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EDITORIAL

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The new, and in many ways revolutionary, paradigm which came out of World War II, translated in the Charter of the United Nations, through the general principle of the prohibition of the use of force (Article 2(4)), was swiftly submitted to a reality check. Since then, the prohibition of the use of force and its exceptions, in particular, self-defence and Security Council authorisation under Chapter VII of the Charter, have faced constant challenges and doubts fuelled, in part, by geopolitical interests and inherent fragilities.

First, during the Cold War, despite the multiple and complex conflicts, often with direct or indirect intervention of the US and/or the USSR in their "areas" or countries of influence, the Security Council was repeatedly paralysed, captured by the issuance of vetoes by one or more of its permanent members. The Council, which has the primary responsibility for the maintenance of international peace and security (see Article 24(1) of the Charter), is entitled to approve decisions that bind the Members of the United Nations (see Article 25 of the Charter). The legality of the use of force in those conflicts which directly or indirectly involved some of its permanent members, was thus scarcely legitimised by the Security Council. Frequently its resolutions were rather flexible, not referring the exact legal basis under which they were adopted, and their texts were ambiguous, leaving little room for legal certainty. Notwithstanding, there were some exceptions to this greyish approach. The authorisation of the use of force in Korea in 1950 is one of the cases which must be mentioned, however the fact that it was adopted in the absence of the Soviet representative make its precedential value questionable. After the return of the Soviet delegate, the Council became paralysed and the General Assembly tried to claim centre stage, under what became known as the *Uniting for Peace* Resolution.

The fall of the Berlin Wall, and the end of the Cold War gave a new life to the Security Council. For a rather brief period of time, the permanent members were able to reach consensus and actually decided on matters regarding Chapter VII. The last decade of the 20th century faced turbulence - even though the end of the Cold War brought an end to some conflicts, others arose. To name a few: in Europe, the war in the former Yugoslavia and the intervention by NATO members; in Africa, war raged in Rwanda, Sierra Leone, and in the Democratic Republic of Congo; in the Middle East, the First Gulf War, between Kuwait and Iraq, took place. In all but three of these conflicts, did the Security Council authorise the use of force: in

operation Desert Storm against Iraq, in several operations by NATO in Bosnia and, finally, through the authorisation for NATO's intervention in Kosovo. Yet, to say that these resolutions by the Security Council were met with criticism is an understatement. As for other conflicts that occurred throughout this decade, force continued to be used by the parties involved, and the Security Council adopted several measures under articles 40 and 41 (with more vigour than in the preceding decades).

Whilst the world was still in shock from the attacks against the World Trade Centre and the Pentagon, the intervention in Afghanistan, authorised by the Security Council, marked a new era. The mantra of the "war on terror" was soon followed by the Second Gulf War and later by the consequences of the Arab Spring. Renewed distrust emerged amongst the permanent members of the Security Council. Geopolitics changed once again, having also effects on the application and interpretation of Chapter VII of the UN Charter, and its consequences, for the past two decades. Recurrent issues remain unsolved and, at the same time, complex and less consensual. New challenges arose, notably, the emergence of non-state actors vested with more financial and military power than many States. Legal persons gained new roles as subjects of international law, particularly in armed conflicts. The waging of wars changed, yet the brutal consequences they inflict to civilians persisted.

Academia and legal professionals have always played a fundamental role, especially in the context of institutional paralysis or disarray, developing interpretations of the Charter, whilst taking stock of the practice of States, the Security Council and international courts.

This number of e-Publica stems from an international conference which took place at the Law School of Lisbon University in May 2022. The conference took the occasion of the 20th anniversary of the intervention on Afghanistan to launch a retrospective discussion on the post 9/11 *jus belli*. But this issue of e-Publica goes beyond the contributions received from that conference, although under the same motto: the international law and use of force in the 21st century.

Therefore in this issue of e-Publica one can find several perspectives on the timeless, yet fundamental, issue of the limits on the admissibility of invoking Article 51 of the UN Charter, either in the context of self-defence against terrorism, as Rita Preto analysis in her text; or in the context of possible constraints due to the non-recognition of Statehood of the actor (notably during the Russian-Ukrainian War), as presented by Olivier Corten and **Vaios Koutroulis**; or finally, as shown under the analysis, conducted by **Mário João Fernandes**, of the current situation in the Red Sea following the attacks perpetrated by the Houthis against commercial and military vessels, since November 2023, and the subsequent reactions by several States against the Houthi forces.

Ana Rita Gil and **Jens Iverson** centred their works on the consequences of the conflicts on civilians. As for **Ana Rita Gil**'s text, it specifically focuses on the protection of the internationally displaced persons fleeing conflicts, on the current limits of the international law and on the need to find solutions, arguing that *jus post bellum* may be used to assign to the States that intervened in such conflicts specific responsibilities to protect. **Jens Iverson**, on the other hand, seeks to answer the question of what obligations intervening states have and why the US/NATO intervention in Afghanistan

failed. Using Afghanistan as a case study, this author attempts to illuminate the responsibilities and objectives of democratic intervening states in general.

João Frey Pinto de Almeida writes a commentary on the European Court of Human Rights decision on the case *Ukraine and the Netherlands v. Russia* (App Nos 8019/16, 43800/14 and 28525/20), of the 30th of November 2022. From the analysis of several aspects of this decision and the international framework of the use of force, the author questions whether the violation of the prohibitive principle of the use of force in international relations, regarding Ukraine, only occurred when Putin authorized a "special military operation" in 2022, or if it goes back in time, starting from 2014.

Finally, **Vladyslava Kaplina**, considering the new role of legal persons in international law, analyses whether rules of international humanitarian law are applicable to businesses and, if so, to what extent. However, highlighting that enterprises' personnel and property, if not directly linked to a conflict, are protected under the Geneva Conventions, the author reminds us that keeping neutrality in armed conflicts is a difficult task for companies and there are different ways in which they can contribute to human rights violations and abuses as well as commit international crimes. One of the paths that companies may take is to conduct a heightened (or enhanced) human rights due diligence and comply with International Humanitarian Law, thus avoiding reputational and organizational risks and criminal and civil responsibility.

The editors,

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