

PACIFIC SETTLEMENT OF DISPUTES UNDER THE UN CHARTER

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INTRODUCTION

In any organization for the maintenance of peace and order, the very heart of the system is to be found in its provisions for the peaceful settlement of disputes and for the adjustment of situations which might lead to the use of force.¹ A plan for the peaceful settlement of international disputes is the very heart of any charter establishing an international organization to maintain peace and security. Greater emphasis may be given and greater popular interest may attach, particularly in time of war, to provisions for the joint use of national economic and military forces in restraint of aggression. Yet it must be admitted that peace and security are most completely assured when the necessity for resort to collective force does not exist, and when nations, like individuals in a well-ordered society, settle their differences by peaceful means.²

Under the Charter plan, the organs of the United Nations which are concerned with the pacific settlement of disputes are the General Assembly, the Security Council, the International Court of Justice, and the Secretariat. In addition, the Charter recognizes regional agencies for the pacific settlement of disputes which may be established under regional arrangements. The only requirement is that such regional agencies and their activities shall be consistent with the principles and purposes of the Organization³. Peaceful settlement of international disputes is

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¹Clyde Eagleton, “*The Pacific Settlement of Disputes Under the Charter*” at 24;

Stable URL: <http://www.jstor.org/stable/1025127> .

² Leland M. Goodrich, “*Pacific Settlement of Disputes*” at 956;

Stable URL: <http://www.jstor.org/stable/1950036>

³ *ibid.*

listed in Article 1⁴ of the Charter as the first purpose of the United Nations, and the obligation of the states to settle disputes peacefully is contained in Article 2(3)⁵ of the UN Charter, one of its corner stone provisions and the whole chapter of chapter VI⁶ of the Charter specially deals with this question.⁷

It is generally accepted that the Security Council can only act if a matter has been referred to it by a state (Art.35 of UN Charter). The Charter specifies further that the council has these duties: to call upon the parties to a dispute to settle it by peaceful means (Art.33 (2)); to investigate any dangerous dispute or situation (Art. 34); to recommend appropriate procedures or methods of adjustment (Art.36(1)); or such terms of settlement as it may consider appropriate (Art. 37(2)) and if it determines that there is threat to peace, breach of peace or act of aggression, to make recommendations or binding decisions on measures to be taken to maintain and restore international peace and security.⁸ These powers of Council are independent ones; the Council can exercise them on its own initiative, without having to wait for submission of disputes by one of the parties or a member state. This is emphasized by the phrase in Art. 33 that the Council shall upon the parties to settle their dispute by peaceful means, “when it deems necessary”; and by the phrase in Art. 36 that “at any stage of a dispute” whose continuance is likely to endanger international peace and security, the Council may recommend appropriate procedures or methods of adjustment. It should be noted that the provisions relating to the powers of the security council to call upon the parties to settle their dispute and to its power to conduct an investigation precede those dealing with submission of dispute or situation to it by a member of United Nations (Art.35

⁴ To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and 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." (Article 1, paragraph 1)

⁵ All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered" (Article 2, paragraph 3)

⁶ **CHAPTER VI: PACIFIC SETTLEMENT OF DISPUTES**

⁷ Richard N. Gardner, Eugene V. Rostow, Brian E. Urquhart, Thomas M. Franck and John F. Murphy, “ *Armed Force, Peaceful Settlement, and the United Nations Charter: Are There Alternatives to A New International Anarchy*”? at 48; Stable URL:<http://www.jstor.org/stable/25658155>

⁸ Louis B. Sohn, “*the Security Council’s role in the settlement of international disputes*”, American Journal of international Law, Vol. 78, (1984).

(1)) or by a non-member state that is party to the dispute (Art.35 (2)).Of course, if the parties are seeking to resolve their dispute by one of the means specified in Art. 33, the Council is not likely to meddle; but if the situation starts to deteriorate, the Council has the duty to consider what steps may be taken to preserve or restore international peace. It may choose any one of the measures specified in Articles 33-37 of UN Charter.⁹

By Article 37, the parties are obligated to refer their dispute to the Security Council when the means of their own choice have failed to achieve a settlement The United Nations Charter distinguishes, in general, between the functions of the Organization in handling threats to the peace, breaches of the peace, or acts of aggression (Chapter VII) and the settlement of the background political disputes which may have caused the disruption of public order (Chapter VI). In the former case the Organization may make recommendations for (or, in the case of the Security Council, decide upon) measures, including the use of armed force, to maintain or restore international peace and security. In its efforts, however, to get a settlement of the political issues which may have caused the dispute, the primary reliance is upon the methods of investigation, conciliation, and mediation¹⁰. In its work under Chapter VI the Security Council may go so far as to recommend terms of settlement if it "deems that the continuance of the dispute is in fact likely to endanger the maintenance of international peace and security." Otherwise, while the Council may recommend or initiate appropriate methods or procedures of adjustment, it may make recommendations with regard to terms of settlement only on the request of the parties.¹¹

MEANS OF PACIFIC SETTLEMENT OF DISPUTE UNDER THE UN CHARTER

Negotiation, enquiry, mediation, conciliation, arbitration¹² and judicial settlement are the various means of pacific settlement of disputes under Art.33 of the UN Charter. Now let us see as to how the UN has used these means for the settlement of international disputes.

⁹ Ibid.

¹⁰ Elmore Jackson, "*Developing the Peaceful Settlement Functions of the United Nations*", at 29;
Stable URL: <http://www.jstor.org/stable/1030427>

¹¹ Art. 38

¹² The 1899 and 1907 Hague Conventions for the Pacific Settlement of International Disputes described the object of international arbitration as the settlement of disputes between States by judges chosen by the parties themselves and on the basis of respect for law. They further provided that recourse to the procedure implied submission in good faith to the award of the tribunal. Accordingly, one of the basic characteristics of arbitration is that it is a procedure which results in binding decisions upon the parties to the dispute

NEGOTIATION

Negotiation means discussions at different levels of authority with a view to achieving common understanding or agreement. Negotiation may provide a final settlement or it may also appear as a precondition for the judicial settlement of international disputes. States may also have consultations, for instance, to establish contact for information sharing or to carry discussions of a preliminary nature. In present day circumstances, negotiations may be conducted in numerous ways: by meeting of parties, by correspondence, by phone, by video conference, or by e-mail. At all levels, negotiation means human contact to settle issues of common interest. Mere negotiation may not bind parties to any particular result but may produce results the parties are willing to implement with legal binding effect. Through a treaty obligation, parties may be committed to enter negotiations before resorting to other means of settlement. In the absence of an agreement on other means of settlement, negotiation may be seen as the minimum requirement for peaceful settlement of international disputes.¹³

Negotiation is one of the means of pacific settlement of disputes mentioned in Art.33 of UN Charter. Negotiation may have either a voluntary or a mandatory nature. As listed in Art. 33 UN Charter, it provides a procedure which the parties to a dispute may choose. They are not committed to do so except to the effect that the provision enjoins the parties to seek a solution by peaceful means of their own choice.¹⁴ The negotiations among the Permanent Five in 1990 over Cambodia¹⁵ represented a critical advance. Building upon earlier work by regional powers, the

¹³ J.G. Merrill, *“International dispute settlement”*, Cambridge University Press,(2011)

¹⁴ Kari Hakapaa, “Negotiation”, Max Plank Encyclopedia Of Public International Law,(2006)

¹⁵ The **Cambodian–Vietnamese War** was an armed conflict between the [Socialist Republic of Vietnam](#) and [Democratic Kampuchea](#). The war began with isolated clashes along the land and maritime boundaries of [Vietnam](#) and [Kampuchea](#) between 1975 and 1977, occasionally involving [division](#)-sized military formations. On 25 December 1978, Vietnam launched a full-scale invasion of [Kampuchea](#) and subsequently occupied the country after the [Khmer Rouge](#) was removed from power. At the Third Jakarta Informal Meeting in 1990, under the Australian-sponsored [Cambodian Peace Plan](#), representatives of the [CGDK](#) and the [PRK](#) agreed to a power-sharing arrangement by forming a unity government known as the [Supreme National Council \(SNC\)](#). The [SNC](#)'s role was to represent [Cambodian sovereignty](#) on the international stage, while the [United Nations Transitional Authority in Cambodia](#) ([UNTAC](#)) was tasked with supervising the country's domestic policies until a [Cambodian government](#) was elected by the people through a peaceful, democratic process. Cambodia's pathway to peace proved to be difficult, as [Khmer Rouge](#) leaders decided not to participate in the general elections, but instead they chose to disrupt the electoral process by launching military attacks on [UN peacekeepers](#) and killing ethnic [Vietnamese migrants](#). In May 1993, [Sihanouk's FUNCINPEC](#) movement defeated the [Cambodian People's Party \(CPP\)](#), formerly the [Kampuchean People's Revolutionary Party \(KPRP\)](#), to win the general elections. However, the [CPP](#) leadership refused to accept defeat and they announced that the eastern provinces of [Cambodia](#), where most of the

Five drew up detailed terms of a settlement and thereby pushed the peace process forward toward the conclusion of the Paris Agreements the following year.¹⁶ The Council did not debate over whether it had the authority to act under Articles 36, 37, or 38. Its permanent members simply seized an opportunity after the Cambodian factions seemed incapable of resolving their differences.

MEDIATION

Mediation is distinguished from other diplomatic methods in that it normally entails the active participation of the mediator in seeking to bring the parties together to further negotiations on the basis of the suggestions and the proposals the mediator would be advancing along the process, usually in an informal manner and as the result of having identified and clarified with the parties their essential interests in the disputed matter. To this end the mediator may elucidate and clarify the facts of the dispute, usually relying on the submissions of the parties but not excluding the mediator's own findings; propose the terms of what would represent a fair settlement of the dispute in the mediator's understanding; and if successful, eventually help the parties with the implementation of the settlement. An important feature of mediation is that it is normally conducted in terms of strict confidentiality so as to ensure that the parties will be able to move forward without public interference.¹⁷

International Organizations have significantly contributed to the development of the practice of mediation, which is today characterized by high degree of institutionalization. It is also apparent that mediation is being increasingly associated with initiatives concerning the maintenance of international peace and security. The United Nations Secretary-General attempted to mediate in connection with the 1956 Soviet invasion of Hungary, but this initiative was not accepted by the

CPP's votes were drawn from, would secede from Cambodia. To avoid such an outcome, [Norodom Ranariddh](#), the leader of FUNCINPEC agreed to form a coalition government with the CPP. Shortly afterwards, the [constitutional monarchy](#) was restored and the Khmer Rouge was outlawed by the newly formed Cambodian Government.

¹⁶ See SC Res. 668 of 20 September 1990, UN SCOR, Res. and Dec, 45th Year, at 28, S/INF/46 (endorsing Permanent Five plan).

¹⁷ Francisco Orrego Vicuna, *"International dispute settlement in an evolving global society"*, Cambridge university Press,(2004)

Soviet Union. Also the Secretary General offered, without success, good offices in the dispute over the Falkland Islands. Mediation was also attempted by the Secretary General in connection with the territorial dispute between Venezuela and Guyana. In practice, international organizations conduct many forms of mediation that are not known as such because of their association with peacemaking functions or similar arrangements. This is the case for e.g., the role of the UN Secretary General's representative for the situation in Cyprus, Haiti (Haiti, conflict). It has been proposed that when the parties to a dispute have agreed to mediation but there is no agreement on the mediator, either party may approach the UN Security Council for the appointment of the mediator.

The role of the mediator in neither preventing international disputes nor ensuring their settlement has been enhanced. Various initiatives developed within the ambit of the UN to overhaul the role of the organization in the field of peace and security, including internal conflict, has envisaged a role for mediator either directly or indirectly. This is the case in particular, of the 1982 Manila Declaration on the Peaceful settlement of Disputes¹⁸ and the 1988 Declaration on the Prevention and Removal of Disputes and situations which may threaten international peace and security and on the role of the UN in this field¹⁹ which led to the 1992 Agenda for Peace proposals ([1992] UN Doc S/24111) and other initiatives for the development of preventive diplomacy and dispute settlement connected with the UN Charter, Reform.²⁰

CONCILIATION

Conciliation is a method of settlement of international disputes of any nature according to which a commission set up by the parties, either on a permanent basis or on an ad hoc basis to deal with a dispute, proceeds to the impartial examination of the dispute and attempts to define the terms of a settlement susceptible of being accepted by them, or of affording the parties, with a view to its settlement, such aid as they might have requested. Conciliation presupposes a will expressed by both parties to find a peaceful settlement. Classically conciliation addresses inter-state disputes. With the development of economic and trade law, international conciliation now also addresses Trans-national issues, i.e., disputes between states and non-state parties. The panel is

¹⁸ (UNGA Res 37/10[5 November 1982]UN Doc A/RES/37/10, Annex)

¹⁹ (UNGA Res 43/51[5 December 1988]UN Doc A/RES/43/51)

²⁰ Francisco Orrego Vicuna, "Mediation", Max Planck Encyclopedia Of Public International Law,(2006)

composed of independent personalities, chosen by or with the participation of the parties. It has no independent authority and has no political clout. Conciliation usually calls for suspension of dispute as parties agree not to aggravate it and to collaborate fully with the panel. Conciliation has developed in the areas of trade, such as Conciliation Rules of the United Nations Commission on International Trade (UNCITRAL), developed in the UNCITRAL Model Law on International Commercial Conciliation (2002). It should also be mentioned that, within the framework of the United Nations operation in the Congo, the General Assembly, in its resolution 1474 (ES-IV) of 20 September 1960, requested the Advisory Committee on the Congo to appoint, in consultation with the Secretary-General, a conciliation commission for the Congo. The commission, which was composed of representatives of some African and Asian countries," carried out its mission from 1960 to 1961. Again in 1961, the General Assembly, by its resolution 1600 (XV) of 15 April 1961, decided to establish a Commission of Conciliation for the Congo, and therefore the President of the General Assembly appointed the members of the commission. However, the Government of the Congo never called on the commission to perform the function for which it was created.²¹

FACT FINDING OR INQUIRY

Fact finding is aimed primarily at clarifying the disputed facts through impartial investigation, which would then facilitate the parties' objective of identifying the final solution to the dispute. In 1963, recalling Art.33 UN Charter, the UN General Assembly commissioned the United Nations Secretary General to look into the role of inquiry as a means for the peaceful settlement of disputes or their prevention in bilateral or multilateral conventions and in the framework of International Organizations.

Art. 34 UN Charter furnished the UN Security council with a power to investigate any dispute, or any situation, which may lead to international friction or give rise to a dispute in order to determine whether continuance of the dispute or situation may pose a risk to the maintenance of international peace and security. Here the Security Council was itself empowered with the ability to institute an inquiry in any situation amounting to a dispute or potentially leading to one in the circumstances described above. Art. 35 UN Charter further allows for the relevant matter to be

²¹ Malcolm N Shaw, "*International Law*", 6th ed., Cambridge University Press,(2004)

brought to the attention of both the Security Council and the General Assembly, the latter being able to make any recommendations with respect to the situation under consideration only upon a request from the Security Council.

UN Security Council, UN Security General and the General Assembly have frequently used the inquiry procedure to mandate numerous committees, commissions, missions, or panels to investigate alleged violation of human rights, assassination of individuals, or county focused inquiries. It was not until 22 March 1979 that the UN Security Council set up the first commission for inquiry. Based on Res 446, the commission was asked to investigate the situation in Jerusalem in order to determine whether the Israeli settlement policies were in accordance with international law. UN Security Council established a commission of inquiry into the Burundi genocide in 1995 and into violations of international law in Dafur province in Sudan in 2004. Similarly it also requested peacekeeping forces to conduct fact- finding investigations in situations of atrocities, e.g. the situation in Liberia and the situation in Sierra Leone.

GOOD OFFICES

It is one of the most modest involvements of third party. It designates the action by a third party who merely encourages the disputing subjects to resume negotiations or help them to get together. The third party is not supposed to participate in negotiation. Interestingly, Art.33 UN Charter does not mention good offices among the list of means for the settlement of disputes. It is more difficult to find actual cases where the mechanism of good offices has been applied. Many of the examples usually quoted were in fact instances of mediation although the title of good offices was used. This is the case, inter alia, for the good offices missions of the United Nations Secretary General. He has been involved in handling of many disputes, some of them international, others internal (e.g. Guatemala, Cyprus, Thailand, the Suez crisis, the Iran-Iraq war (1980-1988), Yemen, Nicaragua and Macedonia. Sometimes he was successful but not always. The good offices of the Secretary-General have also been tendered to deal with disputes relating to Non-Self-Governing Territories or decolonization, such as those concerning the questions of East Timor, the Falkland Islands (Malvinas). It is clear that despite the use of the term good offices, his involvement was far beyond mere good offices as explained above.²²

²² Ruth Lapidoth, "Good offices", Max Plank Encyclopedia Of Public International Law,(2006)

JUDICIAL SETTLEMENT OF DISPUTES

ICJ is towering in the international judicial arena. The ICJ is one of the principal organs of the United Nations. It is the principal judicial organ, the only one with universal scope and membership. Its function is twofold: to settle in accordance with international law the disputes submitted to it by states, and to give advisory opinions on legal questions submitted by duly authorized international organizations. All the members of UN are ipso facto parties to the Court's Statute, which is an integral part of the UN Charter. Yet the court is competent to hear a case only if the States concerned have accepted its jurisdiction.²³ Under Article 36 of its Statute, the International Court of Justice has general jurisdiction in "all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force.". Only in the *Corfu Channel* and *Aegean Sea* disputes did the Council recommend the parties to turn to the International Court.²⁴ Another international institution for judicial settlement is the International Tribunal for the Law of the Sea, provided for under the 1982 United Nations Convention on the Law of the Sea, 65 with jurisdiction over law of the sea disputes.

In recent years, the Council has used Chapter VI in various ways. It has entered into direct dialogue with the parties to a conflict, for example through its discussions with the Political Committee of the Lusaka Agreement. It has tried to work more closely with the Economic and Social Council, and with other regional and sub-regional organizations, to prevent and resolve conflicts in Africa.²⁵

HOW FAR UN IS SUCCESSFUL IN PEACEFUL SETTLEMENT OF DISPUTES?

Observers of the UN tend to fall into one of two camps when examining its role in the peaceful settlement of disputes. The first sees a glass more than half full, with far greater potential for the Organization if only its member States would utilize the processes contemplated in the Charter.

²³ Francisco Orrego Vicuna, "*International dispute settlement in an evolving global society*", Cambridge university Press,(2004)

²⁴ Malcolm N Shaw, "*International Law*", 6th ed., Cambridge University Press,(2004)

²⁵ Available at : <http://www.unis.unvienna.org/unis/pressrels/2003/sgsm8697.html>, last visited on 1/09/2012

This group regards UN one that can influence and settle disputes and thereby contribute to international peace. Chapter VI offers the non-forcible means to this end; lack of coercive measures does not diminish the UN's effectiveness. In the other camp they see the UN as a glass nearly empty, they judge the UN a failure as an actor to end conflicts and any notion of collective security a farce. Typically realist in their political approach, the sceptics argue that the UN can reflect only the individual preferences of member States. Other than perhaps as a forum for negotiation, the Organization itself can exert little successful effort to further international peace and security. Naturally, each camp has its empirical data. The optimists typically cite two categories of UN accomplishments - a history of UN diplomatic interventions that have defused tensions in certain situations; and the results of some UN peacekeeping operations.²⁶ The latter emphasizes the results of peace-keeping in freezing and preventing the escalation of conflicts in Kashmir, Cyprus, the Golan Heights, and elsewhere. Into the bargain, the optimists can always emphasize the UN as a unique forum for the airing of disputes and the possibilities for neutral fact-finding.

The skeptics respond quickly. They offer studies showing a marginal, if not negligible, UN contribution to the resolution of disputes, especially those involving uses of force. The cases offered by the optimists are either exception to the general proposition or perhaps proof of it, insofar as they rarely show the UN definitively settling a conflict.²⁷

CAN THE GAP BETWEEN THE VIEWS BE BRIDGED?

The United States and other member States have often regarded Chapter VI not as processes with its own dynamics, but as a mere weigh station on the road to enforcement measures. All these critics suffer from the same starting point: that war and bloodshed have greater importance to global politics than peace-making, or the use of the diplomatic instrument to bring parties to agreed solutions to their conflict.

²⁶ See, e.g., Franck and Nolte, "The Good Offices Function of the UN Secretary-General", and Morphet, 'UN Peace-keeping and Election-Monitoring', in A. Roberts and B. Kingsbury (eds), *United Nations, Divided World: The UN's Roles in International Relations* (2d ed., 1993) 143, 183.6 *EJIL* (1995) 426-444 as cited in, See, Steven R. Ratner, "Image and Reality in the UN's Peaceful Settlement of Disputes,"

²⁷ See, Touval, 'Why the UN Fails', *Foreign Affairs* (September/October 1994) at 44; Mearsheimer, "The False Promise of International Institutions", *International Security* (Winter 1994/95) 5.

One group sees Chapter VI resolutions as necessary to signal to the parties and other States the outlines of an acceptable settlement and the norms of international law that need to be respected in it. Some even cite studies to say that parties take them seriously in their negotiations for a solution.²⁸

Similar active Council intervention occurred over Angola and Mozambique.²⁹

In second-generation peace-keeping, the parties turn to the UN to keep the post-agreement peace process alive by building confidence among the parties and serving as the first response to threats to a settlement.

Second, the UN's role as *mediator* has shifted. Before it only offered assistance to the parties in pre-agreement peace-making, with, as the realists have convincingly demonstrated, a worse than mediocre record of success. Now the UN has emerged as a mediator after the settlement of the conflict. How can this be? - Because the conclusion of a 'comprehensive' peace hardly settles all issues, as the implementation of an accord invites the parties to offer interpretations of the agreements to buttress their political ends. In second-generation peace-keeping, the UN has to continually negotiate with the parties on their continued compliance. So the wild rush and enthusiasm about Chapter VII must end. As its boundaries are pushed, more States refuse to comply by its decisions, as seen in the sanctions on Libya and Bosnia-Herzegovina. The increased use of Chapter VII shows as much the failure of diplomacy as any revived UN power.³⁰

²⁸ See Vayrynen, 'The United Nations and the Resolution of International Conflicts', 20 *Cooperation and Conflict* (1985) 141, 164-65. as cited in See, Steven R. Ratner , "*Image and Reality in the UN's Peaceful Settlement of Disputes*,"

²⁹ Steven R. Ratner , "*Image and Reality in the UN's Peaceful Settlement of Disputes*" at 438

³⁰ See, Steven R. Ratner , "*Image and Reality in the UN's Peaceful Settlement of Disputes*," at 444

CONCLUSION

Chapter VI provides a mechanism to keep Chapter VII the exception. It also offers the link with consent and 'sovereignty' that most States find necessary to accept expanding the UN's authority in new directions. If indeed the Permanent Five hope to build up a common law for the UN, they had best do so through the softer touch of Chapter VI than the heavy hammer of enforcement measures. . Recourse to Chapter VII may have increased in the past decade. But that does not lessen the importance of Chapter VI. The processes it sets out for the peaceful settlement of disputes and situations affecting international peace and security remain as relevant today as it has ever been.³¹

³¹ Available at : <http://www.unis.unvienna.org/unis/pressrels/2003/sgsm8697.html>, last visited on 1/09/2012