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United Nations' Provisions for Pacific Settlement of International Disputes

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Abstract: As the world's only universal membership and general purpose international organization, it is natural for the United Nations to receive critical attention. The attention is partly because the UN is the only organisation, world over, which is composed of universal membership, influenced by numerous nongovernmental organisations, lobbied by multilateral corporations and serviced by an international secretariat. Of the many purposes and objectives identified for the UN in Chapter VI of the Charter the pursuit of pacific settlement of dispute is put forward as one main method by which the Organisation would achieve its objective of maintaining global peace and security. Consequently, advancing on extant literature, this piece explores the sustenance of global peace through the provisions of Article 33 to 38 of the Charter of the UN in relation to contemporary global security challenges. This is done with a view to determining whether the Chapter VI of UN Charter will continue to find relevance in the coming decades.

Keywords: Pacific settlement; UN Charter; International disputes; Peace; Security

1. Introduction

The United Nations (UN) was founded on the failures of the League of Nations and the ruins of World War II (1939-1945). The League of Nations was formed to prevent another war, but when World War II broke out, it clearly failed in its duties. As a result, when the war ended, the United Nations was founded on renewed hopes and mechanisms to prevent a third World War. Consequently, the preamble of the Charter establishing the UN sets its objective as "to save succeeding generations

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from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind … (UN, 1945). UN Secretary General Dag Hammarskjold (1953–1961) pursues that position when he submits that 'the United Nations wasn't created to take mankind into paradise, but rather to save humanity from hell'. Thus, the founders of the UN were unequivocally unanimous on one point: the new international organization should have adequate safety valves to avoid another war of the magnitude that devastated the world between 1939 and 1945.

The ideas for the ideal of pacific settlement of international disputes predate the establishment of the League of Nations and the United Nations. The ideas date back to the Hague Convention of 8 October 1907. However, to accomplish the task of pacific settlement of international disputes set for the UN, the framework of mechanisms and procedures set out in the Charter has been the guiding principle (Fasulo, 2004:153-155). The UN Charter consists of many chapters, sections, and sub-sections. The pursuit of peaceful settlement of disputes is a fundamental part of the Charter and UN activities. Given that the UN has most sovereign states on its membership pacific settlement of disputes has virtually become one of the bedrocks of international law.

This paper offers no unquestioned 'conclusions' on the future of pacific settlement of international disputes within the provisions of Articles 33–38 of the UN Charter. Rather, what it does is to answer the most salient question(s) confronting international relations scholars today, namely, how to maintain global peace and stability through pacific settlement of disputes, uncertainty in the future relevance of Articles 33–38 of the UN Charter, and the roles of sub-national actors in global peace. The singular objective of the paper is to determine whether the provisions for pacific settlement of disputes, as stated in Chapter VI of the UN Charter, have remained of any effect on interstate relations (Krasner, 1983). To accomplish the set objective the paper provides a brief overview of the United Nations Charter with a focus on Chapter VI. It also takes a look at a few of the usages to which the various provisions of the Chapter had been put. Finally the provisions of Articles 33 to 38 of the UN Charter are critiqued in the context of contemporary global happenings.

Yet, what does the challenges in implementing the provisions of Article 33–38 say about the continued relevance of international relations theories? What insights do these theories bring to our understanding of the changing nature of global peace and security? The paper will be anchored on an eclectic theoretical perspective through a synthesis of elements of Neorealism, Liberal institutionalism, and Constructivism

to provide a more nuance understanding of the state of the pacific settlement of international disputes.

The Chapter VI of the UN Charter is a product of political idealism. The provisions are evidences of that theory of international relations which posits that international law would bring about global peace. The failure of the provisions to address contemporary global security challenges is intertwine with the inability of the framers of the UN to go beyond the realist conception of international relations as the exclusive province of state actors, to accommodate sub-national actors. This failure is a disservice to the search for peace of the contemporary era.

2. Chapter VI of the United Nations' Charter

The United Nations is an intergovernmental organisation whose sole mission is to maintain global peace and security, foster friendly relations among nations, achieve international cooperation, and serve as a focal point for nations' actions (Fomerand, 2009:70, 73). The organisation is the world's largest intergovernmental organisation, as well as the most representative and powerful of all international organisations. Since its inception in 1945, at the end of World War II, the organization has had its headquarters in New York City, with additional offices in Geneva, Nairobi, Vienna, and The Hague. The organisation was formed to prevent future wars and to take the place of the defunct League of Nations. It was specifically created when fifty world leaders met in San Francisco for a conference and drafted what is now the UN Charter, which was adopted on June 25, 1945, and went into effect on October 24, 1945, when the UN began operations.

The UN acts on a wide range of issues, due to the unique international character and powers vested in the Charter. The Charter has in it nineteen (19) chapters, which then contain one hundred and eleven (111) articles that spell out the rules guiding the interactions between member states of the UN. Expectedly, the UN Charter has been subjected to numerous criticisms, many of which cannot be discussed exhaustively in one paper. In consequence, the Charter has been amended three times: in 1963, 1965, and 1973. Yet one trailing criticism of the UN Charter and which continued to gain traction in the post-Cold War era is that which focuses on the provisions of the sixth chapter, otherwise called the Pacific Settlement of Disputes.

According to Simma (2002:103) the principle of the peaceful settlement of disputes occupies a pivotal position within a world order whose hallmark is the ban of the use of force and coercion. States are obligated by international law to settle their disputes peacefully and this obligation gained its needed significance when the prohibition of the use of force was formulated in Article 2(4) of the UN Charter viz: "All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations." With a view to replacing aggression with cooperation in interstate relations, the UN has championed both the norm and practice of peaceful settlement of disputes. To further reflect the importance of the provisions of the chapter, the demand for mediation, which is one of the methods recommended for the peaceful settlement of disputes, has skyrocketing and has been referred to by the UN as the most promising method of settling disputes.

Article 33 requires that countries use "negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice to resolve international disputes." And whenever these methods fail, States are urged to refer the matter(s) in contention to the UN Security Council.

2.1 Negotiations

Negotiation is the conduct of direct talks between the parties to a dispute, aimed at settling the dispute. Iklé (1964:1) defines negotiation as a process in which explicit proposal are put forward ostensibly for the purpose of reaching agreement on an exchange or on the realization of a common interest where conflicting interests are present. Negotiation is a process by which States take steps to agree on an outcome, and each state seeks to make that outcome as good as possible for its national development. It is a method of reaching a compromise or agreement while avoiding argument and dispute. Negotiation has traditionally been included as a parallel process that occurs even during war. In fact, India's former president Jahrwal Nehru is quoted to have said, **"**Every war ends with negotiations. Why don't we start with negotiations?"

Negotiation skills can be taught (Stein, 1988). Negotiations can be bilateral or multilateral, done in the public or in secret with the goal of reaching an amicable

agreement. The beauty of negotiation as a means of dispute settlement is that it is absolutely voluntary (Fisher 1984, pp. 124-130; Buettner, 2006). No nation should be coerced into a negotiation process. The advantageous outcome may benefit all the disputants involved, or it may benefit only one or a few of them. The goal of negotiation to resolve disagreements, gain an advantage for an individual or group, or craft outcomes that satisfy a variety of interests. It is frequently carried out by presenting a position and making minor concessions in order to reach an agreement. The degree to which the negotiating parties carry out the negotiated solution is a germane in the success of negotiations. In the absence of such cooperation the negotiation fails.

A major example of the successes of negotiation is the various agreements that led to the Joint Comprehensive Plan of Action (JCPOA). The JCPOA is an agreement on the Iranian nuclear programme, reached in Vienna on 14th July, 2015 between Iran and the E3/EU+3 (China, France, Germany, the Russian Federation, the United Kingdom and the United States with the High Representative of the European Union for Foreign Affairs and Security Policy). The JCPOA took effect from 16 January 2016, thereby placing enormous ban on Iran's nuclear programme to lift the previously existing economic sanctions (Katzman & Kerr, 2015).

Prior to The Joint Comprehensive Plan of Action, the United Nations Security Council had been negotiating with Iran over the years, trying to lure them with various incentives to get them to halt their nuclear weapons programme, seeing as it was set to spark conflicts among their neighbouring countries. In 2013, the election of President Hassan Rouhani brought about a breakthrough in negotiations as the parties came to the negotiation table and were able to come to an agreement. The Iranian government signed to stop the production of the materials of nuclear weapons; in exchange the European Union, United Nations and the United States lifted the nuclear weapons related economic sanctions of Iran, which led to a boost in the economic development of Iran (Joyner, 2016). And, although U.S. President Donald Trump pulled his country out of the deal on 8th May, 2018 (Holpuch, 2018), the leaders of France, Germany and the United Nations released a joint statement stating that the United Nations Security Council resolution endorsing the nuclear deal remained the "binding international legal framework for the resolution of the dispute." This is a clear case of negotiations being used as a tool to resolve disputes peacefully in modern day international relations.

2.2 Mediation

Instead of going to arbitration or litigation, chapter VI of the UN Charter implores States to use conciliators or mediators in settling international disputes. Mediation is evaluative in the sense that the mediator analyses issues and relevant norms while refraining from giving the parties prescriptive advice. The mediator, who may be an individual, State or an international organisation, serves as a third-party neutral to facilitate rather than direct the process. A mediator is a facilitator in the sense that s/he manages the interaction between parties and promotes open communication. Unlike an arbitrator, a mediator has no legal authority to compel acceptance of his/her decision and must rely on persuasion to assists the parties in finding their best solution(s).

The mediator employs a variety of techniques to steer the process in a constructive direction and to assist the parties in reaching their best solution(s). The focus is primarily on the needs, rights, and interests of the parties. Mediators use a variety of techniques to open or improve communication between disputants in order to assist the parties in reaching an agreement. Much is dependent on the skill of the mediator. Meanwhile, the benefits of mediation may include:

1. Mediation saves time and costs;

2. In mediation nobody knows what happened except the disputants and the mediator(s);

3. Control: Unlike in a court case where the judge or jury retain control mediation gives the parties more control over the resolution. As a result, mediation is more likely to produce a result that is acceptable to all parties;

4. Compliance: Because the outcome is the result of the parties cooperating and is mutually acceptable, compliance with the mediated agreement is usually high;

5. Mutuality: Mediation parties are usually willing to work together to find a solution. As a result, the parties are more open to understanding the other party’s point of view and working on underlying issues in the dispute. This has the added benefit of frequently preserving the relationship that existed prior to the dispute; and

6. Support: The mediator serves as an impartial facilitator, guiding the parties through the process. The mediator assists the parties in thinking "outside the box" to broaden the range of possible solutions.

Kofi Annan in 2005 strengthened the United Nation's capabilities to settle disputes by establishing the Mediation Support Unit (MSU) within the Policy and Mediation Division of the UN Department of Political Affairs (DPA).

2.3 Enquiry

Ascertaining the truth of the issues that gave rise to disagreements is a common obstacle preventing successful negotiation. The unwillingness to agree on facts is at the heart of most international disputes. That is where enquiry comes in. The procedure of inquiry has found expression in treaties for the peaceful resolution of disputes. Commissions of inquiry are established as formal institutions for the pacific settlement of international disputes by the two Hague Conventions of 1899 and 1907 (Carnegie Endowment for International Peace, 1920). The Hague Conventions established that the parties to an international dispute may choose the commissioners.

The UN Charter lists "enquiry" as one of the methods of pacific settlement of international disputes. It is being used in conjunction with other methods of dispute resolution. However, as a separate method of resolving disputes "enquiry" has fallen out of favour. It is now being used in conjunction with other methods of dispute resolution. This is evident in the practice of international organizations such as the United Nations and its specialized agencies.

2.4 Conciliation

This is the process of settling a dispute by referring it to a commission of persons whose task it is to elucidate the facts and (usually after hearing the parties and endeavouring to bring them to an agreement) to make a report containing proposals for a settlement. The proposals do not usually have the binding character of an award or judgement.

2.5 Judicial Settlement

Article 33(1) of the UN Charter refers to "judicial settlement" as a method of pacific settlement of resolving international disputes. It also directs the Security Council, in Article 36(3), to "take into account that legal disputes should, as a general rule, be

referred to the ICJ by the parties." Judicial settlement is the resolution of international dispute by an international tribunal in and in accordance with the rules of the law of nations. The International Court of Justice (ICJ), The Hague (UN, 1945), the International Tribunal for the Law of the Sea (ITLOS), the European Court of Justice, the European Court of Human Rights, and the Inter-American Court of Human Rights are examples of international tribunals.

On 17 July 2019, the ICJ determined in a case filed by India against Pakistan that Pakistan was required to provide effective review and reconsideration of Mr. Kulbhushan Sudhir Jadhav's conviction and sentence through means of its own choosing, in order to ensure that full weight was given to his conviction and sentence, so that the full weight of the effect of the violation of the rights set out in Article 36 of the Vienna Convention was given (ICJ, 2019:234). Through this, it is obvious that the provision of Judicial Settlement of dispute as outlined in Article 33 of the UN Charter is still very much a present-day phenomenon.

2.6 Arbitration

Arbitration entails the appointment of an arbitrator, a neutral and independent third party who hears and decides on the dispute as well as renders a final and binding decision referred to as an award on a private basis, with the expenses borne primarily by both parties. Because the process of arbitration includes the passing of a binding judgment, it is said to be equivalent to litigation but with advantages over the latter. There are four international documents that deal with and describe the guidelines, process, and enforcement of foreign arbitral awards. The documents include:

1. The Protocol on Arbitration Clauses (commonly known as Geneva Protocol, 1923).

2. The Geneva Convention on the Execution of Foreign Arbitral Awards (commonly known as Geneva Convention 1927).

3. The Convention on the Recognition and Enforcement of Foreign Arbitral Awards was signed in New York (commonly known as New York Convention, 1958).

4. The International Centre for Settlement of Investment Disputed (ICSID) Convention on the Settlement of Investment Disputes Between States and Nationals of Other States was signed in Washington in 1965.

However, the International Chamber of Commerce (ICC) Paris is the oldest institution in the field of arbitration. The ICC's arbitration body is the International Court of Arbitration of the International Chamber of Commerce (ICC). It provides necessary facilities for the resolution of international business disputes through arbitration.

3. Criticism of Chapter VI of the United Nations' Charter

There is the argument that the resolutions arising from the chapter VI of the UN Charter may not be legally enforceable. Yet, in some countries (e.g. United Kingdom), the UN Charter and Security Council resolutions have constitutional or special legal standing. In such cases, non-recognition of regimes or other sanctions may be implemented in accordance with the laws of the individual member states. Because "records of the cumulative practice of international organizations may be regarded as evidence of customary international law with reference to States' relations to the organizations," UN Repertory is established and premised on the needs to consider any UN Security Council's resolution on matters affecting international peace and security in the light of Article 25 of the Charter.

According to de Wet (2004:39-40) while Chapter VI of the UN Charter contains judicial language, it lacks the legally binding force of Chapter VII, and as such any declaration made under its provisions are at worst political and at best advisory. To allow binding measures under Chapter VI, De Wet (2004) believes, is to undermine the separation of competencies envisaged for Chapters VI and VII. De Wet further stated that the purpose of separating the chapters is to distinguish between voluntary and binding measures. Whereas the former provides for a peaceful resolution of disputes through the consent of the parties which is not the case of binding resolutions adopted under Chapter VII.

However, Zunes (2004) believes the foregoing does not in any way mean that resolutions under Chapter VI of the UN Charter are merely advisory, since the resolutions are in any case Security Council directives but differ only in that they do not have the same stringent enforcement options, such as the use of military force. In line with this, Higgins (1972) had earlier contends that the placement of Article 25 outside of Chapter VI and VII, with no reference to either, suggests that its application is not to be considered as limited to Chapter VII decisions.

Mindful of the need to respect the principle of sovereignty and non-interference in matters of domestic jurisdiction, the Security Council, they deployed the provisions of Chapter VI as instruments aimed at preventing the outbreak of international conflicts. Credit must therefore be given to the Charter for its attempt at preferring alternative to dispute resolution (ADR) and its effectiveness in managing conflict or scaling down war. The question that begs for answer is "how effective has chapter VI of the UN Charter been in managing conflicts or scaling down war among member States of the UN? This is the parameter by which Chapter VI of the UN Charter can be assessed for relevance. To answer this question, we need to examine the purpose, provisions of means of managing conflicts and how helpful the provisions of Chapter VI have been.

The main purpose of UN Charter which forms the framework of international law and governs member Nations of the UN is the maintenance of global peace and security. If the lessons of history are anything to go by, we would observe that the direct causes of war are usually disputes between states. Naturally it is in the interest of world peace to ensure that disputes between states are settled amicably, thereby preventing disintegration into war. Looking back at the events of the first and second world wars, one realizes how preferable peace is to war. The experiences and lessons from the two wars led to the establishment of the League of Nations and the United Nations in January 1920 and October 1945 respectively. So important was the need for the maintenance of world peace that a whole chapter of the UN Charter was devoted to the peaceful settlement of disputes. And as earlier noted States have been parties to a number of multilateral treaties that aimed at ensuring that disputes between nations are peacefully settled. Chief among the treaties are the multilateral treaty signed on 26 September 1928 in Geneva. It entered into force on 16 August 1929, as was recorded in the League of Nations Treaty Series on the same day. The treaty was ultimately ratified by 22 states. In fact, there are event regional agreements including the 1948 American Treaty on Pacific Settlement, the 195 European Convention for the Peaceful Settlement of Disputes, and the 1964 Protocol of the Commissions of Mediation and Arbitration of the Organisation of African Unity (OAU) now African Union . in addition, there are bilateral and multilateral agreements that have embedded in them specific clauses as relates to settling disputes.

The Hague Conventions of 1899 and 1907

On August 24, 1898, Russian Tsar Nicholas II proposed the First Hague Conference. The conference began on May 18, 1899. The conference's treaties, declarations, and final act were signed on July 29, 1900, and went into effect on September 4, 1900. The Hague

Convention of 1899 consisted of three main treaties and three additional declarations (Carnegie Endowment for International Peace, 1920).

The Second Hague Conference was convened in 1904 at the instance of US President Theodore Roosevelt. It was however postponed due to the war between Russia and Japan. The Peace Conference eventually took place from between June 15 and October 18, 1907. The goal of the conference was to expand on the 1899 Hague Convention by modifying some parts and adding new topics. The 1907 conference placed a great emphasis on naval warfare. The treaties, declarations, and final act emanating from the conference were signed on October 18, 1907, and entered into force on January 26, 1910. The 1907 Convention consists of thirteen treaties and all but one were ratified and entered into force namely (Carnegie Endowment for International Peace, 1920).

More importantly, we have witnessed the judicial method of settling disputes as provided in Chapter VI of the UN Charter come into play as the ICJ has presided over 164 concluded cases and 16 pending cases from 1947 till August 2021, some of which include the Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea, concluded in 2007, the Bakassi Peninsula dispute between Nigeria and Cameroon, Maritime Delimitation between Guinea-Bissau and Senegal (Guinea Bissau v Senegal) concluded in 1995 among many others.

4. Conclusion

The Charter of the United Nations made methods and procedures for the peaceful (pacific) resolution of international disputes available. The variety of the methodologies available in Chapter VI of Charter allows for adaptability in resolving issues between parties. What distinguishes the provisions of Articles 33 to 38 of the UN Charter from other is the lack of binding effect of the report that may be prepared at the end of the process. Nations would do well to take advantage of the methods outlined in them as opposed to allowing disputes escalate into full blown conflicts or wars. Whereas the less than optimal utilisation of the provisions of the UN Charter in its seventy-five years of existence makes it premature to abandon the focus on the institution, it would be equally mistaken to exaggerate the powers of chapter VI of the Charter as a shaper of the global future. But the kinds of disputes disturbing world peace and security today are almost entirely within states. To that extent, the distinctions between a state of war and peace have become blurred with revolutionary wars, liberation wars, religious and ideological revolts and terrorism.

Yet, the UN Charter has no provisions for the sub-national actors at the forefront of these challenges to global peace particularly because their activities take place within nation-states where the enforcement mechanisms of international law do not apply. These defects of the UN Charter show the missed opportunities, unrealistic expectations.

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