

The possibility of classifying the “war on terror” based on the classic war concepts of international law


La posibilidad de clasificar la “guerra contra el terror” a partir de los conceptos clásicos de guerra del derecho internacional público

Abstract: This article aims to analyze the main characteristics of the initial period of the “War on Terror,” in order to work on the possibility of the convergence of this event with the concepts of war that are foreseen by the doctrines and treaties of International Law and from the perspective of United Nations. The analysis is pertinent because, when identifying the armed conflict, the actions that can be taken are restricted and sanctions are given to the responsible actors. Firstly, it aims to analyze the main concepts about war brought by International Law, so that in the subsequent section these definitions are applied to the War on Terror, finalizing the work with the solutions found by the UN to organize the event. The conclusion is that the “War on Terror” could not be considered by the term used, given that it does not converge with the theoretical aspects of the war and is distorted due to the unilateral actions taken by the North American government.

Keywords: War. War on terror. International Law. United Nations Charter.

Resumen: Este artículo tiene por objeto analizar las principales características del período inicial de la “Guerra contra el Terror”, a fin de trabajar sobre la posibilidad de convergencia de este acontecimiento con los conceptos de guerra previstos por las doctrinas y tratados de Derecho Internacional Público y bajo la perspectiva de las Naciones Unidas. El análisis es pertinente para identificar el conflicto armado, restringir las medidas que pueden adoptarse y conceder sanciones a los agentes responsables. En primer lugar, se pretende analizar los principales conceptos de guerra que aporta el Derecho Internacional Público, para que en el apartado siguiente se apliquen estas definiciones a la Guerra contra el Terror, finalizando el trabajo con las soluciones encontradas por la ONU para organizar el evento. Se concluye que la “Guerra contra el Terror” no puede ser considerada por el término utilizado, ya que no converge con los aspectos teóricos de la guerra y además está distorsionada debido a las acciones unilaterales del gobierno de los Estados Unidos.

Palabras clave: Guerra. Guerra contra el Terror. Derecho Internacional Público. Carta de las Naciones Unidas.

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1 Introduction

International Law (*DIP-Direito Internacional Público*) arises with the aim of promoting a harmonious relationship between national states. Thus, war is treated as one of the fundamental issue of the DIP, initially studying the means by which the use of force would be possible, developing until the moment when it was totally abolished as a state practice.

However, the concepts and regulations on war worked by the international legal system became outdated when defining States as main actors. Thus, they do not follow the changes in the international scenario, which modify both the actors and the new forms of conflict development.

This delay becomes evident from the declaration of the "War on Terror" due to the events of September 11, 2001, when the emergence of new actors became evident. Thus, global threats have been redefined in the international system, joining efforts to combat terrorist groups.

In this sense, due to the enemy actor treated, there were doubts about the applicability of the existing international legal rules and the extent to which the measures taken by the USA were allowed by the DIP.

According to this scenario, the article asks: could the "War on Terror" be considered a real war according to the definitions of International Law? The recognition of a conflict according to the legal system is essential to define the measures for redressing the acts suffered, limiting the action of the United States in the face of the actions taken as a response to 9/11. The impossibility of classifying this conflict as a war in the traditional way is the hypothesis of this article.

Using the qualitative methodology combined with the hypothetical-deductive method, primary sources were used for the overview we made, such as the use of United Nations Security Council resolutions, in addition to the analysis of the UN Charter to support arguments (NAÇÕES UNIDAS, 1945). It also includes the analysis of treaties such as the Geneva Conventions (COMITÊ INTERNACIONAL DA CRUZ VERMELHA, 1995), their additional Protocols and the Universal Declaration of Human Rights.

The use of secondary sources is also present, working on concepts through the bibliographic review of scholars of International Law such as Hildebrando Accioly (2011), Francisco Rezek (2016) and Celso Mello (2002), in addition to other multidisciplinary relevant works.

Thus, the general objective is to evaluate the characteristics of the "War on Terror," seeking to compare its aspects with the classic concepts of war of the International Law and the United Nation.

The first section will address the classic doctrines of International Law in order to present how the subject defines wars and what are their limits.

Then, the "War on Terror" will be studied, analyzing the actor who caused the terrorist acts and the means by which this conflict was developed. We sought to analyze the

difficulties found to defend the use of the term “war” in the face of the reaction of George W. Bush to respond to the attacks on the USA territory.

Finally, the main resolutions of the United Nations Security Council on the topic will be addressed, which are fundamental for defining the possible sanctions for the attacks, bringing the form of prevention for future actions arising from the terrorist threat.

2 War in the classical concept of international law

The DIP can be defined as the set of legal rules that regulate the international community (ACCIOLY, 2011). The matter arises as a study of war, since it regulates interstate relations in order to obtain harmonious coexistence between states, respecting, above all, the sovereignty of each of them (MELLO, 2002).

Although the main objective is to avoid this conflicting phenomenon between States, International Law has regulated their right to initiate an armed conflict – the *jus ad bellum* – and limited its action while there is war – the *jus in bello* – (MAZZUOLI, 2015).

The law of war is based on two principles: necessity and humanity (ACCIOLY, 2011). Together they form the basis of the existence of this right, being *conditio sine qua non*. The need refers to the use of force as *ultima ratio* and humanity to ensure the protection of those who are not directly related to war, but who suffer its consequences.

Historically, the war was discussed among the states in the Hague Conventions in 1899 and 1907, held in the region where the Netherlands are today. With a humanitarian bias, it was carried out with the purpose of limiting the autonomy of States in armed conflicts, inspired by an ideology of peace. From then on, the way war occurs is continuously updated, while the actors, means and objectives on which armed conflicts are based change.

Its development reached the point where the practice became an international illicit act. First, to prohibit war it is necessary to conceptualize it. In the classic model, in general, a war is the conflict of armed forces between two or more States (ACCIOLY, 2011), whose purpose is restricted to making one of those involved submit to the will of the other (MAZZUOLI, 2015).

This exclusive competence for States is based on political motivation as a driving force of war (CLAUSEWITZ, 1996). It defines the means for the realization of a conflict and the intensity of States’ actions to achieve their objectives. In this sense, “the political purpose is the goal, war is the means to achieve it, and the means should never be considered separately from its purpose.” (CLAUSEWITZ, 1996, p. 92, our translation).

By defining what would be war, by prohibiting and criminalizing its practice, peace could be achieved by other means: avoiding the war. For this, DIP would be the ideal instrument to repress the use of force (ACCIOLLY, 2011).

In this way, international treaties and organizations emerge in order to renounce the use of force as a way of solving disputes, following the example of the Briand-Kellogg Pact¹ (1928) and of the League of Nations (1919)².

Unfortunately, although they were two major advances for the DIP, they had their imperfections, especially the League of Nations, which from the 1930s began to disintegrate in the face of divergent interests among its members and problems in its infrastructure. In this way, the League ended up not prevailing from the moment it lost legitimacy in the international system with the States abandoning it (SEINTEFUS, 2005).

However, the League of Nations left a normative legacy that served as the basis for the creation of another organization of great international importance: the United Nations.

The Organization was created in 1945 with the objective of promoting multilateralism among countries. The post-World War II environment required a united effort to prohibit the use of force in the international environment and to seek peaceful conflict resolution, as States were recovering from two major world wars that had major consequences.

The Soviet Union, the United States, China and the United Kingdom signed the Dumbarton Oaks agreement exteriorizing the consensus among the states to prohibit war, bringing this desire in the Charter in the first articles (Art. 2):

Art. 2, paragraph 3. All Members shall resolve their international disputes by peaceful means in order that international peace, security and justice are not threatened.

Art. 2, paragraph 4. All Members shall avoid in their international relations the threat or use of force against the territorial integrity or political dependence of any State, or any other action incompatible with the Purposes of the United Nations. (NAÇÕES UNIDAS, 1945, p. 4, our translation).

The Charter do not define what war is, it only mentions the term in the preamble. This was due to an attempt to avoid any kind of conceptualization, expanding the probability of criminalizing the act by using the term "use of force" or "aggression" in order to repress States that acted against peace on the international scenario (MAZZUOLI, 2015).

1 It was concluded in Paris, signed in 1928 by fifteen States, reaching sixty-three members before the beginning of World War II. In the Pact, war would no longer be allowed as a political instrument, being accepted only the Self-Defense. Despite its great importance to the DIP, it contained gaps such as the lack of sanctions for violations of its devices (MELLO, 2002).

2 It appeared at the end of the First War, in 1919, having thirty-two original members who decided to prohibit the use of force among themselves to break with the political conduct adopted until then. It was established in Geneva, and in 1937, already possessing more than fifty member States, it received its own installation in the city (SEINTEFUS, 2005).

In terms of conceptualization, the Charter only define what would be aggression, in the words of the UN General Assembly, in the Resolution number 3.314 (1973):

Art. 1 – Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations, as set out in this Definition. (UNITED NATIONS, 2008)

Within the organization, we have the Security Council as a precursor in the solution of controversies between the States, producing recommendations or determining rules of mandatory nature (UZIEL, 2015). In the context of conflicts, there is a need for the organ to be consulted primarily by the States so that the use of force is allowed as a way to solve their controversies (Art. 41 of the United Nations Charter).

In addition, within the law of war we have the aspect of International Humanitarian Law (IHL), which is a regulatory means for States' actions during conflicts in order to protect goods and people, restricting the means and methods so that they do not bring large negative consequences to humanity.

IHL comes with the first Geneva Convention, together with the birth of the International Committee of the Red Cross (ICRC). This Convention consists of four main treaties and their three additional protocols: the first deals with the Amelioration of the Condition of the Wounded in Armies in the Field (1863), the second (1906) is intended to protect fighters from naval warfare, and the third (1929) takes care of prisoners of war. The 4th convention, the most current one, is concerned with speaking specifically of civilians, guaranteeing the protection of the general population from the scourges of war. It would be the first IHL treaty addressing specifically the protection of civilians in armed conflicts.

The Geneva Conventions were created to protect humanity during the course of an armed conflict. They began by worrying about combatants until they saw the need to protect civilians, as they were as vulnerable as those on the battlefield were.

Thus, after describing the concept of war through the vision of the main references of the DIP and exposing how it can be used by States – from the perspective of two international legal instruments of great importance –, a discussion about the War on Terror will be developed in the next topic. Since this phenomenon has generated debates about its definition as war, diverging on the legal concepts presented in this introductory topic.

3 War on terror

According to the classical concepts presented above, most of the regulations governing armed conflicts were produced during the 20th century. In the 21st century, from September

11, 2001, there was a debate about the contemporaneity of these regulations due to the advent of the "War on Terror," questioning the possibility of classifying the event as war.

On this date, USA was the target of attacks by the al-Qaeda group, which hijacked four national aircraft, throwing them against American symbols. The president at the time, George W. Bush, stated that the actions were acts of war and that American democracy was being threatened. Thus, a new national security policy was made, bringing deep changes in legislative, executive and military actions (OLIVEIRA, 2010).

In this context, war was declared against both the groups responsible and those who contributed in any way to the execution of such acts, calling upon allied states to assist in the repression and prevention of terrorist groups on their territories³.

Two military campaigns were highlighted during the period. The first one occurred in Afghanistan and was initiated the month after the attacks. There was an authorization by the Security Council (UNITED NATIONS, 2001a), because of the Afghanistan government's connection with terrorist groups, already verified by the UN in previous years⁴, therefore, seen as indirectly responsible for the attacks.

The second, generated the invasion in Iraq in 2003, under the assumption that Saddam Hussein would have a nuclear weapons depot targeted for USA territory. In this campaign, Preventive Self-defense was invoked, what initiated a discussion about the validity of this determination (MCGOLDRICK, 2004).

The "War on Terror" brings together characteristics that make it somewhat different from the wars that the DIP defines, which prevents its classification as war itself.

First, what makes it impossible would be its target, terrorism, because, although it is not a new movement, some authors agree with the absence of a solid concept about the term⁵. This is because terrorism has an eminently subjective characteristic as a form of violence and not as an actor that can be directly combated (SAINT-PIERRE, 2015).

Furthermore, a pejorative character is linked to this phenomenon, since it is very common to be considered as a terrorist the nation or group that differs from Western cultural and religious models (SAINT-PIERRE, 2015). These difficulties obstruct the creation of a solid, common and impartial concept of terrorism.

Thus, given this conceptual scope, declaring war in the traditional ways against these groups makes the objective of the campaign extremely vague, and it is not possible to visualize the enemy they intended to fight. Besides being asymmetrical due to the agents involved, since it would be a national State fighting against a transnational organization.

3 Text of the Bush speech, 2001. Available at: <https://www.theguardian.com/world/2001/sep/21/september11.usa13>. Access on: July 10, 2019.

4 Since 1998, the UN Security Council, by resolutions, has demanded that the government of Afghanistan disconnect itself from any link with terrorist groups. Resolution number 1.267/1999 affirmed the determination and demanded efforts to bring these groups to justice so that the proper sanctions could be taken (SOUZA; MORAES, 2015).

5 Faced with the various studies dedicated to the search for a concept of terrorism, this article will use those developed by Ben Saul in his work "Defining Terrorism in International Law" (2010). The author discusses the importance of the conceptualization of terrorism in order to enable the criminalization of acts. Saul's analysis allows us to conclude that the search for a definition of terrorism was not concerned about knowing what specific acts provoked by the groups, but rather with classifying it broadly as any attack on human rights, security, and peace.

In addition, another characteristic is the plurality of the actors, as President Bush categorized some countries as potential threats because they contributed in some way to terrorist activities⁶, the “Axis of Evil,” which consisted of three countries (Iran, Iraq and North Korea). Bush justified his choice, mainly, in the fact that these countries had a nuclear war arsenal, added to the bad relationship with the USA at the time.

The international rules on conflict regulation have become outdated, as it has proved necessary to hold national States accountable for al-Qaeda terrorist attacks, as only in this way would it be possible to formulate legal responses to the advent of new actors.

Therefore, the War on Terror was proclaimed a war along traditional lines, but impossible to be seen as such, since terrorism itself is seen as an irregular conflict. In other words, it would be a target that does not have attack strategies and whose quantity of combatants does not reflect the potentiality of the damage they can cause (VISACRO, 2009).

With the difficulty of classifying the conflict, the protection of civilians and combatants also suffered some impasse. IHL does not provide a definition of what is terrorism, according to an official ICRC report, and IHL does not achieve terrorist acts outside of declared conflicts between States.

Therefore, IHL legislation does not fully achieve the War on Terror because it is not evaluated as a conflict for the ICRC, and is only analyzed in cases related to the conflict, such as the invasion of Afghanistan in 2001. Thus, due to the uncertainties on the subject, the USA carried out inhumane acts such as the use of torture in interrogation practices with foreigners they considered suspected of being associated to terrorist practice⁷.

It also prohibited these foreigners from being judged as prisoners of war since the Geneva Convention did not reach the conflict of the War on Terror because it was not classified as an armed conflict. Only those who are on military service linked to a nation-state are recognized as prisoners, excluding those linked to no-state organizations such as those of terrorist groups. (BUTLER, 2007).

Although condemnation under IHL is difficult, there is no impediment to trial under Human Rights treaties, since the Universal Declaration of Human Rights (1948), in Article 5, condemns the practice of torture, treatment or punishment that is cruel, inhuman or degrading. It guarantees the trial of prisoners, since establishes the universal right of access to justice before national courts in Articles 8 and 10.

With the dimension taken by the War on Terror, it should be classified as multilateral, since from the declaration of war against terrorist groups, many countries offered some support to the USA, assisting militarily in combating this threat, such as the United Kingdom that supported the invasions in Iraq and Afghanistan. However, as the years passed and Bush’s term ended, many of these countries during the event ceased to support the USA government (SOUZA; MORAES, 2015).

6 The USA listed countries in the 2002 National Security Strategy as potential threats because they were suspected of assisting terrorist activities. Available at: <<http://nssarchive.us/NSSR/2002.pdf>>. Access on: July 10, 2019

7 The “John Yoo Memos” advised the Central Intelligence Agency and the USA Department of Justice to use torture as an interrogation practice against foreign suspects. Available at: <<https://nsarchive2.gwu.edu//NSAEPP/NSAEPP127/02.01.09.pdf>>. Access on: July 12, 2019.

The War on Terror has been reduced to the use of USA military force against non-Western countries to promote a policy of ostensible protection so that, according to them, they do not run the risk of having their territory invaded by terrorist groups again.

In addition to using the establishment of Self-Defense, USA also defended its acts as a form of "preventive warfare," arguing that they would not wait for future attacks before promoting an armed response. Faced with this justification, the War on Terror took on greater proportions, being questioned about its ideals and legitimacy.

3.1. Individual and Collective Self-defense

The War on Terror was based on the establishment of Self-defense, which concedes the counterattack to one State victim of aggression by another. Due to the requirement of being the conflict between two States, the legitimacy of this right applied to the event was discussed (DINSTEIN, 2004).

The Individual Self-defense arises by the doctrine of the Common Law (SHAW, 2014), through the resolution of the case of great repercussion of the ship *Caroline*⁸. In this context, requirements for the use of Self-defense were delimited: necessity and proportionality. The use of force is determined only after the exhaustion of other dispute resolution methods, and proportionally to the size of the attack received, and the response must be imminent to the attack (SPEROTTO, 2009).

Subsequently, it was legally provided in Article 51 of the United Nations Charter, which brings in its first part the circumstances under which a State is permitted to use this armed response, requiring a prior armed attack (SHAW, 2014):

Art. 51. Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. [...]. (NAÇÕES UNIDAS, 1945, p. 30).

Therefore, in the legal parameters that currently govern an armed conflict, Self-defense is characterized as the only legal means for one State to use force against another, and must act in accordance with the rights and protections that the *jus in bello* brings (MELLO, 2002).

Also according to Article 51 of the United Nations Charter, the Security Council must authorize the use of force as Self-defense and must be previously consulted by the threatened State. This is because Self-defense is a temporary solution until the Council decides what actions should be adopted to stop the threats.

It is essential to question the use of Legitimate Defense in the War on Terror, since the event was entirely based on this establishment. It would be necessary to modify the law in order to allow the use of force against a group and not only a national State.

⁸ It occurred in the waters of the Niagara River, on the border of the United States with Canada, a place maintained under UK jurisdiction. The British state, to defend its intrusion into Canadian territory, set fire to a private ship under the USA flag, because they were giving support to Canada's independence groups (SPEROTTO, 2009).

However, this modification is impossible, since it is indispensable to recognize the State capable of being responsible for the acts of its citizens, because in order to allow the Self-defense, a pre-existing armed attack is necessary, and according to the organization's definition (see item 1.1), the aggression comes only from the States.

Therefore, it is necessary to analyze the concept that the UN adopts for what would consist in armed attack in order to qualify the event, identify the actors and thus allow the response. Thus, through Resolution 1,373 of 2001 (UNITED NATIONS, 2001b), the Security Council defined that it is the obligation of States to prevent terrorist activities from taking place within national territory, if the States are silent, they will be held responsible.

Acting beyond its reach, USA argued in favor of using Preventive Self-defense to continue its protection plans. This modality still has no legal provision in the DIP, but rescuing cases of common law, USA claimed that a threat also allows the use of force as a means of defense.

3.2. Preventive and Preemptive Self-defense

USA believed that future new attacks could happen again, so the War on Terror assumed its most discussed form: the preventive war. Preventive Self-defense is regulated by customary law based on cases tried by the International Court of Justice, which has consolidated understandings regarding preventive attacks, which generate discussion in the legal sphere regarding their permission in general (DINSTEIN, 2004). The establishment of Self-defense is already exceptional in allowing the use of force as a means of resolving disputes, going against one of the purposes of the creation of the UN and the preamble to the United Nations Charter, which aims for peace and security in the international system.

In advance, it deserves to expose the difference between the Preventive and Preemptive Self-defense, since it points out some inconsistency in this event. The first is the organized response against an imminent attack, when a State evidences the probability of suffering an armed attack. This is the most well received form in the international legal system due to the presentation of concrete proof of the possible attack (DINSTEIN, 2004).

The Preemptive form is characterized by a threat based on an assumption. In other words, without proof and only using deduction, one State claims that it is being threatened by another and therefore maintains that it is necessary to use force to protect itself. The UN (DINSTEIN, 2004) does not admit this form.

In this sense, USA argued that the mere threat could also guarantee the right to use force, according to the country's security strategy (UNITED STATES, 2002). Thus, USA government reported to the Security Council the presence of nuclear weapons in Iraq, so that they would be allowed to begin a preventive intervention in the country, but there was no concrete proof of the presence of these weapons. By the Resolution 1.441, 2002 (UNITED NATIONS, 2002), the Security Council announced the inspection of the complaint by a UN expert to assess the existence of nuclear weapons and, if they existed, the removal of them.

It is noteworthy that the text did not permit the use of force, nor were weapons found on Iraqi territory, but USA continued with their plan to invade Iraq, defining it as a way to prevent future attacks. In this aspect, the response action claimed by the USA was, in reality, the request to act in a Preemptive manner, which is undoubtedly illegal.

Other conflicts already developed under the justification of the Preventive Self-defense have been submitted to international courts, but there has never been any consolidation regarding the use of this instrument, requiring the individual evaluation of each case to determine the need for the anticipated use of force⁹. What distinguishes the War on Terror from the cases already tried is the imminent threat capable of being proven, since the pretext on which USA based its invasion of Iraq proved non-existent, as no nuclear weapons were found in the territory, delegitimizing the actions of the American State.

Another obstacle is that the War on Terror was entirely based on prevention as a justification for the USA's invasions in this battle against terrorism. In other words, only one attack on September 11 resulted in the extensive military campaigns of the War on Terror, making explicit its disproportionality and lack of scope like a war.

Thus, it was the responsibility of the Security Council to establish the necessary definitions of the context in which the conflict was inserted through the body's resolutions. The attitude was necessary so that the right palliative measures could be taken, avoiding the United States to determine them unilaterally.

4 Solutions presented by the UN on September 11

Given the conceptual breadth of terrorism, the Security Council determined measures to mediate the conflict. The subject was discussed intensively by means of resolutions, designing the necessary means by which this combat could be carried out.

It is important to emphasize that the Security Council has such importance within the UN, as it is one of the organizations that has the power to impose activities on behalf of the United Nations (UZIEL, 2015). In this regard, the Council has the power to determine measures to be taken by States with regard to security and peacekeeping (Article 24 of the United Nations Charter).

Since September 11, the debates offered by the UN about terrorism have been more frequent and intense, producing annual resolutions to deal with the issue. Therefore, it is noted that in reaching a State of great influence in the International System, terrorism has become a global issue, focusing the international agenda on security studies and the search for solutions using DIP instruments (BARBOSA, 2002).

⁹ Like the attack on the Iraqi nuclear reactor during the Six Day War, in which Israel acted in anticipation of using the airspace to bomb the area in which the reactor was being built, claiming that it was a threat to the State by the possibility of using the apparatus against it. Because the countries were in a constant war, it was accepted as a use of Art. 51 of the United Nations Charter (DINSTEIN, 2004).

Below will be presented the most relevant resolutions aimed at combating the threat so far little known in the international environment.

4.1. Resolution 1.368 of September 12, 2001

The Resolution 1,368 (UNITED NATIONS, 2001a) recognizes the use of Self-defense for USA, pointing to the events of 9/11 as a threat to international peace and security, and determining the Security Council's responsibility to work on the issue of terrorism.

In its third Article, the resolution expresses the need for multilaterality to contain the terrorist threat, calling for cooperation among States to this end. Those who omit themselves and in some way assist organizations will be held responsible for terrorist acts.

It is clear that the function of this resolution was exclusively to declare the acts on September 11 as terrorist activities. Thus, with the publication one day after the attacks, it gave instantly to USA the Self-defense right against the actors, since it characterized the acts as an armed attack, defining them as a threat to international peace and security.

Later, with Resolution 1,373 of 2001 (UNITED NATIONS, 2001b), the Security Council detailed the required measures to prevent all terrorist acts, the most important of which is to combat terrorist groups.

4.2. Resolution 1.373 of September 28, 2001

The first resolution elaborated by the Security Council in 1999 presents actions that must be followed by national States to prevent the development and dispersion of terrorist groups (UNITED NATIONS, 1999, art. 4), and, if they do not respond to this duty, they are responsible for the acts of groups that are within their territory. These measures are reinforced and detailed in Security Council Resolution 1,373 of 2001.

The resolution details and intensifies the participation of States as the main combatants to the terrorist threat, shifting the guilt of the event to those who abstain from avoiding the activity of these organizations. It addresses both economic and administrative issues, requiring transparency of information about suspicious monetary movements, any type of financing to terrorist groups, and the border flow across territories. The purpose of these measures is to force cooperation in all areas of state power to prevent countries from encouraging terrorist activity.

Therefore, resolution number 1,373 can be considered the most relevant in the period after the September 11 attacks, and the resolutions that follow after this one are intended to reinforce the implementation of its measures. After 2003, with Resolution 1,455 (UNITED NATIONS, 2003), the following section was used as a standard to emphasize the importance and necessity of applying the measures brought by Resolution 1,373 in all its aspects, becoming a reference for the others:

Underlining the obligation placed upon all Member States to implement, in full, resolution 1373 (2001), including with regard to any member of the Taliban and the Al-Qaida organization, and any individuals, groups, undertakings and entities associated with the Taliban and the Al-Qaida organization, who have participated in the financing, planning, facilitating and preparation or perpetration of terrorist acts or in supporting terrorist acts, as well as to facilitate the implementation of counter terrorism obligations in accordance with relevant Security Council resolutions. (UNITED NATIONS, 2003, p. 1).

Furthermore, based on this resolution, the organization has joined efforts to create a Committee to oversee the fight against terrorist practice (art. 6) and to work more intensively on the determinations of the resolution.

Through each country's internal legislation, they will establish how they will penalize and prevent their territory from terrorist attacks, allowing for measures such as the "Patriot Act"¹⁰ to emerge as a legislative alternative for the country's security.

Using the reaffirmation of Resolution 1,373 in subsequent resolutions, even the Council delegating legislative powers to itself has not yet dared to bring a legal definition of what terrorism is, following the same logic as the United Nations Charter by not presenting a definition of war, as this could compromise its objective of eliminating all possible forms of terrorism, even those that had not been discovered yet.

5 Final remarks

The DIP, despite being in constant development, uses classic sources as the main basis for judging contemporary acts, especially the United Nations Charter, since it holds great value and importance for international relations, but it was created in a period marked by the end of World War II, when few actors were recognized.

The right initially granted to the USA by the Resolution 1,368 provided the basis for the declaration of the "War on Terror," in which USA understood that, because of the attacks, they were legitimized to provoke a war against the new enemies, ignoring whether there was a legal parameter for such determination. However, there is no way to provoke a conflict in the circumstances in which that event occurred.

The "War on Terror" has influenced the international context in the sense of demanding an update of the measures taken in relation to security and international peace. Thus, the Resolutions relating to the event require the preparation of States to prevent possible new forms of attack on national territories.

10 In October 2001, the Department of Justice released a legislative measure titled the "Patriot Act," whose purpose was to determine the tools for combating terrorism and preventing future acts such as that which occurred in September of the same year. In a way, it represented a serious violation of the privacy not only of citizens of the United States but also of foreigners who crossed the border by providing special powers to the Executive, FBI, and CIA to investigate, spy on, arrest, and interrogate suspected terrorists (PECEQUILO, 2012).

The event is full of characteristics that question its legitimacy, such as the fact that the USA claims the use of force in the preemptive form, an establishment that is not allowed by the UN, there is not even legal provision, being allowed Self-defense only after an armed attack as the *ultimo ratio* in the solution of conflicts.

Moreover, even if they used the establishment provided by the San Francisco Charter, in developing several military campaigns that exceed the duration of 10 years, there is no longer any way to use the term “defense,” but it is an attack against the sovereignty of the States that become targets of USA military operations.

There is no concession in the legal system for an armed response to a national State against an organization, making it even more difficult to use the term “war” and its development as a war, but it has not prevented USA military campaigns. As a result, Security Council resolutions sought to direct responsibility for terrorist acts to States, as this would be the means found to enable any sanction against the acts of September 11.

Another obstacle to the event would be the identification of this enemy, since until then, because it does not have a common definition, it is unimaginable to achieve the American goal of extinguishing any terrorist threat. It is an abstract and endless ideal, given the lack of full knowledge of these groups and that terrorism has always existed and will continue to exist, changing every year.

Thus, it is not surprising that so many difficulties are found in implementing Security Council resolutions, since they would not be measures to be taken by states at war, which follow the dictates of IHL, but measures of long scale for permanent and not temporary changes. Therefore, the term “war” used ambitiously by the USA government is mixed with a policy to combat new threats.

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