

# Ebola and Securitization of Health: UN Security Council Resolution 2177/2014 and Its Limits

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## *Abstract*

The Security Council's Resolution 2177/2014 on the Ebola Outbreak represented a landmark in the evolution of the notion of security, positioning it alongside modern threats to peace and security. Indeed, for the first time in its practice, the Security Council qualified an infectious disease as a “threat to international peace and security” according to Article 39 of the UN Charter. The present paper deals with whether this resolution represented the culmination of a process of securitization of health started in 2000, or if it was just an isolated event. Did it mark an evolution of the activities and modalities of response of the Security Council to new global threats, or was it no more than a mere flash in the pan? In addition the legal and theoretical foundations of this highly innovative practice of the Security Council, and its relation with the Human Security concept are also discussed.

## *I Framing the Issue*

The last quarter-century registered the resurgence of a phenomenon – infectious diseases – that the medical community deemed to have defeated with the global vaccination campaign, which eradicated Smallpox in the Seventies-Eighties and is now close to doing so with Poliomyelitis.

This had determined the idea that the main challenges to public health in industrialized countries were by then mainly represented by diseases not related to viruses, such as tumors and neurodegenerative diseases (i.e.

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Amyotrophic Lateral Sclerosis, Alzheimer's Disease and Parkinson's Disease) associated with the process of aging of the population ("epidemiological transition model").<sup>1</sup>

The world medical community is now instead facing the emergence of new infectious diseases, the re-emergence of old infectious diseases and the persistence of intractable infectious diseases, that required a re-evaluation of the epidemiological transition model. Those global health challenges, represented by epidemics and pandemics such as HIV/AIDS, SARS, Ebola and Zika that arose in developing countries (in South-East Asia, Sub-Saharan Africa and Latin America), and associated with a high risk of spread in developed countries, resulted in the emergence of a collective interest in the protection of health.<sup>2</sup>

The global health governance architecture, based on the leading role of the World Health Organization (WHO), was heavily challenged by the 2014 Ebola Outbreak in West Africa. Many states (partially or completely) ignored the Temporary Recommendations issued by WHO, and the weakness of the International Health Regulations (IHR) became visible, given the lack of an enforcement mechanism. Therefore, in light of the failure of the IHR to provide an adequate and early response to the epidemic, the United Nations Security Council (UNSC) acted as a "Global Health Keeper"<sup>3</sup> and heavily questioned the central role of WHO in dealing with health emergencies, as it is further discussed in the present book by *Robert Frau's* paper.<sup>4</sup>

In this framework, within a process described as "securitization of health", the UNSC assumed the role of a "securitization actor" by adopting Resolution 2177/2014 on the Ebola Outbreak. The joint efforts by the Security Council in a strict and successful cooperation with WHO and other

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- 1 Indeed, according to Proposition Two (Shifts in Mortality and Disease Patterns) of the "epidemiologic transition" model, degenerative and man-made diseases would have gradually displaced infectious diseases. See, Omran, A, "The epidemiologic transition: A theory of the epidemiology of population change" (2005), 83 *The Milbank Quarterly*, 731.
  - 2 Fidler, D P, *International Law and Infectious Diseases*, 1999, 6.
  - 3 Arcari, M & Palchetti, P, "The Security Council as a global 'health-keeper'? Resolution 2177 (2014) and Ebola as a threat to the peace" (2014), 1 *Questions of International Law – Zoom In*, available at <http://bit.ly/2mdd3AK>.
  - 4 On the role of WHO during the Ebola Outbreak, see Villarreal, P A, "Cuando los derechos humanos chocan entre sí. Las recomendaciones de la Organización Mundial de la Salud frente a la crisis del Ébola en África de 2013-2015" (2015), 2 *Revista del Posgrado en Derecho de la UNAM*, 181.

international and regional organizations<sup>5</sup> resulted in the defeat of the disease in the most affected countries<sup>6</sup> (zero cases for at least 42 days were declared by WHO on March 17, 2016 in Sierra Leone, on June 1<sup>st</sup>, 2016 in Guinea, and on June 9, 2016 in Liberia).<sup>7</sup>

Resolution 2177 implicated what would initially appear to be a turning point in defining roles, functions and powers of the UNSC in the field of health; indeed, for the first time in its practice it classified an infectious disease as a “threat to peace and security”, according to Article 39 of the UN Charter.<sup>8</sup> This resolution marks the culmination of a trend of securitization of health, which started with two previous resolutions of 2000 and 2011 on HIV/AIDS in Sub-Saharan Africa (Resolutions 1308 and 1983). It is not a case that some scholars discussed concerning the possibility to extend the concept of Responsibility to Protect (R2P) to the health sector, indicating to the UN Members States, acting through the UNSC or *uti singuli*, a duty to protect the health of populations affected by a health pandemic with potential repercussion on a global scale (“Responsibility to Practice Public Health”).<sup>9</sup> According to this theory, if and when the most affected countries are not able to respond adequately in the presence of global epidemics/pandemics and to protect the right to health of their citizens, the UNSC would be the only organ within the UN system in charge of providing a collective response. In this case, it would act as bearer of the interest

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- 5 Alvarez J E, *The Impact of International Organizations on International Law*, 2016, 232.
  - 6 On the interaction between these two actors, Agnes, A, “A Combative Disease: The Ebola Epidemic in International Law” (2016), 39 *Boston College International and Comparative Law Review*, 97; see also the contribution of Robert Frau, “Combining the WHO’s International Health Regulations (2005) with the UN Security Council’s Powers: Does it Make Sense for Health Governance?” in this volume.
  - 7 WHO, *Ebola Outbreak 2014-2015*, <http://www.who.int/csr/disease/ebola/en/>. Some flare ups of the disease have, however, been registered and are still expected, see WHO, *Latest updates on the Ebola outbreak*, <http://who.int/csr/disease/ebola/top-stories-2016/en/>.
  - 8 Burci, G L & Quirin, J, “Ebola, WHO and the United Nations: Convergence on Global Public Health and International Peace and Security” (2014), 18 *ASIL Insight*, available at <http://bit.ly/2m5AFIF>; Pavone, I R, “The Human Security Dimension of Ebola and the Role of the Security Council in Fighting Health Pandemics: Some Reflections on Resolution 2177/2014”, (2014), 39 *South African Yearbook of International Law*, 56.
  - 9 Fidler, D P, “The UN and the Responsibility to Practice Public Health” (2005), 2 *Journal of International Law & International Relations*, 41.

of the international community to protect public health, even with the power to adopt measures *ex* Chapter VII of the UN Charter.

In the present paper, the background of the trend to securitize health issues by the UNSC will be discussed, suggesting that Resolution 2177, although innovative in expanding the notion of threats to peace and security, did not eventually modify roles and functions of the Security Council in a sensible manner. In particular, it can be argued that Resolution 2177 was in reality a missed opportunity to extend the R2P concept to the health sector, given that the UNSC did not expressly act under Chapter VII missing to mention R2P, nor did it adopt concrete measures under Articles 41 or 42 of the UN Charter.

For structural purposes, this article is divided into two parts. The first section investigates the theoretical foundations of Resolution 2177, exemplified by the securitization theory and the Human Security concept. The second part engages with the practice on securitization of the United Nations, focusing attention on the content of the three UNSC Resolutions that dealt with health issues under a security paradigm. In this part, it will also be explained why Resolution 2177 was not as revolutionary as it might have seemed at a first glance, arguing that in this case the UNSC did not intend to act *ultra vires* in extending its powers and functions to the health sector or to set a precedent.

## *II New Threats to Peace and Security*

The main global challenges to peace and security in the 21<sup>st</sup> Century are new and unpredictable events that defined a reshaping of the concept of security. The globalized world must face emerging and unpredictable threats, such as the re-emergence of infectious diseases, the rise of ISIS, environmental degradation and climate change.

Those menaces, which were of course not envisaged when the UN Charter was adopted, came out gradually after the end of the Cold War. The different threats are less predictable than “classical” military perils represented by a single enemy state and have different sources: non-state actors (groups of individuals linked to terrorist groups, pirates or insurgents), and intangible actors such as infectious diseases and global warming (even

though one could argue that climate change is also the result of the economic activities of states, leading to their refusal to subscribe and implement environmental regulations).<sup>10</sup>

The classical notion of security was strictly related to the realist view of international relations, developed at the beginning of the Cold War. The theory of realism represents an interpretation of international relations that points out their most conflictual and controversial aspects. It identifies the world order as a system dominated by anarchy, whereas a cluster of states – merely concerned with their own domestic security and national interests – are in competition amongst themselves for the pursuit of power.<sup>11</sup> According to this view, security is the protection of the homeland from aggressions or attacks caused by foreign troops. This classical interpretation of national security was then recognized by Article 51 of the UN Charter (the right to individual or collective self-defense in response to an act of aggression).

Today the notion of security has radically changed if compared to the “realist view”. It is generally accepted that security agendas should no longer be limited to resisting armed attacks by hostile troops and preventing armed conflict, because the array of risks to the survival of the population of a state has multiple sources. In fact, the classical conception of security failed to protect human populations against the new menaces related to the process of globalization endangering their lives.<sup>12</sup>

The nature of the threats and their source have radically changed together with their object. As a matter of fact, it is no longer the state that needs protection, but the individuals and their health (and the environment in which they live), according to the emerging concept of Human Security, which considers “security” as something more than the defense of the territory by an armed attack.<sup>13</sup> The end of the Cold War attested the idea that if the states were safer than before, their citizens were not in the same situation.

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10 Farrell, G, “Network structure and influence of the climate change counter-movement” (2016), 6 *Nature Climate Change*, 370.

11 Amongst the most influential writings on “realism”, see Morgenthau, H G, *Politics among Nations: The Struggle for Power and Peace*, 1948; Kissinger, H, “Documentation: Foreign Policy and National Security” (1976), 1 *International Security*, 182; Walz, K N, *Theory of International Politics*, 1979.

12 Wellens, K, “The UN Security Council and New Threats to the Peace: Back to the Future” (2003), 8 *Journal of Conflict and Security Studies*, 15.

13 Oberleitner, G, “Human Security: A Challenge to International Law?” (2005), 11 *Global Governance*, 185.

The UNSC practice reveals a trend to determine non-conventional “threats to peace and security” under Article 39 of the UN Charter and to align more closely with the Human Security paradigm. A significant moment of this extension is represented by Resolution 688/1991 on the repression of the Kurds in Northern Iraq, whereby the Council considered “the massive flow of refugees towards and across international frontiers and to cross-border incursions, as a threat to international peace and security in the region” (Preamble, Recital 3).<sup>14</sup> The most consistent developments have been registered through Resolution 794/1992 on Somalia,<sup>15</sup> Resolution 965/1994 on Rwanda<sup>16</sup> and Resolution 1529/2004 on Haiti.<sup>17</sup>

This tendency by the Security Council of gradual extension of the notion of threat to international peace since the cessation of the Cold War found its “ideological” foundations in the well-known Presidential Statement of January 31, 1992,<sup>18</sup> through which, for the first time, a UN body emphasized forms of instability different from armed conflicts.<sup>19</sup> Indeed, non-military sources of instability in the economic, social, humanitarian and ecological field have been qualified as “threats”.

A further expansion in the meaning of a threat took place with regard to international terrorism; in particular, Resolution 1368/2001 at the aftermath of the Al-Qaeda terrorist attack against the World Trade Center qualified this event, as well as *any other act* of international terrorism, as a threat to international peace and security (Preamble).<sup>20</sup> Therefore, international terrorism was considered as a threat in general terms, regardless of specific

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14 UNSC Resolution 688 of April 5, 1991.

15 UNSC Resolution 794 of December 3, 1992, on the situation in Somalia. The Council recognized a humanitarian disaster, consisting in gross violations of human rights and of the rules of international humanitarian law as a threat to peace and security (Preamble).

16 UNSC Resolution 955 of November 8, 1994, on the establishment of an International Tribunal and adoption of the Statute of the Tribunal. The UNSC qualified genocide and the systematic violations of human rights as a threat to peace and security (Preamble).

17 UNSC Resolution 1529 of February 29, 2004, on the situation in Haiti. The UNSC invoked “the deterioration of the political, security and humanitarian situation in Haiti” and established that “the situation in Haiti constitutes a threat to international peace and security, and to the stability of the Caribbean” (Preamble).

18 UN Doc. S23500, Decision of January 31, 1992 (3046th meeting), Statement by the President.

19 Bailliet, C M, *Security: A Multidisciplinary Normative Approach*, 2009, 13.

20 UNSC Resolution 1368 of September, 12, 2001, on Threats to international peace and security caused by terrorist acts. See also Resolution 1373 of September, 28,

states or specific crises, and it was the first time that such an abstract phenomenon was included within the concept of international threats.<sup>21</sup>

In line with this tendency, Resolutions 2134 and 2136, adopted on January 28 and 30, 2014, concerning respectively the crisis in the Central African Republic and the equally serious situation of conflict in the Eastern part of the Democratic Republic of Congo, have – incidentally but rather significantly – pointed out the linkage between wildlife poaching and trafficking, ongoing civil wars in the African continent and the activities of criminal networks and terroristic organizations that operate on an international scale.<sup>22</sup> The strict relationship between natural resources and conflicts, although an object of growing interest,<sup>23</sup> had until now remained unrelated to the UNSC practice, at least as regards the significance raised by living natural resources. In these resolutions in particular, the UNSC considered illegal poaching of elephants and smuggling of their ivory as a fuel factor of armed conflicts, because it is an illicit source of financing for various armed groups often linked to international terrorism.<sup>24</sup> These two resolutions – alongside Resolution 2177 – represent a very innovative development of the UNSC practice concerning the notion of threats to peace and security, and in particular on the same qualification of the legal concept of international security.

Conceptually, the aforementioned trend to expand the notion of security matters to the domains of environment and health reflects the new challenges emerging from the process of globalization and, as underlined by some scholars, echoes the point of view of the Copenhagen School theory

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2001 on Threats to international peace and security caused by terrorist acts, which states in the Preamble that “*any act of international terrorism, constitute a threat to international peace and security*”. In this regard, see Cadin, R, I presupposti dell'azione del Consiglio di sicurezza nell'articolo 39 della Carta delle Nazioni unite, 2008, 278; Värk, R, “Terrorism as a Threat to Peace” (2009), 16 *Juridica International*, 216.

21 Conforti, B & Focarelli, C, *Le Nazioni Unite*, 2010, 213.

22 Peters, A, “Novel practice of the Security Council: Wildlife Poaching and Trafficking as a Threat to the Peace” (2014), *EJIL Talk*, <http://bit.ly/1cQ5gtX>.

23 For instance, Öberg, M & Strøm, K, *Resources, Governance, and Civil Conflict*, 2008.

24 Pontecorvo, C M, “Consiglio di sicurezza e risorse naturali viventi: il wildlife trafficking come fuelling factor dei conflitti armati” (2014), 5 *Ordine internazionale e diritti umani*, 938.

of securitization,<sup>25</sup> representing the decline of the “realist thinkers in international relations”.<sup>26</sup>

In the next paragraphs, the theoretical framework of Resolution 2177, focusing on the concepts of securitization of health and Human Security as its theoretical foundations, will be analyzed.

### *III Securitization Theory and Health*

The term “Securitization” refers to “things discussed in security terms” or “things identified as requiring exceptional response”.<sup>27</sup> This concept draws its theoretical foundations from the Copenhagen School’s securitization theory that, for the first time, gained the attention on the need to go beyond the traditional concept of security centered on the defense of the territory of the state by foreign military threats. *Buzan*, considered as the founder of the Copenhagen School, highlighted that the state cannot be considered as the only referent of security policies and also that – in particular in the context of fragile or failed states – non-state actors must be taken into account as the target of security policies.<sup>28</sup>

The Copenhagen School identified five domains of security that comprise not only military security, but also environmental, economic, social and political security, therefore differentiating itself from the “realist thinkers”. In particular, it highlighted a multitude of security threats originating from state as well as non-state actors and non-tangible entities, such as environmental degradation or infectious diseases.

In this framework, securitization is described as a process in two phases, through which states recognize an issue as a threat to their security.<sup>29</sup> In brief, phase I requires the use of the “language of security” that initiates the securitization process, labeling a determined issue or event as menace

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25 The theory of international relations developed by the Copenhagen School, which emphasizes in particular the social aspects of security, is based upon the study of Buzan, B, *People, States and Fear: The National Security Problem in International Relations*, 1983. For further discussions, see Buzan, B, Waever, O & Wilde, J de, *Security: A New Framework for Analysis*, 1998, 23.

26 Swain, A, *Understanding Emerging Security Challenges*, 2013.

27 Hindmark, S, *Securing Health: HIV and the Limits of Securitization*, 2016, 22.

28 Buzan, B, *People, States and Fear: The National Security Problem in International Relations*, 1983.

29 Buzan, Waever & de Wilde, *Security: A New Framework for Analysis*, above Fn. 25.



(speech act). Indeed, as argued by *Austin* since 1962, language is a key instrument whose function is not limited to the delivery of information, but it is a real form of action or social activity.<sup>30</sup> During phase II, the audience and the stakeholders involved are convinced that they are facing a threat; the issue is accordingly widely and commonly accepted as a risk for security (act of securitization). Thus, the securitization actor is legitimized to adopt extraordinary measures.<sup>31</sup> Ebola – which can be considered as a “social threat” – passed through this process of securitization and the UNSC became the securitization actor by adopting Resolution 2177.

The securitization of health dates back to the end of the Cold War with the rise of global health risks, such as the emergence of new infectious diseases (HIV/AIDS), the menace of bioterrorism, environmental degradation and global warning and mass migrations. The globalization process and the increased mobility of persons and animals around the globe accelerated the diffusion of infectious diseases, rendering them a global threat.<sup>32</sup> In particular, developed countries found themselves vulnerable to the spread of health pandemics generated in the Third World.

At the political level, the drive of change in the perception of infectious diseases as a global security issue was led by the US under the Bill Clinton administration. The US National Intelligence Council Report of 2000 (“The Global Infectious Disease Threat and its Implications for the United States”) recognized for the first time that new and re-emerging infectious diseases could pose a rising global health threat and could have a negative impact on US and global security.<sup>33</sup> The document asserted then that the consequences of epidemic outbreaks will lead to conflict or increase the

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- 30 Austin, J L, *How to do Things with Words*, 1962, 1. On the role of language in the securitization process, see Elbe, S, *Security and Global Health. Towards the Medicalization of Insecurity*, 2010, 11.
  - 31 Emmers, R, “Securitization”, in Collins, A (ed.), *Contemporary Security Studies*, 2007, 112.
  - 32 Fidler, D P, “Globalization, International Law, and Emerging Infectious Diseases” (1996), 2 *Emerging Infectious Diseases*, 77.
  - 33 The text of the report is available at [https://www.dni.gov/files/documents/infectiousdiseases\\_2000.pdf](https://www.dni.gov/files/documents/infectiousdiseases_2000.pdf). As evidence of the growing concern in the United States regarding biological threats (including infectious diseases), we can refer to then-US President *Barack Obama*’s Executive Order of November 4, 2016 (“Advancing the Global Health Security Agenda to Achieve a World Safe and Secure from Infectious Disease Threats”). This Executive Order gives public authorities special powers to respond to infectious diseases that could represent a threat to national security. See <http://bit.ly/2mwRexg>.

likelihood of conflict.<sup>34</sup> It was a turning point for the definitive emergence of public health as a security matter at the domestic level, since the previous security strategy of 1998 (“A National Security Strategy for a New Century”), included public health only amongst the secondary threats, and HIV/AIDS, for instance, was mentioned only once.

All these chain of events constituted the move towards securitization within different spheres (academic and political) and came to the decisive moment for the acceptance of health as a security threat within the United Nations, represented by the report of the Secretary-General’s High Level Panel on Threats, Challenges and Change (2004). It highlighted global security threats such as civil wars, the spread of Weapons of Mass Destruction (WMD) and international terrorism. In particular, para. 67 of the Report explicitly referred to health threats (“The Security Council, should host a second special session on HIV/AIDS as a threat to international peace and security”). Indeed, a key element of the Report is represented by the holistic approach it took to health and security, posing at the same level of “threats” naturally occurring outbreaks as well as pandemics generated by biological or chemical agents voluntarily released in the atmosphere (bioterrorism).

The Report recommended that the Security Council consult with the Director-General of the WHO “to establish the necessary procedures for working together in the event of a suspicious or overwhelming outbreak of infectious disease” (para. 70) and, in turn, that WHO Director-General “keep the Security Council informed during any suspicious or overwhelming outbreak of infectious disease” (para. 144).<sup>35</sup> Furthermore, this document speculated for the first time the necessity for the Security Council to provide a concrete support to the action of WHO personnel (“if existing [IHR] do not provide adequate access for WHO investigations and response coordination, the Security Council should be prepared to mandate greater compliance”, para. 144); it could also imply the use of its powers *ex* Chapter VII, in order to realize efficient quarantine measures.

Conferring upon the Security Council the main responsibility of dealing with potential global spread of a virus in case of failure of the WHO, meant that the UNSC acquired a central role triaging health emergencies.<sup>36</sup> Now

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34 Washer, P, *Emerging Infectious Diseases and Society*, 2010, 149.

35 Report of the Secretary-General’s High-Level Panel on Threats, Challenges and Change, *A More Secure World: Our Shared Responsibility*, UN Doc. A/59, 2004. Odello, M, “Commentary on the United Nations High-Level Panel on Threats, Challenges and Change” (2005), 10 *Journal of Conflict and Security Law*, 231.

36 Davies, S E, “Is There an International Duty to Protect Persons in the Event of an Epidemic?” (2010), 2 *Global Health Governance*, 1.

would its extended mandate also imply the possibility to adopt measures within the framework of Chapter VII of the UN Charter in order to protect human populations from health menaces derived from infectious diseases – that can be generated naturally or voluntarily by the human being (bioterrorism) – with a potential global diffusion?

The next paragraphs deal with why this extended mandate – even if it sounded as if there was a danger of *ultra vires* – did not imply, under a practical point of view, the emergence of a new norm of international law recognizing a new power to the UNSC to intervene in order to protect the health of populations in the presence of health epidemics or pandemics. The failure to include Resolution 2177 within the Human Security paradigm, which will now be explained, will contribute to support this position.

#### IV The Human Security Paradigm

In general terms, the ‘Human Security’ paradigm, which encompasses the above mentioned modern threats to peace and security and added a new dimension to the debate on the notion of security, traces back to the writings of eminent scholars in the early 1980s (*Ullman*) and encompasses health within the security paradigm.

*Ullman* affirmed that non-conventional threats, including economic and environmental issues, could be just as dangerous as traditional military ones, and therefore should deserve consideration as “security issues”.

*Ullman* defined a threat to security as

“an action or sequence of events that (1) threatens drastically and over a relatively brief span of time to degrade the quality of life for the inhabitants of a State, or (2) threatens significantly to narrow the range of policy choices available to the government of a State or to private, nongovernmental entities (persons, groups, corporations) within the State”.<sup>37</sup>

Wars of an international or an internal character, terrorism and natural disasters can be included within the first category. A situation with few opportunities for trade, investment and cultural exchange, and in which important values are threatened falls within the second category.

Along the same line of thought, *Mathews* argued that environmental degradation should be considered as a priority in national security strategies, even if she still considers the state, rather than the human being, as the main

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37 Ullman, R, “Redefining Security” (1983), 8 *International Security*, 133.

object of security policies.<sup>38</sup> The 1987 “Brundtland Report” drafted by the United Nations World Commission on Environment and Development (WCED) entitled *Our Common Future*, which was known for having elaborated the concept of sustainable development relevant for the current UN debate, also referred to environmental degradation as a threat to national security (para. 22). Therefore, according to this point of view, damages to the environment and the related consequences on the health and well-being of populations can be a source of political and social instability and conflict.

This position was then confirmed by the notion of Human Security, promoted by Canada and officially endorsed by the United Nations through the UN Development Programme (UNDP), which contributed significantly to the evolution of the security concept and “translated into practice” the thoughts of *Ullman*. UNDP defined Human Security in its 1994 Human Development Report, drafted by *Mahbub ul Haq* and influenced by eminent scholars such as *Martha Nussbaum* and *Amartya Sen*, as “safety from chronic threats, hunger, disease and repression” and “protection from sudden and hurtful disruption in the patterns of daily life”. In delineating Human Security, the UNDP highlighted seven dimensions: economic security, food security, environmental security, energy and resource security, bio-security and health security. Therefore health is considered as one of the core values to be secured. Indeed, according to the proponents of the Human Development Report, the Human Security concept would better respond to the health needs of populations; in a few words, traditional military means are not the most appropriate tool to protect people against the spread of a pandemic.

Strictly related to the Human Security discourse is the distinction between negative and positive peace, drawn by an eminent Norwegian scholar, *Johan Galtung*.<sup>39</sup> Negative peace generally means the absence of an armed conflict and of physical violence, while the concept of positive peace is more articulated. It refers to the presence of conditions that enable a major political equality and social and economic justice. In this regard, the promotion of Human Security can be an important tool in the achievement of positive peace and in the prevention of conflicts.<sup>40</sup>

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38 Mathews, J T, “Redefining Security”, in Owen, T (ed.), *Human Security*, 2013, 37.

39 Galtung J, “An Editorial” (1964), 1 *Journal of Peace Research*, 1.

40 Turan, T, *Positive Peace in Theory and Practice Strengthening the United Nations Pre-Conflict Prevention Role*, 2015, 70.

A second influential report was adopted in 2003 (“Human Security Now”) by the Commission on Human Security, co-chaired by *Sadako Ogata* and *Amartya Sen*. It identified three health challenges strictly related to Human Security: global infectious disease, poverty-related threats and violence and crisis.<sup>41</sup> The report contained a strategy for a “people-centered approach to global health” based on empowerment and protection. Empowerment requires adequate policies with the aim of increasing individual and community capacity, while protection entails prevention of diseases through adequate health strategies. As far as we are concerned, the key element of the 2003 report is given by the incorporation of health within the Human Security discourse.<sup>42</sup>

The novelty of the notion of Human Security is given by the change of perspective in entailing not only the territory of a state, but also the populations as bearers of a right to be protected against threats. It also comported a shift in the approach: in fact, security should no longer be achieved through military means but also through sustainable human development.<sup>43</sup>

This extensive and comprehensive catalogue of sources of Human Security focuses on the potential of harm to individuals and paved the way to the concept of Responsibility to Protect, whose efficiency has been widely challenged due to the failures it met facing the humanitarian crises in Libya and in Syria.<sup>44</sup>

The former UN Secretary-General *Kofi Annan* in his 2005 Report (“In Larger Freedom”) included deadly infectious diseases amongst the threats to peace and security of the 21<sup>st</sup> Century (para. 78), providing moral and legal value to the extension of the Human Security concept to health.

Ebola was a Human Security crisis in all respects, because – given its unprecedented nature – it endangered the life of entire populations of Western Africa. However, the notion of Human Security, even though it certainly contributed to the drafting process of Resolution 2177, was not pivotal. Indeed, in Resolution 2177 the predominant concerns were for the potential impact of Ebola on the political and economic stability of the most affected

41 Tigerstrom, B von, *Human Security and International Law*, 2008, 178.

42 Chen, L & Narasimhan, V, “Human Security and Global Health” (2003), 4 *Journal of Human Development*, 181.

43 Tadjbakhsh, S & Anuradha, C, *Human Security: Concepts and implications*, 2007, 21.

44 Pavone, I R, “The Crisis of the Responsibility to Protect Doctrine in the Light of the Syrian Civil War” (2014), *The Global Community Yearbook of International Law and Jurisprudence*, 103.

countries, and consequently of the African region, compared to concerns for the welfare and well-being of the populations affected by the disease.

## *V Human Security and Securitization of Health*

The Human Security concept and the ongoing process of securitization of health, both recognizing that health epidemics and pandemics pose a threat to peace and security, would seem at a first glance as similar concepts. The securitization of health is instead, for some aspects, at odds with the Human Security concept. Indeed, securitization means that health epidemics and pandemics are no longer considered as a humanitarian issue that must be handled uniquely by the instruments and means provided by development cooperation and by international human rights law, but as a security matter that could also require military means.<sup>45</sup>

Therefore, the Human Security concept and securitization are two sides of the same coin. Both the concepts recognize the nexus health-security, but the means they rely on to protect security against an outbreak are, at least theoretically, quite different.

The Human Security concept is based on the idea that the respect of human rights and human dignity are the main tools to avoid a potential global spread of an infectious disease. In short, if the right to health is adequately fulfilled and promoted – which means access to timely, acceptable, and affordable health care of appropriate quality – a regional health epidemic can be successfully contained. Indeed, all West African countries that have been affected by the Ebola outbreak are listed on the “Fragile States Index”.<sup>46</sup> This means that the root causes of the outbreak of the disease and of the failure to contain the epidemic since its beginning are due to fragile or broken health systems, densely populated urban areas, poverty and malnutrition. Therefore, the security-development nexus was satisfied in this case (fragile States pose a threat to peace and security, providing fertile ground

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45 Floyd, R, “Human Security and the Copenhagen School’s Securitization Approach: Conceptualizing Human Security as a Securitizing Move” (2007), 5 *Human Security Journal*, 38.

46 The Fragile State Index is an annual report published by the Fund for Peace. Guinea is at the “high alert” level (12th of 178 countries in the Fragile States Index Rank), Liberia and Sierra Leone are at the “alert” level. The Report is available at <http://fsi.fundforpeace.org/>.

for tangible and intangible threats, such as terrorism and/or infectious diseases). Thus, those threats are often generated by the failure of a country's efforts towards development, and more security can only be achieved through the fulfillment of the Sustainable Development Goals (2015-2030).<sup>47</sup>

In light of this brief analysis, does it really make sense to frame an infectious disease as a security matter? Advocates of securitization of health retain that a public health emergency – posing a threat to national security – should be treated in the same manner as a traditional military menace, therefore implying a military response. The value of securitizing health issues, according to *Enemark*, is that it “promises to attract greater political resources and attention for protecting human health and human lives in the face of specific infectious disease threats”.<sup>48</sup> In other words, since governments fear exposure to serious threats affecting their homeland security, they are willing to invest more resources and funds against a health epidemic.<sup>49</sup>

However some scholars raised concerns of the equivalence between infectious diseases and national and international security threats, focusing on the risk of overriding human rights and civil liberties.<sup>50</sup> Likewise, there is an underlying lack of historical evidence on the link between infectious diseases and political crises.

The next paragraphs explain that the Security Council's practice of securitization of health never implied military measures nor the limitation of human rights and personal freedoms. However, the WHO's technical recommendations hinted at the latter type of measures; indeed, Resolution 2177 contains a coordination clause which *urges* Member States to comply with these recommendations (para. 9),<sup>51</sup> as explained by *Pedro A. Villarreal* and *Robert Frau* elsewhere in this book. Therefore, the concerns over the ongoing process of securitization of health have been discredited by the

47 See United Nations, *Sustainable Development Goals*, available at <https://sustainabledevelopment.un.org/?menu=1300>.

48 Enemark, C, *Disease and Security: Natural Plagues and Biological Weapons in East Asia*, 2007, 20.

49 In this sense, see DeLaet, D L & DeLaet, D E, *Global Health in the 21st Century: The Globalization of Disease and Wellness*, 2015, 128.

50 Elbe, S, “Should HIV/AIDS Be Securitized? The Ethical Dilemmas of Linking HIV/AIDS and Security” (2006), 50 *International Studies Quarterly*, 119.

51 Para. 9 of Resolution 2177 “urges Member States to implement relevant Temporary Recommendations issued under the International Health Regulations (2005) regarding the 2014 Ebola Outbreak in West Africa”.

cautious policy of the Security Council. Indeed, it managed to contain the disease in a balanced way without overlapping the roles and functions of other UN bodies and Specialized Agencies through a coordinated action with the General Assembly (GA) and the WHO. In addition, it avoided authorizing measures under Article 41, which would have meant imposing quarantine measures and Article 42, which would have implied the authorization to measures requiring the use of force (even though single states such as the United States and United Kingdom sent military troops on the ground)<sup>52</sup>.

## *VI UNSC Resolutions 1308 and 1983*

The UNSC meeting of January 10, 2000 devoted to “The situation in Africa: the impact of AIDS on peace and security in Africa”, is represented by the literature on securitization as the official endorsement by the Security Council of the nexus health pandemics-security.<sup>53</sup> Promoted by the former UNAIDS Executive Director *Peter Piot* and the US Ambassador *Richard Holbrooke*, the meeting was an occasion to gain worldwide attention on the impact of HIV/AIDS on the development and security of Sub-Saharan Africa, the continent most deeply affected by the pandemic. The former US Vice-President, *Al Gore*, in his Opening Statement before the Security Council, stressed the need of a reform of the UNSC security agenda, that should have included the plague of HIV/AIDS, given the huge amount of deaths it caused.<sup>54</sup> *Gore’s* historical discourse laid the foundation for the adoption on July 17, 2000 of UNSC Resolution 1308/2000 on HIV/AIDS, which serves as a “precedent-setting” because it is the first resolution ever

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52 Military personnel from United States (Operation United Assistance) and United Kingdom (Operation Gritrock) was deployed in West Africa, with the task of co-operating with the domestic authorities in containing the spread of the disease. See the report by Scott, A K, “Saving Lives: the Civil-Military Response to the 2014 Ebola Outbreak in West Africa” (2015), 14, available at <http://bit.ly/2nOXOzO>; see also <https://obamawhitehouse.archives.gov/ebola-response>.

53 See, for instance, Altman, D, “AIDS and Security” (2003), 17 *International Relations*, 417; Elbe, S, “AIDS, security, biopolitics” (2005), 19 *International Relations*, 403; Prins, G, “AIDS and global security” (2004), 80 *International Affairs*, 931.

54 Vice President Al Gore, *Opening Statement in the Security Council Meeting on AIDS in Africa*, SC/6781, of January 10, 2000, available at [www.un.org/News/Press/docs/](http://www.un.org/News/Press/docs/).



adopted by the UNSC dealing with an infectious disease.<sup>55</sup> However, it impersonated a change of perspective on HIV/AIDS: its scope was not addressed to the impact of HIV/AIDS on the security and development of the African continent, but it was limited to the impact of the virus on the health of peace-keepers. In fact, the resolution aimed to pursue the goal related to the health of UN Blue Helmets deployed in humanitarian missions in Sub-Saharan Africa, considered as subjects both at risk of infection and as potential vectors for the transmission of HIV. Indeed, the UNSC expressed concern about the potential damaging impact of HIV/AIDS on the health of peacekeeping forces and recommended they receive voluntary testing and counseling (para. 2) and participation in training and educational programs on HIV prevention (para. 3).

In Resolution 1983/2011 of June 7, 2011, the UNSC underlined that HIV/AIDS represents “one of the most formidable challenges to the development, progress and stability of societies”, and therefore demanded “an exceptional and comprehensive global response” (para. 6 of the Preamble). The UNSC then reiterated that Peacekeeping operations can be “important contributors to an integrated response to HIV and AIDS” (para. 4), encouraging the inclusion of “HIV prevention, treatment, care and support” in the mandates of UN missions (para. 7).

Those two resolutions represent a step back when compared to the premises of the UNSC meeting of January 2000, because they narrowed their scope exclusively to the health of peace-keepers. In addition, those resolutions were not passed under Chapter VII and did not expressly qualify HIV/AIDS as a threat to peace and security. Indeed, the concrete impact of these resolutions on the securitization of HIV/AIDS has been heavily questioned.<sup>56</sup> *Garrett* stated, for instance, that except in cases where rape and

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55 Resolution 1308/2000, S/RES/1308, “The responsibility of the Security Council in the maintenance of international peace and security: HIV/AIDS and international peacekeeping operations”. In this regard see, Wet, E De, *The Chapter VII Powers of the United Nations Security Council*, 2004, 172; Poku, N K, “HIV/AIDS, State Fragility, and United Nations Security Council Resolution 1308: A View from Africa” (2013), 20 *International Peacekeeping*, 521. More in general, on the potential impact of HIV/AIDS on military troops, see Heineken, L, “Facing a Merciless Enemy: HIV/AIDS and the South African Armed Forces” (2003), 29 *Armed Forces & Society*, 281.

56 McInnes, C & Rushton, S, “HIV/AIDS and Securitization Theory” (2013), 19 *European Journal of International Relations*, 115; Rushton, S, “AIDS and international security in the United Nations System” (2010), 25 *Health Policy and Planning*, 495.

sexual violence were committed as instruments of war, there was little evidence that HIV transmission was caused by a conflict and that the UN “blue helmets” were persons at high risk of being infected by HIV.<sup>57</sup> As analyzed in the next paragraphs, Resolution 2177/2014, although it expressly qualified Ebola as a threat to peace and security, does not represent a real “step beyond” in the securitization process either.

### *VII Resolution 2177/2014*

Facing the challenge of finding the most appropriate strategy which would have allowed a worldwide mobilization against Ebola, the UNSC adopted a first resolution on the matter on September 15, 2014 (Resolution 2176), where it showed itself heavily concerned over the “current outbreak of the Ebola virus in some countries in Western Africa” (Preamble). In this resolution the SC declared, *inter alia*, the primary responsibility of the concerned government (Liberia) to maintain peace and security and to protect its own population (this important reference to the Responsibility to Protect Doctrine has been subsequently omitted in Resolution 2177). Resolution 2176 enunciated the key elements that then structured the position of the UNSC. It had, in particular, underlined the nexus between the Ebola epidemic and the “lasting stability” of Liberia. However, in this first phase the SC did not make any mention of the subsistence of a threat to peace and security, although it used the wording “acting under Chapter VII of the United Nations” (Preamble, Recital 12).

Subsequently, in response to a request of aid issued by the presidents of Guinea, Liberia and Sierra Leone with a joint letter of August 29, 2014 transmitted by the Secretary-General,<sup>58</sup> the UNSC held an emergency meeting on September 18, 2014, which led to the adoption by consensus of Resolution 2177, supported by 130 Member States (a number never registered before in the SC practice).<sup>59</sup> The majority of Member States, well

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57 Garrett, L, “The Lessons of HIV/AIDS” (2005), *Foreign Affairs*, available at <https://www.foreignaffairs.com/articles/2005-07-01/lessons-hiv-aids>.

58 Letter dated September 15, 2014 from the Secretary-General addressed to the President of the Security Council, S/2014/669.

59 See Statement by the US Ambassador to the United Nations, Samantha Power, UN Doc. S/PV.7268, 8. See also the Statement by the President of the Security Council of November 21, 2014, UN Doc. S/PRST/2014/24.

aware that health issues do not fall traditionally within the domain of Chapter VII of the UN Charter, maintained, however, that the emergency situation caused by the rapid spread of this disease required extraordinary measures as well as a rapid reaction. The situation of emergency bypassed the debate on the re-partition of powers between the Assembly and the Council, which had been raised as a result of the previous discussion concerning climate change as a threat to peace and security.<sup>60</sup> Only few States raised concerns.<sup>61</sup> Argentina, a State traditionally critical towards the action of the Security Council, stated that

“Argentina believes that Ebola is not merely a health problem. It is a multidimensional reality [...] eroding the possibilities of human social and economic development, which is at the root of most of the conflicts we deal with in the Council, and which may have consequences for security”.<sup>62</sup>

The delegate of Brazil considered Ebola as a matter that should have been better addressed within the framework of development cooperation rather than within Chapter VII of the Charter.<sup>63</sup>

In line with the classical scheme of resolutions adopted within Chapter VII, the UNSC classified Ebola as a *threat* to international peace and security, and noted that the outbreak could have threatened the “peace-building and development gains” of Guinea, Liberia and Sierra Leone.<sup>64</sup> In fact, it is relevant to clarify that the hardest-hit countries were recovering from civil

60 Scott, S V, “Securitizing Climate Change: International Legal Implications and Obstacles” (2008), 21 *Review of International Affairs*, 614.

61 For the debates within the Security Council during the adoption of Resolution 2177, see [http://outreach.un.org/mun/files/2014/11/SPV7268\\_ebola.pdf](http://outreach.un.org/mun/files/2014/11/SPV7268_ebola.pdf).

62 Intervention of the Representative of Argentina, Mrs. Perceval, UN Doc. S/PV.7268 20-21.

63 Intervention of the Representative of Brazil, Mr. Patriota, UN Doc. S/PV.7268 28-29. Similarly, the delegate of Colombia raised some criticism about the fact that Ebola was debated within the SC, arguing that this issue should have instead been within the competency of the GA (Intervention of the Representative of Colombia, Mr. Ruiz, UN Doc. S/PV.7268 45).

64 Some scholars retain, however, that Resolution 2177 was adopted not within Chapter VII, but within Chapter VI of the UN Charter. See, Hübler, A K J, “Ebola – International Disaster Response to a Global Health Emergency” (2015), 6 *Freiburger Informationspapiere zum Völkerrecht und Öffentlichen Recht*, 21, available at <http://bit.ly/2mx9Lt5>. For a different position, arguing that Resolution 2177 can be placed in Chapter VII, see Poli, L, “La risoluzione n. 2177 (2014) del Consiglio di sicurezza delle Nazioni Unite e la qualificazione dell’epidemia di ebola come minaccia alla pace ed alla sicurezza internazionale”, (2015), 9 *Ordine internazionale e diritti umani*, 238.

wars and were facing a process of peace consolidation, whose efforts seriously risked being undermined by the viral epidemic. In addition, in Recital 4 of the Preamble, the SC dwelled upon the transboundary implications of Ebola and on the potential impact on regional and international security.

As to the operative part of the resolution, it enclosed important dispositions. The UNSC urged Member States to provide additional resources in the struggle against Ebola, to respond urgently to the crisis and to refrain from isolating the affected countries. The UNSC in particular encouraged

“the governments of Liberia, Sierra Leone and Guinea to accelerate the establishment of national mechanisms to provide for the rapid diagnosis and isolation of suspected cases of infection, treatment measures, effective medical services for responders, credible and transparent public education campaigns, and strengthened preventive and preparedness measures to detect, mitigate and respond to Ebola exposure, as well as to coordinate the rapid delivery and utilization of international assistance” (para. 1).<sup>65</sup>

The Security Council also blamed private entities, like airlines and shipping companies, for their decision to curb trade and travel to and from the most affected countries, asking the first to lift general travel and border restrictions and the latter to maintain trade and transport links with the affected countries and the wider region (para. 4).<sup>66</sup> Through this resolution, the UNSC requested that the Secretary-General ensure that all relevant United Nations sections accelerated their response to the outbreak, encouraging the WHO to strengthen its technical leadership and operational support to Governments and other partners in that effort (para. 12).<sup>67</sup>

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65 In addition, it encouraged “the governments of Liberia, Sierra Leone and Guinea to continue efforts to resolve and mitigate the wider political, security, socioeconomic and humanitarian dimensions of the Ebola outbreak, as well as to provide sustainable, well functioning and responsive public health mechanisms” (para. 2). It also called on Member States “to provide assistance in response to the Ebola outbreak, to enhance efforts to communicate to the public, as well as to implement, the established safety and health protocols and preventive measures to mitigate against misinformation and undue alarm about the transmission and extent of the outbreak among and between individuals and communities” (para. 6).

66 The resolution “expresses concern about the detrimental effect of the isolation of the affected countries as a result of trade and travel restrictions imposed on and to the affected countries” (para. 3) and “calls on airlines and shipping companies to maintain trade and transport links with the affected countries and the wider region” (para. 4).

67 A Statement by the UNSC President of 21 November 2014 welcomed progress in slowing the spread, confirming that the response capacities available to the affected countries had “expanded substantially”, warning however that much remained to be done to end the epidemic.

The recommendations contained in Resolution 2177 had three goals: (1) to answer in an appropriate manner to the humanitarian emergency caused by the spread of the virus, and (2) to prevent a further aggravation and a wider diffusion of the disease, (3) while limiting side effects (for example a health crisis) that – as previously underscored – might impact political, social, economic and humanitarian spheres, not just on a local scale, but potentially extending to a regional or even a global level. With this resolution, the UNSC further confirmed its recent trend to act on emerging global threats recommending specific measures that are intended to stimulate and to address the action of the states and of the stakeholders involved in a crisis, by limiting the possible associated security repercussions.

### *VIII Consequences arising from the adoption of Resolution 2177*

Resolution 2177 was a landmark in the history and practice of the Security Council, contributing to align its functions and powers with emerging threats to peace and security. The key issue is now to evaluate if this new practice of the Security Council is conceptually based on the Human Security paradigm, and if it therefore implies a duty under international law to protect the health of populations affected by epidemics and pandemics in line with the R2P Doctrine, echoing the “Responsibility to Practice Public Health” theorized by *Fidler*.<sup>68</sup>

Indeed, R2P is strictly related to the Human Security discourse, given that massive violations of human rights fall within the category of Human Security, as well as health is a Human Security matter. R2P is based on two assumptions.<sup>69</sup> First, states have an international responsibility to protect their own populations from gross violations of human rights, such as genocide, war crimes, ethnic cleansing and crimes against humanity (labeled as “mass atrocities crimes”). This duty is deeply embedded in existing international customary law and is well established in universal and regional human rights treaties. Secondly, if the host state is unwilling or unable to do so, or if it commits a violation of *erga omnes* obligations (mass atrocities amounting to a violation of *jus cogens*) incurring in an aggravated regime of responsibility, the UN Member States are entitled to intervene (including through use of force) in order to protect these populations.

68 See above Fn. 2.

69 GA Resolution 60/1 of October 24, 2005 (“World Summit Outcome Document”), para. 139. Text available at <http://www.ifrc.org/docs/idrl/I520EN.pdf>.

R2P is founded on a Three-Pillar Strategy: Pillar One regards the responsibility of states to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and from their incitement. Pillar Two is the commitment of states to assist – through capacity-building – other states that are willing, but weak and unable, to uphold their Pillar One responsibilities. Pillar Three foresees the duty of the international community to react when a state is manifestly failing to provide such protection. Accordingly, the R2P doctrine allows the use of force as an *extrema ratio* (authorized by the UNSC) if diplomatic efforts have failed and non-forceful measures, such as sanctions, were unsuccessful in ending mass atrocities.<sup>70</sup>

One could therefore discuss – in light of Resolution 2177 – an extensive interpretation of those categories in order to include health epidemics and pandemics within the categories covered by R2P. However, considering a careful analysis of the content of Resolution 2177, it is premature to identify a norm in international law that establishes a clear duty to protect populations in the event of pandemics. Indeed, as already observed, Resolution 2177 did not contain any reference to the primary responsibility of affected States to protect the health of their populations (unlike Resolution 2176), and no official document adopted within the United Nations explicitly mentioned R2P with reference to health emergencies. It must not be underestimated that ultimately it was not Ebola itself, but the political instability that it could have generated in the hardest hit countries that led the Security Council to act. Therefore, the Security Council did not directly address the disease and its implications for the health of the populations affected, but rather its political consequences in terms of possible civil unrests and riots that could have led to the collapse of the fragile political institutions in the hardest hit countries.<sup>71</sup> Accordingly, even though the 2014 Ebola outbreak was first and foremost a serious human rights crisis, the risks for security were predominant with respect to the aspects related to the violation of fundamental human rights. Rather, Resolution 2177 failed to address the main human rights issues raised by the disease, such as the discrimination and stigmatization of the persons affected by the virus, the violation of the right to health, the right to food and the right to education, and restrictions to the right of free movement. This is the reason why it can be assumed that

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70 In general, on R2P, see Peters, A, “The Security Council’s Responsibility to Protect” (2011), 8 *International Organizations Law Review*, 15.

71 In this sense, Hood, A, “Ebola: A Threat to the Parameters of a Threat to Peace?” (2015), 16 *Melbourne Journal of International Law*, 29 (40).

Resolution 2177 can more easily be related to a securitization discourse than to the Human Security paradigm.

In particular, Resolution 2177, although it explicitly referred to Ebola as a threat to peace and security using the Chapter VII language, did not contain any practical decisions. For instance, the UNSC could have authorized Member States to deploy troops to protect and to surveil the borders and/or to enforce quarantine measures, but it decided not to act in this way. Indeed, this was related in an indirect way to the WHO technical recommendations, as explained by *Pedro A. Villarreal* in this book. Instead, this resolution, given its declaratory rather than mandatory nature (it contains recommendations and not decisions), could have also been adopted by the General Assembly.

In addition, the mandate of United Nations Mission in Liberia (UNMIL), a peacekeeping force already present in Liberia, was extended with Resolutions 2215/2015, but it did not mention, amongst the task of UNMIL, the coverage of the outbreak.<sup>72</sup> On its own, it was the General Assembly and not the Security Council that established with Resolution No. 69/1 of September 19, 2014, the first UN Peacekeeping force with a specific mandate concerning health, the United Nations Mission for Ebola Emergency Response (UNMEER).<sup>73</sup>

In this regard, one could also argue that the Ebola outbreak, and more generally health epidemics and pandemics, could be classified as natural disasters, at the same level as natural hazards such as an earthquake or a flood.<sup>74</sup> It would entail a duty by the international community to protect the persons involved in a disaster if the host state is unable to protect them.<sup>75</sup> It would imply that, in case of failure by the domestic authorities to protect

72 Davies, E S & Rushton, S, "Public health emergencies: a new peacekeeping mission? Insights from UNMIL's role in the Liberia Ebola outbreak" (2016), 37 *Third World Quarterly*, 419.

73 UN Doc. A/RES/69/1. The mission ended its mandate on July 31, 2015.

74 This varies throughout several levels. In some national (and possibly international) jurisdictions they have been assembled under the aegis of "emergencies". However, in the case of theoretical debates they are consistently and commonly distinguished. See Acconci, M P, *Tutela della salute e diritto internazionale*, 2011, 334; Bartolini, G, "La definizione di disastro nel progetto di articoli della Commissione del diritto internazionale" (2015), 98 *Rivista di diritto internazionale*, 55; Breau, S C & Samuel, K L H, *Research Handbook on Disasters and International Law*, 2016.

75 On this topic: Davies, E S, "Is There an International Duty to Protect Persons in the Event of an Epidemic?" (2010), 2 *Global Health Governance*, 1.

the health of their populations in the presence of a disaster, the Security Council could intervene, even adopting military measures under Pillar Three of R2P.

However, this position raises two issues. First, the scope of the R2P Concept is restricted to “massive human rights violations”, or “core crimes” that are defined in Articles 6-8 of the Statute of the International Criminal Court (genocide, crimes against humanity, war crimes, aggression) committed during or as a consequence of a civil war or of a disaster. This narrow application of the R2P Concept, confirmed both by the UN Secretary-General<sup>76</sup> and by the International Law Commission (ILC) Special Rapporteur on the Protection of Persons in the Event of Disasters,<sup>77</sup> limits, as a consequence, any enlargement of this notion to the health domain. Secondly, even assuming an application of R2P to disasters, the linkage between health pandemics and natural disasters has not yet been clarified. The definition of “disaster” provided by the ILC in the draft Articles on the protection of persons in the event of disasters, is not limited to natural disasters.<sup>78</sup> This definition could therefore also apply to events such as infectious diseases and/or nuclear incidents, although it does not expressly mention health epidemics or pandemics. Therefore, the UNSC should have specified in Resolution 2177 the possible nexus between Ebola and natural disasters, recalling disaster law and the duty of the hosting state to protect their populations, but this did not happen.

As a conclusion of this brief analysis, one can ask why the wording of Resolution 2177 was so cautious, why any reference to R2P was eventually

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76 2009 report of the Secretary-General on implementing the responsibility to protect A/63/677, para. 10 (b).

77 International Law Commission, “Report of the International Law Commission on the work of its Sixty-first session” – Chapter IX: Protection of persons in the event of disasters, (May 5, June 5, July 6, August 7, 2009) UN Doc. A/64/10 para. 156. As regards the concept of ‘responsibility to protect’, the Special Rapporteur recalled the 2009 report of the Secretary-General on implementing the responsibility to protect, which clarified that “*the concept did not apply to disaster response*”.

78 Article 3 of the draft Articles states that “disaster means a calamitous event or series of events resulting in widespread loss of life, great human suffering and distress, mass displacement, or large-scale material or environmental damage, thereby seriously disrupting the functioning of society”. International Law Commission, Sixty-eight session, Geneva, May 2 - June 10, and July 4 - August 12, 2016, Protection of persons in the event of disasters. Titles and texts of the preamble and draft Articles 1 to 18 of the draft Articles on the Protection of persons in the event of disasters adopted, on second reading, by the Drafting Committee (Doc. A/CN.4/L.871).



deleted, why this resolution did not formulate any duty upon Member States but it simply recommended measures, or why the Security Council decided not to adopt any concrete measure under Chapter VII. Probably, if the content of the resolution would have been more cogent, it would not have been possible to reach unanimity within the Security Council; some Member States would have raised objections and the great momentum reached would have failed. Put simply, it was not the intention of the drafters of Resolution 2177 to adopt a legislative act with such wide implications on roles and functions of the Security Council as initially speculated.

## IX Conclusions

Much has been debated on the role the Security Council played in the 2014 Ebola Outbreak, evaluating positive and negative aspects of Resolution 2177 on global health governance and UNSC powers.<sup>79</sup> It is undeniable that the steps for the securitization of Ebola – as described by the Copenhagen School’s Theory – have been fully respected, and therefore the UNSC became the “securitization actor” charged with adopting extraordinary measures if necessary.

In practice, however, the culmination of the trend of securitization of health within the UNSC represented by Resolution 2177 never implied a real “militarization” of Ebola (nor a “militarization” of HIV/AIDS if we analyze the content of the two previous resolutions on HIV/AIDS). Although Resolution 2177 was an extraordinary response to an extraordinary event, it did not empower the UNSC to act as a “Global Legislator”, as it did with the two historical Resolutions 1373/2001 and 1540/2004 concerning WMD and international terrorism, for instance.<sup>80</sup> In the case of Ebola,

79 See for instance, Elbe, S, “Health and Security”, in Collins, A (ed.), *Contemporary Security Studies*, 2016, 379; Lappin, R, “Ebola and Understanding Health Crises as Threats to International Security” (2016), Oxford Human Rights Hub Blog, available at <http://bit.ly/2me1IAx>; Roemer-Mahler, A & Elbe, S, “The race for Ebola drugs: pharmaceuticals, security and global health governance” (2016), 3 *Third World Quarterly*, 487.

80 With the adoption of Resolutions 1373 and 1540, the UNSC obliged all UN Member States to adopt some measures against the phenomenon of international terrorism and in order to prevent terrorists to accede to WMD. It was a novelty, given that usually the UNSC imposes duties upon states in relation to a very specific dispute or situation. See Rosand, E, “The Security Council as Global Legislator: Ultra Vires or Ultra Innovative?” (2004), 28 *Fordham International Law Journal*, 549.

it would have mandated the imposition of specific obligations upon Member States and the adoption of measures under Articles 41 and/or 42 of the UN Charter.

Therefore, the drafters of Resolution 2177 did not set out to create a precedent that could have had long-term implications on the roles and functions of the UNSC, by establishing new duties upon Member States; they simply aspired to reach a stricter cooperation amongst UN Member States and to gain additional financial resources while facing an exceptional event. A key element in support of this view is given by the fact that Resolution 2177 did not directly target Ebola and its potential devastating impact on public health; rather it referred to the likely negative consequences of the disease in terms of increasing social and political instability in the most affected countries, which were still recovering from civil wars. In conclusion, the concerns on the trend of securitization of health and on the excessive extension of the powers of the Security Council during the Ebola Outbreak at the expense of the WHO and other UN bodies have been retracted by its practice: “draconian measures” on the population aimed at limiting civil rights and personal freedoms were never imposed nor were “boots on the ground” under UNSC mandate ever deployed (although they were certainly deployed by Western governments under the form of foreign military assistance). The securitization policy implemented by the Security Council in the Ebola crisis was for the most part symbolic and helped to coordinate international efforts and build momentum in the global community, ultimately proving itself successful in containing the worldwide spread of the disease.