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UN Security Council reform: the political and the desire to be seized of the matter

Francine R. De Paula(1) *and* **Marianna R.A. de Albuquerque(2)**

1- Lecturer in International Relations at Queen's University Belfast, UK. Email: f.rossonedepaula@qub.ac.uk

2- PhD in Political Science, State University of Rio de Janeiro. Coordinator of the South-American Political Observatory (OPSA). Email: marianna_raa@yahoo.com.br

In the twentieth century, the United Nations became one of the main sources of legitimacy informing the relation between states. Although the rules and principles guiding international politics have never been static or centralized within a single institution, they have often been presented as universal expressions of the will of the people (we, the people of the United Nations) and expressed through the different agendas of this international organization. By identifying and regulating what constitutes the exception to the rule and to international peace and security, the permanent members of the United Nations Security Council (UNSC) are positioned as the ones defining the limits of normality in international politics. Developing further on an interpretation of the UNSC as a sovereign decision-maker, this paper explores its role in the universalization of certain rules and principles, arguing that the campaign for a reform of the organ sheds light on the political domain of the 'international order'.

The campaign for a reform of the UNSC has the potential to re-politicize the international to the extent that the position of the five permanent members as the legitimate authorities deciding on the exception gets challenged. Evoking Schmitt's conception of the political and against the argument about the dissolution of the 'political' into the liberal normative framework, we show how the campaign for a reform of the UNSC opens up the space for the contestation: (1) of the rules for the creation of rules that guide the conduct of the states; and (2) of the subjectivities constituted and reinforced within these rules.

The paper is divided into three parts. In the first section, we lay down the theoretical framework that will guide our interpretation of the United Nations Security Council as the sovereign of our international system. First, we discuss Schmitt's concept of the political, his definition of sovereignty and the relationship between sovereignty and norm. Additionally, we explore the debate between Carl Schmitt and Hans Kelsen on the relation between politics and the legal order, introducing also Agamben´s

contribution to the subject. Lastly, we suggest that Schmitt offers an oversimplified account of politics that overlooks the continuation of politics beyond his narrow conceptualization of sovereignty.

In the second section, we bring Schmitt's definition of politics and sovereignty to the international level. We explain the existence of an international law and the reasons why the UNSC may be interpreted as holding the kind of sovereignty Schmitt defines. In the last part of this paper we show how the campaign for a reform of the UNSC exposes the relevant political power of the organ and the necessity to reevaluate its constituency. Nevertheless, we conclude that the understanding of the political in Schmittian terms may have its limitations if it disregards deeper implications of the structures of power that goes beyond the direct relationship between the sovereign and its subjects, and the friend/enemy dichotomy. We also highlight further research agendas that could contribute to this debate and deepen our understanding of the international order.

Politics, Norms and Power

When the United Nations was created in 1945, after the Second World War, the liberal thought that guided the reconstruction of the international order after the First World War – in which the League of Nations was emblematic – was considered, to some extent, obsolete. For its critics, the League's structure was considered to be fragile and over-reliant on the good will of its members. The League relied on consensus as the decision-making procedure and had no mechanism to enforce or punish misconducts. In 1939, the belief on a harmony of interests between states became a dead end, and more pragmatic accounts of international politics started to gain strength and visibility (see CARR, 2001). If after the First World War the world was embedded in the Wilsonian idealistic interpretation of the public opinion and the triumph of rationality, the global order in the aftermath of the Second World War challenged these premises. Therefore, this context was marked by a renewal of realism.

Central to a realist interpretation of 'politics' is its expression through the state. For Weber, politics is an extremely broad concept and includes "every kind of independent leadership activity" (WEBER, 2004, p.32), while the state "is the form of human community that (successfully) lays claim to the monopoly of legitimate physical violence within a particular territory" (WEBER, 2004, p.33). He further defines the state as the "source of the 'right' to use violence". Therefore, in the realm of politics, we find "the strive for a share of power or to influence the distribution of power, whether between states or between groups of people contained within a state" (WEBER, 2004, p.33).

The distinction between use of violence and 'legitimate use of violence' affords a distinction between friends and enemies. As expressed in Locke (1988, p.419):

Whosoever uses force without right, as everyone does in society, who does it without law, puts himself into a state of war with those, against whom he so uses it, and in that state all former ties are cancelled, all other rights cease, and everyone has a right to defend himself and to resist the aggressor.

By putting himself against the authority of the sovereign, one resists power in the realm of civil politics. The friend-enemy distinction will be drawn at the limits between the civil and sovereign politics. The leader of a political organization (in this case, the state) not only has the right to use force, but to rule over people in a specific territory. The use of force must be legitimate. Then, an important question concerns the source of this right to rule assigned to the sovereign. According to Weber (2004, p.34), the range of justifications for the "legitimate" rule may include:

First, authority of 'the eternal past', of custom, sanctified by a validity that extends back into the mists of time as is perpetuated by habit. (...) Second, there is the authority of the extraordinary, personal gift of grace or charisma. (...) Lastly, there is the rule by virtue of 'legality', by virtue of the belief in the validity of legal statuses and practical 'competence' based on rational rules.

Especially relevant for this analysis is the legitimacy that derives from the validity of "legal statuses and practical competence". Usually, the validity of the legal system itself is derived by an appeal to custom or an eternal past, in which case the memory of the creation of the rule disappears in the process of fixing the rule in an abstract place and time in tradition.

In contrast, Schmitt argues that the preservation of law is itself an act of validating it. Sovereignty is "the locus and nature of the agency that constitutes a political system" (SCHMITT, 1985, p.xi). Offering a different definition of politics from the one offered by Weber, Schmitt claims that what defines the sovereign is not simply the monopoly to coerce or to rule, but the monopoly over the last decision. According to Schmitt, the nature of the sovereign is the making of "genuine decision" (SCHMITT, 1985, p.3). The sovereign is in a position not only to determine the existence of a condition that is not anticipated by the norm as well as deciding on the appropriate measures to deal with this exception (SCHMITT, 1985, p.xii). The genuineness of the sovereign decision relies on the fact that it does not derive from the norm, as a general norm, "represented by an ordinary legal prescription, can never encompass a total exception" (SCHMITT, 1985, p.13).

The sovereign, and not the general norm, can be held responsible for the situation in its totality. It is through the exception that the essence of norm and authority is revealed. In a sense, sovereignty is legitimized by the legal norm that prescribes its authority, while at the same time it proves to be independent of the law that authorized it (SCHMITT, 1985, p.13). Concerning this distinction between sovereignty and the norm, Schmitt argues that "although he (sovereign) stands outside the normally valid legal system, he nevertheless belongs to it, for it is he who must decide whether the constitution needs to be suspended in its entirety" (SCHMITT, 1985, p.7). The essence of sovereign authority is the 'right' to make decisions without the need to be based on any law. Therefore, the exception makes relevant the subject of sovereignty. In addition, Schmitt explains that the precise details of an emergency cannot be predicted. One cannot tell, when, where, what or whether an emergency is going to happen. Also, "not every extraordinary measure, not every police emergency measure or emergency decree, is necessarily an exception. What will characterize an exception is principally unlimited authority" (SCHMITT, 1985, p.12), as the exception, or emergency, may demand the suspension of the entire existing order. In this context, Schmitt then argues that the exception is more interesting than the rule. According to him the rule proves nothing; the exception proves everything: it confirms not only the rule but also its existence, which derives only from the exception. One can only have the exception if one has the rule. Therefore, the designation of something as an exception is in fact an assertion of the nature and the quality of the rule. It is clear for Schmitt that when the sovereign identifies an exception, is at the same time reinforcing what constitutes the public order and security, and therefore, the “normal” situation.

Deriving from that argument, for Schmitt, every legal order will be based on a political decision. By the same token, every political decision is enabled by its autonomy in relation to the pre-existing norm. Once an exception is determined, defined and interpreted, the resolution to solve this specific situation may become part of the normative arrangement, and will be no longer an exception since it finds specific prescriptions in the norm. The legal order, then, contains necessarily norm and decision (SCHMITT, 1985, p.10).

Schmitt contends that resolute action was necessary to combat threats, for the state's *raison d'être* was to maintain its integrity in order to ensure order and stability (SCHMITT, 1985, xiii). Through the definition of what is regular and normal in opposition to what is different and alien, the sovereign will also distinguish friends and enemies (SCHMITT, 1996, p.27). Regular jurisdiction deals with recognizable cases and subjects, while extraordinary politics invariably calls for the identification of an enemy, a threat whose elimination is necessary for the reestablishment of peace and security. In those cases, the enemy’s annihilation could be understood as the result of an extreme level contained in the friend-enemy distinction in which the enemy is the Other who embodies an ontological denial of the Self.

Moreover, Schmitt's concept of the political emphasizes the notion of human agency behind any notion of 'normality' and 'order'. Instead of a normative system emanated from an abstract idea of the 'general will', diffuse interpretations and decisions concerning the law taken at the juridical level, by bureaucrats or a set of other institutions, Schmitt argues that decisions and judgments are always necessary to the degree one desires to preserve the political.

One of the problems Schmitt identifies in modern political culture is the disappearance of the "political" realm. According to him, modern society (financiers, industrial technicians, Marxist socialists, and anarchic-syndicalist revolutionaries) "unite in demanding that the biased rule of politics over unbiased economic management be done away with". In this sense, "there must no longer be political problems, only organizational-technical and economic-sociological tasks" (SCHMITT, 1985, p.65). Schmitt's diagnosis was that increasingly "the plant" runs by itself, and consequently, "the decisionistic and personalistic elements in the concept of sovereignty are lost" (SCHMITT, 1985, p.48). A similar perspective is found in Weber, who argues that the disenchantment of the world is related to the disappearance of politics, and also rejects this liberal fiction of a self-sustained social order (KALYVAS, 2008, p.38).

Following from this de-politization process, man's desire to rationalize, control, regulate and explain political phenomena scientifically led to the dissolution of politics (separation between politics and the other fields - economics, law, culture etc.). In the forties, Hans Kelsen offered a divergent perspective on the relation between norm and politics that later came to support what we can interpret as the "de-politicization" of the international, in the sense that politics and the norm came to be distinguished as two separate realms. Kelsen defended the pure theory of law as detached from ideologies and human agency. He rejected the notion that norms were the mere reflection of political decisions. According to Kelsen (1945, p.xvi),

It is precisely by its anti-ideological character that the pure theory of law proves itself a true science of law. Science as cognition has always the immanent tendency to unveil its object. But political ideology veils reality either by transfiguring reality in order to conserve and defend it, or by disfiguring reality in order to attack, to destroy, or to replace it by another reality. Every political ideology has its root in volition, not in cognition; in the emotional, not in the rational, element of our consciousness; it arises from certain interests, or rather, from interests other than the interest of truth.

The view we support in this paper is that the "political" has not disappeared, but instead, the sources of legitimation of political authority have changed. Schmitt's narrow definition of the political emphasizes the individual and overlooks the potential strengthening of the political enabled exactly by the alleged dissolution of the political into the norm. The totality of the pure theory of law ignores the impossibility of the doctrine of law to encompass the total exception. Thus, we should keep in mind that the legal doctrine cannot anticipate and pretend to have an answer to any crisis that might emerge. Judgments are constantly demanded, but they might not be perceived as such if one insists to conceal human judgment and decision within a normative structure. To ignore decision-making is to legitimize the structure of power that constitutes the "political", now masqueraded under discourses of universal rights and democracy. The onslaught against the political is based on the fact that the recognition of the human agency behind the normative order enables one to identify the asymmetric relations of power ruling the creation of the norm and the reproduction of the so-called normative order.

As Weber suggested, "whereas during normal politics actors aim at appropriating the means of violence within a given structure of legitimacy, during extraordinary politics they aim at creating the belief in this legitimacy by disseminating those norms that will

justify authority" (KALYVAS, 2008, p.41). With this in mind, we can infer that the aim to unveil the human character of politics is hindered by the sovereign (the one in the position to free itself from the norm in a state of exception) who wishes to legitimize his authority between the norm and its suspension, but who recognizes that the notion of power is now interpreted in the opposite side of legitimacy, as Kelsen (1945, p.xvii) asserts,

In the Anglo-American world, where freedom of science continues to be respected and where political power is better stabilized than elsewhere, ideas are in greater esteem than power; and also with the hope that even on the European continent, after its liberation from political tyranny, the younger generation will be won over to the ideal of an independent science of law; for the fruit of such a science can never be lost.

As Kelsen points out, in our society, ideas are in greater esteem than power. The legitimacy of sovereignty is given by "the people" and created through the notion that political authority and the will of its subjects are indistinguishable. For Schmitt, these counterrevolutionary philosophers of the State heightened the decision-making process to such an extent that "the notion of the legitimacy, their starting point, was finally dissolved" (SCHMITT, 1985, p.65). Although the point in this paper is not to discuss the micro levels of power, we must say that by denying the political and the biases of the norm, and by denying the political as underlying all those other fields in society, one is actually reassuring the continuation of the political by other means, perhaps not in the *persona* of a determined sovereign who decides on the exception, but still in decisions on the exception taken on a daily basis at different levels in society. On a different direction, and more important for the purpose of this paper, we might also recognize the persistence of the sovereign potentially hidden behind overestimated ideas and principles, trying to muddle itself with the norm. Whenever we are compelled to see this "order" as legitimate because of the alleged universalization of principles that "we, people" of this world are convinced we all agreed upon, we fail to recognize the political (which involves decisions and judgments) at work in the constitution and reproduction of the international normative order.

The limitations of the Schmittian account of politics relies on the fact that (1) he narrows down the realm of politics to the relation between a government and its subjects, and (2) he seems to argue that the re-politicization of the political sphere, bringing back a visible and identifiable agent to the decision-making process, is an end in itself. Although he acknowledges that law is an overall system of power that functions as a productive normalizing force, it does not seem that he is trying to "denormalize" it. In other worlds, the more depoliticized a political order is,

the more political it becomes. However, a re-politicization expressed by a simple reintroduction of the "human element" of irrational decisionism may not the best way to challenge the obfuscation of the political by the "rule of law". As Giorgio Agamben (1998, p.12) contends, "the problem of sovereignty [in Schmitt] was reduced to the question of who within the political order was invested with certain powers, and the very threshold of the political order itself was never called into question". Agamben, then, further analyzes the role played by the exception on social relations, such as the constitution of the *Homo Sacer*, the one who is so dehumanized that no guilt comes from its annihilation.

For Schmitt (1985, p.1), the sovereign is "he who decides on the exception". The purpose of any sovereign decision will be the reinstatement of order, either of the old order threatened by chaos, or a new judicial order able to reestablish "normality". Despite the fact that Schmitt does not further explore the implications of power, one must acknowledge the relevance of his theory for an analysis of politics, in the sense that it sheds light on the relation between politics and the normative structure that both enables politics and is constituted by politics.

The depoliticization of relations of power, a concern highlighted by Schmitt and Weber, is indeed a problem. Asymmetries and hierarchical relations of power do not disappear with the disappearance of the image of the sovereign. Recognizing the "political" in the "depoliticized" modern world is the first step to denaturalize it. In agreement with Clifford Geertz, Shapiro (1998, p.16) states that "the delusion with politics is the result of our aggressiveness. We are too 'impressed with command'. We look so hard for direct relations of power that 'we see little else'". In our view, even 'command' may be overlooked when it is disguised in the name of representation, or principles other than power.

There is nothing about truth in any normative order, but about decisions and judgments, as Schmitt emphasizes. The normative order is nothing more than a representation of "normality" and "security" in contrast to representations of the opposite - chaos, disorder, and threat. According to Shapiro (1988, p.21), "once human enactments are banished from the value- and - meaning-creation process, the effect is depoliticizing, for the assumption that a discursive mode delivers truth, rather than being one practice among other possibilities, discourages contention".

The relation between international institutional arrangements and international normative order reveals that while sovereign States are considered to be the main actors to delineate the political realm, they are also understood and defined within the political (SCHMITT, 1985, p.xv). If there is an international structure or order defined by an international law, and if

one accepts Schmitt's assumption that no law can encompass a total exception, one might question the *locus* of the political in the international realm. "Who is responsible [in the international system], for that for which competence has not been anticipated?" (SCHMITT, 1985, p.10). To identify sovereignty in the international sphere is to discuss the historical and geographical sources of "normalized" international principles. As Shapiro (1988, p.37) explains:

Insofar as existing legal codes represent historical political victories, the language of the law reflects the institutionalization of some values and interests and not others. Assuming that prior to institutionalization there exists, under most circumstances, a plurality of different value and interest positions, each of which would have given us a different legal discourse, the existing laws lack depth insofar as the diversity of demands and struggles prior to their emergence cannot be read in the univocal code.

Kelsen (1945, p.xvi) argues that "the political authority creating the law and, therefore, wishing to conserve it, may doubt whether a purely scientific cognition of its products, free from any political ideology, is desirable". As we argued before, the sovereign has not disappeared. Power still impress, as Geertz and Shapiro point out, but one might agree with Kelsen that sovereign power, as the subject with unrestricted power, is not easily esteemed and a leader, may be even freer to act within and above the law if one is convinced of the unity between power and popular will, between authority and Law, between international political decision making and the principles that shapes its structure.

To this notion of a hegemonic value as the source of legitimation of decision-making, Kalyvas (2008, p.35) asserts, drawing from Wolfgang Schluchter (1985) that *the belief in the legitimacy of domination is directly extracted and conditioned by the prevailing hegemonic cultural values. Those who are able to determine the content and orientation of a cultural formation have a higher probability of influencing how people act and determing what In a given society wil be considered to be a legitimate authority*.

In this section, we explored the relationship between power politics and the constitution of normative structures. Building upon Schmitt's interpretation of the political, we argued that the political realm – the realm of genuine decision-making and judgment beyond the established norm, could hardly disappear from international politics; it could have instead adapted over history to an evolving order that had the United Nations as a major center of norm and legitimacy production on behalf of "we, the people". In order to illustrate our view, in the next section we explore the nature and the extent of United Nations Security Council's authority.

The Sovereign International

Centuries after the Treaty of Westphalia, the international order still operates based on sovereign states that embody both Weberian and Schmittian definitions of content, rule, and power. Conceived as sovereign entities which are constantly interacting in an anarchical system, forms to regulate these interactions have been progressively introduced. Even though these regulatory mechanisms have been historically in operation, the formation of an international organization to regulate and mediate states' interaction is a relative novelty in the international system. The first account of an organization that claimed universality was the League of Nations. Three decades after its creation, under the spell of Versailles' idealism, the Second World War erupted and questioned all the League's principles regarding collective security.

After the shocking image of nuclear bombs being employed in Japan's soil, it suddenly became clear that if a new organization was to exist, it should correct the League's failures in preventing another global conflict. As we pointed out in the introduction, the League was structured according to the liberal conception of the international advocated by the U.S. President, Woodrow Wilson. In the famous document "Fourteen Points", Wilson established that a new international organization would be a central element to prevent another global conflict. The Pact of the League of Nations, signed in the optimistic atmosphere of the Treaty of Versailles, was later considered almost naïve. First of all, the United States itself refused to ratify the Pact: the U.S. Congress contradicted Wilson's ideals and considered that it was not in the country's best interest to be involved in foreign challenges. Also, the Pact established the consensus as the sole decision-making procedure and relied on the self-restrain of each member to comply to its rules. The result was an organization that was paralyzed by disagreements even in procedural matters (ALBUQUERQUE, 2020, p.27).

Regarding the absence of a mechanism to enforce its ruling, the League was impassive when some of the members defied its own principles. Carr (2001, p.55) points out how, in 1931, one could already identify the League's lack of effectivity: Japan, one of its most powerful and central members, invaded the Manchuria region, officially owned by China. The League suspended the offender, but it was as far as it could go. The impunity and the lack of hard sanctions also worked to drain the organization's legitimacy and, one by one, the States started to withdrawal their membership. The beginning of the Second World War was the last straw.

When the war was already in progress, the Allies converged on the opinion that a new organization was needed to shape the after-war-order and that it required a different structure from the League.

This topic was pivotal in the Moscow Conference and in the Tehran Conference, both in 1943. In these occasions, the United States, the Soviet Union, the United Kingdom and China started to brainstorm and draft the goals and functions of the new organization. They decided, for example, that France should join them in a restricted group of five powerful countries that must be involved in any security and military decisions [1]. This centrality was reaffirmed at the Dumbarton Oaks Conference (1944), when they wrote a preliminary version of the future organization's treaty, and in the Yalta Conference, when Stalin demanded that each one of them could veto any security action that was against its national interest (ALBUQUERQUE, 2020, p.28).

To accomplish that goal of creating the organization, fifty countries, mostly the ones that declared war to the Axis, reunited in San Francisco for two months. During the San Francisco Conference, states debated over the principles, structure and function of the new organization: The United Nations Organization. The debates in the Eastern American coast culminated in the United Nations Charter. As any Charter, the treaty signed in 1945 has an addressee: "the peoples of the United Nations". The document maintained the liberal principles of the international law, such as the isonomy, the good will and the sovereign equality, but we could affirm that the UN reinterpreted them in a more pragmatic way. Isonomy and equality were some of the core principles, but they also contemplated some exceptions, and the UNSC's structure and decision-making process are the best examples of this "pragmatic turn".

The UN Charter established the organization's six main bodies, including one to specifically define and tackle threats to peace and security. Although there is no hierarchy between the six, the Security Council has occupied the central stage, due to the prerogatives conferred to it by the UN Charter. The United Nations Security Council is not "a bureaucracy that builds up an informational advantage in an issue area. Instead, the delegation is first and foremost to a decision-making rule" (VOETEN, 2008, p.43). By ratifying the United Nations Charter, all member states delegate to the 5 permanent members and 10 non-permanent members the authority to make decisions regarding collective responses to threats to international peace and security. These decisions, which are generally binding under international law, may include far-reaching measures such as economic sanctions and military interventions (VOETEN, 2008, p.43). In his interpretation of the UNSC in 1946, Kelsen (1946, p.1121) compared its authority with the powers granted to a sovereign State:

There is an open contradiction between the political ideology of the United Nations and its legal constitution. And this contradiction may completely

paralyze the great advantage the Charter tried to gain over the Covenant by conferring upon the Security Council a power almost equal to that of a government.

Due to the broad acceptance that the Charter has acquired over time and the depth of its rights and duties, there is a literature that compares it to a kind of constitution of the international system and identifies it as a framework of international law. In this sense, the legal provisions in the UN Charter are compared to norms of *jus cogens*, a legal term that designates imperative norms that cannot have their obedience contested and, therefore, would be hierarchically superior to the ordinary rules of international law (Hossain, 2005; Fassbender, 2009). The comparison of the Charter with a constitution and its approximation to the norms of *jus cogens* indicate the centrality that it acquired as a regulator of the international system in the post-Second War.

According to the UN Charter, the UNSC have the following relevant functions: a) to regulate disputes between UN Member States (Articles 33 to 38), b) to regulate armaments (Art. 26); c) to act in cases of threat to peace and aggression (Articles 39 to 51); d) to decide on the measures to be taken in relation to the judgments of the International Court of Justice (art. 94, § 2). The article 25 in the UN Charter establishes that "the members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter". It is worth noting that in this article we find the norm that abides every signatory member of the Charter to the resolutions issued by the UNSC. Cronin argues that "since the UN Charter is legally binding on all members, which also practically means all states, the line between an organizational mandate and general principle of international law is blurred" (CRONIN, 2008, p.60).

While article 34 in chapter VI delegates to the Security Council the responsibility to investigate any dispute or situation that might endanger the maintenance of international peace and security, article 33, paragraph 1, "obligates the parties to seek solutions, by means of their own choice, of disputes the continuance of which is likely to endanger the maintenance of international peace and security".

Those articles in chapter VI of UN Charter annunciate the responsibility of the Security Council to investigate the cases of disputes that have the potential to disturb the 'order', but the source of UNSC sovereign authority is found in article 39 that establishes that

The Security Council shall determine the existence of any threat to the peace, breach of peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace

and security.

Considering the fact that there is no clear mandate for other organization to review these determinations, what the UNSC decides is a threat, is by definition, a threat (CRONIN, 2008, p.211). In the article 39 we find both conditions for the definition of sovereignty, as defended by Schmitt. The UNSC has the power not only to determine the existence of a threat to international security, as well as to decide on the necessary measures to reestablish international peace and security. The deliberative organ has the exclusive "right" to interpret the norm and go beyond the established norm if necessary.

On the nature of the decision-making process in the UNSC, it is necessary to classify the two kinds of decisions that can be taken by this political body, according to article 27 of the UN Charter. To mere procedural decisions, it suffices the affirmative votes, with no prerogative extended to the permanent members. To make decisions concerning any other substantial issue, the approval depends on the affirmative vote of nine members, including the *affirmative vote of all permanent members*. From this extra demand in voting procedures, we conclude that the permanent members have the so-called "veto power". This is the normative expression that grants the power within the political body to a specific group of States, not only to decide on the exception and on the measures to restore the order, but to prevent any resolution that is not in accordance with the 5 permanent members' best interest.

Evoking Weber's definition of the political, a feature of politics that cannot be emphasized enough is the struggle for power and the asymmetries within the UNSC. Traditionally, the United States, France and Britain make their decisions in prior meetings, called P3 instance, when they determine the Western position. In the 2000s, after their diplomatic approximation, Russia and China have also been increasingly coordinating positions prior to the UNSC adoption meetings. Only later the five permanent members reunite *in petit committee* on so-called P5 instance. There are therefore at least two rounds, defined not only in time and space, but also politically, which may result in blockage of collective action, even before it reaches the meeting of the body (SEITENFUS, 2012, p.146).

Drawing on Sartori's research about small political groups, Baccarini argues that the UNSC operates as a committee, a structure that can be defined by a small and closed group with direct interaction within an institutionalized and permanent mechanism (BACCARINI, 2010, p.10). Baccarini concludes that the proliferation of informal groups and negotiations has in fact generated the emergence of a consensual standard decision-making, where the ability to influence results remains concentrated in the P5. According to the author,

These committees engage in "committees' subsystem" that allows, in addition to internal payments, lateral and external payments through other committees in a coordination mechanism. These side payments are not necessarily negotiated explicitly and may occur through the negotiation of votes and early reactions to possible decisions of a particular committee, favoring adjustment and coordination. (BACCARINI, 2010, p.10)

It results from this oligopolistic format that effective decision-making is confined to those who are capable of providing lateral payments for the support or opposition in any matter, either inside the UNSC or in other multilateral bodies. For Baccarini, among the elements that have an impact on the ability to influence the norm-making process are the amount of financial contribution to the organization budget, the capacity to provide – and produce – technical information, and the organization's instruments to reduce the asymmetries of its member states (BACCARINI, 2010, p.9). Based on the provision of the UN Charter, it is possible to verify that the 5 permanent members concentrate financial, political and informational resources.

Regarding the UNSC structure, one might say that the struggle for power and the veto power within the UNSC undermines its interpretation as the *locus* of sovereignty in the international system. However, the UNSC could still be considered sovereign to the extent one understands that there is no other international political organization with similar authority to check UNSC's power.

Also, it is sovereign to the degree it regulates international order by judging what is security (normality) and what is not (threat to normality) as well as by holding the monopoly over the decision to the legitimate use of force in the international system.

Kelsen, who defends the equality between the ruler and the legal order, recognized that this was not the case regarding the UNSC. He argued that:

The veto right of the five permanent members of the Security Council places them above the law of the United Nations, establishes their legal hegemony over all the other Members, and thus stamps the Organization with the mark of an autocratic regime. This becomes more significant if we keep in mind the fact that the United Nations represents itself as the result of a war not only of arms but of ideals (KELSEN, 1946, p.1121).

It should be highlighted that the authority of the UNSC to determine the existence of a threat and to take action in defense of international peace and security is derived from the UN Charter, which has the legal status of a multilateral treaty (CRONIN, 2008, p.57).

Cronin points out that "under the prevailing theory of international law - legal positivism - states are obligated to follow the dictates of the Council because they have consented to its authority by signing the Charter" (CRONIN, 2008, p.57). On the one side, there is a norm from which the UNSC derives its authority (legitimacy to exercise power), and on the other side, the same norm that legitimizes the sovereignty of the UNSC also frees the UNSC of the ties of the norm.

The recognition that there might be cases that cannot be anticipated in the norm is clear in the establishment of the UN Charter. The sovereignty of the UNSC is not restricted by the international norm. For some authors, the decision by the framers of the Charter not to subject the Council to the precepts of international law "suggests that they wanted to avoid entangling the body in legalisms when making decisions regarding international security" (SIMMA et al., 2002, p.52).

Cronin shows that since the 1990s, the significant and most effective actions of the United Nations Security Council in the name of the international security have been in areas that go beyond the powers granted to the Council "either by the Charter or by some other means of expressing consent: nation-building, prosecuting war crimes, peacekeeping, dismantling apartheid, alleviating serious humanitarian crises, resolving civil wars and restoring a democratically elected government" (CRONIN, 2008, p.57).

Besides the authority granted by the Charter to decide on the exception, the sovereign power of the UNSC is also defined by its authority to decide what constitute legitimate use of force in international politics. Even the right to self–defense is restricted to an immediate moment after the attack. Article 51 clearly states that attacks should be reported to the UNSC as soon as possible and should not affect the Council's authority to decide on the matter. Articles 41 and 42 indicate some of the measures that might be considered by the UNSC in cases of threat to international security. Article 41 establishes that:

The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

Article 42 extends the power of the United Nations Security Council to use coercive force when necessary: *Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such*

action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

The member states agree, by ratifying the UN Charter to provide the necessary forces to 'restore order and security'. Article 43 asserts that all members of the United Nations must "undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security". Even though in practice one might question the real authority of the UNSC to coerce member States to contribute with their forces in the name of international security, the authority granted by the international community, represented by 193 member States, to this deliberative organ is still relevant.

In the next section, we analyze the implications of the campaign for a reform of the UNSC. We argue that this could open up the space for a genuine political debate to the degree that it challenges the universality of the United Nations' principles and rules, as well as the legitimate authority of the permanent members of the UN organ to keep deciding on what constitutes normal behaviors and subjectivities in the international sphere. The reasons that have been raised to justify the need for a reform of the UNSC sheds light on the power struggles, the exclusions and inclusions, and the judgments behind the institutionalization and 'normalization' of the international structure.

The political and the struggle for power

For Schmitt, the distinction between "Us" and "Them" is at the core of the political. It is what renders the political necessary. Even though this dichotomy friend/enemy implies a territorial notion of the inside according to Schmitt, the question of whether or not the location of political life is clearly bounded opens the possibility for one to reflect on the inside/outside at an international level. As Walker contends, "what we call politics must be becoming something other than what we expect it to be as an expression of the necessities and possibilities of the sovereign state" (WALKER, 2006, p.56). If the states are no longer the primary or the only providers of our political identities, we may find other locales where our political identities are been constituted. By the same token, we identify the constitution of new political spatialities and subjectivities, and subsequently, the authorization of a doubled outside. The United Nations Security Council claims to represent and to speak on behalf of a specific collectivity. The work of the United Nations reaches every corner of the globe, as is stated on the United Nations website (www.un.org). There is a "we, the peoples of the United Nations" who is represented by the institution and also said to be

protected by it. However, at the same time that the United Nations defines the 'We' who is protected, it also distinguishes it from the 'They' against whom 'We' must be protected. Since Article 4 restricts membership to those entities that are “peace-loving States”, those who threaten this order of stability are no longer suitable for being part of the “We”. The enemy will be recognized in everything that potentially disrupts the 'normality' of international affairs, including alternative subjectivities that threaten the ones in alignment with modern international politics.

Drawing on this interpretation of the insides and outsides of the international, our argument is that the hesitance on the part of the actual permanent members to welcome the inclusion of new permanent members in the United Nations Security Council is not sufficiently explained at the institutional or technical level. It involves a struggle among political identities and the threat posed by a normative rearrangement.

Most of claims for a reform of the UNSC criticize the incompatibility between a structure created at the post-Second World War period and the contemporary multipolar and more diverse system. The narrative is that the international sphere has evolved and the UNSC is paralyzed in both temporal and spatial dimensions. The end of the Cold War is considered one of the most significant phenomena in relation to which such arguments based on ‘historical change’ are reinforced.

Following the disintegration of the Soviet Union, two proposals for a reform were elaborated. One was sponsored by the United States delegation and was known as “quick-fix”. By this rapid adjustment, the US suggested that two new permanent members should be allowed to join the UNSC with veto power: Japan and Germany. Another attempt came from Razali Ismail, Malaysian Ambassador and former President of the General Assembly of the United Nations. Razali offered a model with 5 new permanent members, with a caveat that 2 should be developed countries and 3 should come from the developing world. His proposal was called “2+3”. According to Valle (2005), the assumption that Japan would be included in any reform was an insuperable obstacle for China, which expressed its discontent with both proposals in its early stages. It followed that neither proposal was formally discussed or opened to a vote.

The twenty-first century brought hope that the UN would adapt to the new era. The 09/11 and the War on Terror that followed helped to expose the organization’s inability to deal with a world in constant transformation. To face these challenges, the former Secretary-General Kofi Annan assembled in 2003 a group of specialists to make recommendations for the UN.

This High-Level Panel launched a report in 2005 that contained, among other suggestion, two proposals specifically for the UNSC. In both suggestions, the Panel recommended an increase in membership, with no mention to which states would occupy the new seats. It also emphasized that the veto power should not be extended to the new permanent members. Such restriction was due to the political use of vetoes in cases of massive violation of human rights in the previous decades. The report stated:

Neither model involves any expansion of the veto or any Charter modification of the Security Council's existing powers. We recognize that the veto had an important function in reassuring the United Nations most powerful members that their interests would be safeguarded. We see no practical way of changing the existing members' veto powers. Yet, as a whole the institution of the veto has an anachronistic character that is unsuitable for the institution in an increasingly democratic age and we would urge that its use be limited to matters where vital interests are genuinely at stake. We also ask the permanent members, in their individual capacities, to pledge themselves to refrain from the use of the veto in cases of genocide and large-scale human rights abuses. We recommend that under any reform proposal, there should be no expansion of the veto (UNGA, 2004, p.81).

In addition to this concern regarding the use of veto power, the member states also engaged in constant debates about the shape of the reformed UNSC. Those who considered themselves entitled for the 'vacant' seats sought to establish alliances to encourage and strengthen their candidacies. One strategy that has been employed is the formation of coalitions among member States. In 2004, Brazil, India, Japan and Germany formally joined in a coalition called G4. The group presented an alternative reform proposal to the General Assembly (A/59/L.64), cosponsored by another 23 states. According to the G4 document, the number of members at the UNSC should increase to 25, with the extra 10 divided into 6 new permanent and 4 non-permanent members.

The 4 new non-permanent members should be from Africa, Asia, Eastern Europe, and Latin America and the Caribbean, regions that are considered underrepresented. The 6 new permanent members should fit a regional distribution of two Asian states, one from Latin America and the Caribbean, one from Western Europe and two from Africa. In this model, all G4 members could have their candidacy contemplated, along with two African states. Although the proposal reaffirmed that the new permanent members would share the same duties and responsibilities of the current ones, article 5 mentions the

extension of the veto power. The article establishes that the new permanent members would not have the veto prerogative immediately, and this *modus operandi* should be reassessed in 15 years. During this period, the P5 should refrain from using the veto.

The G4 countries have gathered in several opportunities, including on the margins of the General Assembly Opening Sessions and during the meeting of the Assembly's Open-ended Working Group on the question of equitable representation and increase in the membership of the Security Council. In February of 2011, Brazil, India, Germany and Japan issued a joint statement on the UNSC reform. The G4 reinstated their main goal to support each other's bids for a permanent seat, and to also include African states. In this joint statement, they summarize their vision:

Recalling also their previous joint statements, the Ministers reiterated their common vision of a reformed Security Council, taking into consideration the contributions made by countries to the maintenance of international peace and security and other purposes of the organization, as well as the need for increased representation of developing countries in both categories, in order to better reflect today's geopolitical realities (G4, 2011).

The campaign for a reform of the UNSC is mainly directed towards the legitimacy of this political body by the fact that it still reflects a political configuration that dates back to more than 70 years ago. The supporters of the reform understand that the power structure of UNSC is a frozen structure of power that reflects that of the end of World War II. Since 1945, the number of member states in the United Nations has increased from 51 to 193, but the only change in the configuration of this UN organ has been an increase in the number of non-permanent members from 6 to 9 in 1965.

At the core of the argument for a reform, we find the issue of legitimacy, which involves both a debate on the representativeness of the UNSC as well as on the legitimacy of the current normative order. In a speech to the United Nations in 2004, former-Brazilian president Lula sustained that

No organ is better suited than the UN for ensuring the world's convergence towards common goals. The Security Council is the only source of legitimate action in the field of international peace and security. But its composition must reflect today's reality". Lula also argued that "there will be neither security nor stability in the world until a more just and democratic order is established (DA SILVA, 2004).

On the one hand, Lula's discourse acknowledges the legitimacy of the

United Nations to preserve world order. The Brazilian government has not advocated for the extinction of the UNSC. Also, it has not questioned its decision-making power to define who is inside and outside of the norm. What the Brazilian government suggested was a change in the decision-making mechanism within UNSC. Brazil and the others in the G4 coalition accused the UNSC of a lack of representativeness, what hinders its legitimacy. In his first statement at the UN General Assembly General Debate as the President of Brazil, Lula asserted that

its [UNSC] decisions must be seen as legitimate by the Community of Nations as a whole. Its composition - in particular as concerns permanent membership - cannot remain unaltered almost 60 years on. It can no longer ignore the changing world. More specifically, it must take into account the emergence in the international scene of developing countries. They have become important actors that often exercise a critical role in ensuring the pacific settlement of disputes (DA SILVA, 2003).

More recently, President Dilma Rousseff was applauded when she advocated a reform of the UNSC in the opening speech of the General Debate of the 66th General Assembly of the United Nations. She sustained that "the more legitimate its [UNSC] decisions are, the better it will be able to play its role. [...] With each passing year, it becomes more urgent to solve the Council's lack of representativeness, which undermines its credibility and effectiveness" (ROUSSEFF, 2011).

Over the last decade, G4 countries have continued to highlight the issue of representation and legitimacy as a core demand regarding UNSC reform. In 2017, the German Ambassador at the UN made a statement in which he reiterated the need for reform, based on the importance of a configuration that reflects 21st century realities, in order to ensure its authority and relevance (HEUSGEN, 2017). In the 2017 G4 Joint Statement, the Ambassador of Japan also pointed to the issue of credibility, by showing that 164 of the current 193 UN member States agreed to engage on text-based negotiation to reform the UNSC (G4, 2017).

The debate on the reform of the UNSC politicizes the international by bringing to the fore the struggle for power that defines the constitution of the system. The campaign denaturalizes the 'normalized' international order. In this sense, the campaign for a reform of the UNSC can be interpreted as a declared fight against the current rules of power, in particular those directly regulating criteria about who gets to rule within and above the norm in international politics. However, as explored in this paper, a Schmittian interpretation of sovereignty is limiting if it does not take into account the

source of its legitimacy. The campaign for a reform of the UNSC exposes not only the struggle for the power to rule over the norm of international politics, but mainly a dispute over the norms according to which certain subjectivities are positioned in a privileged position from where they are able to speak and decide legitimately and intelligibly for "the peoples of the world".

Conclusion

While the debate on the reform of the UNSC politicizes the institution - by recognizing historical and geographical biases behind the UNSC's monopoly of the last decision on the cases of exception in the international, an actual reform has the potential to depoliticize it, to hide yet again history, processes, practices, and biases behind a newly reformed 'democratic' constitution. Additionally, the democratization of the UNSC may also not satisfy Kelsen's notion of a positive international law, as far as the UNSC remains a political body holding the monopoly over the political decision in the international system, and not a mere bureaucratic organ - detached from human judgment and decision - that relies on the science of law.

As we have shown, even amongst the five permanent members, the asymmetry of power in the decision-making process is manifest. At the creation of the UNSC, the five permanent members protected themselves from the ties of legalisms. The stories about the constitution of the United Nations and its different organs and the recent campaign for a reform of UNSC show us that the ability to distinguish between 'normality' and 'abnormality in international politics, or 'legitimate' and 'illegitimate' political structures, depends on historical context, as it relies on meaning making processes and certain rules of intelligibility conditioning the recognition and performance of authority as such. In that sense, the 'sovereign' is never above pre-existing set of discursive and representational rules. A deeper investigation of future possibilities opened up by the debate on the reform of the UNSC should take into account the constitution of new political spatialities and subjectivities as well as new rules of intelligibility enabling and enabled by a new organizational structure.

The questions and controversies highlighted by this article inspire new research agendas that could contribute to the development of International Relations as a discipline as well as to more informed enquiries about the subject of international norms and institutions. By engaging conversations and debates at the intersection of International and Political Theory, it remains vital to analyze more deeply if the current (in)balances of power and the unilateral actions that have been

progressively undervaluing multilateral decision-making arenas could be read as a movement towards the politicization of the international order and/or the reterritorialization of the sovereign decision, and what this could mean in terms of new opportunities and limitations that are presented to actors that have been historically silenced by pervasive and normalizing rules of power and legitimacy on the global stage.

Notes

1- France did note participate in most of the war conferences because it was either occupied by Nazi troops or the government was in exile.

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Abstract

The international political order has been 'normalized' through a number of principles that constitute our international legal and normative framework. The United Nations became one of the main sources of legitimacy informing the relation between states. This paper explores the role of United Nations Security Council (UNSC) in the universalization of rules and principles, and as a sovereign center where decisions on the normal and abnormal behaviors and subjectivities in the international are made. By identifying and regulating what constitutes the exception to the rule and to international peace and security, the permanent members of the UNSC find themselves in a position to also define the limits of normality in international politics. Developing further on these premises, we argue that the campaign for a reform of the UNSC sheds light on the political domain of the 'international order', a domain of dispute, undecidability, and potentiality.

Resumo

A ordem internacional foi 'normalizada' por meio de vários princípios que constituem a estrutura legal e normativa internacional, e as Nações Unidas se tornaram uma das principais fontes legitimadoras da relação entre os Estados. Este artigo examina o papel do Conselho de Segurança das Nações Unidas (CSNU) na universalização de regras e princípios e como órgão soberano onde são tomadas decisões sobre comportamentos e subjetividades considerados adequados no cenário internacional . Ao identificar e regular o que constitui a exceção à regra e à paz e segurança internacionais, os membros permanentes do CSNU encontram-se em posição de definir também os limites da normalidade na política internacional. Desenvolvendo ainda mais essas premissas, argumentamos que a campanha para uma reforma do CSNU lança luz sobre o domínio político da "ordem internacional", um domínio de disputa, incertezas e potencialidades.