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The Role of the United Nations in Pacific Settlement of International Disputes: An Overview

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1. Introduction

The United Nations Organisation (UN) was created in 1945 as the successor to the League of Nations and has taken over the bulk of the responsibility for settlement of international disputes. The UN, which is dedicated to the cause of maintenance of international peace and security and settlement of international disputes by peaceful means, has a number of organs. One of the fundamental objects of the United Nations is the peaceful settlement of the international disputes and avoidance of war.[1] For this purpose, the Charter of the United Nations offers vast possibilities for the United Nations and its organs to play an important role in the pacific settlement of disputes. Under the Charter, each of three principal organs -- the Security Council, the General Assembly, and the International Court of Justice -- has responsibilities for amicable settlement of dispute. The Secretary-General's substantial role is also clearly set out. The Security Council, with primary responsibility for the maintenance of international peace

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[1] Article 2, The Charter of the United Nations Organisation. The United Nations Charter is the treaty which forms and establishes the international organization called the United Nations. It was signed at the United Nations Conference on International Organization in San Francisco on June 26, 1945 by 50 original member countries. It entered into force on October 24, 1945, after being ratified by the five founding members—the Republic of China, France, the Soviet Union, the United Kingdom, and the United States—and a majority of the other signatories. The number of States Parties to the Charter is 192.

and security, enjoys a central position. The possibilities, provided for in Chapter VI of the Charter, are complemented by the competences given to the General Assembly in Articles 10 to 12 and 14 and to the Secretary-General in Article 99 of the Charter. Article 33(2) of the Charter authorises the Security Council to call upon the disputing States to settle their disputes by amicable procedures as given in Article 33(1). Preamble to the Charter and Article 2 Clause 3 provide that nations should settle their disputes by peaceful means. The United Nations was established to save the succeeding generations from the scourge of war. Therefore, nations must avoid war and resort to peaceful procedure for settlement of their disputes. The United Nations is instrumental in the stopping of hostilities in a number of situations and it has a variety of institutionalised and informal methods through which states may settle their international disputes by peaceful means.

The provisions set out in the UN Charter are to a large degree based upon the terms of the Covenant of the League of Nations as amended in the light of experience. Accordingly, in order to be able better to understand the background of the UN system vis-à-vis dispute resolution a brief summary of the procedures provided for within the League for solving disputes is necessary.

2. Pacific Settlement of International Disputes and the League of Nations

The Covenant of the League of Nations declared that any dispute likely to lead to a conflict between members was to be dealt with in one of three ways: by arbitration, by judicial settlement or by inquiry by the Council of the League.[2] The Covenant also noted that the Council was to try to effect a settlement of the dispute in question, but if that failed, it was to publish a report containing the facts of the case and 'the recommendations which are deemed just

[2] Article 12, The Covenant of the League of Nations, signed at Versailles on June 28, 1919.

and proper in regard thereto'.[3] This report was not, however, binding upon the parties, but if it was a unanimous one the League members were not to go to war 'with any party to the dispute which complies with the recommendations of the report'. If the report was merely a majority one, League members reserved to themselves 'the right to take such action as they shall consider necessary for the maintenance of right and justice'. In other words, in the latter case the Covenant did not absolutely prohibit the resort to war by members. Where a member resorted to war in disregard of the Covenant, then the various sanctions prescribed in Article 16 might apply, although whether the circumstances in which sanctions might be enforced had actually arisen was a point to be decided by the individual members and not by the League itself. Sanctions were in fact used against Italy in 1935-6.[4]

The General Act for the Pacific Settlement of International Disputes adopted by the League of Nations Assembly in 1928 was a type of instrument in which a maximum of flexibility and freedom of choice was sought to be achieved. It provided separate procedures, a procedure of conciliation (before Conciliation Commissions) for all disputes,[5] a procedure of judicial settlement or arbitration for disputes of a legal character,[6] and a procedure of arbitration for other disputes.[7] States could accede to the General Act by accepting all or some of the procedures and were also allowed to make certain defined reservations (for example, as to prior disputes, as to questions within the domestic jurisdiction, etc). The General Act was acceded to by 23 states, only two of

[3] Article 15, ibid.

[4] G. Scott, *The Rise and Fall of the League of Nations*, London, (1973), and Strategy of World Order, Chapter 15.

[5] Chapter I, The General Act for the Pacific Settlement of International Disputes adopted by the League of Nations Assembly in 1928.

[6] Chapter II, ibid.

[7] Chapter III, ibid.

whom acceded to part of the instrument, but unfortunately the accessions to the General Act as a whole were made subject to material reservations. As a result, the practical influence of the instrument was negligible. A Revised General Act was adopted by the United Nations General Assembly on 28 April 1949, but it has not been acceded to by as many states as expected.[8]

3. Pacific Settlement of International Disputes and the United Nations System

As successor to the League of Nations, the United Nations Organisation has taken over the responsibility for adjusting international disputes. One of the fundamental objects of the Organisation is the peaceful settlement of differences between states, and by Article 2 of the United Nations Charter, Members of the Organisation have undertaken to settle their disputes by peaceful means and to refrain' from threats of war or the use of force.[9]

The UN system is founded in constitutional terms upon a relatively clear theoretical distinction between the functions of the principal organs of the organisation. However, due to political conditions in the international order, the system failed to operate as outlined in the Charter and adjustments had to be made as opportunities presented themselves. The Security Council was intended to function as the executive of the UN, with the General Assembly as the parliamentary forum.[10] In this connection, important responsibilities devolve on the General Assembly and on the Security Council, corresponding to which wide powers are

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[8] J. G. Starke QC, *Introduction to International Law*, New Delhi: Aditya Books Private Limited, 10th Edition, (1994) p. 518.

[9] Ibid, p. 517.

[10] Malcolm N. Shaw, *International Law*, Cambridge University Press, 4th Edition, (1998) pp. 839-40.

entrusted to both bodies.[11] Both organs could contribute to the peaceful settlement of disputes through relatively traditional mechanisms of discussion, good offices and mediation. Only the Security Council could adopt binding decisions and that through the means of Chapter VII, while acting to restore international peace and security. But the pattern of development has proved rather less conducive to clear categorisation. An influential attempt to detail the methods and mechanisms available to the UN in seeking to resolve disputes was made by the UN Secretary-General in the immediate aftermath of the demise of the Soviet Union and the ending of the Cold War.[12]

In An Agenda for Peace,[13] the Secretary-General, while emphasising that respect for the fundamental sovereignty and integrity of states constituted the foundation stone of the organisation,[14] noted the rapid changes affecting both states individually and the international community as a whole and emphasised the role of the UN in securing peace. The Report sought to categorise the types of actions that the organisation, was undertaking or could undertake. Preventive Diplomacy was action to prevent disputes from arising between states, to prevent existing disputes from escalating into conflicts and to limit the spread of the latter when they occur. This included efforts such as fact-finding, good offices and goodwill missions.[15]

3.1. The Role of the UN Security Council in Pacific Settlement of International Disputes

The primary objective of the United Nations as enumerated in the

[11] J. G. Starke, *op. cit*., p. 517.

[12] Malcolm N. Shaw, *op. cit*., p. 840.

[13] G. Scott, *op. cit*., Chapter 15. This was welcomed by the General Assembly in resolution 47/120. See also the Report of the Secretary-General on the Implementation of the Recommendations in the 1992 Report, N47/965.

[14] G. Scott, *op. cit*., p. 9.

[15] G. Scott, *op. cit*., p.13 et seq.

Charter is the maintenance of international peace and security[16] and disputes likely to endanger this are required under Article 33 to be solved 'by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means'. Indeed, the Charter declares as one of its purposes in the Article 1, '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'. By the Charter, the members of the UN conferred on the Security Council primary responsibility for the maintenance of international peace and security,[17] and agreed to accept and carry out the decisions of the Security Council.[18] The International Court of Justice in the Namibia case[19] drew attention to the fact that the provision in Article 25 was not limited to enforcement actions under Chapter VII of the Charter but applied to 'decisions of the Security Council' adopted in accordance with the Charter. Accordingly a declaration of the Council taken under Article 24 in the exercise of its primary responsibility for the maintenance of international peace and security could constitute a decision under Article 25 so that member states 'would be expected to act in consequence of the declaration made on their behalf.' Whether a particular resolution adopted under Article 24 actually constituted a decision binding all member states (and outside the collective security framework of Chapter VII) was a matter for analysis in each particular case, 'having regard to the terms of the resolution to be interpreted, the discussions leading to it, the Charter provisions invoked and, in general, all circumstances that might assist in determining the legal

[16] Article 1, The Charter of the United Nations.
[17] Article 24, ibid.
[18] Article 25, ibid.
[19] ICJ Reports, 1971, pp. 16, 52-3; 49 ILR, pp. 1, 42-3.

consequences of the resolution of the Security Council'.[20]
The more extensive powers have been conferred by the Charter on the Security Council in order that it should execute swiftly and decisively the policy of the United Nations. The Council acts in two kinds of disputes:

i. disputes which may endanger international peace and security;
ii. cases of threats to the peace, or breaches of peace, or acts of aggression.

In the former case, the Council, when necessary, may call on the parties to settle their disputes by the methods considered above, namely, arbitration, judicial settlement, negotiation, inquiry, mediation, and conciliation. Also the Council may at any stage recommend appropriate procedures or methods of adjustment for settling such disputes. In the latter case, the Council is empowered to make recommendations or decide what measures are to be taken to maintain or restore international peace and security, and it may call on the parties concerned to comply with certain provisional measures. There is no restriction or qualification on the recommendations which the Council may make, or on the measures, final or provisional, which it may decide are necessary. It may propose a basis of settlement, appoint a commission of inquiry, authorise a reference to the International Court of Justice, and so on.[21] In these cases there is no power to make binding decisions with regard to member states. It may only make recommendations.[22]
In making such recommendations, which are not binding, it must take into consideration the general principle that legal disputes

[20] ICJ Reports, 1971, pp. 16, 53; 49 ILR, p. 43.
[21] J. G. Starke, *op. cit*., p. 517.
[22] Malcolm N. Shaw, *op. cit.*, p. 842.

should be referred by the parties to the International Court of Justice. This process was involved when the Security Council recommended that the UK and Albania should take their case regarding the Corfu Channel incident to the International Court.[23] Nevertheless, this example proved to be exceptional.[24] Where the parties to a dispute can not resolve it by the various methods under Article 33, they should refer it to the Security Council under Article 37. The Council, where it is convinced that the continuance of the dispute is likely to endanger international peace and security, may recommend not only procedures and adjustment methods, but also appropriate terms of settlement.

Once the Council has determined the existence of a threat to, or a breach of the peace or act of aggression, it may make decisions which are binding upon member states of the UN under Chapter VII, but until that point it can under Chapter VI issue recommendations only. Under Article 35(1) any UN member state may bring a dispute or a situation which might lead to international friction or give rise to a dispute before the Council. A non-member state may also bring to the attention of the Council any dispute under Article 35(2) provided it is a party to the dispute in question and 'accepts in advance, for the purposes of the dispute, the obligations of pacific settlement provided in the present Charter'. It is also possible for third parties to bring disputes to the attention of the Council. The General Assembly may make recommendations to the Council regarding any questions or issues within the scope of the Charter or relating to the maintenance of international peace, so long as the Council itself is not already exercising its functions with regard to the same question. The Assembly has the power,

[23] Security Council resolution 22 (1947). See the Security Council Official Record, 2nd year, 127th meeting, 9 April 1947, p. 727.

[24] See Security Council resolution 395 (1976) calling for negotiations between Turkey and Greece over the Aegean Sea continental shelf dispute and inviting the parties to refer question to the International Court.

under Article 11, to call the attention of the Council to situations likely to endanger international peace and security. Similarly, the Secretary-General of the UN may, under Article 99, bring to the Council's attention any matter which in his opinion may threaten the preservation of international peace and security.[25]

The Security Council, therefore, has been given wide powers in respect of pacific settlement of disputes. It may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security.[26] The Security Council may, at any stage of a dispute of the nature referred above or of a situation of the like nature, recommend appropriate procedures or methods of adjustment.[27] The legal disputes should as a general rule be referred to the International Court of Justice.[28] It is very rarely that the Security Council has utilized this power. It is also provided that if the parties fail to settle their dispute by the means indicated in the said Article they shall refer it to the Security Council. If the Security Council deems that the continuance of the dispute is in fact likely to endanger the maintenance of international peace and security, it shall decide whether to take action under Article 36 or to recommend appropriate terms of settlement.[29] Lastly, if all the parties to any dispute so request, it may make recommendations to the parties with a view to a specific settlement of the dispute.[30]

As remarked by Bowett, "the Security Council was never intended as an organ appropriate for settlement of inter-State disputes

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[25] Malcolm N. Shaw, *op. cit.*, p. 842-843.
[26] Article 34, the UN Charter.
[27] Article 36, paragraph 1, ibid.
[28] Article 36, paragraph 3, ibid.
[29] Article 37, ibid.
[30] Article 38, ibid.

generally. Its 'jurisdiction' is limited under Chapter VI of the Charter to disputes 'the continuance of which is likely to endanger the maintenance of international peace and security'. The exception to this where both parties to a dispute request the Council to make recommendations (Article 38). Moreover, even in dispute of this character, the procedures afforded by, the Council under Chapter, IV are supplementary to, and not exclusive of traditional, procedures to which the parties must first of all refer their disputes… Recourse to the Security Council should therefore be regarded as a recourse to a secondary means of settlement, when the primary, traditional means have failed."[31] Further, "The jurisdiction of the Security Council is also limited in that, not only must the dispute be one the continuance of which is likely to endanger the maintenance of international peace and security, it must not be dispute involving matters essentially within the domestic jurisdiction of any State'. The limitation of the famous 'domestic jurisdiction' clause of Article 2 (7)—is a limitation common to all UN Organs. It represents the most frequent ground for challenge to the jurisdiction of these organs…. Two further limitations on the competence of the Council exist. The one is to be found in Article 107 which has affected the Security Council only in the Berlin case in 1948 when the Soviet Union denied competence on this ground and voted any resolution—this is a limitation of limited effect and one which becomes increasingly anachronistic. The other is to be found in Chapter VIII of Charter and involves the question whether Article 52 gives a form of 'priority' of competence to regional arrangements over local disputes."[32]

In practice, the Security Council has applied all the diplomatic techniques available in various international disputes. This is in

[31] D. W. Bowett. *'The United Nations and Peaceful Settlement', in International Disputes—The Legal Aspects* (1972), p. 179 at pp. 179-180.

[32] D. W. Bowett, *op. cit*., p. 179 at pp. 180-181.

addition to open debates and the behind-the-scenes discussions and lobbying that take place. On numerous occasions it has called upon the parties to a dispute to negotiate a settlement and has requested that it be kept informed. The Council offered its good offices in the late 1940s with regard to the Dutch-Indonesian dispute[33] and has had recourse to mediation attempts in many other conflicts, for example with regard to the Kashmir[34] and Cyprus[35] questions. However, the cases where the Council has recommended procedures or methods of adjustment under Article 36 have been comparatively rare. Only in the Corfu Channel and Aegean Sea disputes did the Council recommend the parties to turn to the International Court.

Probably the most famous Security Council resolution recommending a set of principles to be taken into account in resolving a particular dispute is resolution 242 (1967) dealing with the Middle East. This resolution pointed to two basic principles to be applied in establishing a just and lasting peace in the Middle East: first, Israeli withdrawal 'from territories occupied in the 1967 war' (i.e. the Six Day War) and secondly the termination of all claims of belligerency and acknowledgment of the right of every state in the area to live in peace within secure and recognised frontiers. Various other points were referred to in resolution 242, including the need to guarantee freedom of navigation through international waterways in the area, achieve a just settlement of the refugee problem and reinforce the territorial inviolability of every state in the area through measures such as the use of demilitarised zones. As well as listing these factors, deemed important in any Middle East settlement by the Security Council, the Secretary-General of the UN was asked to designate a special representative

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[33] E. Luard, *A History of the United Nations*, London, (1982) Vol. I, Chapter 9.

[34] Ibid, Chapter 14.

[35] B. S. Murty, *'Settlement of Dispute' in Manual of Public International Law* (ed. M. Sorensen), London, (1968) p. 721.

to mediate in the dispute and keep the Council informed on the progress of his efforts. Thus, in this instance the Security Council proposed that a dispute be tackled by a combination of prescribed proposals reinforced by mediation.[36]

Therefore, under Chapter VI of the Charter (Pacific Settlement of Disputes), the Security Council has various powers and responsibilities in respect of the settlement of disputes.

> First, if all other means have failed, the parties to a dispute which is likely to endanger international peace and security are under an obligation to refer it to the Security Council.
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> Secondly, any member or non-member of the Organisation may, without the parties' consent, refer any dispute to the Council to see if it is likely to endanger the maintenance of international peace and security.

In both cases, the Council may recommend appropriate procedures or methods of settlement, as well as the actual terms of a compromise. In practice, the procedural aspects of these provisions are quite readily invoked, especially the reference power enjoyed by uninvolved states.[37]

Generally, however, the Council is reluctant to make a concrete recommendation without the participation of all interested parties, as was the case with the India/Pakistan conflict in 1971. It is also clear that the Security Council cannot actually impose a settlement on the parties, save only that its residual power to deal with threats to the peace and acts of aggression remains intact (e.g. the *Lockerbie Case*[38]*).* Thus, as a last resort, the Security Council may

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[36] Resolution 242 (1967) was reaffirmed in Security Council resolution 338 (1973).

[37] Martin Dixon MA, *Text Book on International Law*, London: Blackstone Press Limited, 2nd Edition, (Reprinted in1995) p. 225.

[38] ICJ Reports, 1992, pp. 3, 15; 95 ILR, pp. 478, 498.

impose a settlement in Bosnia if it deems the situation to amount to a breach of Article 39 (threat to the peace etc.). Again, however, the Security Council is primarily concerned with political, not legal matters and its task is to keep the peace rather than to judge the rights and wrongs of a dispute. Indeed, according to Article 36(3) of the Charter, the Council must bear in mind that 'legal disputes should as a general rule be referred by the parties to the International Court of Justice', although it has no power to force states to submit to this jurisdiction. In this respect, note must be taken of the decision in the *Lockerbie Case* where one of the grounds upon which the ICJ decided not to grant 'interim measures of protection' to the plaintiff state (on which see below) was that the Security Council was taking concrete measures in respect of the dispute, having determined that the matter fell within Article 39. Not only does this illustrate that most disputes do have a legal and a political dimension, it also shows that the Security Council can assume paramount responsibility for dispute settlement in such cases as it deems appropriate. This has not been universally welcomed, especially as some states regard the Council as nothing more than the strong arm of the five permanent members. Recently, however, in the *Prevention of Genocide Case*,[39] the court has indeed granted interim measures of protection even though the Council was actively considering all aspects of the dispute between the two states. Perhaps the difference is the lack of concrete Council action in Bosnia designed to deal specifically with genocide (the matter before the Court). Clearly, however, this issue is far from settled.[40]

[39] Bosnia-Herzegovina v Yugoslavia (Serbia and Montenegro) (1993) 32 ILM 888.

[40] Martin Dixon MA, *op. cit.*, p. 226.

3.2. Pacific Settlement of International Disputes and the UN General Assembly

The General Assembly has wide-ranging authority to make recommendations for the settlement of disputes. Although the primary responsibility with regard to the maintenance of international peace and security lies with the Security Council, this should not be taken as meaning that the General Assembly, comprising all member states of the UN organisation, is denied a role altogether. It may discuss any question or matter within the scope of the Charter, including the maintenance of international peace and security, and may make recommendations to the members of the UN or the Security Council, provided the Council is not itself dealing with the same matter.[41] Similarly, subject to the primacy of the Security Council in matters comprising a threat to or breach of the peace, the General Assembly 'may recommend measures for the peaceful adjustment of any situation, regardless of origin, which it deems likely to impair the general welfare or friendly welfare among nations'.[42] However, as with the great majority of Assembly resolutions, these recommendations are not legally binding and the Assembly has no power to make authoritative and binding determinations of fact. It, therefore, can not impose a settlement on the parties, although it may often provide the impetus that is needed for a negotiated solution. In practice, the effect of Assembly discussions and resolutions is variable. Any formal determination or recommendation must necessarily carry some weight, but it is also true that the Assembly is a political body that makes decisions according to bloc allegiances rather than impartial judgment.[43]

[41] Articles 10, 11 and 12, the UN Charter.
[42] Article 14, ibid.
[43] Martin Dixon MA, *op. cit.*, p. 225.

The General Assembly has recommended the partition of Palestine into Jewish and Arab states and an international area around Jerusalem. Since the territory was a mandated territory, there is room for argument that this resolution more that recommendatory only.[44] The Assembly has also contributed significantly to the solution of the problem of Namibia and has buttressed the Secretary-General in his efforts to bring peace to Iran and Iraq. Yet, it has had little success with disputes in the Middle East and Cyprus. Much depends, as always, on the will of the parties to a dispute, rather than on the will of the Assembly. Indeed, the political nature of the Assembly means that questions of international law are not always at the front of its concern and it would seem more suited to the solution of political and economic disputes, especially those in which the Assembly itself has an interest. Thus, the Assembly will be vital in matters concerning statehood and membership, as it was with China in 1974 and the states of the former Yugoslavia in 1992. These are issues having considerable legal significance in respect of which the Assembly has particular expertise.[45]

In practice, the resolutions and declarations of the General Assembly (which are not binding) have covered a very wide field, from colonial disputes to alleged violations of human rights and the need for justice in international economic affairs. The Assembly has also asserted its right to deal with a threat to or breach of the peace or act of aggression if the Security Council fails to act because of the exercise of the veto by a permanent member.[46]

As regards the competence of the General Assembly D. W. Bowett aptly writes: "The Charter does not contain detailed provisions on the powers of the Assembly with regard to pacific settlement of

[44] The General Assembly resolution 181(11) of 1947.
[45] Martin Dixon MA, *op. cit.*, p. 225.
[46] Resolution 377(V), the 'Uniting for Peace' resolution.

disputes comparable to Chapter VI. However, such powers are implicit in the very general terms of Articles 10—14 and even explicit in Articles 12 (1) and 35 (2). By and large the limitations on competence which apply to Security Council apply equally to the General Assembly."[47] It has rightly been pointed out that, "the United Nations record both in resolving international disputes by agreement and helping them become quiescent is by no means impressive though it has played significant role at least in 'defusing' a tense situation."[48]

Despite the above mentioned provisions in the Charter, the General Assembly on 24 October, 1970, adopted the *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States* in accordance with the Charter.[49] The Declaration provides that every State has the duty to refrain from organising, instigating, assisting or participating in acts of civil strife or terrorist acts in another State acquiescing in organized activities within its territory directed towards the commission of such acts, when the acts referred to in the present paragraph involve a threat or use of force. It emphasises the obligation of States to refrain from the use of threat or use of force and their duty to settle their disputes through negotiations, inquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means of their choice. The Declaration added that the principles of the Charter embodied in this Declaration "constitute basic principles of international law" and appealed to all the States 'to be guided by these principles in their international conduct and to develop their mutual relations on the basis of the strict

[47] D. W. Bowett. *op. cit*., p. 179 at p. 183.

[48] S. Dayal, *Peaceful Settlement of International Disputes*, Punjab University Law Review, (1974-1975) at p. 122.

[49] General Assembly Resolution, 2625 (XXV) of 24 October, 1970, General Assembly Official Records, Twenty-fifth Session, Suppl. No, 28 (1971), pp. 121-124.

observance of these principles." As remarked by an eminent author, "This is but one important example of the legislative activity of the General Assembly leading to the creation of new international law applicable to all States…This is not treaty making but a new method of creating customary international law.'[50]

The role of the General Assembly increased due to two factors. First, the existence of the veto in the Security Council rendered that organ powerless in many important disputes since the permanent members (the USA, the UK, Russia, France and China) rarely agreed with respect to any particular conflict, and secondly the vast increase in the membership of the UN, which has had the effect of radicalising the Assembly and its deliberations.[51]

3.3. The Role of the UN Secretary-General

Just as the impotence of the Security Council stimulated a growing awareness of the potentialities of the General Assembly, it similarly underlined the role to be played by the United Nations Secretary-General. By Article 99 of the Charter, he is entitled to bring to the attention of the Security Council any matter which he thinks may threaten the maintenance of international peace and security and this power is in addition to his function as the chief administrative officer of the United Nations organisation under Article 79.[52] In effect, the Secretary-General has considerable discretion and much has depended upon the views and outlook of

[50] Louis B. John, 'The Development of the Charter of the U.N.: The Present State', in the Present State of International Law and other Essays (1973), p. 39 at p. 52.

[51] See e.g. N. D. White, *Keeping the Peace*, Manchester, (1993) part 2 and M. J. Peterson, The General Assembly in World Politics, Boston, 1986.

[52] Under Article 98, the Secretary-General also performs such other functions as are entrusted to him by the General Assembly, Security Council, Economic and Social Council and the Trusteeship Council.

the person filling the post at any given time, as well as the general political situation.[53]

Article 99 of the Charter makes no mention of how the Secretary-General finds out information which in his opinion may threaten international peace and security. This implies that the Secretary-General has a right and responsibility to gather information to enable him to make intelligent and informed opinion before it is reported to the Security Council. Dag Hammarskjold used Article 99 to post his personal UN representatives in hotspots in the globe to inform him about the situation and this was for the first time known as 'the UN presence' at a tension-filled area during his term. A UN presence is now an important factor in preventing many disputes around the world.[54]

Initial consideration of most cases in the United Nations is undertaken by either the Security Council or the General Assembly. Although there has been no paucity of debate on crises and conflicts, both these bodies, recognizing their lack of diplomatic agreement and their unwieldiness, have delegated responsibilities to specialized bodies and mediating tasks to the Secretary-General rather than establishing, as in the early years of the organization, their own conciliating committees or commissions. In a study based on examination of 40 cases before the United Nations in the period 1946-1965, Zacher identified a decline in the use of formal mediating committees and commissions and an increasing reliance upon Secretaries-General Hammarskjold and U Thant as agents to achieve implementation of Security Council and General Assembly resolutions aimed at settlement of conflicts.[55]

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[53] Malcolm N. Shaw, *op. cit*., p. 845.

[54] Harun ur Rashid, *International Relations and Bangladesh*, Dhaka: The University Press Limited, (2004), p. 126.

[55] Mark W. Zacher, "The Secretary-General and the United Nations' Function of Peaceful Settlement," International Organization, 20 (1966), 724-49.

It should be noted as well that both Hammarskjold and U Thant attempted on their own initiative to help resolve conflicts and disputes. In addition to 16 cases where the consultative organs delegated mediating responsibilities to the Secretary-General, Zacher has identified 26 instances since 1954 where the Secretary-General .took mediatory actions on his own initiative—that is, without explicit instructions from the Security Council or General Assembly. Of the delegated and 'private' attempts (a total of 42), Hammarslgold and U Thant could claim at least partial success, in 21 instances—a ratio that compares favorably with probabilities of success achieved through bilateral negotiations, multilateral conferences, and adjudication.

The reason for the consultative organs' increasing reliance upon the Secretary-General is the diplomatic skills of the incumbents. Certainly Hammarskjold was a consummate master at quiet bargaining and earned for the office of Secretary-General great prestige. In Zacher's opinion, the successful record of the secretaries-general in their mediator roles has been an important factor in the willingness of governments to turn to this office in times of international crisis. Other factors are also important: impartiality, no publicized position in support or condemnation of parties to a conflict or crisis, and a variety of diplomatic and technical resources to carry out mediating tasks. Because the Secretary-General is not dependent upon any government and is responsible to all (a "custodian of the community" role), he would appear to have the best qualifications. Resources available to the Secretary-General include a permanent staff of international civil servants, research units, and an independent communications network between United Nations headquarters and field investigators, supervisory units, or mediators.[56]

The role of the Secretary-General has grown with the passage of

[56] K. J. Holsti, *International Politics: A Framework for Analysis*, New Delhi: Prentice-Hall of India Private Limited, 3rd Edition, (1981) pp. 491-493.

time and the office has now become the focus of multinational diplomacy to settle disputes among the states. The Secretary General, being an 'international watch person' of maintenance of international peace and security of the globe, has the prime responsibility to prevent conflicts among states and the success of the UN depends by its ability to prevent inter-state disputes. Hammarskjold's efforts eliminated danger of war between the US and China in the 50s, U Thant,s intervention prevented full scale war between the US and former the Soviet Union in 1962 on missile crisis in Cuba, the efforts of Perez de Cuellar scaled down the Falklands War in 1982 and Kofi Annan's diplomatic efforts averted a crisis between the US and Iraq in 1998 on inspection of sites in Iraq relating to weapons of mass destruction.[57]

The good offices role of the Secretary-General has rapidly expanded.[58] In exercising such a role, Secretaries-General have sought to act independently of the Security Council and General Assembly, in the former case, in so far as they have not been constrained by binding resolutions (as for example in the Kuwait situation of 1990-1). The assumption of good offices and mediation activity may arise either because of independent action by the Secretary-General as part of the exercise of his inherent powers[59] or as a consequence of a request made by the Security Council[60] or General Assembly.[61] In some cases, the Secretary-

[57] Harun ur Rashid, *op. cit*., p. 127.

[58] T. M. Franck, *Fairness in International Law of Ins*titutions, Oxford, 1995, Chapter 6; Perez de Cuellar, 'Role of the UN Secretary-General' in United Nations, Divided World, p. 125.

[59] See e.g. With regard to Abkhazia, T. M. Franck, *op. cit*., p. 207.

[60] See e.g. Security Council resolutions 242 (1967) regarding the Middle East; 367 (1975) regarding Cyprus; 384 (1975) regarding East Timor; 435 (1978) regarding Namibia and 713 (1991) regarding Yugoslavia.

[61] See e.g. with regard to Afghanistan, see General Assembly resolution ES-6/2, 1980, and The Geneva Accords published by the United Nations, 1988, DPL/935-40420. As to Cambodia, see T. M. Franck, *op. cit*., p. 184.

General has acted upon the invitation of the parties themselves[62] and on other occasions, the Secretary-General has acted in concert with the relevant regional organisation.[63]

The development of good offices and mediation activities first arose as a consequence of the severe restrictions imposed upon UN operations by the Cold War. The cessation of the Cold War led to greatly increased activity by the UN and as a consequence the work of the Secretary-General expanded as he sought to bring to fruition the wide range of initiatives undertaken by the organisation. With the experience of Somalia and Bosnia in mind particularly, the middle years of the 1990s decade have witnessed a precipitate decline in dramatic UN activism and this has led to a diminished role for the Secretary-General. The failure to match resources and will to the challenges posed has now led to a lower profile of the organisation than in the immediate post-1989 era.[64]

3.4. Pacific Settlement of International Disputes and the International Court of Justice

In pacific settlement of international disputes, the International Court of Justice (ICJ) occupies a prominent position. The ICJ is a principal judicial organ of the United Nations[65] and functions in

[62] See e.g. the General Peace Agreement of Rome between the Mozambique government and RENAMO rebels in 1992, which called upon the UN to monitor its implementation. The President of Mozambique called upon the Secretary-General to chair the key implementation commissions and assist in other ways including the despatch of monitors, see Report of the Secretary-General, S/24635, 1992, and T. M. Franck, *op. cit*., p. 188.

[63] See e.g. with the Secretary-General of the Organisation of American States concerning the Central American peace process from the mid-1980s, the Report of the UN Secretary-General, N42/127 -S/18688. 1987.

[64] See e.g. Murphy, *The United Nations and the Code of International Treaties*, 1982, Chapter 5, quoted in Malcolm N. Shaw, *op. cit*., pp. 845-6.

[65] Article 7, Paragraph 1& Article 92, the Charter of the United Nations and Article 1, the Statute of ICJ.

accordance with its Statute which forms an integral part of the Charter of the United Nations and is based on the Statute of the Permanent Court of International Justice.[66] This clarifies that International Court of Justice succeeds the Permanent Court of International Justice (PCIJ) which was established under the Covenant of the League of Nations.

The International Court of Justice can only adjudicate upon legal disputes between States. It cannot pass its judgment on political disputes. Oppenheim defines legal disputes as one regarding which contending parties "base their respective claims and contentions on grounds recognised by international law."[67]

3.4.1. Establishment of the International Court of Justice

Establishment of the International Court of Justice is a great experiment in pacific settlement of international disputes. The outbreak of World War II in September 1939 had serious consequences for the PCIJ, the predecessor of ICJ. After its last public sitting on 4 December 1939, the Permanent Court of International Justice did not in fact deal with any judicial business and no further elections of judges were held. It was inevitable that even under the stress of the war some thought should be given to the future of the Court, as well as to the creation of a new international political order.

In 1942, the United States Secretary of State and the Foreign Secretary of the United Kingdom declared themselves in favour of the establishment or re-establishment of an international court after the war, and the Inter-American Juridical Committee recommended the extension of the PCIJ's jurisdiction. Early in

[66] Article 92, the Charter of the United Nations and Article 1, the Statute of ICJ.

[67] R. C. Hingorani, *Modern International Law*, New Delhi: Oxford & IBH Publishing Co. Pvt. Ltd, 3rd Edition, (1993) p. 296.

1943, the United Kingdom Government took the initiative of inviting a number of experts to London to constitute an informal Inter-Allied Committee to examine the matter. This Committee, under the chairmanship of Sir William Malkin (United Kingdom), held 19 meetings, which were attended by jurists from 11 countries. In its report, which was published on 10 February 1944, it recommended —

i. that the Statute of any new international court should be based on that of the Permanent Court of International Justice;
ii. that advisory jurisdiction should be retained in the case of the new Court;
iii. that acceptance of the jurisdiction of the new Court should not be compulsory;
iv. that the Court should have no jurisdiction to deal with essentially political matters.[68]

Meanwhile, on 30 October 1943, following a conference between China, the USSR, the United Kingdom and the United States, a joint declaration was issued recognizing the necessity --

> 'of establishing at the earliest practicable date a general international organization, based on the principle of the sovereign equality of all peace-loving States, and open to membership by all such States, large and small, for the maintenance of international peace and security'.[69]

This declaration led to exchanges between the Four Powers at Dumbarton Oaks, resulting in the publication on 9 October 1944 of

[68] http://www.icj-cij.org/icjwww/igeneralinformation/ibbook/Bbookchapter1.HTM
[69] Ibid.

proposals for the establishment of a general international organization, to include an international court of justice. The next step was the convening of a meeting in Washington, in April 1945, of a committee of jurists representing 44 States. This Committee, under the chairmanship of G. H. Hackworth (United States), was entrusted with the preparation of a draft Statute for the future international court of justice, for submission to the San Francisco Conference, which during the months of April to June 1945 was to draw up the United Nations Charter. The draft Statute prepared by the Committee was based on the Statute of the PCIJ and was thus not a completely fresh text.[70]

The final decisions were taken at the San Francisco Conference, in which 50 States participated. The Conference decided against compulsory jurisdiction and in favour of the creation of an entirely new court, which would be a principal judicial organ of the United Nations with the Statute annexed to and forming part of the Charter.

The San Francisco Conference nevertheless showed some concern that all continuity with the past should not be broken, particularly as the Statute of the PCIJ had itself been drawn up on the basis of past experience, and it was felt better not to change something that had seemed to work well. The Charter, therefore, plainly stated that the Statute of the ICJ was based upon that of the PCIJ.[71] At the same time, the necessary steps were taken for a transfer of the jurisdiction of the PCIJ so far as was possible to the ICJ. In any event, the decision to create a new Court necessarily involved the dissolution of its predecessor. The PCIJ met for the last time in October 1945 when it was decided to take all appropriate measures

[70] Ibid.

[71] Article 92, the Charter of the United Nations; Article 1, The Statute of ICJ.

to ensure the transfer of its archives and effects to the new ICJ, which, like its predecessor, was to have its seat at the Peace Palace in The Hague. The judges of the PCIJ all resigned on 31st January, 1946 and the PCIJ was formally dissolved by a Resolution of the Assembly of the League of Nations on 18th April, 1946. The ICJ is the continuation of the PCIJ.[72] The election of the first Members of the ICJ took place on 5 February 1946, at the First Session of the United Nations General Assembly. The ICJ, in meeting for the first time, elected as its President Judge Guerrero, the last President of the PCIJ and appointed the members of its Registry (largely from among former officials of the PCIJ). The ICJ held an inaugural public sitting, on 18th April, 1946, the date of dissolution of PCIJ.[73] The basic difference between the PCIJ and ICJ is that while the Statute of the ICJ is an integral part of the U.N. Charter, this was not the case regarding the Statute of the PCIJ.[74]

International Court of Justice as a principal judicial organ of the United Nations also performs important functions in regard to the settlement of international disputes through peaceful means.[75] States should be fully aware of the role of the International Court of Justice. Their attention is drawn to the facilities offered by the International Court of Justice for the settlement of legal disputes especially since the revision of the Rules of the Court. States may entrust the solution of their differences to other tribunals by virtue of agreements already in existence or which may be concluded in the future. Further, states should bear in mind:

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[72] Richard K. Gardiner, *International Law*, Harlow, England: Pearson Education Limited, (2003), p. 487.
[73] R. C. Hingorani, *op. cit*., p. 425.
[74] Ibid.
[75] For a detailed, study of this see J. G. Starke, *op. cit*.; S. K. Kapoor, *op. cit*.; Malcolm N. Shaw, *op. cit*.; Martin Dixon MA, *op. cit*., Chapter on "The International Court of Justice".

a. that legal disputes should as a general rule be referred by the parties to the International Court of Justice, in accordance with the provisions of the statute of the court ;
b. That it is desirable that they:

i. consider the possibility of inserting in treaties, whenever appropriate, clauses providing for the submission to the International Court of Justice of disputes which may arise from the interpretation of application of such treaties;
ii. study the possibility of choosing in the free exercise of their sovereignty, to recognise as compulsory jurisdiction of the International Court of Justice in accordance with Article 36 of its statute,
iii. review the possibility of identifying cases in which use may be made of the International Court of Justice. Besides this, the organs of the U. N. and the specialized agencies should study the advisability of making use of the possibility of requesting advisory opinions on the International Court of Justice on legal questions arising within the scope of their activities provided that they are duly authorised to do so. Last but not the least, recourse to judicial settlement of legal dispute particularly referred to the International Court of Justice should not be considered as an unfriendly act between states.[76]

3.4.2. An Evaluation of Role of the International Court of Justice

The establishment of the ICJ has been a progressive step towards judicial settlement of international disputes for maintenance of

[76] Paragraph 5, Part II, the Manila Declaration on the Peaceful Settlement of International Disputes, 1882.

peace and security in the world community. However, the experience of six decades has not been very happy regarding the settlement of disputes by the Court. It has been noticed that like the composition of the Security Council, the Court is also dominated by the five big powers whose nationals have been members of the Court since its inception although China, France and the Russia have never subscribed to the optional clause. In 1956, there was a serious attempt to break the domination when the General Assembly elected the Japanese representative to the court but the Security Council thwarted the attempt. Eventually, the Assembly gave up. Eligibility of judges to seek re-election after the expiry of their term of nine years has the semblance of perpetuating given persons to continue as judges so long as they like. This is not a good practice. No judge should continue beyond one full term.[77]

From above discussion and analysis, it is clearly revealed that the International Court of Justice is often thought of as the primary means for the resolution of disputes between states. As we have seen, however, this is not so and only four or five cases a year are referred to the Court for judicial settlement. On the other hand, the Court does have great potential and its future depends ultimately on the desire of states to utilise it in full measure. The development of the Chamber procedure and the acceptance of jurisdiction by the former Soviet Union indicate that the Court has gained in stature. Indeed, with the exception of the little used Permanent Court of Arbitration, the International Court of Justice is the only universal and permanent judicial institution for the settlement of international disputes.[78] Despite several weaknesses and limitations, the ICJ has performed its functions with distinction and has made a significant contribution to the pacific settlement of international disputes which should not be overlooked.

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[77] R. C. Hingorani, *op. cit*., p. 438.

[78] Martin Dixon MA, *Text Book on International Law*, London: Blackstone Press Limited, 2nd Edition, (Reprinted in1995) p. 230.

3.5. The Role of Other Agencies of the United Nations in Pacific Settlement of International Disputes

A number of specialised agencies operating under the general aegis of the United Nations may also assist in the resolution of disputes between states. These agencies deal with a variety of matters of a specialised nature and they provide a forum for discussion and an impetus to settlement in much the same way as the General Assembly. Included in this category are the International Labour Organisation, the International Monetary Fund, the International Civil Aviation Authority and the rather more autonomous International Atomic Energy Agency.[79]

Reference may be made here to the Manila Declaration on the Peaceful Settlement of International Disputes which was drafted by the Special Committee on the Charter of the U. N. and on the strengthening of the Role of the organisation in its February, March 1982 session and approved by the General Assembly at its 1982 session. The Manila Declaration, in its preamble, reaffirmed the Declaration on Principles of International Law concerning friendly relations and co-operation among states in accordance with the Charter of the U.N. The Manila Declaration declared that states shall seek in good faith and in a spirit of co-operation an early and equitable settlement of their international disputes by any of the following means: negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice, including good offices. In seeking such a settlement, the parties shall agree on such peaceful means as may be appropriate to the circumstances and the nature of their dispute.[80] Further, neither the existence of the dispute nor the failure of a procedure of peaceful settlement of disputes shall permit the use of force or

[79] Martin Dixon MA, *op. cit.*, p. 226.

[80] Paragraph 5, Part I, the Manila Declaration on the Peaceful Settlement of International Disputes, 1982.

threat of force by any of the states parties to the dispute.[81]

The Special Committee on the Charter of the U.N. and on the Strengthening of the Role of the Organisation at its 1988 session (New York, 22 February – 11 March) a draft 'Declaration on the prevention and removal of disputes and situations which may threaten international peace and security and on the role of the United Nations in this field'.[82] Comprising of a preamble, a 25-paragraph operative part and conclusion, it makes following important recommendations—

i. The Security Council should sometimes hold meetings, including at a level of Ministers, or consultations to review international situation and search for effective ways of improving it.
ii. The Council should consider appointing the Secretary-General as rapporteur in a specified dispute.
iii. The Council should consider sending, at an early stage, fact-finding or good offices missions or establishing appropriate forms of United Nations presence including observers and peace-keeping operations, to prevent further deterioration of the dispute in the areas concerned.
iv. The Secretary-General should consider approaching the states concerned in order to prevent a dispute from becoming a threat to the maintenance of international peace and security. He should also make use of fact-finding missions where appropriate.[83]

It has been aptly pointed out, "Highly developed though the

[81] Paragraph 13, Part I, ibid.
[82] See U.N. Chronicle, Vol. XXV, No. 2 (June 1988), p. 63.
[83] Ibid.

structure and the role of international organisation have become, each individual State in virtue of its sovereignty remains for the most part legally free to accept or reject in relation to itself any solution proposed for changing an existing situation."[84] The apparent failure of States in many instances to have recourse to appropriate means of settlement cannot reasonably be attributed to the inadequacy of the several procedures available, although it cannot be denied that there are some weaknesses in the existing structure of International Organisation in regard to the provision made for the settlement of disputes.[85]

4. The United Nations Peace-keeping and Observer Missions

The UN General Assembly has wide powers under Articles 10 and 11 of the Charter to discuss and make recommendations on matters within the scope of the UN Charter, including recommendations concerning the maintenance of international peace and security.[86] Under Article 14, the Assembly may recommend measures for the peaceful adjustment of any situation regardless of origin which it deems likely to impair the general welfare or friendly relations among nations. It can, however, take no binding decision in such matters. The Assembly may also establish such subsidiary organs as it deems necessary for the performance of its functions[87] and entrust functions to the Secretary-General.[88] Peace-keeping and observer missions operate upon a continuum of UN activities and it is helpful to consider these operations together.

The term "Peace Keeping" usually refers to use of multi-national

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[84] The David Davies Memorial Institute of International Studies, *International Disputes: The Legal Aspects*, London (1972), p. 4.

[85] Ibid, p. 37.

[86] However under Article 11 (2) of the UN Charter, where action is necessary on any question relating to the maintenance of international peace and security, the matter must be referred to the Security Council.

[87] Article 22, the UN Charter.

[88] Article 98, ibid.

force of soldiers, police personnel and civilians by the UN to maintain or restore peace in a conflict zone. The UN has able to carve out a role in peace-keeping missions in many trouble-spots of the world.[89] According to the UN, the term "Peace Keeping" is defined as:

> 'A peace-keeping operation has come to be defined as an operation involving military personnel, but without enforcement powers, undertaken by the UN to help maintain or restore international peace and security in areas of conflict.'[90]

The US peace-keeping personnel is commonly known as "Blue Helmets" because they wear blue caps/helmets with the UN insignia imprint on it.[91]

It is interesting to note that peace-keeping operation is not specifically mentioned in the UN Charter. However, peace-keeping operation appears to fall between Chapter VI and Chapter VII of the UN Charter.[92]

The UN peace-keeping mission is intended to facilitate the implementation of a cease-fire or peace-agreement and to support political efforts to arrive at a long-term solution.

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[89] Harun ur Rashid, *op. cit*., p. 132.

[90] This has been defined by the Secretary-General as 'the deployment of a United Nations presence in the field, hitherto with the consent of all the parties concerned, normally involving United Nations military and/or police personnel and frequently civilians as well', An Agenda for Peace, p. 11. Another definition was put forward by a former UN Legal Counsel, who noted that peace-keeping operations were 'actions involving the use of military personnel in international conflict situations on the basis of the consent of all parties concerned and without resorting to armed force except in cases of self-defence', E. Suy, "Peace-Keeping Operations' in A Handbook on International Organisations (ed. R. J. Dupuy), Dordrecht, 1988, p. 379.

[91] Harun ur Rashid, *op. cit*., p. 132.

[92] Chapter VI consists of Article 33 to 38 (Pacific Settlement of Disputes) and Chapter VII consists of Article 39 to 51(Action with respect to threats to the peace, breaches of the peace and acts of aggression) of the UN Charter.

The origin of peace-keeping by the UN may be traced to truce supervision activities. The first such activity occurred in Greece, where the UN Special Committee on the Balkans (UNSCOB) was created in 1947.[93] The UN Truce Supervision Organisation (UNTSO) was established in 1948 to supervise the truce in the 1948 Middle East War.[94] Peace-keeping as such arose as a direct consequence of the problems facing the Security Council during the Cold War. The first peace-keeping activity took place in 1956 as a result of the Suez crisis. The UN Emergency' Force (UNEF) was established by the General Assembly[95] to position itself between the hostile forces and to supervise the withdrawal of British and French forces from the Suez Canal and Israeli forces from the Sinai peninsula. It was then deployed along the armistice line until May 1967.

The second crucial peace-keeping operation took place in the Congo crisis of 1960, which erupted soon after Belgium granted independence to the colony, and resulted in mutinies, insurrections and much confused fighting. The Security Council adopted a resolution permitting the Secretary-General to provide military

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[93] See General Assembly resolution 109. The operation lasted until 1954. See also K. Birgisson, 'United Nations Special Committee on the Balkans' in The Evolution of UN Peacekeeping, Chapter 5.

[94] See Security Council resolution 50 (1948) and M. Ghali, 'The United Nations Truce Supervision Organisation' in The Evolution of UN Peacekeeping, Chapter 6. It has expanded to supervise the armistice agreements of 1949 and cease-fire arrangements of June 1967. See also the UN Military Observer Group in India and Pakistan (UNMOGIP) established by Security Council resolution 47 (1948) to supervise the cease-fire in Jammu and Kashmir, K. Birgisson, 'United Nations Military Observer Group in India and Pakistan' in The Evolution of UN Peacekeeping, Chapter 16.

[95] See General Assembly resolutions 997, 998 and 1000(ES-l). The Security Council was unable to act as two permanent members (the UK and France) were directly involved in the crisis and had vetoed draft resolutions. See e.g. M. Ghali, 'United Nations Emergency Force l' in The Evolution of UN Peacekeeping, Chapter 7.

assistance to the Congo government.[96] This was interpreted by Dr Hammarskjold, the Secretary-General, as a mandate to set up a peace-keeping force 'on an analogy with UNEF. The exercise of the veto in the Council left the Secretary-General with little guidance as to how to proceed in the situation. Accordingly, he performed many of the tasks that had in 1956 been undertaken by the General Assembly with respect to the Middle East.[97]

The development of the Congo crisis from mutiny to civil war faced the United Nations force (known as ONUC from the French initials) with many difficult decisions and these had in the main to be taken by the Secretary-General. The role that could be played by the Secretary-General was emphasised in the succeeding crises in Cyprus (1964)[98] and the Middle East (1973)[99] and in the consequent establishment of United Nations peace-keeping forces for these areas under the general guidance of the Secretary-General.

The creation of traditional peace-keeping forces, whether in the Middle East in 1967 and again in 1973, in the Congo in 1960 or in Cyprus in 1964, was important in that such forces tended to stabilise particular situations for a certain time. Such United

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[96] By resolution S/4405, 22 July 1960, the Council requested all states to refrain from action which might impede the restoration of law and order or undermine the territorial integrity and political independence of the Congo. By resolution S/4426, 9 August 1960, the Council confirmed the authority given to the Secretary-General by earlier resolutions and called on member states to carry out the decisions of the Security Council. See e.g. L. Miller, 'Legal Aspects of UN Action in the Congo', 55 AJIL, 1961, p. 1.

[97] G. Abi-Saab, *The United Nations Operation in the Congo 1960-1964*, Oxford, (1978) pp. 15 et seq.

[98] See Security Council resolution 186 (1964). See Murphy, *op. cit*., pp. 46 et seq.

[99] The Security Council established the UN Emergency Force (UNEF II) to monitor the Israel-Egypt disengagement process in 1973, see resolution 340 (1973) and a Disengagement Observer Force with respect to the Israel-Syria disengagement process, see resolution 350 (1974).

Nations forces are not intended to take enforcement action, but to act as an influence for calm by physically separating warring factions. They are dependent upon the consent of the state upon whose territory they are stationed and can in no way prevent a determined aggression.

The legal framework for the actual conduct of peace-keeping and observer activities centres upon their status as UN organs, so that they are subject to the law governing the UN organisations as a whole. This would cover, for example, questions of privileges and immunities of UN personnel;[100] and responsibility. The UN would be liable for breaches of law committed by members of peace-keeping and observer forces and groups and would, on the other hand, be able to claim compensation for damage and injuries caused to its personnel. Where forces are stationed on the territory of a state, the usual practice is for formal agreements to be entered into between that state and the UN concerning, for example, facilities, logistics, privileges and immunities of persons and property, and dispute settlement procedures. In 1990, the Secretary-General produced a Model Status of Forces Agreement for Peace-Keeping Operations, which covers such matters. It notes, for instance, that the peace-keeping operation and its members are to respect all local laws and regulations, while the government in question undertakes to respect the exclusively international nature of the operation. Jurisdictional and military discipline issues are also dealt with.

The question as to whether UN forces are subject to the laws of armed. Conflict has proved controversial. Since the UN is bound by general international law, it is also bound by the customary rules concerning armed conflict, although not the rules contained only in treaties to which the UN is not a party. Nevertheless, many of the agreements state that the UN force would act in accordance

[100] See in particular the General Convention on the Privileges and Immunities of the United, Nations 1946.

with principles of the general international conventions applicable to the conduct of military personnel. Whether the laws of armed conflict are actually applicable in the particular situation is another question and in most cases of peace-keeping and observer operations the answer is likely to be in the negative since the UN would not be acting in opposition to any local element but would be separating hostile forces or implementing particular agreements or generally monitoring situations.[101] Where actual conflict arises between the UN forces and local forces, then the laws of armed conflict would clearly be applicable.[102]

The UN established a set of principles of peace-keeping operations. They are:

i. the principle of the consent of the parties to the dispute for the establishment of the peace-keeping mission,
ii. the principle of non-use of force except in self defence,
iii. the principle of voluntary contributions of contingents from small, neutral countries to participate in the force,
iv. the principle of impartiality, and
v. the principle of control of peace-keeping operations by the UN Secretary General.[103]

It appears that the UN has now developed a clear understanding of the limits of peace-keeping and also of its continuing usefulness. The 1992 UN Report on Agenda for Peace proposed that the UN should consider the establishment of a standby UN force to carry out peace enforcement operations. As a way of addressing this

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[101] See e.g. The Charter of the United Nations, p. 600 and A. J. T. Dorenberg, *'Legal Aspects of Peace-Keeping Operations'*, 28 The Military Law and Law of War Review, 1989, p. 113.

[102] Malcolm N. Shaw, *op. cit*., p. 847-853.

[103] Harun ur Rashid, *op. cit*., p. 133.

proposal, the UN has encouraged member-states to develop standby forces ready for peace keeping mission.[104]

5. An Evaluation of the Role of the United Nations in Pacific Settlement of International Disputes

One of the most important tasks of the United Nations is the peaceful settlement of international disputes. In evaluating its work in this field certain broad considerations should be borne in mind.

> Firstly, it should be recalled that the Charter imposes primary responsibility on the Security Council but that under certain conditions the General Assembly may take a hand.
>
> Secondly, it should be remembered that the Security Council is bound to no specific procedure; it is authorized to use any or all of several indicated ways of reaching a settlement, or it may devise ways of its own. Its preference is to induce the disputing parties to settle their differences by direct negotiation.
>
> Thirdly, the distinction between political disputes and legal disputes should be kept in mind, but it should not be overemphasized. Generally speaking, political disputes go to the Security Council and/or the General Assembly and legal disputes to the International Court of Justice, but any attempt to divide all disputes into these two categories would lead to confusion.[105]

The record of the United Nations in dealing with the large number of international disputes brought before it has been varied. While no spectacular successes have been scored, the UN has contributed, directly or indirectly, to the settlement of several

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[104] Ibid.

[105] Norman D. Palmer& Howard C. Perkins, *International Relations: The World Community in Transition*, Delhi: CBS Publishers & Distributors, 3rd Edition, (1985) p.326-327.

disputes which might otherwise have become serious threats to world peace and security.

6. Conclusion and recommendations

From above discussion and analysis, it is revealed that the United Nations Charter gives the General assembly the authority to recommend measures for the peaceful settlement of any dispute or situation which is likely to impair general welfare or friendly relations among nations. The powers given to the Security Council are more extensive. It can act with greater speed than the General Assembly. When there is a danger to international peace and security, the Security Council might suggest negotiation, mediation, enquiry, conciliation, arbitration or judicial settlement as the means to solve the disputes. It may propose a basis of settlement, it may appoint a commission of enquiry, it may authorize a reference to the International Court of Justice, and so on. The question as to which particular method should be adopted by the UN to settle an international dispute depends upon the circumstances of each particular case. The measure which is expedient is always followed. But the hopes and aspirations of the people of the world have yet to be met. The UN has in some way achieved the hopes and commitments of its Charter. However the UN in some visible cases failed or ignored to address breaches of global or regional peace and security. The failure of the UN include the atrocities in Rwanda, lack of initiatives in Kosovo, continuing Kashmir dispute in South Asia and Israel-Palestine conflict in the Middle East. In these circumstances, to make the United Nations more effective in the field of settlement of international disputes by amicable procedures some recommendations are put forward below:

- The Security Council should make greater use of its prerogative under Article 34 of the Charter (i.e. appointment of commissions of inquiry and

conciliation) to investigate any dispute, or any situation which might lead to international conflict.

- The Security Council should persuade parties to disputes to engage in the processes for the peaceful settlement of disputes envisaged under Chapter VI of the Charter.
- The Security Council should also make more use of Council missions in conflict zones for promotion of peaceful settlement, as these missions enable it to obtain first-hand information on disputes and conflicts.
- The Security Council should also promote the use of regional or sub-regional organs and mechanisms for the peaceful settlement of disputes between States of the region concerned.
- The Security Council should also promote the use of regional or sub-regional organs and mechanisms for the peaceful settlement of disputes between States of the region concerned.
- The General Assembly should encourage Member States to bring to its attention any disputes or questions relating to international peace and security pursuant to Article 35.
- The General Assembly should make more effective use of its competencies on questions relating to the maintenance of international peace and security, as provided for in Articles 10-12, 14 and 35 of the Charter.
- The relevant declarations and resolutions of the General Assembly that call for strengthening the capacity of the United Nations to respond effectively and efficiently in matters relating to dispute prevention and settlement should be put into practice.

- All member States should accept the compulsory jurisdiction of the International Court of Justice, consistent with Article 36 of its Statute.
- The Secretary-General should be duly authorized by the General Assembly to request advisory opinions in matters pertaining to his functions under the Charter, to strengthen the Secretary-General's role, and that of the U.N. as a whole.
- The Secretary General should make greater use of his prerogative under Article 99 and bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security.
- The Secretary-General may pro-actively employ his good offices, including offers of mediation and through appointment of envoys and special representatives.
- The parties to any dispute must assume their responsibilities to settle their disputes peacefully as required under the Charter and make the most effective use of the mechanisms, procedures and methods for pacific settlement as contained in the Charter. They must show the necessary political will to ensure the success of pacific settlement of disputes.