İSTANBUL UNIVERSITY PRESS

Public and Private International Law Bulletin, 42(2): 757–775

DOI: 10.26650/ppil.2022.42.2.1062630
http://ppil.istanbul.edu.tr/tr/_

Public and Private International Law Bulletin

Submitted: 25.01.2022
Revision Requested: 17.03.2022
Last Revision Received: 22.10.2022
Accepted: 01.11.2022
Published Online: 16.12.2022

RESEARCH ARTICLE / ARAŞTIRMA MAKALESİ

Pandemics That Generate a New Grotian Moment in International Law

Uluslararası Hukukta Pandemilerce Oluşturulan Yeni Grotian Moment

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Abstract

Pandemics, as international health crises, impact the world like the two great wars that the international community faced last century. This has been confirmed by Covid-19 once again for the last two and half years. Individuals, states, societies, and sectors across the world have been seriously impacted in many ways. International law has also inevitably had its share of this. The UN Security Council, the special body of the UN, has technically recognised pandemics threats to international peace and security (IPaS) since 2000. Accordingly, UN peacekeeping missions in the field have been employed to eliminate the effects of pandemics in conflict and post-conflict zones where pandemics occur or cannot be prevented. Additionally, the UN Secretary-General exceptionally established a health mission, namely UNMEER for the first time in the Organisation's history in the fight against the Ebola pandemic, which requires a speciality beyond the capacity of classical UN missions in 2014. Presumably, this trend commenced by the Secretary-General will continue through the Council's authorisation against future pandemics. Recognition of pandemics as IPaS threats and missions' response to pandemics on the ground are significant developments which can be accepted as a turning point for the collective security system (CSS) of the UN and, thus, for international law. This paper argues that the transformation of international law due to pandemics is a new Grotian Moment, which is uniquely used to name transformative changes in international law in the scholarly literature.

Keywords

International law, Grotian Moment, pandemics, Covid-19, Security Council, international peace and security

Öz

Uluslararası sağlık krizleri olarak pandemiler, uluslararası toplumun geçen yüzyılda karşılaştığı iki büyük savaş gibi dünyayı etkilemektedir. Son iki buçuk yıldır devam Covid-19 ise bu durumu bir kez daha doğrulamıştır. Pandemiler, dünya genelinde bireyleri, devletleri, toplumları ve sektörleri birçok yönden ciddi şekilde etkilemektedir. Uluslararası hukuk da kaçınılmaz olarak pandemilerin etkilerinden payını almıştır. BM'nin özel yetkili organı olan BM Güvenlik Konseyi, 2000 yılından bu yana pandemileri uluslararası barış ve güvenliğe yönelik tehditler olarak tanımaktadır. Buna bağlı olarak da pandemilerin ortaya çıktığı veya önlenemediği çatışma bölgelerinde veya çatışma sonrası bölgelerde, pandemilerin etkilerini giderme adına ilgili bölgedeki BM barışı koruma misyonları görevlendirilmektedir. Öyle ki, pandemilerin klasik BM barış misyonları ile giderilemeyecek boyutta olması BM Genel Sekreterini harekete geçirmiş, Örgüt'ün tarihinde bir ilk olan (şimdilik tek) UNMEER sağlık misyonu, 2014 Ebola salgını ile mücadele adına kurulmuştur. Genel Sekreter tarafından başlatılan bu trendin, Konsey yetkilendirmesi ile gelecek pandemilere karşı devam ettirilmesi ihtimal dahilindedir. Pandemilerin uluslararası barış ve güvenlik tehditleri olarak kabul edilmesi ve misyonların pandemilere karşı sahada verdiği mücadele, BM'nin kolektif güvenlik sistemi ve dolayısıyla uluslararası hukuk için bir dönüm noktası olarak kabul edilebilecek mahiyette gelişmelerdir. Bu makale, uluslararası hukukun pandemiler vasıtasıyla dönüşümünün, yeni bir Grotian Moment olduğunu savunmaktadır. Akademik literatürde, uluslararası hukukun geçirdiği dönüştürücü nitelikteki değişiklikleri adlandırmak için kullanılan Grotian Moment konsepti, bu makalede pandemilerin meydana getirdiği yeni bir uluslararası hukuk değişimi olarak kabul edilecektir.

Anahtar Kelimeler

Uluslararası hukuk, Grotian Moment, pandemiler, Covid-19, Güvenlik Konseyi, uluslararası barış ve güvenlik

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To cite this article: Caglayan S, "Pandemics That Generate a New Grotian Moment in International Law" (2022) 42(2) PPIL 757.
https://doi.org/10.26650/ppil.2022.42.2.927100

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Introduction

Have pandemics caused a new Grotian Moment? To answer this question, one should first define what a Grotian Moment is. The concept coined by Richard Falk expresses, so to speak, transformative changes in international law.[1] Yet, there are different discourses about the scope of the concept in scholarly literature.[2] This article adopts that the Grotian Moment means transformative changes in international law hinging on developments such as the rise of the modern era in international law some three and half-century ago with the birth of the Westphalian peace,[3] the establishment of the UN in 1945, the creation of international criminal law with the Nuremberg Trials[4] making individuals subjects of international law and so on. The concept connotes transformative changes, yet such changes may vary over time. For example, Humanitarian Intervention that brings a new dimension to the CSS, which fails to function due to the veto power of the Security Council's permanent members, is also a discussed and accepted a Grotian Moment over the last three decades.[5]

Distinctively, pathogens have turned into new actors and accordingly the pandemics have become new non-traditional IPaS threats like international terrorism and weapons of mass destruction since 2000. This has been recently shown by Covid-19. Depending on this new threat category, the activities carried out by the UN peacekeeping missions in the field in order to combat pandemics, and especially the establishment of a health mission, the UN Mission for Ebola Emergency Response (UNMEER) by the Secretary-General for the first time,[6] are significant changes. Therefore, this paper argues that the recognition of pandemics as a *sui generis* non-traditional threat category and changes in the *modus operandi* of the missions in the field to combat pandemics indicate that international law is facing a new Grotian Moment. This new Grotian Moment did not appear suddenly with the outbreak of Covid-19, yet it has been affirmed by Covid-19. These changes, which have occurred in the normative and practical aspects of the CSS through pandemics, will be discussed in three parts throughout the paper. The first part will discuss the concept of Grotian Moment in the era of pandemics. The second will draw attention to the cost of pandemics and the need for change. Lastly, the third part will discuss how pandemics have become a new Grotian Moment during the last two decades.

1 Richard Falk, 'Some Thoughts on the Decline of International Law and Future Prospects' (1981) 9 Hofstra Law Review 399, 407–409.

2 Milena Sterio, 'A Grotian Moment: Changes in the Legal Theory of Statehood' (2011) 39 Denv. J. Int'I L. & Pol'y 209, 211.

3 Boutros Boutros-Ghali, 'A Grotian Moment' (1995) 18 Fordham International Law Journal 1609, 1609.

4 Milena Sterio, 'Humanitarian Intervention Post-Syria: A Grotian Moment' (2014) 20 ILSA Journal of International and Comparative Law 343, 344.

5 ibid.

6 UN, 'UN Mission for Ebola Emergency Response (UNMEER)' (*Global Ebola Response*) <https://ebolaresponse.un.org/un-mission-ebola-emergency-response-unmeer> accessed 13 January 2022.

I. Grotian Moment in the Era of Pandemics

Dutch thinker Hugo Grotius, who contributed to the formation of the classical period of international law, is known as the "*father of international law*".[7] The concept of Grotian Moment that is identified with Grotius's name describes the milestones of international law. There are also alternative terms like Constitutional Moment and International Constitutional Moment to express what Grotian Moment proposes to tell. For international law, however, Grotian Moment is more appropriate since the others mainly point out changes related to American constitutional law rather than international law.[8]

In 1985, the notion of the Grotian Moment was first coined by Richard Falk, who employed the term to articulate the ineffectiveness of the existing world order in solving global problems and the emergence of a new era in international law accordingly.[9] The concept grew into a popular conceptualisation among legal scholars in the following periods. The end of the Cold War constituted initial examples of academic works that utilised the term for defining significant changes in international law. In 1993, Samuel Murumba expressed that a Grotian Moment meant an introduction of a new era in international law.[10] Guiding international law through human rights was a new Grotian Moment, Murumba added.[11] In 1995, the UN Secretary-General Ghali described the post-cold war era as a new Grotian Moment.[12] Ghali drew attention to the fact that ethnic conflicts suppressed during the bipolar Cold War period began to have a place in the aftermath of the Cold War in terms of posing a threat to IPaS.[13]

Breathtakingly, the interest in the concept has increased in the 21st century. The 9/11 attacks and the US-led invasion of Iraq kindled the discussion on the Grotian Moment in the literature of international law.[14] Michael Scharf has held an important place among the names engaging the phenomenon over the last decade.[15] According to Scharf, Grotian Moment amounts to "*a paradigm-shifting developments in which*

7 Hugo Grotius, *On the Law of War and Peace* (Archibald Colin Campbell tr, Batoche Books 2001); Hugo Grotius, *The Free Sea* (David Armitage ed, Richard Hakluyt tr, Liberty Fund 2004).

8 Bruce A Ackerman, *Reconstructing American Law* (Harvard University Press 1984); Mark Tushnet, 'Living in A Constitutional Moment?: Lopez and Constitutional Theory' (1996) 46 Case Western Reserve Law Review 845; Anne-Marie Slaughter and William W. Burke-White, 'An International Constitutional Moment' (2002) 43 Harvard International Law Journal 1; Leila Nadya Sadat, 'Extraordinary Rendition, Torture, and Other Nightmares from the War on Terror' (2007) 75 George Washington Law Review 1200.

9 Richard Falk, *International Law: A Contemporary Perspective* (Richard Falk, Friedrich Kratochwill, and Saul H MendLovitz eds, Westview Press 1985) 10.

10 Samuel K Murumba, 'Grappling with A Grotian Moment: Sovereignity and the Quest for a Normative World Order' (1993) 19 Brook. J. Int'I L. 829, 832.

11 ibid 831.

12 Boutros Boutros-Ghali (n 3) 1609.

13 ibid 1610.

14 Ibrahim J Gassama, 'International Law at a Grotian Moment: The Invasion of Iraw in Context' (2004) 18 Emory Int'I L. Rev. 1, 31.

15 See the first monography on the concept Michael P. Scharf, *Customary International Law in Times of Fundamental Change Recognizing Grotian Moments* (Cambridge University Press 2013).

new rules and doctrines of customary international law emerge with unusual rapidity and acceptance."[16] Scharf has evaluated current developments like the practice of humanitarian interventions by exercising his own test of Grotian Moment.[17] Milena Sterio also employed the phenomenon in her works in the same vein as Scharf. She, who exercises Scharf's theory, argues that humanitarian interventions in Syria,[18] and changes in the legal theory of statehood[19] are both paradigm-shifting developments that constitute a Grotian Moment.

Overall, the concept is seemingly employed to express the changes in a different context in international law. Some developments such as the establishment of the Westphalia System and the UN system that the concept represents do not cause controversy. These developments as Grotian Moment are the results of serious international crises. Whether such major crises (i.e., third world war) will occur is not something that can be known, at least for now. Therefore, events causing partial changes can also be called Grotian Moment. The establishment of the International Criminal Court (ICC) that imposes international criminal responsibility on individuals, the development of air and space law with the moon landing and, some similar progress can be called new Grotian Moments. Furthermore, the events that cause the unwritten rules of international law to take shape can also be called Grotian Moment, as pointed out by Scharf and Sterio.[20]

Agreeably, the Grotian Moment is a sign of a great change stemming from a need. The main reason behind this need, and naturally the change, is the ineffectiveness of the current international law system at the time in question. Departing from this point, it can be said that international law is insufficient to eliminate international health crises, particularly pandemics today. The need deriving from this inadequacy will result in a new Grotian Moment in the end. Even though this inadequacy had been voiced especially during the 1990s in terms of human security,[21] the starting point for the change became possible when the UN Security Council adopted its first pandemic resolution (Resolution 1308 on HIV/AIDS) in 2000. However, this is a process which has not been ended yet. Put differently, we are still living in a Grotian Moment. The Council's pandemic resolutions generate the normative basis for a new Grotian Moment. The activities of UN peace missions in the field constitute the other part of this unfinished Grotian Moment. In this paper, the Security Council's corpus on

16 Michael P. Scharf, 'Seizing the Grotian Moment: Accelerated Formation of Customary International Law in Times of Fundamental Change' (2010) 43 Cornell International Law Journal 440, 440.

17 Michael P. Scharf, 'Striking a Grotian Moment: How the Syria Airstrikes Changed International Law Relating to Humanitarian Intervention' (2019) 19 Chicago Journal of International Law 586.

18 Milena Sterio, 'Humanitarian Intervention Post-Syria: A Grotian Moment' (n 4).

19 Milena Sterio, 'A Grotian Moment: Changes in the Legal Theory of Statehood' (n 2).

20 Michael P. Scharf, 'Seizing the Grotian Moment: Accelerated Formation of Customary International Law in Times of Fundamental Change' (n 16); Milena Sterio, 'Humanitarian Intervention Post-Syria: A Grotian Moment' (n 4).

21 UNDP, 'Human Development Report 1994: New Dimensions of Human Security' (1994) <http://www.hdr.undp.org/en/content/human-development-report-1994> accessed 6 December 2021.

pandemics and the adaptation of UN peacekeeping to pandemics including the potential to build a *sui generis* health mission will be expressed as a new Grotian Moment.

II. The Cost of Pandemics and the Need for A Change

The world is facing severe biological threats in this century. The majority of these threats stem from worldwide infectious diseases called pandemics.[22] In fact, pandemics posed threats to humanity in previous centuries as well. However, the diversification and increase of the reasons accelerating the spread of pandemics naturally cause them to become much more dangerous for all in this century. Epidemiologists, who study the distribution and control of diseases, suggest that global trade, travel, and the mobilisation of military troops,[23] accelerate the transmission of viruses due to developments in related fields. This serious cycle has frequently been recurring in the last few decades. The ones from the previous century, like HIV/AIDS and Ebola, as well as novel ones such as Sars-CoV, Mers-CoV, Zika and Swine Flu, have threatened human health in the last twenty years.[24] The said pandemics have all been severe health crises, only three of which namely HIV/AIDS, Ebola, and Covid-19 have been tackled by the Security Council in terms of IPaS threats. Therefore, we will concentrate on the Council's resolutions and peacekeeping activities combating the three pandemics.

The pandemics undoubtedly affect every single person, state, sector, etc. Yet, people, essentially, have taken their share of the three pandemics. HIV/AIDS has been the most fatal instance with forty million death tools over the last forty years.[25] It does not only cause deaths or acute physical deficiencies but also reduces people's mental realisations. Likewise, the current example, Covid-19, follows HIV/AIDS in terms of deaths it has caused. According to WHO's figures, as of August 2022, there are nearly six hundred million cases and about six and a half million deaths around the world.[26] Lastly, Ebola has killed fifteen thousand people since 1976.[27] Even though Ebola has caused comparatively fewer deaths, it is scientifically the most severe pandemic type that has a very high fatality rate of 50%.[28]

22 Diseases are called by different names according to the region they affect. Pandemics means an outbreak of a disease that affects the whole globe. For similar terms, see Dara Grennan, 'What Is a Pandemic?' (2019) 321 JAMA: The Journal of the American Medical Association 910, 910.

23 Jocelyne Piret and Guy Boivin, 'Pandemics Throughout History' (2021) 11 Frontiers in Microbiology 1, 2–8.

24 For detailed information on pandemics, see Robert David Siegel, 'Classification of Human Viruses' (2018) Principles and Practice of Pediatric Infectious Diseases 1044, 1044–1046.

25 UNAIDS, 'Global HIV & AIDS Statistics' (2020) <https://www.unaids.org/en/resources/fact-sheet> accessed 1 September 2021.

26 WHO, 'WHO Coronavirus (COVID-19) Dashboard' (30 August 2021) <https://covid19.who.int> accessed 01 September 2022.

27 WHO, 'Ebola Virus Disease' (23 February 2021) <https://www.who.int/news-room/fact-sheets/detail/ebola-virus-disease> accessed 1 September 2021.

28 Ibid

Moreover, the pandemics have exacerbated the situation all over the world. Most importantly, Covid-19 has been by far the most effective one during the last two and half years. The United Nations Development Program (UNDP) warns that Covid-19 is more than a health crisis since it worsens societies, economies, etc.[29] For example, the economy is one of the areas affected by Covid-19. Lockdowns implemented by governments made economic facilities unable to function their economic circulations and naturally led to economic recession.[30] This has reduced the tax revenue of states accordingly.[31] Depending on the lockdowns, the states lost their incomes and had to make additional precautionary expenditures. Allocating special funds for vaccination and subsidizing those who cannot meet their basic needs have imposed extra burdens on states.[32] Furthermore, HIV/AIDS and Ebola have had deteriorating effects so far. HIV/AIDS, for instance, has caused a stigma in society. Those who are infected by HIV are facing segregation which consequently leads to systematic human rights violations.[33] The same is, unfortunately, true for Ebola,[34] which has negatively impacted weak government structures and their industries.

Furthermore, the pandemics have undoubtedly exacerbated relationships among states, and international organisations. For example, Covid-19 has regenerated an old-fashioned discussion related to the sovereignty of states. The US and China, two significant powers of today's world, fell into a dispute as to the emergence and spread of the virus. The US's accusation of China being negligent in the creation and the spread of the virus resulted in a legal investigation against China before American courts based on the Justice Against Sponsors of Terrorism Act (JASTA) in 2016, which may lead to a violation of *state immunity,* one of the main principles of international law.[35] This dispute prevented WHO from being mentioned in the Security Council's binding resolution that unfortunately has interrupted a fight against Covid-19.[36]

29 UNDP, 'Covid-19: Socio-Economic Impact' <https://www.undp.org/coronavirus/socio-economic-impact-covid-19> accessed 10 December 2021.

30 OECD, 'The Territorial Impact of COVID-19: Managing the Crisis across Levels of Government' (2020) OECD 2 <https://read.oecd-ilibrary.org/view/?ref=128_128287-5agkkojaaa&title=The-territorial-impact-of-covid-19-managing-the-crisis-across-levels-of-government> accessed 11 January 2022.

31 ibid.

32 ibid.

33 Peter Aggleton, Kate Wood, and Anne Malcolm, 'HIV - Related Stigma, Discrimination and Human Rights Violations' (UNAIDS 2005) <https://data.unaids.org/publications/irc-pub06/jc999-humrightsviol_en.pdf> accessed 15 February 2022.

34 Allison Aiello, 'Ebola as an Instrument of Discrimination' (*Culture of Health Blog*, 21 November 2014) <https://www.rwjf.org/en/blog/2014/11/ebola_as_an_instrume.html> accessed 18 February 2022.

35 Department of Justice, 'Harvard University Professor and Two Chinese Nationals Charged in Three Separate China Related Cases' (28 January 2020) <https://www.justice.gov/opa/pr/harvard-university-professor-and-two-chinese-nationals-charged-three-separate-china-related> accessed 12 January 2022; Angela Huyue Zhang, 'Coronavirus-Related US Lawsuits against China Risk a Further Worsening of Relations, and Could Backfire' (*South China Morning Post*, 11 May 2020) <https://www.scmp.com/comment/opinion/article/3083504/coronavirus-related-us-lawsuits-against-china-risk-further> accessed 12 January 2022.

36 UNSC Res 2532 (1 July 2020) UN Doc S/RES 2532. Unarguably, WHO, the responsible agency of the UN for championing health, is a significant actor that determines whether a health crisis becomes a PHEIC. Once it declares a health crisis a PHEIC situation, it obtains information about cases in member countries and coordinates pandemic responses via country teams.

Similarly, HIV/AIDS pandemic worsens relations among states, particularly during UN peacekeeping interventions. Failure to respond to haemorrhagic accidents and injuries in missions due to HIV concerns may cause tensions between host states and troop-contributing countries (TCCs). Even though it was not a classical UN peacekeeping, such a situation was witnessed in a mission carried out by ECOMOG (Economic Community of West African States Monitoring Group) in West Africa. Sierra Leone, the host country, blamed Nigerian peacekeepers on the ground for bringing HIV to their country. In response to this, Nigeria argued that its peacekeepers were not HIV infected before their deployment.[37] Although not all of them can be mentioned due to the limitations of the study, examples of the negative effects of pandemics in different areas can be multiplied.

III. The UN Security Council, The CSS, and the Birth of a New Grotian Moment

With the catalytic role of Covid-19, the pandemics cumulatively play a greater role in reshaping the CSS. The Security Council's approach regarding pandemics for the last two decades has begun to extend the scope of the IPaS threat category. Yet, before moving into detail about how the Council has extended the IPaS threat category, it would be useful to briefly discuss how the CSS works.

A. The Essence of the CSS

The CSS, established by the UN, has an extensive historical background. However, in essence, this system is intended to preserve IPaS. In other words, the asset protected through this CSS is the maintenance of IPaS. Technically, the UN sets a formula for its CSS in the UN Charter. To this end, the Security Council, as a special organ, shoulders the primary responsibility under Chapter V of the Charter. The rules and procedures the Council follows are specified under Chapter VII. In this context, Article 39 is the critical enabler of the CSS that consists of three parameters, namely "threat to peace", "breach of peace" and "act of aggression". Once the Council determines a particular event as a "threat to peace", which the Council has mostly employed since its establishment,[38] "breach of peace" or "act of aggression" under Article 39, then it applies enforcement actions expressed under Article 41 and Article 42.

On the other hand, the Charter does not set any threshold for determining the said three situations. The Council has discretion in making such determinations as it is the

37 Duane Bratt, 'Blue Condoms: The Use of International Peacekeepers in the Fight against AIDS' (2002) 9 International Peacekeeping 67, 75.

38 Malcolm N. Shaw, *International Law* (8th edn, Cambridge University Press) 948.

political organ of the UN.[39] In practice, the Council interprets this grey zone of Art 39,[40] which causes the adoption of resolutions that may not be linguistically compatible with each other because each time the sponsor(s) of the resolutions vary, and the UN has no procedure in determining the use of words. In terms of enforcement, the Council calls the member states and then authorises them or international organisations pursuant to Chapter VIII because it has no military forces unless otherwise planned under Article 43.

Conventionally, the Council has considered state-related situations, including inter-state and intra-state situations in making determinations under Article 39. That the UN was a product of World War II (WWII) and the great majority of provisions in the UN Charter regulate state relations are the reasons why the Council has mainly handled such situations. Wars, invasions, and armed attacks are examples of inter-state situations, while civil wars, which damage the interests of states and harm people and societies, constitute intra-state situations. The Arab-Israel Conflicts,[41] the Korean War,[42] the Falkland Islands conflicts,[43] the Gulf Wars,[44] hostile acts of South Africa[45] and South Rhodesia[46] towards their neighbouring countries are the cases of inter-state situations about which the Council has introduced resolutions. On the other hand, the Angolan Civil War,[47] conflicts in the Former Yugoslavia,[48] conflicts in the Caucasus[49] and lastly, the civil war in Syria[50] constitute samples of intra-state threat situations determined as such by the Council. The involvement of non-state actors, particularly terrorist groups, as in the case of the Syrian Civil War in the equation may take threats to another dimension.

The end of the Cold War caused essential changes in the *modus operandi* of the Council. The main reason was the change in the balance of power in international politics. International terrorism and weapons of mass destruction, the non-traditional threat categories, have attracted the attention of the Council. The Council made threat determination as to international terrorism in the case of the Lockerbie disaster in 1988,[51] and the 9/11 attacks in 2001[52] under Article 39, and employed enforcement

39 Nicholas Tsagourias and Nigel D. White, *Collective Security: Theory, Law and Practice* (Cambridge University Press 2013) 28.

40 Karel Wellens, 'The UN Security Council and New Threats to the Peace: Back to the Future' (2003) 8 Journal of Conflict & Security Law 15, 17.

41 UNSC Res 54 (15 July 1948) UN Doc S/RES 54.

42 UNSC Res 82 (25 June 1950) UN Doc S/RES 82; UNSC Res 83 (27 June 1950) UN Doc S/RES 83.

43 UNSC Res 502 (3 April 1982) UN Doc S/RES 502.

44 UNSC Res 598 (20 July 1987) UN Doc S/RES 598; UNSC Res 674 (29 October 1990) UN Doc S/RES 674.

45 UNSC Res 393 (30 July 1976) UN Doc S/RES 393.

46 UNSC Res 424 (17 March 1978) UN Doc S/RES 424.

47 UNSC Res 864 (15 September 1993) UN Doc S/RES 864.

48 UNSC Res 713 (25 September 1991) UN Doc S/RES 713.

49 UNSC Res 858 (24 August 1993) UN Doc S/RES 858.

50 UNSC Res 2165 (14 July 2014) UN Doc S/RES 2165.

51 UNSC Res 731 (21 January 1992) UN Doc S/RES 731.

52 UNSC Res 1368 (12 September 2001) UN Doc S/RES 1368; UNSC Res 1373 (28 September 2001) UN Doc S/RES 1373.

actions accordingly. Usage of weapons of mass destruction in Kuwait by Iraq and currently in Syria by the Assad regime were accepted as threats by the Council too.[53]

B. Recognising Pandemics as Non-Traditional IPaS Threats

Recognition of the non-traditional threats by the Council shows the Council's willingness to discuss further issues. Some positive developments during the early 1990s encouraged the Council in this direction. To this end, the Council gathered its first summit, entitled *Responsibility of the Security Council in the Maintenance of International Peace and Security*.[54] It was acknowledged in the summit that the absence of wars itself does not constitute a sole threat category; importantly, non-traditional threats stemming from socio-economic, ecologic, and humanitarian issues now pose formidable challenges to IPaS.[55] In 1992, Secretary-General Ghali addressed new problems like disease, poverty, famine, and forced migration as new types of threats in his famous report titled *An Agenda for Peace*.[56] In 1994, the UNDP published the *Human Development Report* which raised the matter of health security.[57] The report mainly gave place to the threat HIV/AIDS poses for humanity.[58] Shortly after, the Economic and Social Council (ECOSOC) took HIV/AIDS one step further by establishing the *Joint United Nations Programme on HIV/AIDS* (UNAIDS) which proposes ending the pandemic by means of incorporating people with HIV in the decision-making process.[59]

The year 2000 was the year when the first fruits of the efforts of the last decade were felt. The Council addressed a new situation that poses a threat to IPaS. On July 17, 2000, the Security Council discussed the impact of HIV/AIDS in the 4172nd meeting and adopted Resolution 1308 as the first resolution in its history which recognised a disease as a threat to IPaS.[60] It was *stressed* in the resolution that the "*HIV/AIDS pandemic, if unchecked, may pose a risk to stability and security*". Even though the language explicitly mentions neither "threat" nor "international peace and security", it is a threat determination under Article 39, which authorises the Council to invoke its unique power to end the threat in question. Passing this resolution was not an unexpected development at all. Richard Holbrooke, who was the US Ambassador to the UN at the time, played a key role in persuading Secretary-General Kofi Annan

53 UNSC Res 2118 (27 September 2013) UN Doc S/RES 2118.

54 'United Nations: Security Council Summit Statement Concerning the Council's Responsilibility in the Maintenance of International Peace and Security' (1992) 31 International Legal Materials 758.

55 ibid 761.

56 Boutros Boutros-Ghali, 'An Agenda for Peace Preventive Diplomacy, Peacemaking and Peace-Keeping' (1992) A/47/277-S/24111 13,22,26 <https://www.un.org/ruleoflaw/files/A_47_277.pdf> accessed 6 December 2021.

57 UNDP (n 21).

58 ibid 28.

59 UNAIDS, 'About' <https://www.unaids.org/en/whoweare/about> accessed 7 December 2021.

60 UNSC Res 1308 (17 July 2000) UN Doc S/RES 1308

to make the call for the Council to add HIV/AIDS to the Council's agenda.[61] The delegates taking part in the meeting all agreed on the fact that HIV/AIDS negatively impacted IPaS.[62]

The adoption of Resolution 1308 was a significant event in terms of changing the threat perception of the Council. The Council's attention towards the disease has commenced a new process while HIV/AIDS has been the concern of international society since the 1980s. In this process, pandemics through HIV/AIDS have started to be a new non-traditional threat category same as international terrorism and weapons of mass destruction. In 2011, the Council passed another specific HIV/AIDS resolution, Resolution 1983. This second resolution, which recognised HIV's effects on development, stability and progress, and underlines the role of other UN mechanisms, shows that the Council (will) follow the path set in 2000.[63]

Apart from HIV/AIDS, another pandemic that the Council focuses on is Ebola, which has been becoming a severe health crisis with high mortality, particularly in Africa, since 1976.[64] Upon the spread of the virus in 2014, the Council issued Resolution 2177 in an emergency meeting.[65] This was the third of its kind following two resolutions adopted for HIV/AIDS. However, one thing made this resolution different from its predecessors: The Council explicitly determined that the "*unprecedented extent of the Ebola outbreak in Africa constitutes a threat to international peace and security"*. This determination is precise enough in a way that leaves no room for discussion for the activation of the Council's powers. It is because the Council's practices suggest that such a clear determination leads to a launch of concrete action like establishing a peace mission in the field where pandemics occur but cannot be prevented. However, the Council has not initiated any mission so far though it has issued some mandates for the missions already in the field to eliminate the effects of pandemics, as will be discussed below. Despite the Council's silence, the Secretary-General launched a health mission, namely UNMEER, as the first-ever UN emergency health mission that operated between 2014 and 2015.[66]

In 2017, the Democratic Republic of Congo (DRC) announced that Ebola reappeared in the Country and reported the cases to WHO.[67] In 2018, the Council passed Resolution 2439, the second Ebola resolution, because of the severity of the situation.[68] Just as in

61 Colin Mcinnes and Simon Rushton, 'HIV, AIDS and Security: Where Are We Now?' (2010) 86 International Affairs 225, 227–228.

62 UNSC '4172nd Meeting Record' (17 July 2000) UN Doc S/PV.4172.

63 UNSC Res 1983 (7 June 2011) UN Doc S/RES 1983.

64 WHO, 'Ebola Virus Disease' (n 27).

65 UNSC Res 2177 (18 September 2014) UN Doc S/RES 2177.

66 UN, 'UN Mission for Ebola Emergency Response (UNMEER)' (n 6).

67 WHO, 'Overview' (*Ebola*, 2017) <https://www.who.int/emergencies/situations/ebola-outbreak-2017---drc> accessed 13 January 2022.

68 UNSC Res 2439 (30 October 2018) UN Doc S/RES 2439.

Resolution 1983, the second resolution for HIV/AIDS, the Council did not make any threat determination in Resolution 2439, nor did it establish a mission for the current outbreak. Instead, it refers to the role of MONUSCO, the existing UN peace mission in Congo, in controlling Ebola in the region.[69]

Lastly, Covid-19 has confirmed the fact that pandemics constitute a unique non-traditional threat category to IPaS. The UN, with its principal organs, funds, and specialist agencies, has tried to seek a way to eliminate the virus and its detrimental effects. The first organ that drew attention to the pandemic was the Secretary-General. Following the WHO's declaration of Covid-19 as a pandemic,[70] Secretary-General Antonio Guterres called for a "global ceasefire" for the ongoing conflicts taking place in various parts of the world.[71] Based on the UN Charter's authorisation, Guterres brought the issue to the agenda of the Security Council. He spoke at the Security Council meeting on July 2, 2020,[72] and tried to mobilise the Council's members in combating the pandemic. Publishing a report titled "*Shared Responsibility, Global Solidarity: Responding to the Socio-Economic Impacts of Covid-19*", which aims to prevent the transmission of the virus; protecting people's lives and livelihoods by sustainable solutions;[73] and setting up a recovery fund in this regard was another initiative of the Secretary-General.[74] Concurrently, the General Assembly adopted many resolutions regarding Covid-19. Some directly addressed Covid-19 whereas the majority pointed to the harmful effects of the pandemic on the General Assembly's agenda items. The ones that directly emphasise Covid-19 have multiple purposes: enhancing global solidarity,[75] building international cooperation to ensure global access to vaccines and other medical equipment,[76] and protecting vulnerable groups such as women and girls during the pandemic.[77]

The eyes of the international community have turned to the Security Council since the outbreak of Covid-19. The Council's pace of acting against Covid-19, which received a lot of criticism, was relatively slow compared to the pandemic's spread.

69 ibid.

70 WHO, 'Listings of WHO's Response to COVID-19' (29 June 2020) <https://www.who.int/news/item/29-06-2020-covidtimeline> accessed 13 January 2022.

71 Daniel Dickinson, 'COVID-19: UN Chief Calls for Global Ceasefire to Focus on "the True Fight of Our Lives"' (*UN News*, 23 March 2020) <https://news.un.org/en/story/2020/03/1059972> accessed 13 January 2022.

72 Antonio Guterres, 'Profoundly Affecting Peace across the Globe', Says Secretary-General, in Address to Security Council' (*UN*, 2 July 2020) <https://www.un.org/press/en/2020/sc14241.doc.htm> accessed 13 January 2022.

73 'Shared Responsibility, Global Solidarity: Responding to The Socio-Economic Impacts of Covıd-19' (UN 2020) Official <https://unsdg.un.org/sites/default/files/2020-03/SG-Report-Socio-Economic-Impact-of-Covid19.pdf> accessed 13 January 2022.

74 'The Secretary-General's UN COVID-19 Response and Recovery Fund' (UN 2020) Official <https://unsdg.un.org/sites/default/files/2021-01/COVID19-Response-Recovery-Fund-Document_2.pdf> accessed 13 January 2022.

75 UNGA Res 74/270 (2 April 2020) UN Doc A/RES/74/270; UNGA Res 74/307 (11 September 2020) UN Doc A/RES/74/307.

76 UNGA Res 74/274 (20 April 2020) UN Doc A/RES/74/274.

77 UNGA Res 75/156 (16 December 2020) UN Doc A/RES/75/156; UNGA Res 75/157 (16 December 2020) UN Doc A/RES/75/157.

France and Tunisia proposed a draft resolution for the cessation of hostilities during the pandemic, yet the draft was suspended for a long time due to the debate between the USA and China over the role of WHO.[78] The US claimed that WHO was not effective in combating the pandemic and cut financial support to the agency. On the other hand, China supported WHO. This opposition prevented the adoption of a resolution. After long discussions in the Council, the Security Council introduced Resolution 2532, which does not contain any statements about WHO on July 1, 2020.[79] This unanimously adopted resolution called for a 90-day global ceasefire.[80] This call, however, excluded military operations launched to combat terrorist groups including ISIS and Al-Qaeda.[81] Understandably, the Council, by this resolution, tried to strike a balance between human health and conflict prevention. That is why it excluded missions' fight against terrorist groups from the ceasefire. Importantly, Resolution 2532 considered "*unprecedented extent of the COVID-19 pandemic is likely to endanger the maintenance of international peace and security".* We know that this is a threat determination under Article 39. The vagueness in this statement reminds us of the reason why the Council did not employ a clearer language.

On February 18, 2021, another draft resolution was introduced and passed on February 26, 2021.[82] Compared to the first Covid-19 resolution, what accelerated the adoption of Resolution 2565 was Guterres's call for vaccination on February 17, 2021.[83] Like Resolution 2532, this was also adopted under the heading of "international peace and security". Similarly, the same indirect threat determination was made in this resolution too. Yet, unlike the previous one, Resolution 2565, which reiterated the need for cooperation against the pandemic and a call for the cessation of hostilities with the same exceptions,[84] emphasised that WHO has a crucial role in contending the pandemic, particularly in the supply and coordination of vaccines.[85]

Overall, the Security Council has passed six resolutions as responses to HIV/AIDS, Ebola, and Covid-19 since 2000. The Council recognised HIV/AIDS as a threat to peace for the first time in Resolution 1308 though it employed indirect referrals in the resolution. However, the Council preferred a much more familiar usage in addressing Ebola as a threat to peace in Resolution 2177. It was also noticed that the second resolutions of each of the two pandemics namely, Resolution 1983

78 UNSC, Draft Resolution 607 2020.

79 UNSC Resolution 2532 (n 36).

80 ibid 2.

81 ibid 3.

82 UNSC Res 2565 (26 February 2021) UN Doc S/RES/2565.

83 António Guterres, 'Remarks to the Security Council Open Meeting on Ensuring Equitable Access to COVID-19 Vaccines in Contexts Affected by Conflict and Insecurity' (*UN Secretary-General*, 17 February 2021) <https://www.un.org/sg/en/content/sg/speeches/2021-02-17/ensuring-equitable-access-covid-19-vaccines-contexts-affected-conflict-and-insecurity-remarks-security-council>.

84 UNSC Resolution 2565 (n 82) 2,3,5.

85 ibid.

and Resolution 2439, did not even make any threat determination in the context of Article 39. However, we know that it is adequate for the Council to make a threat determination only once. The Council is then able to invoke its enforcement actions. Unlike its predecessors, both resolutions adopted for Covid-19 made the same reference to the issue of posing a threat to IPaS, which helps in strengthening UN missions in the field to combat pandemics and gives momentum to the idea of establishing a special health mission.

C. Developing Peacekeeping Practices Against Pandemic Threats

The inadequacy of the CSS during pandemics forced the Security Council to pass *sui generis* resolutions recognising pandemics as threats to IPaS. This has made it possible for a new Grotian Moment to be commenced. In other words, recognition of pandemics as threats to IPaS constituted the first stage of the emergence of a Grotian Moment. Completion of this process, however, requires the Council to act decisively in the field as well as at the table. UN peace missions operating in the field for about the last three quarters are prominent tools of implementation, which have been working towards the maintenance of IPaS.[86] Updating and revising peace missions -and establishing a new one when conditions are suitable- is the second phase for generating a new Grotian Moment.

UN peacekeeping is a tool for implementation working towards the elimination of threats in conflict zones pursuant to the Council's mandates.[87] UN peacekeeping was not envisaged in the UN Charter by the founders of the organisation. Rather, it has been developed through time and reshaped when necessary by the Council and also the Secretary-General, who assesses the need in the field, reports to the Council, and conceptualises the type of missions by means of relevant doctrines and guidelines.[88] Since 1948, there have been seventy peacekeeping missions, twelve of which are still ongoing in the field.[89] The missions have mainly realised tasks regarding protecting civilians, preventing conflicts, building rule of law and security institutions, promoting human rights, empowering women, and delivering field support.[90]

UN peacekeeping missions started to make a considerable effort to eliminate pandemic threats immediately after the first pandemic resolution, and in this context, they expanded the scope when each mandate arrived. So far, mandates have been

86 UN, 'Our History' (*UN Peacekeeping*) <https://peacekeeping.un.org/en/our-history> accessed 7 August 2022.

87 UN, 'What Is Peacekeeping' (*United Nations Peacekeeping*) <https://peacekeeping.un.org/en/what-is-peacekeeping> accessed 7 August 2022.

88 see UNSG, 'United Nations Peacekeeping Operations Principles and Guidelines' (2008) <https://www.un.org/ruleoflaw/blog/document/united-nations-peacekeeping-operations-principles-and-guidelines-the-capstone-doctrine/> accessed 9 August 2022.

89 UN, 'Our History' (n 86).

90 UN, 'What We Do' <https://peacekeeping.un.org/en/what-we-do> accessed 2 September 2022.

issued for the three pandemics, and precautions have been taken accordingly. For HIV/AIDS, it was required by Resolution 1308 and 1983 to set up new HIV units, develop regular training, and circulate information cards containing brief information regarding the pandemic among peacekeeping staff.[91] UNAMSIL, UNMIL, and MINUSTAH were the main actors in anti-HIV activities in the field.[92] In the Ebola case, the Council learning lessons from the HIV experience concentrated not only on the protection of mission staff but also on the local population. Resolution 2177 in the first outbreak and Resolution 2439 in the second one offered a broader approach to help the advancement of national health systems, providing necessary medical equipment, and realising public awareness campaigns. MONUSCO, UNMIL, and UNMISS tried to conduct such activities within the bounds of possibility.[93] In addition to the Council mandates, the Secretary-General initiated UNMEER as Ebola became a very serious multidimensional threat during the 2014-2015 period.[94] In this last instance, it has been very difficult for the missions to combat the Covid-19 pandemic. Resolution 2532, which was hardly passed due to the disagreement between the US and China as explained above, entitled missions like MONUSCO, UNAMID, MINUSMA, and UNMISS to carry out anti-pandemic activities such as the delivery of medical services in the field hospitals and public awareness along with their military activities against terrorist groups.[95] Resolution 2565, the last resolution for Covid-19, on the other hand, focused on the distribution of Covid-19 vaccines in conflict and post-conflict areas. This task requires due care and cannot be like the distribution of condoms in the HIV case. It requires sustaining temperature requirements for vaccines, which were produced by different providers with unique procedures, and therefore necessitates the collaboration of professional partners.[96] The UN, during the vaccine distribution, was aware of the fact that the protection of mission staff is a pre-condition for the protection of locals where the missions operate.[97] Based on these premises, Covid-19 vaccines, of which the first batch was distributed to MINUSCA in Central Africa, started to be distributed in April 2021.[98]

91 Sara E Davies and Simon Rushton, *Healing Or Harming?: United Nations Peacekeeping and Health* (International Peace Institute New York 2015) 9–10; Paolo Tripodi and Preeti Patel, 'HIV/AIDS, Peacekeeping and Conflict Crises in Africa' (2004) 20 Medicine, Conflict and Survival 195, 202.

92 Roxanne Bazergan and Philippa Easterbrook, 'HIV and UN Peacekeeping Operations' (2003) 17 Aids 278, 1; Global Peace Operations Review, 'Timur-Leste' (2014) <https://peaceoperationsreview.org/wp-content/uploads/2014/10/2008_timor_leste_mission_reviews.pdf> accessed 15 August 2022.

93 Sara E Davies and Simon Rushton, 'Public Health Emergencies: A New Peacekeeping Mission? Insights from UNMIL's Role in the Liberia Ebola Outbreak' (2016) 37 Third World Quarterly 419, 419–420.

94 UN, 'UN Mission for Ebola Emergency Response (UNMEER)' (n 6).

95 El Mostafa Rezrazi, 'Peacekeeping Missions in the Time of Coronavirus: New Configurations and New Challenges' (2020) Policy Center for the New South 1, 5.

96 DSV, 'A Life-Saving Operation for the UN' <https://edit.www.dsv.com/en-in/insights/case-studies/un> accessed 1 September 2022.

97 UN, 'Arrival of Covid-19 Vaccines for UN Personnel in the Central African Republic' (15 April 2021) <https://peacekeeping.un.org/en/arrival-of-covid-19-vaccines-un-personnel-central-african-republic> accessed 2 September 2022.

98 ibid.

Apparently, the devoted works of the UN missions in the field to the extent permitted by the Council's mandates in the fight against pandemics show how the missions are evolving into health providers. This indisputably contributes to broadening the multidimensional structure of the missions. However, limited mandates in terms of pandemic response sometimes put these missions in a difficult position because the current type of UN missions still mainly consists of staff other than health professionals, or those familiar with healthcare interventions. Therefore, a limited number of healthcare professionals in the current missions remain incapable of facing pandemics. Available medical staff in the field hospital, which was transformed into a referral point in South Sudan during Covid-19, had rotation problems due to the travel bans, and have therefore been mentally exhausted.[99] This is one of the examples of the current type of UN mission hardships against pandemics. It is therefore significant and necessary to speed up the adaptation of UN missions to pandemic response or establish a health mission.

Concluding Remarks

Pandemics, such as Covid-19, have confirmed the fact that the international community has entered into a new Grotian Moment. This is the shortest answer to the question asked at the outset of this article. No one denies that the establishment of the UN was the clearest example of a Grotian Moment in this modern age. However, expecting such a change in the institutional apparatus of international law in the UN system is an old-fashion discourse, as well as a waste of time. Instead, the updates to the existing system are and should be welcomed as Grotian Moments. Pandemics have been causing a new Grotian Moment for the last twenty years. The reasons why pandemics have created a Grotian Moment within these two decades are the change in the Council's perception of threats, change in the modus operandi of the existing practical tools, namely UN peacekeeping, and the concretisation of the possibility of developing new missions in this regard.

Peer-review: Externally peer-reviewed.
Conflict of Interest: The author has no conflict of interest to declare.
Grant Support: The author declared that this study has received no financial support.

Hakem Değerlendirmesi: Dış bağımsız.
Çıkar Çatışması: Yazar çıkar çatışması bildirmemiştir.
Finansal Destek: Yazar bu çalışma için finansal destek almadığını beyan etmiştir.

99 Yongxue Zhang, D Xiang and N Alejok, 'Coping with COVID-19 in United Nations Peacekeeping Field Hospitals: Increased Workload and Mental Stress for Military Healthcare Providers' (2021) 167 BMJ Mil Health 229, 229.

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-------- Res 2165 (14 July 2014) UN Doc S/RES2165.

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