



## THE SECURITY COUNCIL OF UNITED NATION ORGANIZATION AS AN INSTITUTIONAL METHOD OF DISPUTE SETTLEMENT – AN ANALYSIS

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### ABSTRACT

The idea to solve disputes through peaceful means is not new. The actions of the international organizations add to the efforts made by the states that in any dispute between them to be no place for force and power, but only for persuasion and reason. In the center of the preoccupations of the international society, the values of peace and security have a privileged place, both in the sense of their actual materialization, and, especially, in guaranteeing and promoting them. The rapid evolution of the international society reveals a climate of turbulences, of increase of the risk factors that, by aggregation, may lead to the emergence of disputes. The paper aims to analyze in an interdisciplinary manner the role that the United Nations Security Council has in maintaining peace and security. For this purpose, a great attention will be given to the study of the functions and procedures made in this sense.

**KEYWORDS :** United Nation, Pacific Settlement, Security Council

### Introduction:

The United Nations was established following the conclusion of the Second World War and in the light of Allied planning and intentions expressed during that conflict.<sup>1</sup> The United Nations is a pivotal organ of world government, and the most important of all international institutions. It is an organization of independent states which have accepted the obligations contained in the United Nations Charter signed at San Francisco on 26 June 1945. The body or main stem of the United Nations is represented by the organs expressly named in the Charter.<sup>2</sup>

The United Nations is an association of States but like other organizations it carries out its functions through organs composed of individuals who in most cases act as representatives of member States; Security Council is one of such organs of the United Nations.<sup>3</sup>

Security Council is a principle organ of the United Nations.<sup>4</sup> The Council consisted of fifteen members,<sup>5</sup> out of which five are permanent members. No decision can be taken by the Council on non-procedural matters if a dissenting vote is given by any permanent member.<sup>6</sup>

The main function of the Security Council is to maintain International peace and security by peaceful means or by taking enforcement action.<sup>7</sup> The Council may investigate any dispute, or any situation which might lead to international friction or give rise to dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of the international peace and security.<sup>8</sup>

In order to maintain international peace the Security Council has played an important role in the Korean Conflict, and the Congo and Rhodesian situations.<sup>9</sup> Security Council has been fulfilling its primary objective by solving the international conflicts time and again.

The Dumbarton Oaks proposals had envisaged the need for an executive organ of limited membership which would be entrusted with the "primary responsibility for the maintenance of international peace and security."<sup>10</sup> The increased degree of decentralization of the procedure for maintaining international peace and security made Security Council even more essential than the Council of the League.<sup>11</sup>

### Security Council and Pacific settlement of Disputes:

Under Chapter VI of the Charter, "Pacific Settlement of Disputes", the Security Council "may investigate any dispute or any situation which might lead to international friction or give rise to a dispute". The Council may "recommend appropriate procedures or methods of adjustment" if it determines that the situation might endanger international peace and security. These recommendations are not binding on UN members.<sup>12</sup>

The following have a right to submit disputes to the Council: the General Assembly,<sup>13</sup> the Secretary-General,<sup>14</sup> member States,<sup>15</sup> and non-member States.<sup>16</sup> There is also a duty imposed on parties to a dispute likely to endanger international peace and security to submit the dispute to the Council if they cannot settle it by traditional means.<sup>17</sup>

In dealing with a dispute the Council has a number of alternative ways of proceeding open to it. It may simply call upon the parties to utilize the traditional means of settlement, leaving the choice of any particular means to the parties.<sup>18</sup> Or it may, under Article 36(1), recommend a particular means of settlement. The council may even go further and, under Article 37(2), recommend the actual terms of a settlement in addition to the means or procedures for settlement.

### Enforcement Action:

Under Chapter VII, the Council has broader powers to decide what measures are to be taken in situations involving "threats to the peace, breaches of the peace, or acts of aggression". In such situations, the Council is not limited to recommendations but may take action, including the use of armed force "to maintain or restore international peace and security". This was the basis for UN armed action in Korea in 1950 during the Korean War and the use of coalition forces in Iraq and Kuwait in 1991. Decisions taken under Chapter Seven, such as economic sanctions, are binding on UN members.<sup>19</sup>

The Security Council has two forms of enforcement action available to it; those described in Article 41, *i.e.* not involving the use of armed forces, and those prescribed in Article 42, *i.e.* involving actions by air, sea or land forces.

### (i) Measures involving non-use of Force :

These measures include 'complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio and other means of communication and severance of diplomatic relations.'<sup>20</sup> In order to take measures provided under Article 41, States have made provisions in their municipal laws. India in 1947 enacted the United Nations Act<sup>21</sup> which provided that if the Security Council calls upon the Central Government to apply any measures not involving the use of armed forces the Central Government may make such provisions as appear to it necessary for enabling those measures to be effectively applied.

Measures under Article 41 have been taken in the following cases –

1. After the Iraq's invasion of Kuwait in 1990, the Council imposed mandatory economic sanction against Iraq.<sup>22</sup>
2. Following the destruction of the two civilian aircrafts – Pan American which exploded over Scotland and UTA explosion in Niger, the Security Council adopted a resolution wherein it condemned the Libyan act.<sup>23</sup>
3. The former Yugoslavia consisted of six constituent Republics, but following the internal disorder and crisis three of the Republics

were seceded from Yugoslavia. The fighting between Yugoslavia and the new States deteriorated the situation in the region. The Council by adopting a resolution<sup>24</sup> urged parties to end conflict and abide by the cease-fire. When the fighting did not stop, the Council imposed both economic and diplomatic sanctions including a flight ban.

4. A complete embargo on the delivery of weapons and military equipment to Libya was imposed by the Security Council on November 19, 1992<sup>25</sup> after condemning the cease-fire violation and attacks on West-African peace-keeping forces.
5. In Haiti the first democratically elected president was ousted by the military coup in 1991. Thereafter violation of Human Rights began to occur in large scale. When the situation deteriorated in Haiti the International Civil Mission was approved by General Assembly to Haiti. When the situation did not improve, the Council unanimously adopted a resolution<sup>26</sup> by which oil and arms embargo was imposed.
6. On April 26, 1996, the Security Council by adopting resolution 1054 (1996) imposed diplomatic sanction against Sudan for giving shelter to three Egyptians who were wanted in connection with the assassination attempt on the life of Egyptian President.
7. The Security Council adopted a resolution<sup>27</sup> on March 31, 1998 and decided that 'all States shall for the purposes of fostering peace and stability in Kosovo, prevent the sell and supply to Yugoslavia, from their territories, of arms and related materials of all types.'
8. The Council by adopting the resolution 1333 (2000) imposed sanctions which included arms embargo covering all types of weapons and related matters, as well as ban on the provision of technical training or advice related to the military activities of armed personnel under Taliban Control.<sup>28</sup>
9. North Korea became a party to Non-Proliferation Treaty in 1985 but it withdrew from NPT in 2003. Later, in 2006, it conducted a test of a nuclear weapon which the Security Council considered that it poses danger to peace and stability in the region and beyond. The Council adopted a resolution<sup>29</sup> wherein it was laid down that all members shall prevent the direct or indirect supply, sale or transfer to North Korea, through their territories or by their nationals any battle tanks, armored combed vehicles, large caliber artillery systems etc.

#### (ii) Measures involving Use of Armed Force:

If the Security Council considers that measures provided for in Article 41 are not adequate or they have proved to be inadequate, 'it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security.'<sup>30</sup> These may include demonstration, blockade, and other operations by air, sea or land forces of Members of United Nations.

The above implies that the United Nations' system of collective security presupposes the conclusion of military agreements supplementary to the Charter. In the absence of agreements there is no guarantee that the Council will ever be able to apply military sanction.<sup>31</sup>

#### (iii) Collective Security Measure:

By the term 'collective responsibility' is meant the measures taken by the United Nations with the application of tangible pressure in situations amounting to threat to the peace, breach of peace or acts of aggression. A system of collective security is formalized legally through a treaty.

If the Council determines under Article 39 that there exists threat to the peace, breach of the peace of an act of aggression, it may take an action as provided under Article 41 and 42 of the Charter. This action is taken by the members of United Nations collectively in order to maintain international peace and security.<sup>32</sup>

#### The UN's role in international collective security is defined by the UN Charter, which gives the Security Council the power to:

1. Investigate any situation threatening international peace;
2. Recommend procedures for peaceful resolution of a dispute;
3. Call upon other member nations to completely or partially interrupt economic relations as well as sea, air, postal, and radio communications, or to sever diplomatic relations; and
4. Enforce its decisions militarily, if necessary.

#### (iv) Miscellaneous Measures:

Besides performing its main responsibility of maintaining international peace and security, the Council performs a number of

other functions which have been conferred to it under the Charter –

1. The Council may recommend the Assembly for admission of a State in the United Nations.<sup>33</sup> The Assembly may admit a member only when the Council gives a favourable recommendation.
2. The Council has been empowered to recommend the Assembly to suspend<sup>34</sup> or expel<sup>35</sup> a member of the United Nations.
3. The council is empowered to control and supervise the strategic areas of the trust territories.<sup>36</sup>
4. The Council recommends the Assembly for the appointment of the Secretary-General of the United Nations.<sup>37</sup>
5. The Security Council may convoke a special session or an emergency special session of the General Assembly by making a request to the Secretary-General.<sup>38</sup>

#### Conclusion:

From the above discussion it can be summarised and conclude as the Settlement of international disputes is one of the most important roles of the United Nations. The Charter of the United Nations stipulates that it is the task of the United Nations "to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace." To this end, the Charter provides a system for the pacific settlement or adjustment of international disputes or situations under which the wide competence of the United Nations in this matter is established, and the corresponding obligations of the members of the United Nations are imposed. This system is delineated mainly in Chapter VI of the Charter.

Chapter VI of the Charter contains the United Nations mechanism for the pacific settlement of disputes. Article 33 obliges the parties to a dispute, the continuance of which is likely to endanger the maintenance of international peace and security, to settle such a dispute by any of the enumerated peaceful means therein, or by any peaceful means of their choice. When the parties fail to observe their obligations or their efforts are not successful, the United Nations will intervene to consider the dispute and give its recommendations on the matters. The Security Council is given the primary responsibility in this regard. It is entitled to intervene either on its own initiative, upon invitation of any member of the United Nations, upon invitation by the General Assembly, or upon a complaint of a party to a dispute. The Security Council may follow three courses of action. First, it may call upon the parties to a dispute to settle their dispute by any of the peaceful means listed in Article 33(1). Second, it may recommend to the parties appropriate procedures or method of settlement. Third, it may recommend terms of settlement, as it may consider appropriate.

Although under the Charter the Security Council is given the primary role for maintaining international peace and security, the General assembly is not excluded from doing so. Under Articles 11, 12 and 14, the General Assembly may discuss and make recommendations for procedures or methods of adjustment, or for terms of settlement, with regard to any dispute or situation brought before it. The disputes or situations may be brought before the General Assembly by the Security Council, any member of the United Nations, or any State party to such dispute.

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