

ROLE OF UNITED NATIONS IN INTERNATIONAL DISPUTES SETTLEMENT

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ABSTRACT

International dispute settlement is the need of nations. The technological advancements have certainly proved a boon to human civilization, but at the same time they pose a threat of being misused and causing threat to the present generations. There are various disputes amongst the different countries of the world, which has to be settled amicably in a peaceful manner in order to save our mother earth. UN was created with the objective of preventing any possibility of future world wars and maintenance of international peace and security. The objective of present paper is therefore to study and analyze the role of United Nations in maintenance of international peace and security. An attempt has been made to throw light on United Nations emergency peace services and various United Nations peace operations. The present study is doctrinal in nature and is based on secondary data collected from various resources like, books, journals, reports etc.

Keywords: *United Nations, international disputes settlement, peace*

1. Introduction

The United Nations (UN) is an international organization which aims at facilitating cooperation in international law, international security, economic development, social progress, human rights, and achievement of world peace. The UN was founded in 1945 after World War II to replace the League of Nations, to stop wars between countries, and to provide a platform for dialogue. It contains multiple subsidiary organizations to carry out its missions. One of the primary purposes of the United Nations is the maintenance of international peace and security.¹ Since its creation, the United Nations has often been called upon to prevent disputes from escalating into war to persuade opposing parties to use the conference table rather than force of arms, or to help restore peace when armed conflict does break

¹Abhishek Agarwal, "Role of united nations in maintenance of international peace and security", available at; https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1948054 (visited on 27 March 2019).

out². Over the decades, the United Nations has helped to solve numerous conflicts, often through action of the Security Council, one of its primary organs for dealing with issues of international peace and security.² The Security Council, the general assembly and the secretary general, however, all play major complementary roles in fostering peace and security. United Nations activities cover the principal areas of conflict prevention, peacemaking, peacekeeping, enforcement and peace building. These types of engagement must overlap or take place simultaneously if they are to be effective³. Security Council determines when and where a UN peacekeeping operation should be deployed. It takes many different factors into accounts considering the establishment of new peace operation: first, whether there is a ceasefire in place and the parties have committed themselves to a peace process intended to reach a political settlement, second, whether a clear political goal exists and whether it can be reflected in the mandate, third, whether a precise mandate for a UN operation can be formulated.³

2. The preamble of the United Nation

We the people of the United Nations determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom, and for these ends to practice tolerance and live together in peace with one another as good neighbors, and to unite our strength to maintain international peace and security, and to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and to employ international machinery for the promotion of the economic and social advancement of all peoples, have resolved to combine our efforts to accomplish these aims. Accordingly, our respective Governments, through representatives assembled in the city of San Francisco, who have exhibited their full powers found to be in good and due form, have agreed to the present Charter of the United Nations and do hereby establish an international organization to be known as the United Nations. The Preamble to the Charter of the United Nations (signed on 26 June 1945 by 51 Countries).⁴

3. Organs of united Nation

There are six main organs of the United Nations—the General Assembly, the Security Council, the Trusteeship Council, the Economic and Social Council, the International Court of Justice, and the Secretariat. The Court has its

² United Nations department of public information New York, *Basic facts about the United Nations*, 1st edn, 2011, p.59.

³ Ibid

⁴ Michael davies, international organization, 2014, p. 199

seat at The Hague, Netherlands. All other organs are based at United Nations Headquarters in New York. While Headquarters in New York serves as the principal nerve center of the organization, several important activities are directed from offices located in centers around the world. Meetings and various UN bodies are often held away from Headquarters. The Economic and Social Council, for example, rotates its regular annual session between and New York, and special committees of the General Assembly have frequently held meetings in many countries around the world. Conferences on topics such as population, food, the environment and human rights have been held in different parts of the world.⁵

4. Foundation of United Nation

The United Nations is the world's main organization for deliberating matters of peace and security, but its work encompasses far more than peacekeeping and conflict prevention. The UN system includes scores of entities dedicated to areas ranging from health and humanitarian needs to economic and cultural development. As a founding member of the United Nations and the host for its headquarters, the United States has been a chief guide and major funder of the organization for more than seventy years.

The United States remains the largest donor to the United Nations, contributing more than \$10 billion in 2017, roughly one fifth of the body's collective budget. President Donald J. Trump, however, has raised questions about how much the United States will continue to contribute. If the Trump administration is able to follow through on his proposed cuts to foreign aid spending, the United Nations will likely undergo significant changes.⁶

5. The United Nations Emergency Peace Services (UNEPS)

The proposal for a United Nations Emergency Peace Service (UNEPS) is intended to create a permanent "911" first-responder. UNEPS is to complement existing UN and regional arrangements by filling the critical gap of managing the initial six months of demanding operations. This option was specifically designed to help prevent armed conflict and genocide to protect civilians at extreme risk, to ensure prompt start-up of demanding peace operations, and to address human needs where others either cannot or will not. The core principles underlying the UNEPS proposal are that it be: a permanent standing, integrated UN formation, highly trained and well-equipped; ready for immediate deployment upon authorization of the UN Security Council; multidimensional (civilians, police and military); multifunctional (capable of diverse assignments with specialized skills for security, humanitarian, health and environmental crises); composed of 16,000 dedicated personnel (recruited professionals, selected, trained and employed by the UN) developed to ensure regional and gender equitable representation; co-located at a designated

⁵⁵ S.K. Kapoor, international law and human rights, central law agency, 18th edition, p 493

⁶ "united nation", available at: https://en.wikipedia.org/wiki/United_Nations (visited on April 20th)

UN base under an operational headquarters and two mobile mission headquarters; at sufficient strength to operate in high-threat environments and a service to complement existing UN and regional arrangements²⁵. A proposal & global movement to address our five big challenges in preventing and managing armed conflict. UNEPS was specifically designed to help with:

1. The prevention of armed conflict;
2. Stopping genocide and mass atrocity crimes;
3. Protecting civilians at extreme risk;
4. Ensuring prompt start-up of demanding peace operations; and,
5. Addressing human needs in areas where others cannot.⁷

6. Meaning of International disputes

A disagreement that arises between states concerning their relations with one another and with other states.

Contemporary international law, which forbids the use of force or the threat of force in relations between states, requires that all international disputes be resolved only by peaceful means, on the basis of an accord between the disputing states. This principle is maintained by the UN Charter (art. 2, para. 3), the Pact of the Arab League (art. V), the Charter of the Organization of African Unity (art. 3), and the Declaration on the Principles of International Law Concerning Friendly Relations Among States in Accordance With the Charter of the UN (1970)⁸.

International law does not predetermine the precise peaceful means of resolving a specific dispute but allows the states to choose these means themselves. Article 33 of the UN Charter lists the following peaceful means for resolving international disputes: negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, and recourse to regional agencies or arrangements. Peaceful means of resolving international disputes also include various conciliatory procedures, including good offices and the creation of investigation and conciliation

⁷ "UNEPS", available at: <https://globalcommonsecurity.org/drpetlangille/initiatives/united-nations-emergency-peace-service-unepps/> (visited on April 17, 2019).

⁸ "encyclopedia2" available at <https://encyclopedia2.thefreedictionary.com/International+Dispute> (visited on 22 May 2019)

commissions. In contrast to direct negotiations, conciliatory procedures usually feature the participation of third states or international bodies, with the consent of the disputing states⁹.

Disputes between states can also be resolved with the aid of international courts and arbitration bodies. International disputes today are resolved more and more often through international organizations, which resort to procedures provided for in their charters. In the UN, the peaceful resolution of disputes is handled primarily by the Security Council; the General Assembly and the International Court of Justice are sometimes called upon to resolve disputes.

7. Reasons of international conflict

Conflict is defined in terms of the needs, wants or the obligation of the parties involved and that it takes place between two conscious, though not necessarily rational, beings. Traditionally, the term "international conflict" referred to conflicts between different nation-states and conflicts between people and organizations in different nation-states.

However according to some scholars it is only normal to experience conflict locally or internationally due to the human nature. Michael Lund¹⁰ suggests that, in the years ahead crises and threats will grow more numerous, not less, and will pose significant threats to international peace and security and to the interest of many nations.

7.1 Political and institutional factors

(i) Weak state institutions

Political institutions that are unable to manage differing group interests peacefully, to provide adequate guarantees of group protection, or to accommodate growing demands for political participation, can fracture societies.

Mansfield et al argued that the international community should be realistic about the dangers of encouraging democratization where the conditions are unripe. The risk of violence increases if democratic institutions are not in place when mass electoral politics are introduced.¹¹

(ii) Elite power struggles and political exclusion

Colonialism and liberation struggles in Africa, the Middle East and Asia have left various legacies, including divisive and militarized politics and fierce struggles for power and land. For example after the 1995 elections, President Henri Konan Bedie won and pushed for policies that promoted Ivorian Nationalism.

The domination of access to state structures and resources by any one leader, group or political party to the exclusion of others exacerbates social divisions. Lindeman argues that the ability of post-colonial states in Sub-

⁹ Ibid

¹⁰ Michael Lund is Australian journalist he was winner in the 2004 Queensland media award.

¹¹ Stephan L. Quackenbush, international conflict logic and evidence, 2015, p. 79

Saharan Africa to maintain political stability depends on the ability of the ruling political parties to overcome the historical legacy of social fragmentation.¹²

(iii) Breakdown in social contract and corruption

The outbreak of militancy has been caused by the failure of political institutions and organizations, and the violation of the social contract. How the state is managed is important to the emergence of conflict within a state i.e. public response to how public funds and revenue are utilized.

(iv) Identity politics

When Identity is mobilized in terms of; religion, ethnicity and culture provide a system of beliefs and practices that can unite adherents in a community, alter their perception of others and encourage them to take collective action in the name of their group.

7.2 Socioeconomic factors

The human needs theory also gets support from the so called —Security Dilemma□. formulated by Waltz in 1979 stating that because the ordering of the international system is anarchical rather than Hierarchical, states will always seek survival through accumulation of military power, which is also the reason behind competition between states, such for superiority and the need to manage more resource base. Realism supports the presence and puts emphasis on the anarchic nature of not only the states but also the human beings, which has been viewed as the major cause of international conflict.

Poverty and conflict

Conflict and poverty are clearly linked - a disproportionate number of conflicts take place in poor countries. The direction of causality has been debated, however. Most research contends that poverty, in itself, is rarely a direct cause of conflict; yet it is evident that conflict exacerbates poverty. The concepts of chronic poverty and violent conflict have been treated as separate spheres. It is argued that poverty and conflict are linked. Violent conflict is not a side issue and needs to be better understood in order to achieve development goals. Conflict tends to be enhanced and manifested especially in poor countries where other attributing factor are said to emanate to facilitate conflict.¹³

7.3 Resource and environmental factors

Realism has undergone some change. The neo-classical views on realism theories look at the causative factors of international conflict from the material/ resource based point of view. They argue that material capabilities are the most important determinants of state strategies and give causal primacy to the system structure. They emphasize the need for state leaders to mobilize societal resources to convert them to power that can support the state. The strength and autonomy of any state in the society therefore is dependent on its ability to mobilize societal resources for the

¹²“settlement international disputes”, available at [https://www.peacepalacelibrary.nl/setelmeent of international disputes](https://www.peacepalacelibrary.nl/setelmeent%20of%20international%20disputes),(visited on 28 May 2019)

¹³ Ibid

purposes of accumulating power. Failure of any given society to achieve this leads to weak states that are usually divided and less expansive. On the other hand, those that have mastered that ability have the ability to stay autonomous and also expand to accumulate more.¹⁴

8. Kind of international dispute settlement

8.1 Legal dispute resolution

The legal system provides resolutions for many different types of disputes. Some disputants will not reach agreement through a collaborative process. Some disputes need the coercive power of the state to enforce a resolution. Perhaps more importantly, many people want a professional advocate when they become involved in a dispute, particularly if the dispute involves perceived legal rights, legal wrongdoing, or threat of legal action against them.¹⁵

The most common form of judicial dispute resolution is litigation. Litigation is initiated when one party files suit against another. In the United States, litigation is facilitated by the government within federal, state, and municipal courts. The proceedings are very formal and are governed by rules, such as rules of evidence and procedure, which are established by the legislature. Outcomes are decided by an impartial judge and/or jury, based on the factual questions of the case and the application law. The verdict of the court is binding, not advisory; however, both parties have the right to appeal the judgment to a higher court. Judicial dispute resolution is typically adversarial in nature, for example, involving antagonistic parties or opposing interests seeking an outcome most favorable to their position.¹⁶

8.2 Extrajudicial dispute resolution

Some use the term dispute resolution to refer only to alternative dispute resolution (ADR), that is, extrajudicial processes such as arbitration, collaborative law, and mediation used to resolve conflict and potential conflict between and among individuals, business entities, governmental agencies, and (in the public international law context) states. ADR generally depends on agreement by the parties to use ADR processes, either before or after a dispute has arisen. ADR has experienced steadily increasing acceptance and utilization because of a perception of greater flexibility, costs below those of traditional litigation, and speedy resolution of disputes, among other perceived advantages. However, some have criticized these methods as taking away the right to seek redress of

¹⁴ Id at p. 84

¹⁵ H.O Agarwal, international law and human rights, central law publication 19th edition 2013 p. 538

¹⁶ Id at p. 539

grievances in the courts, suggesting that extrajudicial dispute resolution may not offer the fairest way for parties not in an equal bargaining relationship, for example in a dispute between a consumer and a large corporation. In addition, in some circumstances, arbitration and other ADR processes may become as expensive as litigation or more so.¹⁷

9. Methods of international dispute settlement

9.1 Lawsuit (disambiguation)

A lawsuit is a proceeding by a party or parties against another in the civil court of law. The archaic term "suit in law" is found in only a small number of laws still in effect today. The term "lawsuit" is used in reference to a civil action brought in a court of law in which a plaintiff, a party who claims to have incurred loss as a result of a defendant's actions, demands a legal or equitable remedy. The defendant is required to respond to the plaintiff's complaint. If the plaintiff is successful, judgment is in the plaintiff's favor, and a variety of court orders may be issued to enforce a right, award damages, or impose a temporary or permanent injunction to prevent an act or compel an act. A declaratory judgment may be issued to prevent future legal disputes.¹⁸

9.2 Arbitration

Arbitration, a form of alternative dispute resolution (ADR), is a way to resolve disputes outside the courts. The dispute will be decided by one or more persons (the "arbitrators", "arbiters" or "arbitral tribunal"), which renders the "arbitration award. Arbitration is often used for the resolution of commercial disputes, particularly in the context of international commercial transactions. In certain countries such as the United States, arbitration is also frequently employed in consumer and employment matters, where arbitration may be mandated by the terms of employment or commercial contracts and may include a waiver of the right to bring a class action claim. Mandatory consumer and employment arbitration should be distinguished from consensual arbitration, particularly commercial arbitration.¹⁹

Arbitration can be either voluntary or mandatory (although mandatory arbitration can only come from a statute or from a contract that one party imposes on the other, in which the parties agree to hold all existing or future disputes to arbitration, without necessarily knowing, specifically, what disputes will ever occur) and can be either binding or non-binding. Non-binding arbitration is similar to mediation in that a decision cannot be imposed on the parties.

¹⁷ Id at p. 530

¹⁸ "lawsuit" available at <https://en.wikipedia.org/wiki/Lawsuit> (visited on 23 may 2019)

¹⁹ P.K Basu Majumdar, Low of Arbitration, Universal law Publication, 2011 p. 1

However, the principal distinction is that whereas a mediator will try to help the parties find a middle ground on which to compromise, the (non-binding) arbiter remains totally removed from the settlement process and will only give a determination of liability and, if appropriate, an indication of the quantum of damages payable. By one definition arbitration is binding and non-binding arbitration is therefore technically not arbitration.²⁰

9.3 Mediation

Mediation is a dynamic, structured, interactive process where a neutral third party assists disputing parties in resolving conflict through the use of specialized communication and negotiation techniques. All participants in mediation are encouraged to actively participate in the process. Mediation is a "party-centered" process in that it is focused primarily upon the needs, rights, and interests of the parties. The mediator uses a wide variety of techniques to guide the process in a constructive direction and to help the parties find their optimal solution. A mediator is facilitative in that she/he manages the interaction between parties and facilitates open communication.²¹

Mediation, as used in law, is a form of alternative dispute resolution resolving disputes between two or more parties with concrete effects. Typically, a third party, the mediator, assists the parties to negotiate a settlement. Disputants may mediate disputes in a variety of domains, such as commercial, legal, diplomatic, workplace, community and family matters.

The term "mediation" broadly refers to any instance in which a third party helps others reach agreement. More specifically, mediation has a structure, timetable and dynamics that "ordinary" negotiation lacks. The process is private and confidential, possibly enforced by law. Participation is typically voluntary. The mediator acts as a neutral third party and facilitates rather than directs the process. Mediation is becoming a more peaceful and internationally accepted solution in order to end conflict. Mediation can be used to resolve disputes of any magnitude.

10. Role of United Nation in Disputes Settlement

The Charter of the United Nations requires all Members of the Organization to settle their international disputes by peaceful means in such a manner that international peace and security are not endangered. The United Nations Convention on the Law of the Sea builds on this commitment by providing a compulsory and binding framework for the peaceful settlement of all related disputes.

²⁰ Id at p. 3

²¹ Christopher W. Moore, *The mediation process*, 4th edition 2014, p. 1

10.1 The Convention and the Settlement of Disputes

Part XV of the United Nations Convention on the Law of the Sea requires that States Parties to the Convention settle any dispute between them concerning the interpretation or application of the Convention by peaceful means in accordance with article 2, para. 3, of the Charter of the United Nations and shall seek a solution by the means indicated in article 33, para. 1, of the Charter. Where, however, no settlement has been reached, article 286 of the Convention stipulates that the dispute be submitted at the request of any party to the dispute to a court or tribunal having jurisdiction in this regard.²²

10.2 International Tribunal for the Law of the Sea

The International Tribunal for the Law of the Sea is the central forum established by the United Nations Convention on the Law of the Sea for the peaceful settlement of disputes. Its seat is at the Free and Hanseatic City of Hamburg, Germany. The Tribunal may sit and exercise its functions elsewhere whenever it considers this desirable.

10.3 Jurisdiction

The jurisdiction of the Tribunal comprises all disputes and all applications submitted to it in accordance with the United Nations Convention on the Law of the Sea and all matters specifically provided for in any other agreement which confers jurisdiction on the Tribunal.

The Tribunal has exclusive jurisdiction, through its Seabed Disputes Chamber, with respect to disputes relating to activities in the international seabed Area. Where the authorities of a State Party have detained a vessel flying the flag of another State Party and it is alleged that the detaining State has not complied with the provisions of the Convention for the prompt release of the vessel or its crew upon the posting of a reasonable bond or other financial security, the question of release from detention may be submitted to the any court or tribunal agreed upon by the parties or, failing such agreement within 10 days from the time of detention, to a court or tribunal accepted by the detaining state or to the International Tribunal for the Law of the Sea, unless the parties otherwise agree.²³

10.4 Composition

The Tribunal is composed of 21 independent members elected by States Parties to the Convention on the Law of the Sea from among persons with recognized competence in the field of the law of the sea and representing the principal legal systems of the world. The first election was held in August 1996.

Upon their election, the members of the Tribunal will elect a President and a Vice-President whose term of office shall be three years. The Tribunal also appoints its Registrar and other officers of the Registry as may be necessary. The President of the Tribunal, as well as the Registrar, reside at the seat of the Tribunal.

²² S.K Kapoor, Arbitration and conciliation, universal law publication, 3rd edition, 2015, p. 234

²³ "Mediation" available at <https://en.wikipedia.org/wiki/Mediation> (visited on 27 May 2019)

11. Role of International Court of Justice in International dispute settlement

The framers of the Charter of the United Nations, like those of the Covenant of the League of Nations, have provided for an agency whose principal function is to apply legal techniques in the resolution of international controversies and problems. This agency is the International Court of Justice, which is described in the charter as one of “the principal organs” and as “the principal judicial organ” of the United Nations (Article 7 (1) and Article 92). With minor modifications, the organizations and powers of the International Court of Justice are similar to those of the Permanent Court of International Justice in the League of Nations system, and its Statute, which forms an integral part of the Charter, is expressly based on the Statute of the old Court. The reputation of the Permanent Court of International Justice, unlike that of the League of Nations, had not been damaged by the failure of collective security in the inter-war period. It had developed a tradition and prestige by which the new Court was to benefit. However, since many of the enemy and neutral states continued to be parties to the old Statute, it was found technically easier to accomplish the necessary changes by the adoption of a new statute and the creation of a new Court. The Court not only settles legal disputes, but also provides opinions on legal questions sent in by its international branches, the UN General Assembly and agencies. The Court has dealt with only a handful of cases, although many developing countries are becoming increasingly interested in using the Court. One such famous case the Court dealt with was Nicaragua v. United States in which the Court ruled that the United States was in violation of international law. At this point, the U.S withdrew from the courts compulsory jurisdiction and now accepts their rulings case-by-case.²⁴

12. Conclusion

The United Nations (UN) is an intergovernmental organization that was tasked to maintain international peace and security, develop friendly relations among nations, achieve international co-operation and be a center for harmonizing the actions of nations. The headquarters of the UN is in Manhattan, New York City, and is subject to extraterritoriality. Further main offices are situated in Geneva, Nairobi, Vienna and The Hague. The organization is financed by assessed and voluntary contributions from its member states. Its objectives include maintaining international peace and security, protecting human rights, delivering humanitarian aid, promoting sustainable development and upholding international law. The UN is the largest, most familiar, most internationally represented and most powerful intergovernmental organization in the world. In 24 October 1945, at the end of World War II, the organization was established with the aim of preventing future wars. At its founding, the UN had 51 member states; there are now 193. The UN is the successor of the ineffective League of Nations.

The International Court of Justice (ICJ) is the UN’s main judicial organ, located in The Hague, Netherlands. Established in 1945, the ICJ, or “World Court” assumed its functions in 1946. The Court settles legal disputes only

²⁴ Oliver J. Lissitzyn, *The International Court of Justice: its role in maintenance of international peace and security*, 1st edition, 1951, p.1.

between nations and not between individuals, in accordance with international law. The Court's role is to settle, in accordance with international law, legal disputes submitted to it by States and to give advisory opinions on legal questions referred to it by authorized United Nations organs and specialized agencies. The International Court of Justice sometimes called the World Court, is the principal judicial organ of the United Nations (UN). The ICJ's primary functions are to settle international legal disputes submitted by states (contentious cases) and give advisory opinions on legal issues referred to it by the UN (advisory proceedings). Through its opinions and rulings, it serves as a source of international law.

13. Acknowledgement

First and foremost, I would like to thank Almighty Allah for giving me the strength, knowledge, ability and opportunity to undertake this research study and to complete it successfully, without his blessing, this achievement would not have been possible.

I am so grateful to the Faculty of law at the University of AP Goyal Shimla for making it possible for me to study here. I give deep thanks to the Dr.R.K.Singh, Head of the department, Professors and lecturers. My special and heartily thanks to Dr. Ramesh "Verma" Assistant professor, school of legal study and research, Shimla University, who encouraged and directed me to do this research. His challenges brought this work towards a completion. I am extremely grateful for what he has offered me. I also thank my family who encouraged me and prayed for me throughout the time of my research and from the beginning to the end of this endeavor support me during ups and down.

I would like to express my deepest appreciation to my honest spouse the most precious person in my life for her confidence in me and for the support, Love and understanding that she has provided me throughout my life.

I would like to thank all those good human beings, whom I have come across in this path of my journey, whose lives have inspired me and from whom I've learnt to live the life.

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