement depending on the interests of the involved states.

2. Only the unity of the states in the region within the international structures they have built as a result of exercising their sovereignty, diminishing the sectarianism and the pragmatic approach to the harmful and devastating effects of military force instruments used in settling disputes between the states in the region could constitute the preconditions for building an effective regional system for the prevention and settlement of the regional crises in the Middle East.

3. For the purposes of this research, we mention the need to identify the opportunities for the establishment of a United Nations mission in the Gaza Strip and more consistent support from the UNHCR in the difficult process of ensuring all necessary things the refugees from Syria. The intervention of the regional structures is also needed to ensure a substantial contribution to the prevention of adverse effects and to ensure regional peace and security especially and international security generally by all necessary and available means.

4. In the context of the regional crisis in the districts on the left bank of the Dniester, it is proposed to address an express request from the legal government of the Republic of Moldova to the United Nations Security

Council to create a peacekeeping mission and to ensure conciliation between the two banks of the Dniester and the effective assurance of the reunification of the Republic of Moldova within the recognised borders on the international arena.

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