

# DEMOCRATIC LEGITIMACY: HOW JUSTIFIED IS THE INTERVENTION OF THE UN SECURITY COUNCIL INTO OTHER STATES?

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## ABSTRACT

*In the words of Rousseau: “Power doesn’t create rights, and man must submit to just power”<sup>1</sup>*

*Respect for democracy and the rule of law have come under threat in recent years in various member states of the United Nations (UN). On one hand, the UN is facing a new global reality that is increasingly far removed from its basic values – leading to the undertaking of democracy promotion. On the other hand, the United Nations Security Council’s (UNSC) promotion of democracy could impact the legal right of state sovereignty – leading to what some may consider as illicit intervention from the UNSC into the internal affairs of states. Such acts may result in loss of confidence by member states in the UN democratisation process and the authority and legitimacy of UNSC.*

*Accordingly, the current study will elaborate on why ‘promoting democracy’ in states has become a contested issue that the UNSC has embarked on as one of its preventive means to deal with conflicts. In doing so, the researchers will be using various international cases where the UNSC’s has demonstrated an ambivalent stance towards contentious international issues.*

*Thus, the empirical aim of the paper is to increase awareness of the inevitable role of UNSC in the ‘democratic legitimacy’ debate, whereas the methodological aim is to contribute, firstly, with a globally oriented perspective on research connecting legal studies and ‘democratic legitimacy’ studies and, secondly, with an answer to calls for more studies at the intersection of legal studies and international relations. The findings of the study indicate that claims of selective enforcement, systemic injustices, and permanent members abusing their veto power have affected the confidence of member states in the credibility and ability of the UNSC’s to promote democracy in other states without breaching the state sovereignty right.*

**Keywords:** Security Council, Intervention, Democratic Legitimacy, Sovereignty, Conflict Resolution.

## INTRODUCTION

After the end of bipolarization, the UN Security Council (UNSC) has been engaged in adopting actions that are favourable to democracy in the States. It has also adopted the newly evolved principles and values of the contemporary international law, such as: the principle of non-recourse to threat or use of force (Neidleman, 2020), the principle of non-intervention in the internal affairs of a state, the principle of cooperation, the principle of the right of peoples

to self-determination and finally the principle of democratic legitimacy. Added to these principles are the principles of justice, equality, the rule of law, pluralism, development, improvement of living conditions and solidarity. Hence, it has been advocated that '*International law has, by nature, a teleological vocation. It only has legitimacy through the values it carried*'<sup>2</sup>.

However, the effective protection of democracy in the domestic legal order was not a matter of concern for the international community when the UN was established. Again, the democratic legitimacy of the government was not a prerequisite for the recognition of a state in the UN or any other international organisation (Saranti et al., 2014), such as the EU or the Arab League<sup>3</sup>. For example, according to Article 8 of the Arab League,

*[e]very member state of the League shall respect the form of government obtaining in the other states of the League, and shall recognize the form of government obtaining as one of the rights of those states, and shall pledge itself not to take action tending to change that form*<sup>4</sup>.

This approach has also been upheld by the International Court of Justice (ICJ) in the *Western Sahara Advisory Opinion of 1975*<sup>5</sup> and the 1986 case – *Nicaragua v. United States*<sup>6</sup>. Yet, the promotion of democracy and the principles that flow from it has become a growing concern of the United Nations in its pursuit of maintaining international peace and security and consolidating cooperation between different member states. This grave mission of the UN has been assigned to its executive body – the Security Council – as pointed out in Article 24 of the UN Charter<sup>7</sup>. Again, the term 'conflict' has evolved to incorporate both: conflicts between States (inter-State) and complex civil conflicts (intra-State). As a result, ways to resolve and prevent conflicts have also evolved. Faced with this reality, it seems obvious that the Security Council must ensure peace by preventive means. Among these means, we can cite the promotion of democracy which appears in the internal order of the state, and is subsequently transposed onto the international level.

So, the objective of this research will be dedicated to increase awareness of the inevitable role of UNSC in the 'democratic legitimacy' debate by answering the following primary research question: '*How justified is the Intervention of the UN Security Council into Other States?*'.

This entails answering the following sub-questions:

- *Is promoting democracy in other states a legitimate objective of the UNSC?*
- *How does promoting democracy in a state impact the sovereignty right of that state?*

The first section of this study will start with reviewing previous research that outlined the new global reality in which the UNSC is trying to promote democracy in other states. The second section will outline the adopted methodology and the theoretical framework for analysing and interpreting the UNSC's intervention cases. The third section will elaborate on relevant debates regarding 'democratic legitimacy', 'promotion of democracy', and 'state sovereignty'. The fourth section will be dedicated for the findings and conclusions of the current study.

## DEMOCRACY & DEMOCRATIC LEGITIMACY IN PREVIOUS RESEARCH

On a universal level, 'democracy' was not among the explicit concerns of the UN. The first article of the Charter does not mention it as a UN goal. Yet, the drafters of this convention began the preamble with these famous words '*we, the peoples of the United Nations*' - which reflected the fundamental principle of democracy, namely the will of the people which is the essence of the legitimacy of sovereign states and therefore of the entire United Nations. Thus, it is evident that 'democracy' is a core value of the United Nations,

and the UN supports democracy by promoting human rights, development, and peace and security.

Nonetheless, the universal declaration of human rights (UDHR) of December 10, 1948 expressly considered in its Article 21§3 that the will of the people is the foundation of public powers<sup>8</sup>, and in its Article 29 §2, it insisted on the democratic society clause<sup>9</sup>. Thus, the international covenant on civil and political rights recognizes in its article 25 the right of every citizen to take part in the management of public affairs<sup>10</sup>.

In other words, one may think of 'democracy' as a term that is not a univocal concept. The word democracy is even struck by an '*excess of meaning*' and 'a semantic overload (Beramendi, 2015)'<sup>11</sup>. Thus, for Georges Burdeau, democracy '*is not only a formula for political organization or a method of engaging in social relations - it is a value*'<sup>12</sup>. The different, even contradictory, conceptions of democracy come from the content we give to this value. For example, for Marxists, democracy is only '*the affirmation of the primacy of real equality of which freedom is only a corollary*'<sup>13</sup>. In this way, democracy is only a means to achieve equality and justice. However, for liberals, democracy is the means to guarantee both individual and collective freedoms.

This consecration of the democratic principle was consolidated, on the one hand, by the political changes in Central Europe after the end of the Cold War, and on the other hand, by the beginning of the rise of the European Union as a democratic example par excellence. The enthusiasm of the United Nations for the promotion of democracy has given a new approach to the principle of sovereignty for the benefit of the consolidation of the principle of democratic legitimacy. Most concepts of democratic legitimacy refer to the relationship between (Zeller, 2024) nation-states and their civil society<sup>14</sup>. In the democratic constitutional states of the West, democracy is seen as the (Kriesi, 2013) 'dominant idea of legitimacy'<sup>15</sup>. It is often believed that (Rittberger et al., 2016) deficits of the democratic legitimacy of an institution is due to their growing political influence<sup>16</sup>. The word 'Legitimacy' relates to the perception that authority is appropriately (Maffettone et al., 2019) exercised<sup>17</sup>. However, if powerful states permanently impose their will within the UNSC at the expense of weaker states (Farrell et al., 2019), the legitimacy of the UNSC from the perspective of the weaker states is undermined<sup>18</sup>. Since democracy is seen as the best possible form of political rule, this implies that the authority of collective actors exercised beyond democratically constituted states should also meet the standards of democratic rule. This is why this contribution concentrates on 'democratic legitimacy'. Therefore, most international law scholars see the democratically constituted nation-state as an essential framework for realizing the democratic principle and as a cardinal point of the international system<sup>19</sup>.

Yet, the reality of the Security Council shows a shift in thinking due to the changing reality of international law<sup>20</sup>, where new actors, threats, rules, and principles have chipped away at the autonomy of states and highlighted the erosion of their independence<sup>21</sup> (De Hoogh, 2012). Thus, states have witnessed a decrease in many domestic issues where they can exercise their authority, especially through participation in treaties or binding decisions of international organisations. However, it is worth reminding ourselves that the international law is still based on the principle of sovereignty which guarantees states the freedom to choose their political, economic, social and cultural system and which protects them against all hegemony. Therefore, some scholars have argued that it is important for promoting democracy to:

*take new geopolitical realities into account; effacing the boundary between support for democracy in new and in established democracies; strengthening the economic dimension of democracy assistance; and moving technological issues to the forefront.*

Thus, *participation, freedom, equality, control, and the rule of law* are identified as the normative core of democracy. In some democratic theories, the common good is also considered an essential principle of a democratic constitution. Therefore, *democracy is seen as a constitution in which the exercise of power or rule is based on political freedom and equality and citizens' comprehensive political participation rights*<sup>22</sup>. Comprehensive political participation rights can be interpreted as the participation of individuals in decisions that affect them and to which they are subjected. Merkel's minimalist model of democracy demonstrates that a political system must include participation in terms of universal, free, and equal elections to be considered a democracy<sup>23</sup>. Thus,

*if genuine democratic input is required, this means that member states' elected representatives must have a choice between alternatives. This choice must be meaningful, giving representatives real power to shape policy. For this participation to succeed, the freedom and equality of the member states affected by a far-reaching decision must be secured through control mechanisms. To enable the governed to recognize who decided on what and hold the governors accountable later, transparency and throughput legitimacy are required (Rak, 2023). Only then can citizens participate adequately*<sup>24</sup>.

Accordingly, some of the Security Council's actions have been criticised on the basis of democratic legitimacy and have been found to contravene the principle of democracy, the principle of state sovereignty and the claim of democracy promotion. This criticism was based on the UNSC's use of its extensive powers under Chapter VII of the UN Charter. The UNSC has attempted to settle legal disputes between States by means of Chapter VII Resolutions. Its 'treaty action' (Talmon, 2009) has effected changes in international treaties<sup>25</sup>, as well as its adoption of general, non-country specific and non-situation specific measures having the character of (Talmon, 2005) legislation<sup>26</sup> as well as the creation of international criminal courts<sup>27</sup> and the imposition of sanctions on individuals – who are entities other than states, increasingly<sup>28</sup>.

## METHODOLOGICAL APPROACH

For developing strong and trustworthy analyses in this legal research, an appropriate methodology and theoretical framework have been selected – it is a qualitative, multi-method approach, which integrates case study analysis, literature review, and theoretical framework application. This combination is well-known in legal studies and is consistent with the goals of our study – which concern investigating the United Nations Security Council's (UNSC) intervention procedures for promoting democracy in other states. Hence, there is a need for techniques that uncover legitimacy issues, procedural problems, and undeclared motives or basis for the UNSC's interventions. For instance, relevant literature has been reviewed to identify recent scholarly views of the UNSC's intervention selectivity and the consequences of its structural flaws as important relevant themes to place findings within the larger academic (Winther et al., 2021) discourse<sup>29</sup>. Also, different cases of past and recent UNSC's interventions or inactions (e.g., Libya, Syria, Sudan, Ukraine, and Palestine) have been brought to attention and analysed to put the theoretical discussion in context. In legal research, the case study method is well known for its capacity to analyse intricate phenomena in authentic settings<sup>30</sup> and to reveal the complex dynamics of legal procedures<sup>31</sup> - case studies are crucial for bridging the gap between academic frameworks and practical applications<sup>32</sup>. Thus, this approach made it possible to thoroughly examine the trends, political dynamics (Kaluzhna et al., 2022), and decision-making procedures that influence UNSC interventions.

So, for data collection, primary and secondary sources were both used to gather the data for this investigation. The UN Charter, UNSC resolutions, international treaties, and case

law are examples of primary sources. Peer-reviewed scholarly publications, reports, and articles published within a pertinent time period make up secondary sources, guaranteeing their validity and relevance. Recurring themes and patterns were found using thematic analysis, especially those pertaining to accountability, representation, and the legal grounds for interventions.

To organise analyses and evaluate wider ramifications of this study, a doctrinal legal analysis has been adopted by systematically examining the UN Charter, pertinent UNSC resolutions, international treaties, and case law. Thus, a thorough evaluation of the legal underpinnings supporting the UNSC's jurisdiction and intervention procedures is made possible by doctrinal study. These techniques are especially useful for examining the interplay between constitutional and international principles in the framework of global (Tannar et al., 2024) government<sup>33</sup>. Global governance (Fioretos et al., 2021), is argued to be 'the exercise of authority across national borders as well as consented norms and rules beyond the nation state'<sup>34</sup>.

Again, to provide relevant explanations of the UNSC intervention cases, a broader theoretical framework, such as 'multilateralism' and 'democratic legitimacy' has been selected. Legal scholars assert that the use of theoretical frameworks is crucial in legal research in order to organise analyses and evaluate wider (Taekema et al., 2024) ramifications<sup>35</sup>. Thus, the current study critically assesses the UNSC's role in international peacekeeping by referencing theories from global governance and international relations, such as multilateral legitimacy, power-sharing, and accountability. In doing so, the researcher was able to place UNSC reform debates in a broader theoretical framework and highlights the necessity of structural adjustments to improve openness, diversity, and fairness. For instance, this framework has enabled the researchers to assess critically how well the UNSC's procedures and organisational design meet modern standards for accountability, equity, and inclusivity. It also examines how the Council's decision-making procedures either embody or fall short of democratic governance principles<sup>36</sup> in a world that is becoming more multipolar<sup>37</sup>.

## THE LEGITIMACY OF UNSC INTERVENTION

In the age of globalization, the emergence of new forms of international cooperation and interdependence has impacted the principle of 'non-intervention', decreasing to the horizon of domestic jurisdiction while increasing the boundaries of international jurisdiction. In effect, questions have been raised regarding the legitimacy of intervention in many situations. Thus, in the case of Kosovo 1999, NATO has taken military actions unilaterally without the authorisation of the UNSC – (Hosli et al., 2020) and this was in response to the unreasonable threats of Russia and China to veto any such authorization<sup>38</sup>. Such unilateral use of force in the international spheres constitutes a threat to the system of collective security in general and to the Security Council's position in particular. On this occasion the Security Council could have an authorization to use force on the grounds that its intervention is taken in order to stop the human rights abuses. Similarly, the United States used military force against Iraq in 2003 without any authorization by the Security Council to use force. We should note here that Iraq has its obligations towards the Security Council under resolution 687, NOT towards separate allied states like the United States and the United Kingdom. So, a new Security Council session was required when Iraq was in material breach of its obligations under resolution 1441 (Simuziya, 2023), and consequently a new resolution then could have been reached to authorize the use of force<sup>39</sup>. In these examples, we could argue

that the collective security is under threat from the veto power which enables the Five permanent members (5Ps) of the UNSC to act unilaterally.

The compelling question is ***“To what extent does the Security Council sanction democracy in States?”***. To answer this question, one needs to understand that there is an intricate relationship between the UNSC and the international law. As a political body, UNSC makes decisions and takes actions that may destabilise the settled international law, especially the principle of state sovereignty – meanwhile the Council can make new laws at the international level (Carothers et al., 2007). However (Fox, 2006), for some scholars<sup>40,41</sup>, the practices of Security Council regarding the democratic norm can be reinforced or contested based on the high-profile examples where the Council has exercised its Chapter VII powers to restore democracy and also through the text of all of its resolutions, whether or not adopted under Chapter VII.

In fact, the UN Security Council has demonstrated an inclination to advocate that both inter-state stability, and world peace and security require the adoption of state democracy and democratic governance. Its frequent engagements in restoring democracy and protecting democratic governance (e.g., dealing with the 1990s Haiti and Sierra Leone cases by using Chapter VII<sup>42</sup>) have established the belief that there is a right to democratic governance and a companion “democratic norm” (Mégret, 2021) at the international level requiring the promotion of democracy and democratic governance<sup>43</sup>. Again, in dealing with the 2008 Zimbabwean presidential elections, the UNSC has indicated is a growing formal commitment by the UNSC to democracy, particularly in post-conflict environments. However, the drafted resolution by the UNSC has been rejected on grounds that the situation was “in no way a threat to regional peace and security,” and that it therefore did not fall within the purview of the Security Council’s mandate<sup>44</sup>. So, the situation in Zimbabwe was resolved, not by the UNSC but through the intervention of the South African Development Community (SADC), which brokered a power-sharing agreement between Mugabe and Tsvangirai<sup>45</sup>.

From a different perspective, the UNSC has been criticised for being undemocratic based on some grounds: first, the UN Charter determines the type of membership of the council and the capacity of its members - fifteen members: five that hold permanent seats (China, France, Russia, the United Kingdom, and the United States), and ten that hold two-year seats. Any state of the permanent members can disallow a resolution via a negative vote - known as a “veto”. On the other hand, for a vote to pass, it needs to reach the requisite nine affirmative votes. Hence, giving the permanency and the veto to five states only is undemocratic since the five states are made more equal than the other 192 UN member states. Second, many nations that sit on the General Assembly and the Security Council do not qualify as democracies. Third, the UNSC does not represent the broader membership of the UN. Even, informal practices can bypass formal procedures of UNSC – for example, “any member of the UNSC may be a penholder<sup>46</sup>. However, in practice, the UK, the USA, and France keep their practice of pen-holding<sup>47</sup>. Thus, there is a discrepancy between the documented working methods and the actual practice operation of the Council.

Furthermore, it was often argued that the dominance of the permanent members goes far beyond the given privileges by (Gifkins, 2021) the UN Charter<sup>48</sup>. This institutional power is evident in three key areas: the capacity for “informal veto,” agenda setting, and pen-holding. *Informal veto* takes place during informal negotiations, where permanent members threaten to use the veto to reject provisions of a resolution or an entire resolution. As for the agenda setting, the veto is applied only to substantive (nonprocedural) questions<sup>49</sup>, while adding items to the agenda is procedural and therefore the veto does not apply. However, dominance over agenda setting is not assumed equally by the P5 (5 permanent members), but predominantly by the P3 (Von Einsiedel et al., 2015), with Russia and China showing little

interest in adding new items to the agenda<sup>50</sup>. Finally, pen-holding practices enable permanent members to dominate negotiations informally. The penholder drafts decisions for a given conflict, and consequently (Ralph et al., 2017), if the penholder does not create a draft, it is unlikely that other states will create one<sup>51</sup>. The power to interpret a situation is inherently political. Pen-holding has been shown to be one of the primary means of influence within the Security Council<sup>52</sup>. Pen-holding also includes, informally, organizing open debates, deciding whether to hold emergency meetings, and leading visits when the Security Council travels abroad. The dominance of the P3 in this role is similar to great-power dominance in the San Francisco negotiations that formalized the UN Charter; smaller states accepted this, however reluctantly, as a cost of getting great power buy-in for the institution. Despite the informal nature of pen-holding (Schia, 2017), it has become a key feature of decision-making and the P3 resist attempts to challenge this system<sup>53</sup>.

It is worth mentioning here that much of the decision-making, particularly on contentious issues, occurs between permanent members (P5) with limited capacity for input from elected members (E10). Drafts are generally negotiated and agreed by the P3, then negotiated with Russia and China. Only then, once a balance has been reached, are drafts shared with elected members (E10), with limited time before a vote and discouragement from drafters for substantive change. Therefore, concerted efforts have been undertaken for more than a decade to bring about reforms to the Security Council<sup>54</sup>. However, formal reform or change to the membership or voting rules set out in the UN Charter has remained deadlocked – with little hope for informal changes to practices or working methods which seem to undergo – though little – change over time. For example, elected members (E10) took diplomatic initiatives and made impact on the Syrian humanitarian track. Again, because of the frustration with the dominance of pen-holding by P3 members, the UK has shared pen-holding with Germany on Libyan sanctions in 2019. This is an indication that E10 need to have a more active role in drafting and more influence through broader participation in negotiations. Therefore (Winther, 2020), concerted efforts have been undertaken for more than a decade to bring about an expansion to the Security Council<sup>55</sup>. But these efforts have been hampered by the disagreement between the G4 and the UfC prominently concerns a structural reform of the UNSC: the issues of the permanent/non-permanent seats, the size of an enlarged council, and the question of the veto. The G4 (Brazil, Germany, India and Japan) argue for a reform that assign permanent membership of the Council to the G4 members and to two unspecified African countries. The Uniting for Consensus, the UfC (led by Italy, Pakistan, Argentina, Mexico and South Korea) wants to double the amount of non-permanent members from ten to twenty and exclude expansion of the permanent membership (Karns et al., 2015)<sup>56</sup>.

## **Democratic Legitimacy - A New Demand from the Security Council**

The idea of democratic legitimacy is not entirely foreign to the international practice of States. Indeed, the principle of constitutional autonomy refers to the freedom of choice of the political, economic, social and cultural system. However, this principle has suffered some doctrinal attacks since the beginning of this century. In 1907, Carlos Tobar, the Minister of Foreign Relations of Ecuador has developed a doctrine – known as Tobar Doctrine – (Stansifer, 1967) which advocates the non-recognition of a government resulting from a coup and whose legitimacy has not been established by elections<sup>57</sup>. Likewise, Brezhnev's doctrine of limited sovereignty provides for the primacy of proletarian internationalism over state sovereignty<sup>58</sup>.

It is worth mentioning here that the UN has never expressed a preference for any political regime, yet the UN adopted a political debate which contributed to the emergence of a right to democracy, and this was evident in the operations of the Security Council for the maintenance of peace – which has extended to cover new aspects. Despite the continued affirmation by UN bodies of the principle of sovereign equality and that of the constitutional autonomy of States, the political debate of the world organization is no longer indifferent to the political systems of States. The UN's preference for liberal democracy has coincided with the change in the international political order in favour of this model. The Secretary General of the UN seems to put the principle of the constitutional autonomy of States on hold by affirming that

*‘the imperative of democratization is the fundamental issue at the end of the century. Only democracy, within States and within the community of States, is the true guarantor of human rights. It is through democracy that individual rights and collective rights, the rights of peoples and the rights of individuals are reconciled (Boutros-Ghali, 1995), it is through democracy that the rights of States and the rights of the community of States are reconciled’<sup>59</sup>.*

In this sense, democracy appears to be the only political value capable of resolving the contradictions of international law. This discourse has been echoed in the writings of certain authors who go so far as to speak of a “conversion to democracy”<sup>60</sup> (Hellmüller et al., 2022). “The democratic imperative” (Karatnycky, 2004) has always been presented as a means to achieve the goals of the United Nations<sup>61</sup>. Thus, “human rights are intimately linked to the way in which they govern their people, that is to say, to the more or less democratic character of their political regime”<sup>62</sup>. Furthermore, the Secretary General of the UN has made democracy the corollary of development, stating that:

*‘Democracy and development are linked for various fundamental reasons. First of all, democracy offers the only solution for reconciling antagonistic ethnic, religious and cultural interests in the long term while minimizing the risk of violent internal conflicts’<sup>63</sup>.*

Faced with this association of democracy, human rights and development, we can only confirm the idea that “at least as far as their implementation is concerned, this set of values finds itself in a situation of contradiction with the most important principles.” most proven aspects of the current international political order and legal order. The fundamental and contradictory feature of the “human rights-democracy-development” ideology is, on the one hand, their vocation for universality, without which they would lose a large part of their values and their meaning but on the other hand, the fact that these values can only be realized at the scale of the State, within the framework of the State and with the good will of the State. The Secretary General of the United Nations has not only associated democracy, human rights and development: “now the democratic requirement invests the field of peacekeeping by assigning to United Nations operations a double mission: national reconciliation and democratic consolidation”. In the same sense, he estimated that *‘only democracy allows both to arbitrate and settle, in a lasting manner, the numerous political, social, economic and ethnic tensions which constantly threaten to tear apart societies and destroy states’*.

In conclusion, democracy today constitutes a new ideology of the World Organization - an ideology which aims to be universal, and which tends to be what the Secretary General of the UN would like to call “an international right of democracy”. Consequently, this integration would presuppose that, beforehand, a profound readjustment be carried out at the level of the principles of international law most firmly anchored in international society. However, it is clear that the political discourse of the UN testifies to a decline in the principle of free choice of the political, economic, social and cultural system. This discourse, which sought to adapt to the “acceleration of history” and the profound changes that the



international political order has experienced, has not remained without influence on the new practice of the UN organization and especially on the mission of the UNSC to maintain international peace and security.

### Linking Democracy to Peacekeeping Operations

The mission of the Security Council in maintaining peace is closely linked to the consolidation of democracy. However, establishing stability and security conducive to democratic transition risk failure if the Security Council mission is not integrated into a larger operation, composed of several necessary elements. This observation is verified in most Security Council mandates in states exhausted by conflicts. Indeed, the mandate of the United Nations provisional authority in Cambodia includes seven components, namely human rights, elections, military functions, civil administration, police and the reconstruction of the country. For instance, the UN secretary has confirmed that "*the essence of UNTAC's mandate was to start the democratic process*" (Boutros-Ghali, 1996), and that the term of the elections constituted "*the centrepiece of the Paris agreements*"<sup>64</sup>. In the case of ONUMOZ mandate, the general peace agreement for Mozambique entrusted the Security Council with a very broad role which included four elements: political, military, electoral and humanitarian to which we can then add a civilian police component (Maekawa et al., 2019), the CIVPOL which has become an essential complement to the mandate of ONUMOZ<sup>65</sup>. It monitored police activities in the country, and it would control respect for civil rights and liberties, as well as the normal progress of the electoral campaign and the exercise of political rights as much as an element of the democratization process.

Again, the UNSC operation in El Salvador included two components: human rights and democratization since it included the mission of verifying the observation of human rights (Murillo, 2021) in accordance with the San José agreement by making recommendations in this matter<sup>66</sup>. Here, the presence of the UN before the electoral campaign and the continued presence of the organization on the ground, with very small staff, have the mission of strengthening institutions in a country without a democratic tradition and without a solid administration<sup>67</sup>. It was emphasized that the mandate of the UNSC was "*indivisible and interdependent*" therefore the delay in the deployment of the military component greatly affected the establishment of the other components. The Secretary General said in this regard: "*if this departure takes place too early, it risks destabilizing a still vulnerable government and encouraging the forces of reaction to take advantage of its weakness; if it takes place too late (Daillier, 1996), it can create a situation of dependence detrimental to the stability and future development of the country*"<sup>68</sup>.

The security aspect then constitutes the priority initially, gradually giving way to the human rights/democratization of the State component. The practice of the UNSC must be flexible; it is on the basis of these elements that the Secretary General proposes and that the UNSC decides to extend the mandate of ONUSAL three times after the 1994 elections<sup>69</sup>.

Furthermore, in the context of Haiti, the UNSC successively created three peace-building missions; the UN Support Mission in Haiti, the UN Transition Mission in Haiti, the UN Civil Police Mission in Haiti responsible for helping the Haitian authorities to professionalize the national police and maintain a climate of security after the restoration of legitimate government.

The execution of the peacekeeping mission is characterized by the indivisibility of these operations and the interdependence of the democratization components of the States. This indivisibility is a characteristic of the interdependence of the UNSC's mission – which concerns the humanitarian sphere, the military sphere and the electoral sphere. Thus, when a

peacekeeping operation is carried out in a failing country, the boundary between the purely military aspects and the purely humanitarian aspects is eliminated, so interventions in one domain have direct repercussions in the other. For instance, following the downfall of President Siad Barre in 1991, a civil war broke out in Somalia. In 1992, the Security Council established the United Nations Operation in Somalia (UNOSOM I) to “*take appropriate measures, including coercive measures, with a view to establishing security conditions for the distribution of humanitarian aid throughout Somalia*”<sup>70</sup>. Again, maintaining security and stability allows the holding of free and honest elections, ensure democratic governance and protect human rights. The electoral process is at the heart of the democratization process since it constitutes the “cornerstone” of democracy, but it is clearly impossible to organize free, honest and pluralistic elections in accordance with international standards in the absence of order and security, as well as the neutrality of public authorities which influence the results of elections. In short, elections must be part of a long process leading to a strengthening of public powers and the democratic life of a country<sup>71</sup>.

### PROMOTING DEMOCRACY IS UNDER THREAT

Some scholars have expressed counter views regarding UNSC’s promotion of democracy, claiming that the council’s practices in this regard takes ‘democracy’ as a liberal ideology to interfere in the internal affairs of states. Such intervention has been considered as illicit act that constitutes a serious violation of international law<sup>72</sup>. On the other hand, the UNSC seems to have no reality outside its constituting member states, especially the great powers – permanent members – who created the council and continue to dominate it and determine its effectiveness. So, each permanent member state can block (via the right of veto) decisions that do not suit them as well as any amendment to the text of the Charter deemed contrary to their interests. This entire configuration is based on a world view in which the great powers must ensure the maintenance of peace because they can repress or bring into line states that do not comply with “international law”.

Accordingly, the UNSC - the executive body which has discretionary power to qualify a situation as a threat to peace - risks distorting “democracy” under the power of its permanent members having the right of veto. In some cases, the UNSC no longer has the objective of maintaining international peace and security but prefers to punish states that deviate from the liberal world order. It thus becomes the body of arbitrary interpretation at the service of the great powers. The discretionary power attributed to it by the Charter of the United Nations has become a power placed solely at the service of the interests of the strongest, legitimizing their strategies of domination and covering up serious violations of international rules.

The actions of UNSC have been under scrutiny since it demonstrated an ambivalence when responding to some cases. For example, in the case of Haiti the council has acted strongly while in similar cases it did not consider it appropriate to do so. Its timid reaction to the Niger coup d'état in 1996 can only prove its incontestably selective practice. Thus, the practice of the UNSC, with a view to protecting democracy and democratic legitimacy, is a selective practice which depends on the balance of power within the Council and the interests of the great powers. In this sense, the great powers see the UNSC as a source of authority for the use of force, but not as an instrument for limiting its use. In fact, Articles 43 & 47 of the Charter provide for another method, namely the establishment of “special agreements” according to which states make armed forces, facilities, etc. available; constitution of a Staff Committee responsible for advising and assisting the Security Council<sup>73</sup>.

The extension of the concept of threat to international peace and security, the increasingly "polymorphic" character makes Article 2 §7 of the United Nations Charter useless since it is enough for the Security Council to 'act on the basis of Chapter VII to derogate from the principle of non-intervention.

*Article 2 (7) states that the United Nations has no authority to intervene in matters which are within the domestic jurisdiction of any State, while this principle shall not prejudice the application of enforcement measures under Chapter VII of the Charter.*

Article 2 §7 is then useless as long as there is no control over the qualifications carried out by this political body of the UN on the basis of Article 24 §2 which provides that "*in the fulfilling of its duties, the Security Council acts in accordance with the purposes and principles of the United Nations*"<sup>74</sup>.

However, the permanent members of the UNSC are among the largest providers of funds to the UN. Consequently, they enjoy a certain political pre-eminence within the Council which is in a state of force when they give it the means to act – peacekeeping operation in Central America between 1989 and 1992, in Mozambique between 1992 and 1994 - ; and its weakness when they block its decisions or withdraw its means of action (the example of Rwanda) or the United States having notably prevented any decision to strengthen the mission on the ground (United Nations Assistance Mission in Rwanda, UNAMIR). In other words, States are the sole judges of whether or not to use the UNSC to resolve a given crisis, depending on the constraints they are prepared to accept, the number of supports that need to be rallied and the compromises that need to be made. They can only consent. Therefore, for some, the UNSC has proxy and inconstant power, which only allows it to influence the course of events in an erratic manner.

The effectiveness of the action undertaken by the UNSC derives from the political will of its permanent members. For example, The UNSC could not authorize military action in the conflicts of Crimea, Syria and Gaza due to the use of veto by some of its permanent members (Van Schaack, 2020) – this use was not done to enhance international peace and security, as supposed to. This indicates that '*the Council has been largely paralyzed by the re-emergence of great power rivalries*'<sup>75</sup>. This raises the question of whether the UNSC has a duty to act. First, a State – including the permanent FIVE – has a binding obligation with no exception to prevent genocide by employing means reasonably available to it. This means a permanent member must refrain from using its veto against the authorization of military action. Second, a State has the Responsibility to Protect, and if it fails to protect its population from genocide, war crimes, crimes against humanity, or ethnic cleansing, the 'international community' is:

*'prepared to take collective action in a timely and decisive manner through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate'*.<sup>76</sup>

Third, under Article 14 of DARIO (the Draft Articles on the Responsibility of International Organizations):

An international organization which aids or assists a State or another international organization in the commission of an internationally wrongful act by the State or the latter organization is internationally responsible for doing so if:

- a) *the organization does so with knowledge of the circumstances of the internationally wrongful act; and*
- b) *the act would be internationally wrongful if committed by that organization.*

Again, Article 42 of DARIO provides for particular action by the Security Council:

1. *States and international organizations shall cooperate to bring to an end through lawful means any serious breach within the meaning of article 4[jus cogens norms].*
2. *No State or international organization shall recognize as lawful a situation created by a serious breach within the meaning of article 41, nor render aid or assistance in maintaining that situation.*

Accordingly, the UNSC has a legal obligation to act by passing relevant resolutions to maintain peace and security – this does not imply a duty to prevent wars. So, by exercising the veto in the Syrian case, Russia and China have breached their duty to prevent war crimes. In this case, we find it quite difficult to link their exercise of the veto to violations of international law on the ground. This failure to act has led the Netherlands to regard Syria as responsible under international law for gross violations of human rights, and torture. This will become a case for the International Court of Justice rather than for the UNSC to answer. However, there is evidence that permanent members could force the Security Council to deploy in situations where they themselves do not want to get involved – as the UNAMI in IRAQ<sup>77</sup> and in the Democratic Republic of Congo [MONUC].

These internal challenges of the Security Council have made democracy an origin of an interventionist policy of certain States. For example, the intervention of the United States in Grenada in 1983, in Panama in 1989, that of the Soviet Union in Afghanistan in 1979 as well as that of Vietnam in Cambodia in 1978 - were justified by an alleged illegitimacy of the governments concerned. It is undoubtedly the episode of the second Iraq war (2003) which further shows the UN's impotence: The Americans, disavowed by their partners on the Security Council (Russian and French veto), declared war on Iraq, thus showing, once again, that the law of the strongest takes precedence over international law. So, a Security Council, based on the agreement of the great powers, risks distorting democracy, which today seems to be an instrument for unlocking the sovereignty of States.

## DEMOCRACY VERSUS STATE SOVEREIGNTY

Sovereigns are often anxious to have a certain behaviour imposed on them towards their population<sup>78</sup>. Therefore, States have been cautious when joining international institutions relating to human rights (Ben Achour, 1996). This caution is explained by the idea that these States fear any interference in their internal affairs which can possibly be justified by the commitment of this State to promote or respect the rights of individuals proclaimed in these international texts.

Currently, democracy is a legal fiction. The Charter of the UN proclaims the principle of "*non-interference in the internal affairs of States*", however this principle fades in the face of coercion exercised '*in the event of threats to the peace, breach of the peace or acts of assault*'. The interventions of the UNSC, in the name of democracy, can weaken the sovereignty of the State, since in certain cases, the Council exceeds the mission entrusted, hence the inadequacy of its mission.

In addition, democracy can be an instrument for unlocking the sovereignty of the State given its financial dependence on the outside through the increase in its debts<sup>79</sup>. The impossibility of achieving national unity - for example the Libyan case - can be the result of institutional weakness and an absence of democratic traditions, but also, it can be the result of intervention by the UN especially through UNSMIL. This mission was created by resolution 2009 (2011) on September 16, 2011- it is charged with a set of tasks in different areas such as: electoral support, promotion of the rule of law, human rights, transitional justice, maintaining public security, economic recovery, coordination of economic aid, information communication, weapons and related materials. UNSMIL also aims to conduct an investigation into the human rights situation on Libyan soil.

In reality, the success of this Mission<sup>117</sup> must not be the tree that hides the forest, such a counterpart mission was provided in Cambodia (UNTAC). It is also responsible for a set of missions such as: supervision of the ceasefire, the withdrawal of foreign forces, disarmament, civilian missions, supervision of administrative activities and police forces,

promotion of respect for human rights and supervision of the electoral process. In fact, we are seeing, on the ground, the expansion of the role of the Security Council in relation to the role of the State. Therefore, the Security Council plays a determining role. In this case, we are talking about a policy of democratization that is more imposed than desired.

Therefore, we may assume that democracy, in this case, is not a pure will of the people but a will of the international community. We must not forget that the will of the people is what will protect the State and help it overcome internal political crises: the Libyan people today cannot form the government. In fact, the evolution towards democracy, which is often the result of internal conflicts “*leads... to exacerbate latent economic, social and political crises*”.

## CONCLUSION

The multiplicity of types of intervention by the UN Security Council in the name of democracy can weaken the quality of sovereign State<sup>80</sup>. In any case, this intervention aims to address the underlying reasons for the conflict, but it may result in the impoverishment of the quality of the sovereign State. Such a consequence could reduce the independence of national decision-making. It is essential in this regard to define the ‘duty of interference’ – which is often taken as a prospective concept vaguely reflecting the idea of the legitimacy of armed or unarmed humanitarian interventions in the territory of a State whenever human rights are seriously violated there. In several cases, this right of interference has been manipulated because of political issues. The democratization process can fail because of these harmful effects of interference; the typical example is the Somali case which has led the doctrine to note in this case that:

*‘the only difference between the present times and those before the colonization consisted in the fact that the occupation was now managed by the international community and with the stated aim of helping national reconciliation. Democracy, therefore, in this case, is not a pure will of the people but a will of the international community’*<sup>81</sup>.

On the other hand, this support of democracy by UNSC has been found to focus on “executives and elections, increasing executive power, and limiting states’ domestic policy options, which stunts institutional development”<sup>82</sup>. In this sense, citizens participate in politics, but institutions are unable to represent mass interests or govern effectively<sup>83</sup>. Even with military alliances promoting human rights, scholars have doubts that such action is taken largely to advance the strategic interests of those alliances rather than the interest in the domestic policies<sup>84</sup>.

## RECOMMENDATIONS

Due to the regular exercise of veto power by permanent members, the UNSC seems crippled and unable to act effectively during pressing global crises. Hence, it is necessary to carry out structural and procedural improvements to the UNSC and give more authority to the UN General Assembly. For instance, the UN Charter could be re-interpreted in light of the new geopolitical changes, the veto use could be restricted in cases involving clear mass crimes, and representation in the UNSC could be extended to incorporate wider participation of world states. This will be the way forward to enhance the credibility and the legitimacy of UNSC, especially in cases of intervention into other states.

## SUGGESTIONS FOR FURTHER RESEARCH

The financial security and the funding sources seem to impact the effective functioning of the UN in general and its executive body UNSC in particular. This could be taken as a research gap that is worth investigating in future studies.

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<sup>8</sup>Article 21 §3: The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedure

<sup>9</sup>Article 29§2: In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

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