PEACE THROUGH CONSTITUTION: THE IMPORTANCE OF CONSTITUTIONAL ORDER FOR INTERNATIONAL PEACE AND SECURITY

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One of the major concerns of preventive diplomacy, especially as exercised by the United Nations, is the question of whether, in situations where the constitutional order of a state is violated, there is any link with the maintenance of peace and international security justifying the attention or intervention of the Security Council. Experience has shown that this issue has often influenced the direction and even the results of the processes towards preventing or ending crises. The question almost always arises with more or less urgency according to the distinctive character of the situations involving violations of the provisions of a state constitution, for example, the overthrow of a democratically elected government.

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It emerges from the wording of the United Nations Charter that there is no automatic connection between the respect for international law and the maintenance of international peace and security;¹ nor does such a link seem to exist a priori with respect to compliance with internal law, including for its most fundamental norms with constitutional value. This is evident from the wording of Article 39 of the UN Charter, which states:

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken ... to maintain or restore international peace and security.

Thus, the Security Council was not originally conceived as an organ to ensure the respect for legality in general, but solely as a body with the responsibility for maintaining world peace. In this context – in the absence of specific guidance from the Charter – when there is an agreement between its members, the Council has a discretionary power to decide whether a certain situation represents a threat to peace in the world or not.²

The current trend towards a widening of the concept of collective security has also led the members of the Council, in a joint statement on 31 January 1992, which was adopted at the level of Heads of State

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