ARTIGO

PRECEDENCE OF UN BODIES IN MATTER OF INTERNATIONAL PEACE AND SECURITY

PRECEDÊNCIA DOS ÓRGÃOS DA ONU EM ASSUNTOS DE PAZ E SEGURANÇA INTERNACIONAL

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ABSTRACT: This article aims to analyze the legal aspects of the relationship between the General Assembly and the Security Council in matters of international peace and security. Through a literature review, it is argued that the relationship between the two bodies has been problematic due to the weak legal framework provided by the UN Charter, which provides for overlapping functions and does not define anybody as an arbitrator to resolve conflicts of competence. In addition, attempts to coordinate work between them have generally been ineffective, as there are no regular and permanent bases of contact. In this context, politics has been filling in the gaps, and the
interpretation of the UN Charter has alternated between conservatives and liberals according to the balance of power in the organization. Finally, it is argued that the current conflicts (Syria, Ukraine and Venezuela) gently herald a new liberal era in the relationship, giving more prominence to the General Assembly.


**RESUMO:** Este artigo tem como objetivo analisar os aspectos jurídicos da relação entre a Assembleia Geral e o Conselho de Segurança em assuntos de paz e segurança internacional. Por meio de uma revisão de literatura, argumenta-se que a relação entre os dois órgãos tem sido problemática devido à fraca estrutura legal fornecida pela Carta da ONU, a qual prevê funções sobrepostas e não define nenhum órgão como árbitro para dirimir conflitos de competência. Além disso, as tentativas de coordenar o trabalho entre eles têm sido, em geral, ineficientes, já que não há bases regulares e permanentes de contato. Nesse contexto, a política vem preenchendo as lacunas, e a interpretação da Carta da ONU tem alternado entre conservadores e liberais de acordo com o equilíbrio de poder na organização. Argumenta-se, por fim, que os conflitos atuais (Síria, Ucrânia e Venezuela) anunciam suavemente uma nova era liberal no relacionamento, dando mais destaque à Assembleia Geral.

**PALAVRAS-CHAVE:** Nações Unidas, Conselho de Segurança, Assembleia Geral, Paz e Segurança Internacional, Relacionamento.

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**1. Introduction**

Along with the promotion of the development and the respect for human rights, the maintenance of international peace and security is one of the main pillars of the United Nations (UN). In this field, the Security Council and the General Assembly play a lead role. However, while the first has its primary competence well defined in the United Nation Charter (UN Charter), the second has broad and nebulous responsibilities. In addition to the
overlapping of functions, several other factors should be considered, such as the differences of representativeness and powers between them, the failure of the Security Council to act, the pressure of politics on law, the emerging security challenges, and the lack of an umpire organ in the system to interpret the UN Charter. Considering all these, this paper asks: what are the juridical aspects involved in the relationship between the General Assembly and the Security Council in the field of the maintenance of international peace and security?

The existing legal framework and the mechanisms of cooperation between the Security Council and the General Assembly are not sophisticated enough to avoid disputes in international peace and security issues. Legal gaps have been filled by politics over the years, and variations in the balance of power between and within the two organs have stretched the interpretations of the UN Charter as far as convenient. Therefore, understanding this complex relationship could allow us to improve the communication between the Security Council and the General Assembly, consolidating a more stable and predictable UN Collective Security System.

This paper will address the topic in two sections. First, it will examine the responsibilities of the Council and the Assembly in the field of international peace and security under the UN Charter. Articles of the Charter related to their competence in the issue will be analysed, considering hermeneutical debates and the jurisprudence of the International Court of Justice. Then, as a subsection, examples of successful cooperation between the two organs will be brought to consider how to enhance the relationship. The second section will cover an analysis of how politics have come to dominate the relationship over time, relegating the law to a subservient function. As a subsection, a new trend in the relationship between the Council and the Assembly will be assessed, considering the cases of Syria, Ukraine and Venezuela.

Peace and security is one of the main pillars of the UN, and it is possible to deduce from the Charter that their maintenance to be shared by different parts of the organization (Kenny, 2016, p. 3). However, this shared responsibility has been a constant source of disputes, mainly between the Security Council, which clearly has the primary responsibility on the issue (art. 24) (United Nations, 1945), and the General Assembly, considered 'the open conscience of humanity' (United Nations, 1947, p. 51) due to its competence to discuss any matter within the remit of the Charter (art. 10) (United Nations, 1945).

The powers of the Security Council on the issue are well established in Chapters VI¹, VII² and VIII³ of the Charter. In the peaceful settlement of disputes or in cases that might endanger peace, the Council has broad recommendatory powers, such as recommending methods of adjustment (art. 36) (United Nations, 1945) or terms of settlement (art. 37) (United Nations, 1945). It can also investigate situations that may escalate into international crises or give rise to a dispute that may endanger peace and security (art. 34) (United Nations, 1945). Under Chapter VII, the Security Council is endowed with special powers inasmuch as it can pass binding resolutions incumbent on all state members (art. 25) (United Nations, 1945). Besides having the discretion to decide when a situation is a threat to the peace, breach of the peace or act of aggression (art. 39) (United Nations, 1945), the Council can also make recommendations (art. 39) (United Nations, 1945), demand provisional measures (art. 40) (United Nations, 1945).

¹ "Pacific settlement of disputes".
² "Action with respect to threats to the peace, breaches of the peace, and acts of aggression".
³ "Regional Arrangements".
1945) (like ceasefires), take a range of non-forcible measures (art. 41) (United Nations, 1945) (like sanctions), and order military action (art. 42) (United Nations, 1945). Finally, under Chapter VIII, the Council can encourage pacific settlement of local disputes through regional arrangement or agencies [art. 52(2)] (United Nations, 1945) and utilize them for enforcement actions [art. 53(1)] (United Nations, 1945).

On the other hand, the General Assembly’s role in this context is broad, ill-defined and comes with no enforcement power (WHITE, 1997, p. 139). According to Article 10, it can discuss and make recommendations to UN members, to the Security Council or to both about any question or matters within the scope of the Charter, which includes issues related to international peace and security [art. 11 (2)] (United Nations, 1945). The Assembly, as defined in Article 11(1), may also “consider the general principles of cooperation in the maintenance of international peace and security” and “make recommendations with regard with such principles”. Reinforcing this substantial responsibility, Article 14 determines that the General Assembly can address recommendations “for the peaceful adjustment of any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations”. All these commands suggest that the Assembly has a much wider range in international peace and security matters than the Security Council (White, 2015, p. 303).

Therefore, there appears to be large areas of overlap between these two organs. Some articles in the Charter, such as 35 and 11(3), further strengthen this ambiguity. According to Article 35, any UN member can bring any disputes or situations that are likely to endanger international peace and security to the attention of the Security Council or of the General Assembly. In addition, Article 11(3) determines that in such disputes or situations the General Assembly “may call the attention of the Security Council”, which suggests that the former has discretionary power and not an obligation to refer the cases to the Council (White, 2015, p. 304).
There are also Articles in the Charter that imply a hierarchy between the two organs. Articles 15(1) and 24(3) establish that the Council shall submit annual and special reports to the consideration of the Assembly, including an account of the measures taken or decided in relation to peace and security. The simple wording of the articles seems that they put the Council in a subordinate position to the Assembly, although that is not the general understanding of their relationship. The Security Council does not need to seek approval for its actions from the General Assembly, and has absolute freedom of decision when acting in peace and security matters (Hilger; Tichy; Bittner, 2012, p. 570).

In an attempt to prevent any clashes between the two organs, the Charter establishes that the Security Council has primary responsibility for the maintenance of international peace and security [art. 24(1)] (United Nations, 1945). However, the mechanisms to support this, provided by Articles such as 12(1) and 11(2), have come under intense political pressure over time. According to Article 12(1), the General Assembly cannot recommend measures relating to disputes or situations which are being dealt with by the Security Council. However, since the Cold War, there has been an ‘accepted practice’ that the Assembly can work in ‘parallel’ with the Council on similar issues concerning international peace and security (White, 2015, p. 307). This understanding was endorsed by the International Court of Justice in the advisory opinion on The Construction of a Wall in the Occupied Palestinian Territory (2004), which affirmed that the Assembly could adopt resolutions on the same matter at the same time as the Security Council (White, 2015, p. 305).

Article 11(2) empowers the Assembly in a general competence in the field of international peace and security, which indirectly includes situations of threat to the peace, breach to the peace and acts of aggression. Nevertheless, the same Article determines that, if an action is necessary, the Assembly must refer the question to the Security Council. This was supported
by the International Court of Justice in the *Certain Expenses* (1962) advisory opinion, which affirmed that the Council is the exclusive organ in the UN that can require enforcement by coercive action (White, 2015, p. 306). However, it is unclear from the decision if the General Assembly can address non-binding resolutions recommending economic sanctions or military actions under Chapter VII, for instance.

Therefore, the jurisdictions of the Security Council and General Assembly in the field of international peace and security are fragmented along the Charter, which complicates our understanding of the matter. This fragmentation, along with some ambiguous articles, is compounded by an intense political environment that seeks to change even the interpretation of unequivocal commands. In addition, none of the six principal organs of the UN is given the role of interpreting the Charter.

At the San Francisco Conference, discussions were held about the “umpiring function” among the UN principal organs (Chesterman; Johnstone; Malone, 2016). The majority of states suggested that the International Court of Justice (ICJ), as the judiciary branch of the organization, should be the final arbiter to interpret any conflict of competence at the UN (Chesterman; Johnstone; Malone, 2016). They argued that this jurisdiction was assigned to courts in many constitutional systems, such as those of Canada and Germany (Chesterman; Johnstone; Malone, 2016). Nonetheless, powerful states in the Security Council\(^4\) resisted the idea of judicial supremacy (Chesterman; Johnstone; Malone, 2016). It was therefore decided that the UN Charter would be silent about the “umpiring function”, and each principal organ could interpret and resolve its own competence issues in the scope of its functions as established in the treaty (Chesterman; Johnstone; Malone, 2016).

\(^4\) The five permanents: The United States, the United Kingdom, the Soviet Union, China and France.
In conclusion, overlapping functions between Security Council and General Assembly along with and the silence about which of them can give the last word on the Charter’s interpretation has caused clashes over the years, mainly in matters of international peace and security.

2.1 The Coordination Between the Two Organs in Practice

The level of coordination between the Security Council and the General Assembly in the field of maintenance of international peace and security is very low considering the substantial overlapping in their competences. Certainly, some initiatives to improve communication between these two organs have been successful. However, they are exceptions in the practice of the organization and still need to be improved.

The interaction between the General Assembly’s subsidiary organs and the Security Council, for instance, is based on several mechanisms of dialogue, which have worked well in many situations. The already completed Special Committee against Apartheid in South Africa and the Council for Namibia, both created by the Assembly, were successful in their joint work with the Security Council (Sievers; Daws, 2014, p. 585), submitting reports and regularly participating in Security Council proceedings (Sievers; Daws, 2014, p. 585). In addition, the still active UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) is another interesting example, as its representatives are occasionally invited to speak at Council meetings (Sievers; Daws, 2014, p. 585). Nonetheless, it is important to highlight that these kind of interactions are ad hoc and have decreased in frequency over time (Sievers; Daws, 2014, p. 585).

The Annual Report submitted by the Council to the Assembly, under Articles 15(1) and 24(3) of the Charter, is another robust means of communication. The Security Council has held joint informal meetings in its elaboration process and has worked to become more reader-friendly,
informative and open to suggestions (Sievers; Daws, 2014, p. 589). Besides that, the General Assembly has promoted regular debates on the report since 2002, which has contributed to its improvement (Hilger; Tichy; Bittner, 2012, p. 569). Notwithstanding, the report has been criticized by some states, which argue that the Security Council does not provide all substantial and necessary information to the General Assembly. According to them, the motivation for some activities and the individual positions of Security Council members are not clear in the reports, undermining the relationship between the organs (Hilger; Tichy; Bittner, 2012, p. 569).

There are other tools to raise the level of the partnership which are often under or poorly used. One example is the practice that the rotating Security Council President should meet the President of the General Assembly once a month to maintain regular communications. Although important, these meetings are considered by many states to be mere courtesy visits, without substantive discussions about the organs’ work (Sievers; Daws, 2014, p. 584). Likewise, the President of the Assembly is invited on occasion to attend Security Council meetings “to supply it with information or to give other assistance in examining matters within its competence”\(^5\), and even to participate in informal activities (Sievers; Daws, 2014, p. 584). These rendezvous could be used as opportunities to strengthen the relationship, but they do not occur on a regular basis and depend on the goodwill of the Security Council.

Many other mechanisms of coordination have been tried over the last seventy-four years. However, despite some successes, there is still no permanent legal framework to guarantee lasting cooperation between the Security Council and General Assembly in the field of international peace and security. With such a lack of goodwill, clashes between them are inevitable.

\(^5\) Article 39 of the Provisional Rules of Procedure of the Security Council (S/96/Rev.7).
In this context, politics have played a powerful role, stretching the UN Charter and filling its gaps according to the balance of power at the time.

3. Filling Legal Gaps and Stretching the Interpretation of the UN Charter in the Service of Politics: Historical Background

Many factors have contributed to the troubled relationship between the Security Council and the General Assembly. The absence of regulation lies at the centre of the problem, but it is not the only issue. Over time, interstate conflicts have given way to armed conflicts within states and transnational issues which were not even mentioned in the Charter emerged in the agenda of both organs (such as terrorism and climate change) (Luck, 2010, p. 62). In addition, the General Assembly and the Security Council cannot be considered stable organs. The Assembly’s composition has grown exponentially, creating new alignments and groups of interest over the years, and the Security Council has showed itself unable or unwilling to act in some situations. In this context, the interpretation of the UN Charter has alternated between liberal and conservative cycles.

At the beginning of the Cold War, Security Council action was often blocked by the Soviet Union, while the General Assembly was dominated by Western countries. The United States and their allies therefore decided to use a liberal interpretation of the UN Charter, introducing bodies and procedures to circumvent the paralysed Council (White, 1997, p. 140). For example, they successfully approved the creation of the Interim Committee or Little Assembly, which could address peace and security questions when the General Assembly was not in regular sessions (White, 1997, p. 172). The Assembly also passed the Resolution 377 A(V)6 during the Korean War in 1950, known as the ‘United for Peace’ resolution or “U4P”.

6 Only its Part A is validity today (Carswell, 2013).
The U4P resolution established that if the Security Council fails in its primary responsibility for the maintenance of international peace and security because of a lack of unanimity among the permanent members, the Assembly shall make recommendations to UN members for collective measures (United Nations, 1950). It may even recommend, when appropriate, the use of armed force in case of breaches of the peace or acts of aggression (United Nations, 1950). The resolution also created a new category of session for the Assembly, called 'Emergency Special Session’, which may be summoned within twenty-four hours of a request by the Council⁷ or the majority of the UN Members, if the Assembly is not in regular session (United Nations, 1950).

Although the U4P resolution was merely giving effect to the provisions of the UN Charter, its adoption symbolised the zenith of the Assembly’s influence in the sphere of international peace and security (Kenny, 2016, p. 10). It was applied in the Korean War (1951)⁸ and in Bangladesh (1971) during regular sessions. Beyond that, ten Emergency Special Sessions have been convened so far: Middle East (1956), Hungary (1956), Middle East (1958), Congo (1960), Middle East (1967), Bangladesh (1971), Afghanistan (1980), Palestine (1980), Namibia (1981), Middle East (1982) and Palestine (1997) (United Nations, 2013). The content of the measures taken by the Assembly in these situations has varied over the years, going from requesting to create peacekeeping operations in Suez⁹ to requesting an ICJ advisory opinion on the construction of the wall in the occupied Palestinian territory.

The honeymoon of this liberal interpretation of the Charter ended when the West lost its majority in the Assembly. UN membership exploded from

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⁷ On procedural voting (a majority of 9 members, without the right of veto).
⁸ The General Assembly recommended action and the use of military force in Korea. See UNGA, Res 498 (V) (1 February 1951).
⁹ United Nations Emergency Force (UNEF).
its 51 original members to 126 at the end of the 1960s as a result of the decolonization process (United Nations, 2019a). A socialist and non-aligned majority was formed in the General Assembly, which began to question the representativeness of the Security Council. Consequently, the West became more conservative in the interpretation of the Charter, claiming that the Security Council could not be bypassed in its primary responsibility. In opposition, some states argued that the Assembly could better address solutions in peace and security matters as it was a forum where “the masses” could compensate for “the aristocracy” of the Security Council (Peterson, 2018, p. 126). The General Assembly then started issuing resolutions prejudging or pre-empting the Council’s work, defining cases as threats to or breaches of peace, under Article 39 (White, 1997, p. 164).

At the same time, complex questions regarding colonialism, neocolonialism, self-determination and human rights emerged at the UN, further confusing the competences of the two organs. On the one hand, the General Assembly has the primary role in the protection of human rights and self-determination (White, 1997, p. 169); on the other, these issues are often related to peace and security matters, a field where the Security Council takes precedence. The new majority at the Assembly took advantage of this grey area of interpretation and claimed that the denial of self-determination and human rights also constituted a threat to peace (White, 1997, p. 170). Western states, led by the United States, argued that the Security Council was the only competent organ to do that kind of assessment. These different points of view provoked many clashes between the two organs during the decolonization process, such as those involving Portuguese territories, Southern Rhodesia and Namibia, and the apartheid regime in South Africa. In addition, Security Council and General Assembly resolutions about the Middle East became increasingly antagonistic from the 1970s on (White, 1997, p. 168).
From the end of the Cold War until 2011, the relationship between the Security Council and the General Assembly continued to fluctuate. The Council saw a resurgence in its activity, with the number of resolutions growing by 450% (Nadin, 2016, p. 47). At the same time, the Assembly grew larger\(^\text{10}\) and more polarized, increasingly divided between wealthier nations in the Global North and developing nations in the Global South. The agenda of the two bodies also changed, due to growing attention to transnational threats like terrorism, weapons of mass destruction and organized crime (Goodrich, 1951, p. 248). These factors brought about repeated struggles between the two organs, whose relationship alternated between cooperation and confrontation.

In the beginning of the 1990s, the Security Council and the General Assembly mostly worked in harmony, issuing parallel and complementary resolutions during the Gulf Crisis (1990-91) and in the Haiti Coup (1993), for instance (White, 1997, p. 144-145). This kind of concerted effort was also seen years later, for example, in regards to military action in Afghanistan, after the terrorist attacks of September 11\(^{th}\), and the use of force in Cote d’Ivoire and Libya (2011) under the principle of Responsibility to Protect (R2P) (Von Einsiedel; Malone, 2018, p. 156). On the other hand, many clashes occurred as well. The Assembly’s pressure on the United States to withdraw its economic embargo on Cuba (1995) and motions related to the Israeli-Palestinian conflict are notable examples of disputes between them.

In conclusion, the historical background of the relationship between the Council and the Assembly shows that the law had often been instrumentalized for the furtherance of political interests. Deadlock within the Security Council, promoted by vetoes or by plain indifference, has motivated the General Assembly to find alternative solutions to matters of international peace and security. For this purpose, the law was relegated to

\(^{10}\) From 159 members in 1990 to 193 in 2011.
3.1 The Current Relationship: The Emergence of an Old Rivalry and a Trend for a “New” Cycle of Liberal Interpretation of the UN Charter

Old dilemmas still haunt the relationship today. The differences in representativeness between the two organs, abuse of the veto right, the lack of interest of the Security Council in addressing some issues, the creation of various groups of interests in the General Assembly and the politicisation of important discussions related to peace and security are all part of the context. The absence of a strong legal framework, half-hearted attempts at cooperation and the lack of impetus for reform are preventing the evolution of the relationship between the Council and the Assembly, which is doomed to repeat past cycles.

Since 2012, this relationship has been slowly reverting to the old East-West rivalry, and has seen the resurgence of a more liberal interpretation of the UN Charter. The animosity between the P3 (the United States, the United Kingdom and France) and the P2 (Russia and China) in the Council has seen an increase in the numbers of vetoes (Von Einsiedel; Malone, 2018, p. 157). As a result, the Western-inclined Assembly is trying to reassert its responsibility in the field of international peace and security.

The beginning of this new cycle was exposed by the dynamics surrounding the Syrian Civil War. Since the beginning of the conflict, Russia has vetoed twelve resolutions regarding the issue, half of them with China (United Nations, 2019b). Meanwhile, the Assembly approved many resolutions condemning continued and grave human rights violations in
Syria. It also went a step further, condemning the Council’s failure to act and establishing an International, Impartial and Independent Mechanism to assist the investigation and prosecution of those responsible for the most serious crimes under international law committed in Syria since March 2011 (United Nations, 2016). In addition, though it has not been used in the case of Syria yet, the now defunct “U4P” resolution has been raised as a potential alternative to addressing the conflict, in an attempt to call attention to the Assembly’s responsibility when it comes to humanitarian atrocities.

The Ukraine crisis in 2014 which culminated in the full scale Russian invasion in 2022 serves as another example to confirm this trend. It is necessary to emphasize, as many authors do, that the current conflict between Russia and Ukraine has deeper roots, although the Crimean issue served as a trigger:

The truth is that the historical implications and the conflicting nature of the Slavic peoples are so, which makes it almost impossible to attribute the origin of the current conflict between Russia and Ukraine to a single factor. Capital of Russia, at the time when the Slavic provinces were grouped together. Hence the reason for the appeal used in Putin’s speech in the justification that the action taken by the Russians was a movement of integration in the region, just like there was in the case of the Crimean war. According to Vladimir Putin’s speech, military action is justified by the need and desire of the peoples to regain the uniqueness of the region “as a single people” (Villa; Lebelem, 2022, p. 21).

A draft resolution condemning the annexation of Crimea was vetoed by Russia (United Nations, 2014a), so that the Assembly later approved a similar wording document calling on all states, organizations and international agencies not to recognize any change in the status of that peninsula (United Nations, 2014b). This can also be seen in the case of Venezuela, which has so far followed the same pattern seen in Syria and

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Ukraine. Russia and China vetoed a draft resolution last February, considering that the election of Nicolás Maduro in 2018 was not free and fair (United Nations, 2019c). Meanwhile, most western states in the General Assembly recognized opposition leader Juan Guido as interim president of Venezuela.

Therefore, the prospect for a good and cooperative relationship between the General Assembly and the Security Council in the field of international peace and security therefore seems unlikely in the short term. Not learning from their past transgressions, the two organs are repeating old behaviours, with little sign of progress.

4. Conclusion

As this paper has shown, the relationship between the Security Council and the General Assembly has known more conflict than cooperation due to several reasons. The first revolves around how the competencies of these organs in the field of international peace and security are established in the UN Charter. The Security Council’s functions and powers are well defined, while the General Assembly’s competence in peace and security matters is broad and imprecise. There is a huge overlapping of functions that was deepened by the International Court of Justice when decided that both organs can discuss and make recommendations about the same question at the same time, regardless of the provision of Article 12 (1) of the Charter. Second, the absence of an umpire organ in the organization complicate the tense relationship and hamper progress. Third, while many attempts to coordinate the work of the two organs have taken place over the years, most have been under or poorly used, and lacked regular and permanent bases.

Therefore, these reasons have opened the door for political manoeuvring. Legal gaps between the two organs have been filled by the intense political power play that has plagued the UN since its inception. The
interpretation of the UN Charter has changed according to the balance of power in the membership of the organization. In this context, liberal and conservative cycles have been alternated over the years, relegating the law to a mere instrument of politics.

The current war involving Russia and Ukraine will still bring new perspectives on the role of the Security Council. However, these analyses will need to distance themselves further from the recent conflict. Even so, lastly, recent events in Syria, Ukraine and Venezuela show that the relationship is not progressing. On the contrary, since 2012, the Security Council and the General Assembly have been regressing to the old patterns of the Cold War, giving more powers to the General Assembly in international peace and security issues by a liberal interpretation of the UN Charter.
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