Ebola, the Security Council
and the securitization of public health

Gian Luca Burci *

1. *Introduction*

The Security Council adopted at an emergency meeting on 18 September 2014 resolution 2177 (2014), which declared the unprecedented extent of the outbreak of Ebola hemorrhagic fever (Ebola) in Africa a threat to international peace and security. That determination was reiterated by the President of the Council in a statement made on 21 November on behalf of the Council.[1] This is an unprecedented step in expanding the concept of threat to international peace and security and implicitly the scope of the powers of the Council under the UN Charter. It remains to be seen whether resolution 2177 (2014) will remain an isolated incident or whether it is a further step in a trend that has characterized the practice of the Council since the early 1990s. It will also be important to assess whether it confirms and strengthens a recent trend to construe infectious diseases as security threats besides public health risks, and thus to 'securitize' health.[2]

* Legal Counsel, World Health Organization; Adjunct Professor of International Law, Graduate Institute of International and Development Studies, Geneva. The opinions expressed in this contribution are solely those of the author and do not necessarily reflect the views or positions of the World Health Organization.

[1] UN doc S/PRST/2014/24 (21 November 2014).

[2] On this topic, see the recent posting by GL Burci, J Quirin, 'Ebola, WHO, and the United Nations: Convergence of Global Public Health and International Peace and Security' (2014) 18 ASIL Insight, <www.asil.org/insights/volume/18/issue/25/ebola-who-and-united-nations-convergence-global-public-health-and>.

2. *The Ebola outbreak and WHO's response*

The outbreak of Ebola, the worst so far and the first outside its traditional reservoir in central Africa, started in late 2013 in Guinea but was only notified to the World Health Organization (WHO) in March 2014. The outbreak soon spread to Liberia and Sierra Leone and went out of control, in particular in overpopulated urban centres. Despite the growing mobilization of the international community, the outbreak is not yet under control and its human toll keeps growing. As of 30 November 2014, WHO reported more than 17000 confirmed, probable, and suspected cases of Ebola and more than 6000 reported deaths.[3] The outbreak is having a dramatic impact on the economies of the three countries, which have recently emerged from civil unrest and instability; it has led to political and social tensions within the affected countries and to their growing international isolation. Even though the spread of the diseases to third countries so far has been limited and contained, many governments have imposed restrictive measures on the entry of nationals from the affected countries and suspended commercial flights. The image of Ebola as a gruesome and incurable disease, perpetrated by popular culture and media hype, has arguably played a major role in shaping the perception of the outbreak as a security threat.

WHO responded to the outbreak from a normative and operational perspective. From a normative perspective, Ebola falls within the scope of the International Health Regulations (2005) (IHR), the sole international legal instrument directly aimed at controlling the international spread of diseases.[4] On the basis of Articles 12 and 15 of the IHR, WHO's Director-General on 8 August 2014 declared Ebola a 'public health emergency of international concern' and issued 'temporary recommendations' addressed partly to the affected countries and partly to third states aimed at preventing a further spread of the disease while

[3] <www.who.int/csr/disease/ebola/situation-reports/en/> (accessed on 6 December 2014).

[4] International Health Regulations (adopted on 23 May 2005, entered into force on 15 June 2007), 2509 UNTS 79. The IHR as most recently revised in 2005 are the latest manifestation of an international legal development that began in the mid-19th century. On the history of that development and an extensive analysis of the IHR, see D Fidler, 'From International Sanitary Conventions to Global Health Security: The New International Health Regulations' (2005) 4 Chinese Journal of International Law 325.

avoiding over-reactive measures or unnecessary isolation of the affected countries. The recommendations were extended and revised on 22 September and 23 October but compliance has been uneven, especially with regard to suspension of flights, restrictions on entry, and other measures that further isolate the affected countries.[5]

3. *Ebola in the Security Council*

Resolution 2177 (2014) was adopted unanimously and co-sponsored by some 130 states, the highest number in the history of the Council. The Council determined in a preambular paragraph that '… the unprecedented extent of the Ebola outbreak in Africa constitutes a threat to international peace and security'. There is no elaboration on the factual or normative basis for that determination except that it seems to be linked to the risk of the outbreak reversing the 'peacebuilding and development gains' of the most affected countries. The Council does not, however, affirmatively act under Chapter VII of the Charter and did not take any enforcement action. As a matter of fact, it would have been difficult to imagine what enforcement measures it could have taken in that case in the absence of a political target whose behavior had to be changed through coercion. The use of Article 39 language, therefore, seems to have been designed for a political and symbolic purpose, in particular to generate momentum and additional political, operational and financial commitments by the international community.

The operative part of the resolution for the most part calls on the affected states to take mitigating actions, on other member states and partners to increase their assistance and mobilize resources, and on UN system entities to scale up an better coordinate their actions. It addresses, in other words, humanitarian assistance as well as public health measures and concerns that one would expect to find in a General Assembly or WHO, rather than Security Council, resolution. The same can be said for the aforementioned President's statement that goes in some detail into the necessary interventions for fighting Ebola such as medical evacuation and treatment capacities for first-line responders,

[5] The recommendations are available at <www.who.int/ihr/ihr_ec_ebola/en/> (accessed on 6 December 2014).

the availability of Ebola treatment units, and the deployment of vaccines and diagnostics. The substantive involvement of the Security Council stands in striking contrast with the brevity of General Assembly resolution A/RES/69/1, which simply welcomes the Secretary-General's decision to deploy a United Nations Mission for Ebola Emergency Response (UNMEER).

The statements made by member states upon the adoption of resolution 2177 (2014) reveal a high degree of endorsement of the Council's determination that the Ebola outbreak constitutes a threat to international peace and security and that the action by the Council was justified on that basis. Again, the main qualifier was the unique political and economic vulnerability of the three countries that have emerged with difficulty from vicious civil wars and that risked seeing their development and political gains reversed by Ebola. The reasons about Ebola presenting a global security threat beyond the immediate affected region are not elaborated in detail, but they are arguably linked to the risk of international spread of the disease. The language, if not the use, of Chapter VII is presented as an important symbolism of the need for unprecedented mobilization by the international community.[6]

Even though the Council did not adopt enforcement actions as part of resolution 2177 (2014), its determination about the security implications of the Ebola outbreak is having normative effects and indirectly influencing the Council's actions under Chapter VII with regard to Liberia. Indeed, the Council adopted on 9 December 2014 resolution 2188 (2014)[7] with regard to the termination of the arms and travel sanctions against specific targets in Liberia. The Council decided to extend the sanctions currently in force also because of concerns that Ebola could affect the political stability of the country and reverse its peacebuilding gains.

[6] UNSC Verbatim Record, UN Doc S/PV/7268 (18 September 2014). Even the representatives who remarked that health would normally not rise to a security threat and would fall under the competence of the General Assembly or WHO, distinguished the situation under consideration. The representative of Argentina, for example, stated that 'Argentina believes that Ebola is not merely a health problem. It is a multidimensional reality… eroding the possibilities of human social and economic development, which is at the root of most of the conflicts we deal with in the Council, and which may have consequences for security.' ibid 20.

[7] UN doc S/RES/2188 (2014) (9 December 2014).

4. *A changing vision of international security*

The implications of resolution 2177 (2014) have to be assessed against two parallel and interrelated strands of legal and political development: the evolution of the notion of international security in the practice of the Security Council and the emerging perception of infectious diseases as a security threat.

The end of the cold war has led to a progressive reconsideration and broadening of the perception of threats to international security. The Security Council has adopted this approach in its enforcement actions as well as in its peace-keeping practice. The Council has included into its findings under Article 39 of the Charter massive human suffering and displacement arising from violations of human rights and humanitarian law, international terrorism, violent overthrow of democratic governments, and 'illicit exploitation of natural resources, including diamonds and wildlife' that can fuel violent conflict.[8] The Security Council has also stepped since 2007 into the perceived security implications of climate change.[9] This practice, which has not been devoid of controversy at the Council's 'mission creep' and the risk of undermining the role of other UN-system bodies, on the one hand reflects the changed perception of threats in a globalized world, and on the other positions the Council as the enforcer of some of the fundamental values of the international community. It also points to a concept of security substantially different from that characteristic of the cold war and of realist thinking in international relations, and incorporates considerations arising from the 'human security' discourse. Robert Ullman has captured this by defining threats to security as events that acutely degrade the quality of life of a population or that threaten significantly to narrow the range of policy choices available to a government or to private entities within a state.[10]

[8] UN doc S/RES/2134 (2014) (28 January 2014) with regard to the situation in the Central African Republic.

[9] See the statements made at the first such debate on 17 April 2007; UNSC Verbatim Record, UN Doc S/PV.5663 (17 April 2007). During a subsequent debate on the same issue on 20 July 2011, UNEP's Executive Director described climate change as a 'threat multiplier'. Text available at <www.unep.org/newscentre/default.aspx?DocumentID=2646&ArticleID=8817> (accessed on 6 December 2014).

[10] R Ullman, 'Redefining Security' (1983) 8 International Security 129, 133.

Given this trend, it is not surprising that health would appear on the agenda of the Council given the increasing perception that the spread of infectious diseases – whether natural or as a result of an act of bioterrorism – could threaten regional and global security. The main example before Ebola is HIV/AIDS, discussed by the Council on 10 January 2000 at the initiative of the United States in view of its perceived security implications in Africa.[11] The opening statement by the President of the Council (US Vice-President Al Gore) is emblematic about the changing security agenda: 'The heart of the security agenda is protecting lives … when a single disease threatens everything from economic strength to peacekeeping, we clearly face a security threat of the greatest magnitude … The powerful fact that we begin here today by concentrating on AIDS has a still larger significance: it sets a precedent for Security Council concern and action on a broader security agenda. By the power of example, this meeting demands of us that we see security through a new and wider prism and, forever after, think about it according to a new and more expansive definition.'[12] The Council did not adopt any decision on that occasion, but has integrated HIV/AIDS in subsequent resolutions on peace-keeping, both from the perspective of protecting military contingents as well as of including HIV awareness for civilian population as part of the mandate of multi-dimensional peacekeeping.[13]

Even considering this precedent, however, resolution 2177 (2014) represents a further innovation because the spread of HIV/AIDS has been a consequence of widespread rape and massive violations of humanitarian law in conflict situations, while the spread of Ebola does not present this behavioural and social component, and neither were the affected countries in a situation of on-going internal conflict. The normative bases for the Council's determination are therefore the potential effects of the disease over the stability of the affected countries, the knock-on political effects over the broader West African region, and the risk of international spread that could generate panic and insecurity in the broader sense mentioned above.

[11] UNSC Verbatim Record, UN Doc S/PV.4087 (10 January 2000).

[12] ibid 2.

[13] See e.g. UN Doc S/RES/1308 (2000) (17 July 2000); and UN Doc S/RES/1983 (2011) (7 June 2011).

5. *Infectious diseases and international security*

As noted above, resolution 2177 (2014) represents the symbolic culmination of an increasing process of securitization of health, whereby the risk of international spread of infectious diseases is seen not so much as a public health problem to be dealt with by civilian authorities but a security threat to be addressed primarily by security, military and intelligence authorities at the national and international levels.[14] Public health and security were historically not associated from a policy, legal and practical point of view but formed part of different policy realms. This perception has been changing dramatically since the 1990s as a consequence of the perceived increased risk of bioterrorism as well as the reemergence of infectious diseases – that were considered vanquished in the 1960-1970s – as a global public health risk. The convergence within a few years of the Anthrax attacks in the United States in 2001, the outbreak of SARS in 2003 and the fear of a deadly pandemic of avian influenza since the late 1990s seemed to confirm the need to approach public health from a security perspective, especially since a stronger national public health capability would be crucial to manage both orders of threats.

The United States pioneered this policy shift in the 2002 National Security Strategy, but it also received a strong affirmation at the international level in 2004 by the High-level Panel on Threats, Challenges, and Change convened by the UN Secretary-General in preparation for the 2005 World Summit. The Panel's report states that '… Any event or process that leads to large-scale death or lessening of life chances and undermines States as the basic unit of the international system is a threat to international security' and proposes as a separate cluster of threats 'economic and social threats, including poverty, infectious diseases and environmental degradation'.[15] Among the Panel's most far-reaching statement was a recommendation that WHO keep the Security

[14] There is a growing literature on the securitization of health and the implications of the biosecurity agenda for public health. See e.g. DP Fidler, LO Gostin, *Biosecurity in the Global Age* (Stanford UP 2008) 121-145; and GL Burci, 'Health and Infectious Disease', in TG Weiss, S Daws (eds) *Oxford Handbook on the United Nations* (OUP 2007) 582.

[15] UNGA 'A More Secure World: Our Shared Responsibility. Report of the High-level Panel on Threats, Challenges and Change' UN Doc A/59/565 (2 December 2004).

Council informed during any suspicious or overwhelming outbreak of infectious disease and that the Council would either support WHO's work or to take over direct responsibility for the response to the outbreak. The Panel also envisaged a role for the Council in establishing a sanitary cordon or quarantine measures in cases of extreme threat, and mandate compliance from recalcitrant states.[16]

The report of the Secretary-General 'In Larger Freedom' did not explicitly endorse the most far-reaching recommendations by the Panel. However, the Secretary-General fully endorsed a broader notion of security including 'deadly infectious disease and environmental degradation' and declared his readiness to use Article 99 of the Charter to bring to the attention of the Security Council, in consultation with WHO, 'any overwhelming outbreak of infectious disease that threatens international peace and security'.[17]

The Panel's report represents an intellectual turning point in the securitization of health. The Panel, in particular, conflates and considers from the same security perspective both acts of bioterrorism and naturally occurring outbreaks. WHO has been looking at the same overlap from a health protection perspective and has been using the expression 'global health security' as a policy and operational concept that aims at staying clear of international security concerns.[18] The tension between a public health and a security perspective also characterized the negotiations in 2004-2005 of the revised IHR, in particular due to the determination by the United States and other Western countries to include the intentional release of biological, chemical and radiological agents in the scope of the instrument.[19] Notwithstanding the opposition of a vocal group of states that feared a subordination of public health to a security agenda, the IHR is in fact applicable to any disease '… irrespective or

[16] ibid 44-45.

[17] UNGA 'In Larger Freedom: Towards Development, Security and Human Rights for All, Report of the Secretary-General', UN Doc A/59/2005 (21 March 2005) 25, 29.

[18] WHO, *A Safer Future. Global Public Health Security in the 21st Century* (WHO 2007). See also WHO (Resolution of the World Health Assembly) 'Global public health response to natural occurrence, accidental release or deliberate use of biological and chemical agents or radionuclear material that affect health' (18 May 2002) WHA55.16.

[19] Fidler (n 4).

origin or source ...', coded language that includes terrorist or military acts that may lead to the international spread of diseases.[20]

6. *Should infectious diseases be considered threats to international security?*

The main rationale behind the increasing securitization of health is the perception that highly pathogenic infectious diseases spreading internationally may undermine the political, economic and social bases for a state's stability, plunge it into chaos and possibly lead to massive population displacement; this in turn would reverberate regionally and cause further instability and conflict that could also affect the security perception of third states with interests in the affected region. Another rationale has been referred to by David Fidler as the 'synergy thesis': when an outbreak occurs, the first line of defense is the public health system. Thus, strengthening public health from a biosecurity perspective achieves the dual purpose of defending against biological weapons as well as from naturally occurring diseases. Moreover, the security and defense sectors usually attract a larger share of national budgets, which can then be redirected to public health capabilities and which, at times of crisis, will enable well prepared and equipped military forces to assist in outbreak response.

These justifications have been challenged by a growing number of scholars on different grounds. An important criticism is that the historical record disproves the link between infectious diseases and political instability. Scholars have noted that, for example, neither the Spanish influenza pandemic in 1918-1919 nor the HIV-AIDS pandemic in Africa have had a detectable effect on the political stability of affected countries, including on their military forces that were expected to show higher rates of HIV infection and be decimated by the disease.[21] Modern history denies that infectious diseases may become national security threats; critical scholars observe that the greatest dangers come from

[20] IHR, art 1 (n 5).

[21] A de Waal, 'Reframing Governance, Security and Conflict in the Light of HIV/AIDS: A Synthesis of Findings from the AIDS, Security and Conflict Initiative' (2010) 70 Social Science & Medicine 114.

panicked or coercive reactions by non-affected states, something that the IHR and good public health communication should have helped manage.[22]

Other scholars argue strongly that characterizing diseases as security threats pushes responses away from civil society toward military and intelligence organizations as well as towards an authoritarian approach and coercive measures that may easily lead to human rights violations and stigmatize victims without evident public health benefits. A security framework brings into play a 'threat/defense' logic that may undermine international public health efforts, making them a function of narrow national interest and allowing states, for example, to skew rational investment and prioritize funding for their elites and security forces as 'first responders' to a disease, rather than health care workers and capabilities.[23] Based on the recent controversy at WHO concerning the conditions for sharing pandemic influenza viruses, moreover, Stefan Elbe and other international relations scholar conclude that construing international health cooperation on the basis of national security interests complicate the political environment and negotiations around a health issue and entangle them with a wider set of political disputes than would be the case if negotiations had been held within an exclusively public health framework.[24]

7. *Implications for WHO*

WHO has historically perceived itself as a technical public health agency. Even while acknowledging the increasing politicization of global health and being aware of the security perception surrounding infectious diseases, the Organization has focused on preparedness and response capacities as public health interventions and looked with ambivalence at the implications of being drawn closer to the Security Council

[22] A de Waal, 'Militarizing Global Health' (2014) Boston Review, <www.bostonreview.net/world/alex-de-waal-militarizing-global-health-ebola> (accessed on 6 December 2014).

[23] S Elbe, 'Should HIV/AIDS Be Securitized? The Ethical Dilemmas of Linking HIV/AIDS and Security' (2006) 50 International Studies Quarterly 119.

[24] S Elbe, 'Haggling over Viruses: The Downside Risk Securitizing Infectious Diseases', (2010) 25 Health Policy and Planning 476.

with a view to cooperating in maintaining international security. From a legal point of view, WHO is under an obligation to cooperate with the Security Council at the latter's request under the terms of Article VII of the 1948 agreement under which the UN recognized WHO as a specialized agency.[25] Requests by the Security Council have been very infrequent in WHO's history, but it is on this basis, for example, that WHO has participated together with the United Nations and the Organization for the Prohibition of Chemical Weapons in the 2012 investigation on the allegation of use of chemical weapons in Syria. Besides ad hoc instances of cooperation within the limits of the constitutional mandate of WHO, there are no general arrangements requiring or regulating cooperation between WHO and the Security Council with regard to outbreak of infectious diseases.

The main questions raised by resolution 1277 (2014) for WHO are its legal and political implications for its relations with the Security Council. The IHR do not envisage any particular interaction with the Security Council as such; however, Article 14 requires WHO to 'cooperate and coordinate its activities … with other competent international organizations' and provides that in cases in which '… notification or verification of, or response to, an event is primarily within the competence of other intergovernmental organizations … WHO shall coordinate its activities with such organizations … in order to ensure the application of adequate measures for the protection of public health.' Depending on how the practice of the Council may evolve with regard to health events, it may raise an expectation that WHO should report and defer to it for investigation and response, in particular in case of allegations of an act of bioterrorism but also for naturally occurring outbreak if the trend to securitize such events continues.

It should be noted that resolution 2177 (2014) refers explicitly to the IHR. It its preamble, it recalls them and their contribution to global public health security, and underscores the importance of WHO member states complying with their commitments under the IHR. In its operative part, the resolution urges member states to implement the temporary recommendations referred to above, arguably with regard to both positive measures to implement as well as unnecessary overreac-

[25] Agreement between the United Nations and the World Health Organization (entered into force on 10 July 1948) 19 UNTS 194.

tions. The general tone of those provisions and the fact that they were partly placed in the preambular part of the resolution suggests that their purpose is to extend political support and generate more commitment to a legal instrument whose crucial role for an effective and balanced response to the outbreak has not been matched by a high level of compliance.

The implications for WHO, consequently, are for the moment more a matter of speculation as to future developments than an immediate concern. It is indicative in my view that, for the moment, the Council has not taken operative decisions that could have directly or indirectly implicated WHO. It is equally indicative that UNMEER was established by the Secretary-General as a coordinating tool among UN entities participating in Ebola response, rather than by the Security Council as new kind of peace operation akin to peace-keeping. Finally, it is almost ironic that the 21 November 2014 statement by the President of the Security Council doesn't even mention WHO but focuses on UNMEER in its role of providing 'overall leadership and direction to the operational work of the United Nations system…'.

8. *Conclusions*

Where does the foregoing analysis lead us in terms of the proper role of the Security Council in responding to outbreak of infectious diseases? Can the Council legitimately become the guardian or enforcer of global health?

As we have seen, the practice of the Council – apparently supported by a majority of UN member states – continues to broaden the notion of international security by including social and developmental issues; the debates on the threats posed by climate change and the intervention in the Ebola crisis are just the most recent manifestation of a consolidated practice that arguably reflects the political perception of security in a globalized world. The narrative of international security generates much political traction and mutes criticism, including because of the linkage with bioterrorism in the case of infectious diseases. The involvement of the Council may also raise the political profile of the situation at hand, generating political commitment, mobilizing additional fi-

nancial resources and facilitating the deployment of military assets with the required logistical, organizational and enforcement capacity.

On the other hand, the criticism and reservations summarized above concerning the risks of securitizing public health should give cause for reflection. Even within a broader and broadening notion of international security which may legitimately include public health events such as the Ebola outbreak, the role of the Security Council should be limited to situations whose potential or actual security implications are assessed on the basis of a more holistic analysis rather than conclusions that are based on unqualified or anecdotal assumptions, or are the by-product of domestic media and political pressure. Such an analysis could be provided by the UN Secretariat in cooperation with other relevant international organizations including WHO. A coordinated international response to the outbreak of infectious diseases should otherwise be more appropriately left to WHO within a defined threshold of political complexity, or otherwise to the General Assembly.