

**A research**

Presented by The researcher

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:

**Role of the Security Council**

**In International Disputes Resolution**

**Research Paper**  
**Role of the Security Council**  
**In International Disputes Resolution**

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**Introduction:**

International organizations are merely means for fulfilling one basic end which is the maintenance of peace and international security, such a slogan which has been related to international organization since the emerge of their idea. International organizations has took over the duty to maintain the international peace and security, and made of themselves the guardians for such purpose. Probably, the most dangerous threat to the international peace and security is the international disputes that must be faced by efforts of international organizations to settle and finalize such disputes, which is the basic role of international organizations.

The role of international organizations is crucial in the settlement of international disputes, and in most cases is more effective than the efforts exerted by the conflicting parties themselves, based on several issues:

International organizations serve and represent all states of the international community, where all states are gathered and directed for fulfilling peace maintenance. Accordingly, an

international organization is more effective and efficient in the management and resolution of international disputes which is the basic purpose for which these international organizations have been established.

On the other hand, most states are overwhelmed with their internal or external affairs, a situation that make such state less interested in the disputes of other states, unlike international organization which are devoted for such activities necessary for settling international disputes.

Moreover, the idea of one state intervenes to settle or resolute some dispute between two other states, out of good faith efforts or otherwise, is not such a great idea that most states are more likely to refuse for the critical nature of such activities, but with an international organization such critical nature is much lower, if it does exist in the first place, as international organizations represents all member states and have their own legal liability independent and apart from any other member state.

As well as, such intentional organizations have the necessary powers to settle international disputes, to the extent that may come to the use of military action as provided in Chapter VII of the United Nations Charter. However such powers and capacities are not available to any other intermediary state that may attempt to settle such dispute, comparable to the effective and efficient action of international organizations.

For all of the above, we can conclude the critical and crucial role of international organizations in the resolution of international disputes being the most dangerous threats to the international peace and security. It was a matter of necessity for the United Nations, being the existing international organization capable to settle international disputes, to provide its Charter with such terms and conditions illustrating the main work-frames through the UN acts to properly settle international disputes represented

by its different organs especially the General Assembly and the Security Council.

The objective of this paper is to illustrate the role of the Security Council being the most important UN institution capable to settle international disputes, and for this end, a clear definition of "International Disputes" must be realized at first, being the subject of this presentation, then determine what exactly an international dispute is, and at which point such dispute can be taken as "international" empowering the international organization to act towards peaceful resolution. This basic issue is a crucial criterion that may exclude many disputes of the powers of the international organizations.

Also, we must have clear definition to the Security Council, compositions, and powers thereof. For such reasons I have chosen the subject of this research paper: **Role of the Security Council in International Disputes Resolution.**

### **Reasons for choosing subject:**

The reasons that led me to choose this subject are two reasons:

**Self reason:** Due to the increase of armed conflicts in which numerous violations of the international law and horrific crimes committed against millions of civilians were increased, so I wanted to highlight the role of the Security Council, which is an important organ at the international level in resolving such disputes.

**Objective reason:** to study the role of the Security Council as a UN organ in the application of international law.

**Research Problematic:** The problem of this subject is as follows:

The extent of the intervention of the Security Council in the application of international law and international disputes resolution, and the extent of efficacy of the mechanisms that it relied on, as these problems include:

- Problematic definition of international disputes and the UN Security Council, as well as problematic determination of its functions and powers;
- Problematic role of the Security Council in international disputes resolution by a peaceful mean;
- Problematic role of the Security Council when investigating in international disputes resolution in accordance with Article 34 of the Charter of the United Nations;
- Problematic nature of resolutions of the Security Council and international disputes resolution;
- And problematic assessment of the role of the Security Council in the resolution of international dispute.

### **Importance of Research:**

**Importance of the subject is as follows:**

- The application of international law has become one of the most controversial topics at the moment, especially with the increase of armed conflicts, such as internal ones where serious violations of international law were committed.
- Due to the lack of effective mechanisms in implementing the international law and imposing sanctions on the violators of its basic rules, the Security Council has become the most effective organ in this field for the executive powers it holds under the Charter.

- But the intervention of the Security Council in the application of international law, may become a two-edged sword so that the Council may be the best organ for the application of international law and at the same time may be the most dangerous mechanism or organ to intervene in the affairs of states under the pretext of ending violations of international law.
- Also due to its political nature, the intervention of the Security Council in the resolution of a dispute may raise controversy about the real purpose behind this intervention, if its purpose will actually be for ending violations of international law or it has other purposes, such as political or self-interest for the benefit of its members.

### **Research Objectives:**

The researcher has identified several objectives to this research, including:

Determination of the functions and powers of the Security Council under the Charter and definition of international dispute, in order to reach the objective of basic subject which is to highlight the role of the Security Council in the resolution of dispute, through the use of powers given to it by the Charter, as well as an attempt to shed light on the mechanisms used by the Security Council for the application of international law, and by achieving the following procedural objectives:

- To define international disputes and the Security Council, and to determine its functions and powers;
- To discuss the role of the Security Council in international disputes resolution by a peaceful mean;

- To highlight the Security Council's role when investigating in international disputes resolution in accordance with Article 34 of the Charter of the United Nations;
- To explain the nature of resolutions of the Security Council and international disputes resolution;
- And to evaluate the role of the Security Council in the resolution of international dispute.

### **Research Questions:**

**We can determine questions of this research as follows:**

- What is the definition of international disputes and the UN Security Council, and what are its functions and powers?
- How the Security Council exercises its role in international disputes resolution by a peaceful mean?
- What is the role of the Security Council when investigating in international disputes resolution in accordance with Article 34 of the Charter of the United Nations?
- What is the nature of resolutions of the Security Council and international disputes resolution?
- How to evaluate the role of the Security Council in the resolution of international dispute?

### **Research Methodology:**

This subject was adopted in the style of the research on the descriptive and analytical approach in describing international disputes and the Security Council, and defining its functions and powers, so as to describe the role of the Security Council in international disputes resolution by a peaceful mean, to analyze

the role of the Security Council when investigating in international disputes resolution in accordance with Article 34 of the Charter of the United Nations, to describe the nature of resolutions of the Security Council and international disputes resolution, and to evaluate the role of the Security Council in the resolution of international dispute.

### **Previous Studies:**

There are no previous studies with this title, but studies addressing in general the Security Council and international organizations, and some of them contained in the list of references. These studies did not address the subject of this research, so this study was conducted to address it for the first time under the title: Role of the Security Council in international disputes resolution.

## **Research Division**

This research will discuss some of the issues outlined to its questions already asked, trying to answer these questions, according to the following division:

### **Research Plan**

#### **Chapter I: Definition of international Disputes and the UN Security Council.**

**Theme I:** Definition of international disputes.

**Theme II:** Definition of the Security Council, its formation and its functions and powers.

**Topic I:** Definition of the Security Council and its formation.



**Topic II:** Functions and powers of the UN Security Council.

**Chapter II:** Role of the Security Council in international disputes resolution by a peaceful mean.

**Theme I:** Calling on the conflicting parties by the Security Council to settle the dispute by any mean.

**Theme II:** Calling on the conflicting parties by the Security Council to settle the dispute by a specific mean.

**Theme III:** Recommendation of the Security Council as it deems appropriate conditions to resolve the dispute if its parties failed to resolve it.

**Chapter III: Applications of the Security Council's role in international disputes resolution.**

**Theme I:** Role of the Security Council when investigating in international disputes resolution in accordance with Article 34 of the Charter of the United Nations.

**Theme II:** Nature of resolutions of the Security Council and international disputes resolution

**Topic I:** Non-Arab disputes and resolutions of the Security Council

**Topic II:** Arab disputes and resolutions of the Security Council

**Theme III:** Assessing the role of the Security Council in the resolution of international dispute

Conclusion

Results

Recommendations

References

## **Chapter I**

### **Definition of international disputes and the UN Security Council**

Research begins with this chapter under the title of definition international disputes and the UN Security Council, so as to address the definition of international disputes, and then the definition of the Security Council, its formation and its functions and powers, in two themes as follows:

**Theme I:** Definition of international disputes.

**Theme II:** Definition of the Security Council, its formation and its functions and powers.

## Theme I

### Definition of International Disputes

The Charter of the United Nations did not set a definition of international dispute to resort to when resolving this matter, and therefore must be exposed to the views of jurisprudence in this matter to get to define what was meant by dispute. Dr. Jaber al-Rawi cited in his book "International Disputes" a definition of dispute, saying: "The dispute term is very much like the other terms which is characterized by lack of clarity and can be interpreted on two designated basics (<sup>1</sup>):

**Broader sense:** Means the lack of agreement in international law or in fact as a dispute from a legal point of view.

**Limited sense:** Means the parties to the dispute file a special claim based on breach of the law at a time when the other party rejects the claim.

But I do not go with Dr. Jaber in respect of the broader sense that looks at dispute as a disagreement in international law, because the dispute requires the availability of both parties and the existence of a conflict of views among both, and a mere dispute over international law itself is not enough. On the other hand, what is stated in the limited sense that the dispute is a conflict on the basis of breach of the law, we find that writer limits dispute on the basis of - breach of law - i.e. a legal dispute despite the fact that the claim may be based on the interests and not always on the basis of the law.

So, I cannot accept the definition of dispute set out by Dr. Jaber Al-Rawi, as there are many topics talking about the difference between conflicts and disputes, but, in fact, these topics did not

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(<sup>1</sup>) Jaber al-Rawi, International Disputes, Dar es Salaam, 1978, various pages.

identify a specific definition of dispute and limited it to the issue of voting as a difference between conflict and dispute.

Dispute is like a conflict over a right or interest or legal issue for a certain country or a person of international law <sup>(1)</sup>.

ered as international.

Also, Article 1 of the Charter states only on international peace and security in the sense to be both achieved in relationships between countries, and therefore the domestic conflicts and wars are not covered by the jurisdiction of the United Nations. Thus, the provisions of the Charter based on Article 2, paragraph 7 deprives the United Nations to intervene in domestic matters of any state <sup>(2)</sup>.

## **Theme II**

### **Definition of the Security Council, its formation and its functions and powers**

The Security Council is one of the most diverse organs of the United Nations, which was created based on Article 23 of the Charter of the United Nations, in order to maintain international peace & security, and which is the only organ that has the power and authority to issue binding resolutions to all Member States under the Charter, unlike other organs of the United Nations, which only make recommendations to various governments. The Charter of the United Nations created a Charter consists of six main organs, and one of these organs was the UN Security Council, which is the main responsible for maintaining international peace and security.

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<sup>(1)</sup> Jaber al-Rawi, International Disputes, op. cit., p. 16.

<sup>(2)</sup> Muhammad Said Daqqaq & Mustafa Hussein, Contemporary International Organizations, 1990, p. 20.

All United Nations members must respect the decisions of the Security Council and work to implement them. While the sections and other organs of the United Nations make the recommendations to the Member States, Security Council set to issue binding resolutions to member states, under the agreed Charter. Meetings of the Council are held at its headquarters, and may meet in a place other than the headquarters.

The UN Security Council consists of 15 members of the United Nations, including the five permanent members, and the ten remaining members are elected by the General Assembly for two years, and does not allow the election of one of the ten members once again directly, as there is a constant and permanent representative of each Member at the United Nations, so as to achieve continuity.

**Definition of the Security Council, its formation and its functions and powers require the division into two topics as follows:**

**Topic I:** Definition of the Security Council and its formation.

**Topic II:** Functions and powers of the UN Security Council.

## **Topic I**

### **Definition of the Security Council**

The United Nations Security Council (UNSC), known in the media as the UN Security Council, is one of the most important United Nations organs and is responsible for maintaining international peace and security under the Chapter VII of the Charter of the United Nations. The Security Council held its first session on 17 January 1946 and was followed by several sessions were held in several cities around the world until it selected its current headquarters, which is located in New York City as a permanent residence of the Council of Nations.

The Security Council established in accordance with Article 23 of the Charter of the United Nations for the purpose of maintaining international peace and security, which is the only organ that has the power to issue binding resolutions to member states under the Charter, where other UN organs just make recommendations to governments. The meetings of the Council are usually held in the headquarters and could meet in a place other than the headquarters.

## **Topic II**

### **Formation of the Security Council**

The UN Security Council consists of 15 members of the United Nations, including the five permanent members, and the ten remaining members are elected by the General Assembly for two years, and does not allow the election of one of the ten members once again directly, as there is a constant and permanent representative of each Member at the United Nations, so as to achieve continuity principle, which is an important engine for the management of the Security Council, and permanent Member States:

- United States of America;
- Russia;
- Britain;
- France;
- China.

It is worth mentioning that the Union of Soviet Socialist Republics was a founding member of the United Nations since October 24, 1945. In a letter dated on December 24, 1991 Boris Yeltsin (Boris Nikolayevich Yeltsin) - President of the Russian Federation - informed the Secretary-General of the United Nations

We'll address each category of members as well as the Security Council Committees in the following sections:

**Section I:** Permanent members of the Security Council.

**Section II:** Non-permanent members of the Security Council.

**Section III:** Committees of the Security Council.

## **Section I**

### **Permanent members of the Security Council**

**The five permanent members of the Council are:**

- United Kingdom;
- Russia;



- China;
- France;
- United States.

Charter of the United Nations stipulates that any decision concerning the adoption of practical matters require nine votes of 15 members, while the substantive issues also require nine votes, including the Permanent Member States, and any State that is a party to the dispute has no power of vote. There is an authorized act for big States, known as the Power of "Veto". According to the United Nations Act, "Veto" term means power of objecting, which in fact really strains resolution, not just to make an objection on it.

## **Section II**

### **Non-permanent members of the Security Council**

The non-permanent members are elected depending on their strength and their ability to maintain international peace and security, and taken into account the equitable geographical distribution in the election process. The seats of the ten non-permanent Member States in the Security Council are distributed as follows:

- Five seats for African and Asian States;
- Two seats for Latin America States;
- Two seats for Western European and other States;
- One seat for Eastern European States.

The number of non-permanent members in the Council has been increased from six to ten members in 1965 when the Charter of the United Nations has been amended.

The General Assembly of the United Nations elected on Thursday October 15, 2015, Egypt, Japan, Senegal, Ukraine and Uruguay without opposition to non-permanent seats of the United Nations Security Council for two years starting from January 1, 2016, where these States were previously selected based on a regional distribution and no other States did compete on their seats.

Egypt has got 179 votes in the General Assembly consisting of 193 members, while Japan got 184, Senegal 187, Ukraine 177 and Uruguay 179 votes.

All these States have replaced Chad, Chile, Jordan, Lithuania and Nigeria in the 15-seat Council, including five permanent seats.

Egypt got membership for the sixth time in its history, as it has already got it before that, during the periods: 1946, 1949/1950, 1961/1962, 1984/1985, and 1996/1997.

Saudi Arabia also rejected in 2013 to accept non-permanent membership in the Security Council, as the Saudi Foreign Ministry issued a statement which explained the rejection by referring that: "Kingdom believes that the style, mechanisms and current double standards of acting in the Security Council prevent the Council to perform its functions and responsibilities for maintaining world peace and security. <sup>(1)</sup>

The statement referred to that the Palestinian issue remains unresolved and the Council failed to rid the Middle East of all

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<sup>(1)</sup> Saudi Arabia apologizes for admission of the Security Council membership until to be reformed, "Al Ahram", 18 October 2013, retrieved 18 October 2013.

weapons of mass destruction, because of the failure to subdue the nuclear programs of all States to be under control without exception, or prevent any State seeking to possess nuclear weapons.

Russia criticized the Saudi rejection, where the Russian Foreign Ministry referred in a statement that this rejection means that "Saudi Arabia abandons collective work within the Council on maintaining peace and security in the world. <sup>(1)</sup>

Either France announced that they share the frustration of Saudi Arabia, referring that it had a proposal for the amendment of veto power. <sup>(2)</sup>

Also the US Foreign Ministry Spokesperson considered that the Saudi decision is a "special matter"<sup>(3)</sup>

### **Section III**

#### **Committees of the Security Council**

Under the Charter, the Council has the right to act as it deems necessary for the performance of its functions, according to Article 29 of the Charter, so the Council has established numerous committees, including:

1. Standing Committees, which are two committees containing representatives of all Member States in the Security Council, namely:

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<sup>(1)</sup> Moscow criticizes Saudi rejection of non-permanent membership in the UN Security Council, Moscow News, 18 October 2013, retrieved 19 October 2013.

<sup>(2)</sup> France understands the Kingdom rejection and supports the amendment of "veto" power, ar-Riyadh, October 18, 2013, retrieved 19 October 2013.

<sup>(3)</sup> Washington: Saudi decision is a special matter, Sky News Arabia, 18 October 2013, retrieved 19 October 2013.

- Committee of the Experts, which specializes in the rules of procedure;
  - Committee charged with the admission of New Members.
2. Specialized Committees, which contain all members of the Security Council, these Committees are formed as needed, and their meetings are closely-held, namely:
    3. Security Council Committee, which acts when holding the meetings of Council outside the headquarters; Council of the United Nations Compensation Commission, which was created in 1991; Security Council Counter-Terrorism Committee, which was created in 2001.
    4. Sanction Committees of the Security Council Committee in regard to the conflict between Kuwait and Iraq, in 1990;
    5. Security Council Committee, which was formed with respect to Libya, where this Committee was created in 1992;
    6. Security Council Committee on the situation in Somalia, which was formed in 1993;
    7. Security Council Committee on the situation in the State of Angola, which was held in 1993;
    8. UN Security Council Committee, which was held because of the situation in Rwanda, where was created in 1994;
    9. Security Council Committee on the situation in Sierra Leone, where this Committee was created in 1997;
    10. Committee of the Security Council, which was created in 1998;

11. Security Council Committee, which was held in 1999;
12. Committees of the Security Council held on the State of Eritrea and Ethiopia, which were created in 2000;
13. Committee of the UN Security Council, which took place due to the State of Liberia, which was created in 2001;
14. Ad Hoc Committees (AHC).

Such Committees are created by the Council to follow Security Council resolutions on sanction issues, or on specific issues, such as the Committee appointed under the Security Council resolution 661 for Iraq, and the Committee appointed under the Security Council resolution 748 for Libya. These committees consist of all members of the Security Council, and meet in closely-held sessions (<sup>1</sup>).

The Council sends "Peace-keepers" to tension and conflict regions in the world, to defuse the battles, impose the security and monitor truces, (see Peace-keepers). International Tribunals for war criminals are also included, as well as the Security Council, as in the case of the "International Criminal Tribunal for Rwanda", which is located in Arusha - Tanzania, and the "International Criminal Tribunal for the former Yugoslavia", which is located in the Netherlands.

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(<sup>1</sup>) <http://www.m.ahewar.org/s.asp?aid=316952&r=0>

## **Topic III**

### **Functions and powers of the Security Council**

The functions and powers given to the Security Council are broader and most comprehensive, compared with other UN organs. The most important of these functions and powers are as follows:

1. To maintain international peace and security in accordance with the principles and purposes of the United Nations;
2. To investigate any dispute or situation which might lead to international friction;
3. To recommend methods of adjusting such disputes or the terms of settlement;
4. To formulate plans for the establishment of a system to regulate armaments;
5. To determine the existence of a threat to the peace or act of aggression and to recommend what action should be taken;
6. To call on Members to apply economic sanctions and other measures not involving the use of force to prevent or stop aggression;
7. To call on Members to apply economic sanctions and other measures not involving the use of force to prevent or stop aggression;
8. To call on Members to apply economic sanctions and other measures not involving the use of force to prevent or stop aggression;

9. To exercise the trusteeship functions of the United Nations in "strategic areas";
10. To recommend to the General Assembly the appointment of the Secretary-General and, together with the Assembly, to elect the Judges of the International Court of Justice.

In view of the above, we find that the functions and powers of the Security Council are divided into two types:

**1. Exclusive functions and powers of the Security Council include the following:**

- A. All functions of the United Nations relating to strategic areas, including the approval of the terms of the trusteeship agreements and of their alteration or amendment shall be exercised by the Security Council, as stipulated in Article 83, paragraph 1 of the Charter of the United Nations.
- B. The conditions under which the Court shall be open to other states shall, subject to the special provisions contained in treaties in force, be laid down by the Security Council, but in no case shall such conditions place the parties in a position of inequality before the Court, as stipulated in Article 35, paragraph 2 of the Statute of the International Court of Justice.
- C. In order to promote the establishment and maintenance of international peace and security with the least diversion for armaments of the world's human and economic resources, the Security Council shall be responsible for formulating, with the assistance of the Military Staff Committee referred to in Article 47, plans to be submitted to the Members of the United Nations for the establishment of a system for the regulation of armaments, as stipulated in Article 26 of the Charter of the United Nations.

D. If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment, as stipulated in Article 94, paragraph 2 of the Charter of the United Nations.

## **2. Joint functions and powers of the Security Council:**

Are the functions and powers that require the participation of the Security Council with the UN General Assembly to be taken, such as:

### **A. The selection of the Secretary General of the United Nations:**

As stipulated in Article 97 of the Charter of the United Nations: "The Secretary-General shall be appointed by the General Assembly upon the recommendation of the Security Council."

### **B. The admission of new members in the United Nations Organization:**

As stipulated in Article 4, paragraph 2 of the Charter of the United Nations: "The admission of any such state to membership in the United Nations will be effected by a decision of the General Assembly upon the recommendation of the Security Council."

### **C. The cessation of membership of the United Nations Organization:**

As stipulated in Article 5 of the Charter of the United Nations: "A Member of the United Nations against which preventive or enforcement action has been taken by the Security Council may be suspended from the exercise of the rights and privileges of



membership by the General Assembly upon the recommendation of the Security Council."

**D. The isolation from the Organization:**

As stipulated in Article 6 of the Charter of the United Nations: "A Member of the United Nations which has persistently violated the Principles contained in the present Charter may be expelled from the Organization by the General Assembly upon the recommendation of the Security Council."

**E. The election of judges of the International Court of Justice:**

As stipulated in Article 8 of the Statute of the International Court of Justice: "The General Assembly and the Security Council shall proceed independently of one another to elect the members of the Court." And as stipulated in Article 4, paragraph 1 of the same Statute: "The members of the Court shall be elected by the General Assembly and by the Security Council."

**F. The determination of accession criteria of the non-member states in the Statute of the International Court of Justice:**

In order for the Security Council to enforce these functions and powers, it can intervene directly and indirectly in disputes between Member States. <sup>(1)</sup>

**Security Council Objectives:**

- To maintain international peace and security;

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<sup>(1)</sup> <http://www.assakina.com/news/news2/30688.html>

- To investigate conflicts between states, which may lead to international dispute;
- To emphasize on disputes resolution;
- To plan to combat the dangers that threatens international peace;
- To take military action at the discretion of the Council against the aggressors;
- To recommend the admission of new members in the International Court of Justice, as well as the rules of their admission to the Statute of the International Court of Justice;
- To apply the trusteeship functions of the United Nations areas;
- To recommend to the General Assembly the appointment of the Secretary-General and, together with the Assembly, to elect the Judges of the International Court of Justice.

Under the Charter, all Member States are obligated to comply with Council decisions. The Council is the only organ that has the power to issue binding resolutions to member states under the Charter, where other UN organs just make recommendations to governments. The Council shall be so organized as to be able to function continuously, and a representative of each of its members must be present at all times at UN Headquarters so that the Security Council can meet at any time as the need arises <sup>(1)</sup>.

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<sup>(1)</sup> Muhammad Said Daqqaq & Mustafa Hussein, Contemporary International Organizations, 1990.

The Security Council also selects each month a President, according to the alphabet of the names of the Member States <sup>(1)</sup>.

## **Chapter II**

### **Role of the Security Council in International Disputes Resolution by a peaceful mean**

The Security Council is one of the most important and most effective organs in the United Nations, as the Charter entrusted to it the primary responsibility for the maintenance of international peace and security according to article 24, paragraph 1 of the Charter: "In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf."

Whereas, we find that the texts contained in Chapter VI and VII combine the maintenance of world's peace and security with international disputes resolution by peaceful means, because most of the war causes are disputes or situations the parties or some of the parties to them refuse to resolve or fail to resolve them by a peaceful solution, and both or one of them resort to the use of force. So, it was stated in Article 33 of the Charter that "the parties or states to any dispute, shall, first of all, seek a solution by negotiation, inquiry or other peaceful means and provide it to

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<sup>(1)</sup> <http://www.misrjournal.com/681110>

United Nations Security Council (English)

联合国安全理事会 (Chinese)

Conseil de sécurité des Nations unies (French)

Совет Безопасности Организации Объединённых Наций (Russian)

Consejo de Seguridad de las Naciones Unidas (Spanish)

international organizations if it threatens the continuation of international peace and security." <sup>(1)</sup>

**We will clarify the above through the following:**

**Theme I:** Calling on the conflicting parties by the Security Council to settle the dispute by any mean.

**Theme II:** Calling on the conflicting parties by the Security Council to settle the dispute by a specific mean.

**Theme III:** Recommendation of the Security Council as it deems appropriate conditions to resolve the dispute if its parties failed to resolve it.

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<sup>(1)</sup> Article 33 of the Charter of the United Nations stipulates that:

1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

2. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means.

## **Theme I**

### **Calling on parties to the dispute by the Security Council to settle it by any mean**

**Research will address the above said through the following three topics:**

**Topic I:** Analyzing Article 33

**Topic II:** Disputes

**Topic III:** How Security Council controls a dispute or a situation?

### **Topic I**

#### **Analyzing Article 33**

Also, the Article 33 in Chapter VI of the Charter stated on seeking to resolve disputes by a peaceful solution when such disputes threaten international peace and security, and -in my opinion- this Article constitutes the general framework for authorizing the international organizations, the United Nations, and especially the Security Council to act and do so.

As stipulated in Article 33 of the Charter: "The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice."

By analyzing Article 33, we get a set of findings and observations.

The text of Article herein used the phrase - the parties to any dispute - without requiring to be a Member or Non-Member of the UN, and this is consistent with paragraph 6 of Article 2, which requires that Non-Member States of the United Nations must comply with the principles of the Charter as far as may be necessary for international peace and security.

We also note that the same requirement is confirmed by Article 35 to give Non-Member States the power and right of resorting to the Security Council to resolve their disputes -within the conditions we will mention later-. Since Article 33 of the Charter constituted the general framework, it was necessary to include -in general- Members and Non-Member States. (<sup>1</sup>)

What does the Article 33' phrase "first of all" mean? Does it mean that before resorting to the Security Council, the parties to the dispute shall seek a solution by the means provided in Article 33? We will address the discussions that took place at the San Francisco conference on this phrase, as the Delegate of Ethiopia requested to delete the phrase (first of all), interpreting that the Security Council shall be able to intervene in the dispute even before resorting to such means, or if such means will lead to non-peaceful solution of the dispute.

But the Delegate of the United States came with another interpretation, in which he said: "It is highly desirable that the parties to any dispute seek to resolve it by usual means of peaceful settlement, however, if these means were not or will not be successful and there was any threat to the peace or any action of aggression, the Security Council shall act immediately and take the necessary measures, as well as to intervene in any dispute threatens international peace and security, but does not

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(<sup>1</sup>) See: Article 35, Chapter VI of the Charter of the United Nations.

have to possess these powers in respect of all disputes, except in case of necessity." <sup>(1)</sup>

Also, the US delegate stressed that the Security Council should intervene if a dangerous situation broke up without having to wait for the completion of preliminary measures.

There is no doubt that logic does not accept exhausting all means, where it's enough to resort to only one mean, so that if such mean failed, the parties to a dispute shall provide it to the Security Council, and Dr. Abadi had addressed several points that go with this opinion:

The mean by which a dispute is addressed, is purely of the parties' own choice, and there is no combination between choice and force on the exhaustion of these means. Also, it's not logical to seek a solution to the dispute, while investigating it. There are disputes that their continuation may represent a threat to international peace and security, so if we require the exhaustion of these means, international peace and security will be surely threatened.

**In this regard, I'll mention the following points:**

On the other hand, there are many disputes that cannot be resolved by peaceful means mentioned in Article 33, for example, such as political disputes that cannot be resolved by the judiciary and arbitration. Moreover, some of the means require the consent of parties to the dispute to resort to, for example, such as the judiciary, and this may not be available. Hence, we conclude that it is sufficient that the parties to the dispute resort to one of the means contained in Article 33, so that they if fail, to provide it to the Security Council.

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<sup>(1)</sup> Jafar Abdul Salam, International Organizations, Generation Printing House, 1972.

## **Topic II: Disputes**

### **Section 1: Description of the Dispute**

Is it enough for a dispute to be international in order to be settled by the Security Council? There is no argument that disputes settled by International Organizations generally and by the United Nations particularly, shall be international disputes as we mentioned earlier in the preamble, but the question that arises - is it enough for a dispute to be international in order to be considered by the Security Council...? We find that Article 33 of the Charter provided that "... any dispute, that its continuance would put peacekeeping and international security at risk (<sup>1</sup>).

Hence, we find that a conflict must endanger international peace and security besides being an international dispute because there are disputes that may arise and endanger international security and peace; however the Security Council can not address them in cases that involve the essence of domestic jurisdiction for a Party to a dispute. But the question that arises here is who decides that the continuance of a conflict would endanger the international peace and security?

Hence, we conclude that the Security Council addresses the international disputes which their continuance would endanger the international peace and security. We have already identified what is intended by a dispute and its international character as well as we have presented also in this regard what is intended of threatening the international peace and security by risk until the Security Council is able to consider a conflict.

### **Section II: Situations:**

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(<sup>1</sup>) See: Article 33, Chapter VI of the Charter of the United Nations.



In addition to disputes, the Security Council considers the international situations. We find that a dispute is different from a situation and we find that the Charter has mentioned the word situation without a specific definition, but we can say that in situations the States which are Parties can participate in the vote therein, while in a dispute the parties to a dispute cannot participate in the voting.

The situation is usually multifaceted and levels as well as its continuance may lead to the use of force on the other side, and its parties are more than the dispute's which requires to be solved by a general conference.

### **In differentiating between a dispute and a situation:**

It is established that a claim by a State as to a matter on a State denies it makes it a party to the dispute, as a dispute carries the meaning of litigation, while a situation is a general case involves political problems related to the generality of the international community than to certain parties in particular. The Minor Assembly has tried to contribute in solving the problem and applied to the General Assembly to consider the availability of a dispute in these cases:

- Agreement between certain parties to a dispute;
- The State's claim that a State or other States violated its international obligations or committed an action that threatens the peace and international security;
- Denying this claim by a defendant State or states, and the claim of a State that another State has violated the rights of a third State, and the last State approved that. Thus the Security Council can control the situations directly because its continuation would endanger the international peace and security. We note that the provisions of the Charter,

particularly Article 33 of the Charter mentioned on the dispute which threatens the international peace and security and required at the outset that such a dispute is to be resolved by peaceful means is not mentioned on situations. Thus, we can say that if we are to address a situation, in such a case, the Security Council shall immediately consider it without the controversy which was addressed by Article 33 of the Charter on the dispute being arisen, because the situation itself endangers the international peace and security. Therefore we conclude that the Security Council shall consider the disputes which endanger the international peace and security and the situations as well. The Council has to determine when a matter shall be a dispute or a situation, and then the question arises about how the Security Council controls a dispute or situation and that is what we will address hereafter.

### **Topic III**

#### **How the Security Council controls a dispute or situation?**

As Article 34 of the Charter stipulates that: ‘The Security Council 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.’

By reviewing the texts of Articles 34 and 35 contained in the Charter, we find that the Charter granted more than one party the right to bring the matter before the Security Council and that is a confirmation by the Charter on the duty of all States to protect the international peace and security:

**First: the States which are parties to a dispute themselves:**

Although Article 35 of the Charter does not provide for that expressly as what is contained in Article 35 of the Charter was on the Member States and non-member States without mentioning the parties of a dispute, but we can deduce that through the text of Article 37 of the Charter, which obligated the parties of a dispute upon their failure to solving it in accordance with Article 33 of the Charter that they shall present it before the Security Council. This is an indubitable matter, because the most eligible people in presenting a dispute are the parties of the dispute themselves because they are the most knowledgeable people of its details, on one hand and of the extent of the need of their interests of this final solution to the dispute <sup>(1)</sup>.

1- Should the States which are parties to a dispute of the type referred to in Article 33 of the Charter failed to settle it by the means indicated in that Article, they shall present it before the Security Council.

2- If the Security Council considers that the continuance of this dispute would in fact endanger the international peace and security, it shall determine whether it performs its work in accordance with Article 36 or recommends appropriate terms of settlement.

On the one hand, we can say that the parties to a dispute are entitled to present the dispute before the Security Council, whether they are members of the United Nations or not. This is clear from the provisions of the Charter since Article 35 of the Charter expressly granted the Member States- even if they are not a party to a dispute - the right to notify the Security Council thereto, then, a fortiori, if they were a party thereof.

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<sup>(1)</sup> See: Article 37, Chapter VI of the Charter of the United Nations.

On the other hand, if they were not, the same Article in paragraph 2 has granted a non-member State which is a party to a dispute the right to bring the matter before the Security Council, so we find that the States which are parties to a dispute have been given the right to do so whether they are members or not.

### **Second: The Member States of the United Nations:**

In accordance with Article 35 of the Charter has given UN member the right to notify the Security Council of any dispute or situation, even if the Member State was not a party to a dispute or situation.

We note here that an notify by a member State of the United Nations to the Security Council of a particular dispute is just a license granted by the Charter to the Member States which have the right to use or ignore it, as the case may be, where the text came with the word, "and - per-" not with the word "shall", but in the case where the member State is a party to a dispute and fails to settle it peacefully, it is imposed upon it under the Article 37 of the Charter to bring the matter before the Security Council. The matter here is mandatory <sup>(1)</sup>.

We find that the Member State can estimate solely if it will notify the Security Council or not because a State is not under any authority.

Some would say that it is not required for a State to be free to file a dispute before the United Nations. I do not agree with the writer's point of view because the UN member States are countries of full sovereignty and independence.

States could, upon notifying the Security Council of a dispute, submit a specific proposal to resolve it as well, in order to assist the Security Council to find a solution to the dispute.

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<sup>(1)</sup> See: Article 37, Chapter VI of the Charter of the United Nations.

### **Third: Non-Member States of the United Nations:**

The second paragraph of Article 35 of the Charter has granted the non-members of the United Nations the right to notify the Security Council of a dispute which threatens the international peace and security, but we find that the Charter has developed terms for the non-member States to accept its notifying to the Security Council by them:

It is a must for a non-member State to be a Party in a dispute and this is a logical matter by the Charter when it differentiates between a member and non-member States, where a non-member State is not accepted to notify the Security Council of a dispute in which it is not a party, because it did not satisfy originally to be represented by that organization in peacekeeping, so it does not have to be entrusted to do so.

A state must accept a peaceful resolution issued by the Security Council in advance, as I think, in order to ensure the seriousness of the matter presented before the Security Council and the expansion of its powers so as to consider and settle disputes for the States that are not members of the United Nations.

### **Fourth: General Assembly:**

Article 11, paragraph 3 of the Charter stipulates that: "The General Assembly may call the attention of the Security Council to situations which are likely to endanger international peace and security."

Subject to this paragraph, the General Assembly has the right to draw the Council's attention to the cases that endanger the international peace and security, which corresponds to the word notifying. It would be better if the Charter has used the same words to denote the same meaning as it has used the word notify in Chapter VI. Whereas it is under the third paragraph of Article 11 of the Charter that it is not required, in this case, that a dispute

is to be presented before the General Assembly because that lies under paragraph 2 of the same article.

This case assumes that the General Assembly upon noticing a dispute or situation, in my opinion endangers the international peace and security, and then it notifies the Security Council thereof like members or non-members states which are parties to a dispute.

**Fifth: Secretary - General:**

Article 99 of the Charter stipulates that: "The Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security."

We find that doing so by the Secretary-General in this matter is considered as a personal initiative by him and not at the request of the United Nations' organs as the Secretary-General has to notify the Security Council of the matters that threaten the international peace and security. We find that the text of the Article has used the word matter and therefore this gives the Secretary-General the right of notification even if the matter did not include a dispute or situation.

I find that the word matter is a dispute and situation because these two things are the two that would threaten the international peace and security which we are dealing with now. The mere matters that do not involve disputes or situations are under Chapter VI of the Charter and I find that the Secretary-General does not have the right to notify the Security Council of them. As long as this is a matter of the personal matters which belong to the Secretary-General, we find that the Secretary-General may interfere in

notifying the Security Council of such matters because States or parties to a dispute are usually earlier in this matter (<sup>1</sup>).

We find that this article has not been applied on the work except for two times:

In 1950 when Trygve Lie notified the Security Council of the outbreak of war in Korea; and in 1960 when Hammarskjöld notified and called the Security Council to discuss the Congolese crisis. The reason for this, perhaps it is due to that it is usually the States which are parties or related to a dispute notify the Security Council of the matter (<sup>2</sup>).

### **Sixth: Intervention by the Security Council itself:**

In many cases, it is difficult or hard to present a dispute by the parties to a dispute or by a member State either for matters relating to, for example, the interests of the States or that they couldn't reach an agreement among themselves in order to refer the matter to the Security Council on the one hand, or because the states are adherent to their sovereignty and immunity on the other hand.

We mean these cases and others. This has given the Security Council the right to address a situation or a dispute on its own, even if it has not been requested by anyone to do so.

As stipulated in Article 34 of the Charter: "The Security Council 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."

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<sup>1</sup>) <https://pulpit.alwatanvoice.com/articles/2011/05/17/228004>

<sup>2</sup>) Jaber al-Rawi, International Disputes, Dar es Salam, 1978.

We have presented the importance of distinguishing and difference between a dispute and a situation previously, so there is no room for repetition, but what concerns us in this regard is that the Security Council's main target of examining a dispute or situation is to ascertain the extent of exposing the international peace and security to risk since it is the basic requirement for a dispute to be considered by the Security Council <sup>(1)</sup>. We find that the matter subjects to the estimation of the Security Council itself in the light of the facts obtained, where it could perform all actions it deems appropriate in order to examine a dispute or situation. If the Security Council concludes after that, that this dispute or situation threatens the international peace and security, in this case, it can control and solve such dispute or situation in accordance with what is granted to it by the other articles of Chapter VI, which we will mention <sup>(2)</sup>.

## **Theme II**

### **Security Council's call for the parties to a dispute to be settled by a specific mean:**

Article 36 of the Charter and the following Articles have addressed the ways through which the Security Council can resolve a dispute which threatens the international peace and security:

Article 36 of the Charter of the United Nations stipulates that:

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<sup>(1)</sup> Muhammad Abdul Hamid, Law of International Organizations, i. 4, 1979.

<sup>(2)</sup> See: Dr. Ibrahim Al-Khalifa, International Regulation, p. 271 and beyond.



"The Security Council may, at any stage of a dispute of the nature referred to in Article 33 or of a situation of like nature, recommend appropriate procedures or methods of adjustment.

The Security Council should take into consideration any procedures for the settlement of the dispute which have already been adopted by the parties. In making recommendations under this Article the Security Council should also take into consideration 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."

In addressing the analysis of this article, we find many points that can be raised, as the first paragraph of the Article has granted the Security Council the right if there is a dispute threatens the international peace and security to issue recommendations Whatever the stage reached by that dispute. This makes some says that the Security Council has that right even if the States were in the process of one of the means provided for in Article 33 of the Charter.

On the one hand, I can say in this regard that in the case of a dispute which its parties follow the ways of settlement provided for by the Charter and this appears that it will conclude the matter, the respect of States' will and sovereignty necessitates that the Security Council does not issue its recommendations in this case, but it has to wait the result of these ways or if it notices that these ways will not conclude the dispute and the continuity of this dispute threatens the international peace and security, the Security Council shall interfere in such a case.

- Restriction imposed on the Council:

We find that Article 36 of the Charter when it granted the Security Council the power to issue recommendations it deems appropriate at any stage of a dispute, it did not always unleash the

Council totally, but it restricted the Council by restrictions on a dispute that are not provided on a situation. Therefore if the matter is for a situation and not for a dispute, the Security Council shall have the full authority to issue recommendations it deems appropriate unconditionally due to the severity of the situation and these restrictions are:

The legal disputes are always within the jurisdiction of the International Court of Justice and the Security Council should not be allowed to address them in any way, but recommends referring them to the Court and this a matter of respect to jurisdiction between the United Nations organs.

Thus, we conclude that in this case the Security Council determines the appropriate means and recommends going with it. Also, we find that the prescription issued by the Council is a recommendation and, this leads us to know the intended recommendation and distinguish it from the resolution.

### **Theme III**

#### **Recommendation of the Security Council as it deems appropriate conditions**

**To resolve a dispute if its parties failed to resolve it:**

#### **Topic I**

**The recommendation power of the Council:**

The text of Article 36 refers to the Security Council power to make recommendations, and the recommendation is like a proposal issued by an international organization in order to take action or omission.

Thus, what is under the power of the Security Council if it used Article 36 of the Charter, is issuing recommendations and here,

the States are free to accept or reject these recommendations, but usually when states refuse these recommendations, they provide justifications and legal grounds for the rejection because the mere rejection thereof causes a political embarrassment.

But the question that arises here; is the Security Council can issue resolutions in this regard, and not just a recommendation?

Recommendations without resolutions as resolutions are limited to what is provided for in Chapter VII of the Charter.

In supporting this, we can say that the Security Council has the right to issue resolutions on the case of Article 36 at any stage of the dispute as long as the Security Council itself is to decide the extent of the need to issue a resolution or recommendation. Therefore, it is necessary to make resolution when there is a need for it but if there is no need, a recommendation is issued. However there is no precedent in this regard.

## **Topic II:**

### **Mean indicated in Article 37:**

Article 37 of the Charter of the United Nations stipulates as follows:

"Should the parties to a dispute of the nature referred to in Article 33 fail to settle it by the means indicated in that 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 such terms of settlement as it may consider appropriate."

By referring to the text of Article 37 of the Charter, we find that it casts a duty on the States which are parties to a dispute that a dispute shall be presented before the Security Council. If we have

noticed in the former Articles that States solely have the right to decide freely whether a dispute shall be presented or not before the Security Council except for the cases which the Security Council controls automatically, this case involves an obligation on the States which are parties to a dispute that the dispute must be presented before the Security Council.

Through analyzing the previous text, I can say that:

The obligation set out in the Article is only on the parties to a dispute while we find that the previous Article 35 of the Charter has granted the right to present the matter before the Security Council to different parties which are not parties to a dispute, since this matter is obligatory, we find that the Charter has limited it to the parties of a dispute only.

The Council shall ascertain that the two parties have used all amicable ways set out in Article 33 of the Charter or it is shown before it that one of them has refused to enter into negotiations or escaped its resumption. In this regard, I find the Security Council does not require the parties to use all ways provided for in Article 33 of the Charter, as we mentioned upon addressing Article 32 where it is enough as I believe- and for achieving the symmetry between the provisions of the Charter- for a State or the States which are parties to a dispute to use one of the ways provided for in the Article, as we have mentioned previously that it is often difficult to use all ways. It is enough that the way used by the States which are parties to a dispute is failed for such States to be bound of presenting a dispute before the Security Council. The Security Council can reject the action in accordance with Article 37, paragraph 2 in the case a dispute is presented before it under the Article 37/1 before the parties themselves try to resolve it by the ways set out in Article 33 of the Charter and this if the Security Council has used its powers under the text of Article 34 and not 37, paragraph 2.

After the matter is being submitted before the Security Council by the parties of a dispute and the matter became under the control of the Security Council, in such a case, we find that the first obligation on the Security Council is to examine the dispute to see if its continuance threatens the international peace and security and if the Security Council concludes to this result, it can:

### **Topic III**

#### **The role of the Security Council under the text of Article 38 of the Charter:**

*Article 38 of the Charter stipulated that:*

We find that Article 38 can be invoked if the cases of Article 36 and 38 are not available, according to the following illustration:

On the one hand, Article 36 of the Charter assumes that the Security Council itself in any stage of the dispute shall address it and recommend what it deems appropriate solutions depending on the circumstances and within the constraints that we have mentioned. While in Article 38 of the Charter, we find that the Security Council does not do so on its own, but it does so at the request of the States which are parties to a dispute. We find that Article 38 has addressed the dispute only without the situation and this is logical, where in a situation which is contained in Article 36, the Security Council intervenes on its own.

On the other hand, Article 37 of the Charter assumes that the States failed to reach peaceful solutions and the dispute threatens the international peace and security, as we find that Article 38 does not require that States have to resort to peaceful solutions in advance according to Article 33), but they may not have resorted to that. However, those States present the matter before the Security Council requesting a solution to a dispute. Further more than that, Article 38 does not provide that a matter or a dispute

threats the international peace and security, where I see that the States which are parties to a dispute have the right to do so even the matter does not threats the international peace and security because if the matter was like that, the Security Council would have intervened on its own.

### **The power of the Security Council:**

There is no doubt that what the Security Council can do is to issue non-binding recommendations to the States which are parties to a dispute because its powers are limited to the issuance in this regard under the express text of the Article.

I see in this case that the Security Council cannot pass a resolution if the cases of Articles 36 and 37 are not available because the matter is under the will of the States themselves, and the matter is less serious than in the previous two Articles.

There are those who believe that the Security Council shall resolve the matter regardless of the realization of the right or securing the justice as long as the primary objective is the stability of the international peace and security.

## **Chapter III**

### **The applications of Security Council's role in resolving international disputes**

The Charter of the United Nations has granted the Security Council with powers under Chapter VI and VII to resolve the disputes peacefully, where it is mentioned in the beginning of Chapter VI of the Charter - in resolving the disputes peacefully - and in Chapter VII the ways that include suppression of acts of aggression and what concerns us in this regard is to study the applications of the Security Council's powers in resolving the international disputes by a peaceful solution.

The Charter in Article 24 has put the primary liability for keeping international peace and security on the Security Council and considered it as a deputy on behalf of the States in that. It was necessary to give the Security Council the powers and the organization of the process followed by the Council for protecting the international peace and security. Chapter VI of the Charter has organized how the Council resolves disputes peacefully, which is the subject of our study in this topic and, Chapter VII was about the suppression of acts of aggression by the Security Council and it is not the subject of the study in this regard.

**Theme II:** Nature of resolutions of the Security Council and international disputes resolution

**Theme II:** Nature of resolutions of the Security Council and international disputes resolution

**Topic I:** Non-Arab disputes and resolutions of the Security Council

**Topic II:** Arab disputes and resolutions of the Security Council

**Theme III:** Assessing the role of the Security Council in resolving international dispute

## **Theme I**

### **Role of the Security Council when investigating in international disputes resolution**

#### **Under Article 34 of the Charter of the United Nations,**

"The Security Council 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."

Article 34 empowers the Security Council to intervene for investigating in any dispute or any situation of the type referred to in the same Article. Conducting an investigation in accordance with this Article forms a particular procedure that can be established on a self initiative by the Security Council, for the purpose of addressing any dispute or situation. This initiative will be in the context of the application of paragraph 02 of Article 33 or Article 36 of the Charter. This initiative can also be done if the parties to a dispute present their dispute before the Security Council in accordance with paragraph 2 of Article 38.

The Security Council is not obliged to conduct an investigation in accordance with Article 34, as it has a discretionary authority to decide to do it or not, and its decision to conduct an investigation is a serious act requires before reaching it an issue necessitate such action. The Council must be convinced of all the facts before it, that the continuation of a situation endangers the international peace and security, which requires the carrying out of an investigation by the Security Council. It is essential that the Security Council protects itself from being exploited as propaganda in favor of a party to a dispute or situation and to protect the peaceful settlement procedures under Chapter VI of the Charter from being misused <sup>(1)</sup>.

The final purpose of an investigation is to determine the type of a dispute or situation. The determination that a dispute or situation is of the type referred to in Article 34 of the Charter is a necessary step to establish the eligibility of the Security Council to intervene in accordance with Chapter VII of the Charter. However, the Council sometimes refrains from making such a

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<sup>(1)</sup> Dr. Muhammad Walid Abdul Rahim, United Nations and the Maintenance of International Peace and Security, Printing House of Egyptian Library, Beirut, 1994, p. 38.



determination due to the presence of strong opposition from one of the parties to determine the type of dispute or situation or because its members do not agree on the nature of the measures that can be taken under Chapter VI or VII of the Charter. <sup>(1)</sup>

On other occasions, the Council identified the type of dispute in accordance with Article 34 of the Charter despite the lack of its members' agreement on the nature of the measures that must be taken. The Council's determination here has come as a compromise between the situations of the Member States, and some members were considering the disputes or situations submitted before the Council as a threat to the peace in accordance with Article 39 of the Charter, and they want the Council to act under Chapter VII of the Charter, while others opposed this trend. <sup>(2)</sup>

## **Theme II:**

### **Nature of resolutions of the Security Council and international disputes resolution**

This research will address the nature of resolutions of the Security Council and international disputes resolution through the following two topics:

**Topic I:** Non-Arab disputes and resolutions of the Security Council

**Topic II:** Arab disputes and resolutions of the Security Council

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<sup>(1)</sup> Dr. Muhammad Walid Abdul Rahim, *United Nations and the Maintenance of International Peace and Security*, op. cit., p. 41.

<sup>(2)</sup> Dr. Muhammad Walid Abdul Rahim, *United Nations and the Maintenance of International Peace and Security*, op. cit., p. 42.

## **Topic I:**

### **Non-Arab disputes and resolutions of the Security Council**

The Security Council's missions in Kosovo and East Timor in 1999 differ from other missions in other areas, as they have been assigned by a number of new jobs as well as of broad powers to enable them to perform their functions. <sup>(1)</sup>

We will address the role of the Security Council in each of these areas in a separate section; the first is devoted to indicate the role of the Security Council in Kosovo, while the second is to indicate the process of Security Council's role in East Timor.

## **Section I**

### **Security Council's role in Kosovo**

#### **First: the formation of Peacekeeping Mission in Kosovo**

The Federal Republic of Yugoslavia <sup>(2)</sup> has witnessed in 1998 an internal fierce dispute between the governmental army and the rebels who demand the independence of Kosovo - with a majority of Albanian Muslim - from Yugoslavia. As a result of this dispute, the governmental army committed brutal massacres and gross violations of human rights in Kosovo as well as mass

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<sup>(1)</sup> Dr. Khalida Thanon Maree: United Nations and the Management of Domestic Conflict, Tikrit University Magazine of Law & Political Science, v. (9), year 3, 2011, p. 267.

<sup>(2)</sup> Federal Yugoslavia in 2003 was named ([Republic of Serbia and Montenegro](#)), and in 2006, Montenegro declared its independence from the Yugoslav Federation and Serbia became the legal successor of the State of Yugoslavia, for more details, see: Merabet Rabeh: Impact of Ethnicity on the Stability of Nations, Kosovo Case Study, Doctoral Dissertation, Faculty of Law, Hadj Lakhdar University of Batna, Algeria, 2008-2009, p. 41.

deportations of Albanians from the region. This matter forced the international community to move, as the Security Council has passed several resolutions calling the parties of the dispute to cease fire, take the necessary steps to improve the humanitarian situation in Kosovo and to seek resolving problems through negotiation <sup>(1)</sup>.

As a result of lack of Yugoslavia's commitment to the resolutions of the Council mentioned above, the NATO launched air strikes on the capital of Yugoslavia (Belgrade) on 24.03.1999, after the alliance failed to get a mandate from the Security Council because of the Russian veto and China's public rejection for this attack <sup>(2)</sup>.

On 10 June 1999, the Council considered that the internal dispute in the State of Federal Yugoslavia constitutes a threat to international peace and security under the resolution 1244, which requires a direct intervention by the United Nations on the basis of Chapter VII of the Charter for the purpose of saving the grave humanitarian situation in the territory of Kosovo. The Resolution explained the need for the deployment of international military forces as well as the formation of an international peacekeeping operation with the consent of the State of Yugoslavia, without prejudicing its sovereignty, to prevent hostile acts. <sup>(3)</sup>

The resolution included the need for a military force under United Nations auspices in the name of (IMP) that shall work with the participation of NATO to provide security, maintain the ceasefire operation, to ensure the withdrawal of military and

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<sup>(1)</sup> Official Documents of the Security Council for the year 1999, docs S/RES/1203 (1998), S/RES/1199 (1999).

<sup>(2)</sup> Qahtan Hussein Taher al-Husseini: the role of the United Nations in the settlement of international disputes after the Cold War, Master Thesis, Faculty of Political Science, Baghdad University, 2005.

<sup>(3)</sup> Official Documents of the Security Council for the year 1999, doc S/RES/1244 (1999).

police forces of the Government of Yugoslavia from Kosovo, prevent its return, to disarm Kosovo Liberation Army, other armed Albanian groups, and to oversee the removal of mines. <sup>(1)</sup>

The resolution also included the formation of a peacekeeping operation of the United Nations in Kosovo which is called (the international civil presence) to support the goals of the above governing. The resolution mentioned also an appointment of interim administration which is a subsidiary of the international civil presence to carry out the administrative civil functions of the territory, the supervision of elections and the rule of law. This administration shall also support the economic sector, the text of humanitarian assistance, and respect for human rights, ensure the return of all refugees and displaced persons to their homes safely <sup>(2)</sup>.

The Secretary-General of the United Nations shall select a special representative for him to follow up the performance of the international civil presence in Kosovo and to coordinate the work with the international military forces. The resolution determined the military and civil presence with period of 12 months which shall continue afterwards unless the Security Council decides otherwise <sup>(3)</sup>.

### **Second: The role of the Security Council in the settlement of Kosovo's dispute:**

After the Security Council issued its resolution 1244 in 1999, Yugoslav Forces withdrew from Kosovo and the NATO bombing were stopped. The International Military Forces in the territory reached (50000) soldiers led by NATO to contribute to the restoration of security. <sup>(4)</sup> The Interim Administration has

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<sup>(1)</sup> Paragraph 9 of the resolution 1244.

<sup>(2)</sup> Paragraph 11 of the resolution 1244.

<sup>(3)</sup> Paragraphs 6 & 19 of the resolution 1244.

<sup>(4)</sup> Official website of the International Peacekeeping Mission in Kosovo:

appointed the first governor of the territory of Kosovo who was the Frenchman (Bernard Kouchner) and his powers was broad to enable him to perform the functions designated to him such as his power in the dissolution of parliament, the appointment and dismissal of the judiciary, entering into agreements with States, international organizations, the imposition of security, public order and the conduct of elections.

The interim administration gained the support of the European Union and the Organization for Security and Cooperation in Europe as well as the United Nations' specialized agencies, and have had an active role in helping Kosovo to reach a settlement of the dispute through the establishment of an independent self-governing and overseeing the local and federal elections. The interim administration has also built the judicial, security, economic and cultural institutions. And it has also contributed in the return of many of the displaced persons and refugees, as well as the formation of the Transitional Council, which includes all minority groups in Kosovo to consult on management issues there.

Although the resolution numbered (1244) granting Kosovo an independent autonomy without compromising the sovereignty of Yugoslavia, the territory's Albanian demanded separation from Yugoslavia, on 17/2/2008 Kosovo Assembly issued a resolution of secession to become an independent and sovereign State support (109) of the members of the Assembly (120), the Assembly established a special Kosovo Constitution came into force on 15/6/2008. <sup>(1)</sup>

Yugoslavia rejected the independence of region; considering it a part of its territory and its separation was contrary to International Law, while the United Nations General Assembly adopted a

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<http://www.un.org/ar/peacekeeping/missions/unmik/background.shtml>.

<sup>(1)</sup> Official website of the International Peacekeeping Mission in Kosovo:

<http://www.un.org/ar/peacekeeping/missions/unmik/background.shtml>.

resolution submitted by Yugoslavia requests an advisory opinion from the International Court of Justice on Kosovo's independence. <sup>(1)</sup>

The advisory opinion came to confirm that this independence did not violate the International Law. <sup>(2)</sup>

Until the present day, the international peacekeeping Operation of the United Nations is still operates in Kosovo, despite the gradual reduction of its numbers; for the purpose of maintaining its achievements, to establish security and stability in full, to try to remove the tensions between Serbs and Albanians, as well as the normalization of relations between Serbia and Kosovo <sup>(3)</sup>.

We conclude from the foregoing, that the UN Peacekeeping Forces have a clear role in narrowing the internal dispute in Yugoslavia. Those forces were unique due to the functions assigned to them at the time. It is the first operation by the United Nations which is competent of the following functions:

- Humanitarian Aid;
- The Civil Administration;
- Democratization and Institutions Building;
- Reconstruction and Economic Development.

These Forces have worked to support the independence of Kosovo through the text of humanitarian assistance, disarmament, supervision on elections and the placement of the

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<sup>(1)</sup> Official Documents of the Security Council for the year 2008, doc A/RES/63/3. p.p.1-2.

<sup>(2)</sup> Official Documents of the Security Council for the year 2010, doc A/65/4. p.67.

<sup>(3)</sup> Official Documents of the Security Council for the year 2014, doc S/2004/773.p.13. .

territory under the international supervision by the United Nations until the declaration of independence in 2008. Troops are still present in Kosovo to achieve security and stability in full in light of the ethnic disputes that cannot be solved within a short period but need long-term solutions.

## **Section II**

### **The role of the Security Council in East Timor**

#### **First: the formation of Peacekeeping Operation in East Timor**

The East Timor is one of the islands which were under the Portuguese colonization, and in 1975 declared its independence. Subsequently invaded and occupied by Indonesia, as it was regarded as an Indonesian province no. 27 in the year 1976 <sup>(1)</sup>.

Armed disputes have erupted between the Indonesian forces and some groups in East Timor, known as (Falintil) during the period from 1976 to 1999. And for the purpose of ending these disputes, an agreement between the States of Indonesia and Portugal has been entered into under the auspices of the Secretary-General of the United Nations on 5 May 1999. The agreement included granting autonomy to the territory of East Timor within the framework of the Republic of Indonesia and performing a referendum about the fate of the territory.<sup>(2)</sup>

The Secretary-General submitted his report dated on 7 May 1999 proposing the establishment of the mission to supervise the

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<sup>(1)</sup> Flo Lamoureux: East Timor the world's newest country, Center for Southeast Asian Studies School of Hawaiian, Asian and Pacific Studies, University of Hawai'i at Manoa, March, 2004, p.4.

<sup>(2)</sup> Official Documents of the Security Council for the year 1999, doc S/1999/513.p.5.

referendum in East Timor, to contribute also in the maintenance of security and to work for achieving reconciliation between the disputing parties <sup>(1)</sup>. The Council responded to that by its resolution 1246 for the year 1999 that the referendum is to be concluded on 8 August 1999 to indicate the desire of the people of East Timor to accept autonomy or the secession from Indonesia. The resolution has determined the period of the work of mission until 31 August 1999 <sup>(2)</sup>.

For logistic and technical reasons, the Secretary General request the Council to postpone the date of the referendum to be on 31 August 1999, as well as the extension of the duration of the mission for one month. <sup>(3)</sup>

The Council agreed on that under its resolution 1257 in 1999. <sup>(4)</sup>

The result of the referendum stated after concluding the vote the rejection of approximately 87.5% of the voters to the idea of autonomy, but that did not end the dispute, and the opposite happened. Violent attacks on the citizens of East Timor were carried out by the Indonesian army and by the help of other militias rejecting the recession <sup>(5)</sup>. The Security Council has condemned the attack and demanded a cease-fire. It also agreed on establishing a multinational force led by the State of Australia in order to restore security and peace, and requested the Secretary-General to submit his recommendations regarding the

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<sup>(1)</sup> Official Documents of the Security Council for the year 1999, doc S/1999/595.p.p.1-8. .

<sup>(2)</sup> Official Documents of the Security Council for the year 1999, doc S/RES/1246 (1999).

<sup>(3)</sup> Official Documents of the Security Council for the year 1999, doc S/1999/830. .

<sup>(4)</sup> Official Documents of the Security Council for the year 1999, doc S/RES/1257 (1999).

<sup>(5)</sup> Official website of the International Peacekeeping Missions in East Timor:

<http://www.un.org/arabic/events/peacekeeping60/1990s.shtml>.



formation of a peacekeeping operation of the United Nations to replace the above mentioned multinational force <sup>(1)</sup>.

The Council called the mentioned operation the "United Nations Transitional Administration", working under the chairmanship of the Special Representative of the Secretary-General of the United Nations, and will be responsible for public administration in East Timor. The Council authorized it with all the powers that would enable it to fulfill that responsibility. It is also assigned to maintain the security, law, order, ensuring civil and social services, the text of humanitarian aid, to support building of capabilities and institutions necessary for the independence. The resolution determined the mandate of the United Nations Transitional administration until 31 January 2001. <sup>(2)</sup>

The resolution has mentioned three main components of the administration which are <sup>(3)</sup>:

- The component of governance and public administration, which includes 1640 persons.
- The component of humanitarian assistance and emergency rescue.
- The military component, which includes 8950 soldiers and 200 military observers.

### **Second: the role of the Security Council in settling the dispute of East Timor**

After the Security Council issued its resolution 1272 for the year 1999, the Brazilian (Sergio de Mello) was appointed as a

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<sup>(1)</sup> Official Documents of the Security Council for the year 1999, doc S/RES/1264 (1999).

<sup>(2)</sup> See: Paragraphs 1, 2, & 17 of resolution 1272.

<sup>(3)</sup> See: Paragraph 3 of resolution 1272.

transitional governor of East Timor by the Secretary-General of the United Nations <sup>(1)</sup>. The Transitional Governor has established the National Advisory Council, a political body consists of (4) members of the United Nations Transitional Administration and (11) members of East Timor. This Advisory Council carries out the function of supervising the decision-making process during the transition period, and the Constituent Assembly was also established, which specializes with legislative functions, as well as the establishment of the first private Constitution of East Timor on 22 March 2002.

The formation of the United Nations' Transitional Administration, then the Council and the aforementioned Assembly with the participation of the United Nations was seen as rejected matters by some Timorese and raised their hostile spirit. This matter led to the emergence of armed militias which committed many armed attacks on the Transitional Administration members. The Secretary-General sent a report to the Security Council explaining those attacks and the instability of the situation in East Timor, which requires the extension of the mandate of the Transitional administration <sup>(2)</sup>. The Council responded to that and made it up to 31 January 2002 <sup>(3)</sup>, and then to 20 May 2002 <sup>(4)</sup>.

Based on that, the Security Council issued a recommendation to accept East Timor, as a member of the United Nations <sup>(5)</sup> and the

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<sup>(1)</sup> (Sergio Vieira Mello) was a [United Nations](#) diplomat in several countries, most recently in [Iraq](#), and was killed in [the bombing of the UN building in Baghdad](#) in 2003 by a car bomb.

<sup>(2)</sup> Refer to the Secretary-General's Report in the Official Documents of the Security Council for the year 2001, doc p.p.3, 13. S/2001/42.

<sup>(3)</sup> Official Documents of the Security Council for the year 2001, doc S/RES/1338 (2001).

<sup>(4)</sup> Official Documents of the Security Council for the year 2002, doc S/RES/1392 (2002).

<sup>(5)</sup> Official Documents of the Security Council for the year 2002, doc S/RES/1414 (2002).

General Assembly approved the aforementioned recommendation for the new member to be under the name of the "State of Timor - the Democratic Leste" <sup>(1)</sup>. The Council also formed a new peacekeeping operation on the basis of its resolution No.: 1410 of the year 2002, and was under the name of "United Nations Mission in Support of East Timor" (UNMISET). Its role was to assist the governing bodies and to support the protection of the law through the establishment of the East Timor Police Department and contribution to the maintaining of internal and external security. The resolution determined the mandate of the operation period to be of (12) months from the date of 20-05-2002, and it also mentioned three key components of those forces which are <sup>(2)</sup>:

Civilian component consists of 100 employees, comprising the Office of the Special Representative of the Secretary-General, the Serious Crimes Unit and the Human Rights Unit;

Civilian police component consists of 1250 officers;

Military component consists of 5000 troops and 120 military observers.

The mandate of the operation was extended until 20 May 2004 <sup>(3)</sup>, and then was extended for 6 additional months i.e. until 20 November 2004 <sup>(4)</sup>, then to 20 May 2005 <sup>(5)</sup>.

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<sup>(1)</sup> Official Documents of the General Assembly for the year 2002, doc 3/A/RES/57.

<sup>(2)</sup> Official Documents of the Security Council for the year 2002, doc S/RES/1410 (2002).

<sup>(3)</sup> Official Documents of the Security Council for the year 2003, doc S/RES/1480 (2003).

<sup>(4)</sup> Official Documents of the Security Council for the year 2004, doc S/RES/1543 (2004).

<sup>(5)</sup> Official Documents of the Security Council for the year 2004, doc S/RES/1573 (2004).

At the end of the operation's mandate, the Security Council established a political mission in the name of "United Nations Office in Timor-Leste" under its resolution 1599 for the year 2005, which is a mission of international peacekeeping operations, works to provide advisers and training for the transfer of skills and knowledge to national bodies for one year ending in 20 May 2006 <sup>(1)</sup>. The Council extended the mandate of the mission until 20 June 2006 <sup>(2)</sup>, then to 20 August 2006. <sup>(3)</sup>

During the month of September, 2011, the government of Timor-Leste agreed with United Nations Integrated Mission on a common transition plan for the purpose of the latter's withdrawal at the end of 2012 <sup>(4)</sup>. The Security Council determined the mandate of the mission finally to be on 31 December 2012 <sup>(5)</sup>. The implementation of this agreement was concluded by ending the mission's work and the withdrawal of all its members on the aforementioned date <sup>(6)</sup>.

We believe that the Security Council was not successful in that, having noted the security breakdown that occurred after the end of the mandate of the second operation (the United Nations Mission of Support in East Timor); due to its replacement with a mission whose work is limited to providing advice and training and it is not a subsidiary mission of international peacekeeping

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<sup>(1)</sup> Official Documents of the Security Council for the year 2005, doc S/RES/1599 (2005).

<sup>(2)</sup> Official Documents of the Security Council for the year 2006, doc S/RES/1677 (2006).

<sup>(3)</sup> Official Documents of the Security Council for the year 2006, doc S/RES/1690 (2006).

<sup>(4)</sup> International Peacekeeping Journal, issued by the Department of Public Information of the United Nations in consultation with the United Nations integrated mission in Timor-Leste, v. (12-62742), December, 2012, p. 1.

<sup>(5)</sup> Official Documents of the Security Council for the year 2012, doc S/RES/2037 (2012).

<sup>(6)</sup> Official Documents of the Security Council for the year 2004, doc S/RES/1573 (2004).

operations (UN Office in Timor-Leste). It has worked for more than a year and three months. It was better for the Council to form one operation of peace-keeping of the United Nations operations, since the beginning of the dispute in East Timor, and its work are not to be terminated except after the conclusive ascertainment of establishing the security, the rule of law and enabling the national bodies to exercise its functions fully.

Despite of the security failures occurring after the end of the second operation, the contribution of all UN peacekeeping operations mentioned above in resolving the internal dispute in East Timor after its separation from Indonesia cannot be denied. These operations had a key role in supporting the independence by taking over the management, maintenance of security, the enforcement of law, the text of humanitarian aid, the supervision on elections, the text of advice and training in all areas of the state as well as enabling East Timor to get the United Nations' membership.

## **Topic II:**

### **Arab disputes and resolutions of the Security Council**

The Security Council has been concerned with a number of issues related to the Arab States and issued a number of resolutions that concern them. Along with the Palestinian, Lebanon and Iraq issues, it has been concerned with the situation in the Islamic Republic of Iran, the situation between Israel and Tunisia, the situation in Western Sahara, the situation in Somalia, the situation in Libya and the situation in Yemen, where the Arab Region has enjoyed the lion's share of the UN Security Council resolutions for more than half a century, especially in Palestine, Lebanon and Iraq, as follows:

#### **First: Palestine:**

Middle East crisis has been ranked first in terms of attention, as the ongoing conflict between Arabs and Israelis who have settled in the Palestinian region and occupied its territories, which led to the outbreak of hostilities between the two parties, promoted the Security Council to issue on 20 January 1948 a resolution for a ceasefire in Palestine, followed after months later by a threat to impose economic and military sanctions on anyone who violates the resolution, which was carried out by Arab governments, and fighting has stopped on 18 July, except in Jerusalem.

Followed by a series of Israeli raids on the sites of Palestinian Militants in Jordan and Lebanon within the ongoing conflict continued with the countries of the region, and after the Egyptian Forces crossed into the Suez Canal in the Yom Kippur War in 1973, the Security Council issued resolution 338 on 22 October, which called to stop fighting on all fronts of the Yom Kippur War and to implement the resolution 242 in all its parts, where it was accepted by Egypt, Jordan and Israel, rejected by Syria, Iraq, Libya, Morocco, Algeria & Tunisia refraining from taking any action, while the PLO announced that the Palestinian Revolution did not care about the resolution.

With the continuation of Israeli encroachment towards Suez and Ismailia, the UN Security Council has passed the resolution 339 on 23 October 1973, which called for a ceasefire, a return of the warring parties to the lines of 22 October and sending observers stationed on these lines, as well as the resolution 340 on 25 October, which called for forming a UN Emergency Force not including the Permanent Member States of the Council.

Palestine Liberation Organization has participated for the first time at a meeting of the Security Council, but Israel has boycotted the meeting based on the Council resolution issued on 4 December 1975, which called on the Organization to "fully participate" in the discussions, but the meeting held on 12 - 27 January 1976 ended with a US veto on a resolution stating that

"the Palestinian people need to be able to establish an independent state in Palestine and to be guaranteed the sovereignty and territorial integrity in all countries of the region, as well as their political independence and their right to live in peace within secure and recognized borders."

At the invitation of the Islamic Foreign Ministers for the Security Council to hold a meeting concerning Israel's decision to annex Jerusalem, Council passed resolution 476, which opposed the Israeli measures for annexation on 30 June 1980 and condemned the annexation of East Jerusalem on 20 August.

The visit of Ariel Sharon to Al-Haram Al-Sharif, which includes Al-Aqsa Mosque and Dome of the Rock on Thursday, the 28th day of September & July of 2000, led to the outbreak of Palestinian anger and the start of Al-Aqsa insurrection, promoting the UN Security Council to unanimously issue resolution 1322 on 7 October 2000 condemning Israel for the excessive use of force against the Palestinians, while the United States refrained from voting.

With the continuation of armed clashes between Palestinians and Israeli soldiers and the escalation of tension in the Palestinian territories and the entry of the uprising in its second year, the UN Security Council failed to reach a compromise agreement on the situation in the region and in 2001 US used the veto power in the Security Council to block an Arab draft resolution that calls for sending observers to the occupied Palestinian territories.

The UN Security Council demanded that Israel lift its siege of Palestinian President Yasser Arafat's headquarters in Ramallah territories. In addition, the resolution 1435 passed on 24 September, called on Israel for the immediate cessation of the actions taken in the City of Ramallah and its environs, especially the destruction of Palestinian civilian and security infrastructure,

but Israel rejected the resolution immediately and announced its intention to continue the siege <sup>(1)</sup>.

### **Second: Lebanon:**

The suffering of Lebanon after independence in 1946 was followed by a civil war that lasted more than two decades, and then Lebanon subjected to Israeli violations continued till the moment, resulting in an intervention by the UN Security Council in an attempt to find a settlement in the region.

Moreover, Lebanon filed a complaint to the UN Security Council in 1958, accusing the United Arab Republic that it intervenes in its domestic affairs, the Council decided in 11 June to send observers to the Syrian-Lebanese borders and the internal border points to prevent foreign interventions.

Two PFLP (Popular Front for the Liberation of Palestine) men did an attack on an Israeli plane at Athens airport in 1968, then Israel's response represented in a raid on Beirut Airport which destroyed a number of combat aircrafts. The Security Council unanimously condemned the Israeli military operation, and condemned it again on 26 August 1969 after it launched a raid on Lebanon in response to Palestinian attacks <sup>(2)</sup>.

After the events of Black September 1970, retaliatory raids and Israeli combat operations continued on Southern Lebanon, where Israeli Forces invaded the South and centered in the Hock Area, but withdrew under resolution 278 issued by the UN Security Council on 12 May.

In 1972, the leader of the Lebanese National Bloc Christian Maronite party, Mr. Raymond Edde, requested to cancel the

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<sup>(1)</sup> Institute for Palestine Studies, United Nations Resolutions on the Arab-Israeli Dispute, g. 1-2-3-24.

<sup>(2)</sup> Encyclopedia of Politics, Abdul Wahab Kayali, op. cit., p. 318 & 319.



Cairo Agreement signed by and between Lebanon and Palestinians in 1969, aiming to regulate the activities of PFLP men in Lebanon, because it helps Israel to justify any attack on Lebanon before the Security Council.

Saeb Salam's Government in Lebanon resigned to express its displeasure after the Israeli attack on Beirut killing three Palestinian leaders in 1973, and the Security Council condemned this operation on 21 April.

On 10 August 1973, the Council issued a resolution calling on Israel to refrain from violating Lebanese territory and warning it to do repeat that, after Israeli planes intercepted a Lebanese plane believing that it was about to kill the leader of the Popular Front for the Liberation of Palestine.

But Israel refused to implement the resolution 425 and PFLP operations continued against Israel, as well as meetings of the Security Council to try to control the situation, where in its meetings the Council declared the unity, safety and independence of Lebanon and the strength of UN Emergency Force in the South.

The Security Council passed resolution 508 on 5 June 1975 after a complaint filed by Lebanon to the Council. This resolution requires that all the parties to the dispute halt all military operations in South Lebanon immediately and simultaneously on both sides of the Lebanese-Israeli borders, but the Israeli reaction to this resolution was the next day by invading the Lebanese territory in the Operation Peace for the Galilee. The Security Council issued resolution 509, which demands Israel to withdraw its Military Forces immediately and unconditionally to the internationally recognized borders with Lebanon <sup>(1)</sup>.

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<sup>(1)</sup> United Nations' Website.

But Israel continued its violations, since it has intercepted a cargo ship rented by the International Committee of the Red Cross carrying Aid Equipment to Tyre and Sidon on 19 June 1990. The Council adopted resolution 512, which calls on all the parties to the dispute to respect the civilian rights of individuals, refrain from any act of violence against those people and take all the necessary measures to alleviate the suffering caused by the dispute, especially by facilitating the transfer and distribution of Aid materials provided by the United Nations and the International Committee of the Red Cross.

Followed by resolution 513 on 3 July to re-provide basic services normally like distribution of water, electricity and food, especially in Beirut, while Israel's name was not mentioned in this resolution, which was issued after the Israeli Forces blockade on West Beirut, the road closures between two parts of the Lebanese Capital, the prevention of foodstuffs entry and cutting off electricity and water inside the region.

Then, Israel banned the UN Emergency Force sent to Beirut under resolution 516 adopted by the Security Council, which decides to deploy international observers to oversee the situation in Lebanese Capital after the fall of Beirut International Airport in the hands of the Israelis and the indiscriminate bombing of West Beirut, while Israel justified its action saying "We are not able to verify the activities of Terrorist Organizations in Beirut and its suburbs.

The Islamic Resistance Movement carried out operations against the French and American Forces, which led the UN Forces to withdraw from Lebanon in 1983 and, as time passed on, the number of Israeli Forces has increased to the point that the occupied strip (security zone) has become affiliated directly to the Israeli Military Administration, where Israel has committed many massacres in the region. Thus, the Security Council has called upon Israel to withdraw from Southern Lebanon and allow

the redeployment of the UN Emergency Force along the border with Israel in 1986 <sup>(1)</sup>).

Israel has continued its raids and assaults on Lebanese territories until it has agreed on the 1st day of April 1998 upon the implementation of Security Council resolution 425 (twenty years after its release) demanding Israeli Army to withdraw from all the Lebanese territories provided that Syria and Lebanon guarantee Israel's security at its northern borders, but Syria and Lebanon rejected the Israeli requirement demanding unconditional withdrawal of the Israeli Army.

The Israel's Government issued a decision in March 2000 to withdraw from Southern Lebanon unilaterally and implemented the decision to withdraw in May of the same year, while the Security Council welcomed this step in resolution 1310 calling on both parties to respect the line of withdrawal and self-restraint, as well as calling on Lebanese Government to ensure the return of its effective authority and presence in the South through the deployment of Lebanese Armed Forces on a large scale.

Then the UN Security Council approved unanimously to reduce the number of the United Nations Forces in Lebanon in the resolution 1337 adopted on 30 January 2001, but urged Beirut to exert control over its territory in the southern borders, and the Council agreed on 16 May/June on a plan to reduce the UN Peacekeeping Forces in Lebanon leaving the details ambiguous, because of opposition from Beirut to Forces reduction, and after that the Security Council has voted unanimously on 31 July to reduce the UN Forces on the Lebanese-Israeli borders by 20% and converted them to observers, despite the opposition from Lebanon and refusing to approve any formula without consultation with it <sup>(2)</sup>).

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<sup>(1)</sup> Encyclopedia of Politics, Abdul Wahab Kayali, op. cit., p. 318 & 319.

<sup>(2)</sup> United Nations' Website.

In 2002, the UN Security Council extended the mission of the United Nations Emergency Force in Southern Lebanon and deployed on the borders with Israel since 1978, for six months, but a request was from Secretary-General Kofi Annan to continue reducing the number of international soldiers, expressing his concern about "serious breaches" to the withdrawal line since Israel withdrew its troops from Southern Lebanon in May 2000.

### **Third: Iraq:**

The war between Iran and Iraq broke out on 22 September in 1980, as Israel carried out a surprise air strike on 7 June 1981, which destroyed an Iraqi nuclear reactor under construction, and in 1984 chemical weapons were used in the war between the two countries, every state has destroyed the civilian ships of the other state, and after eight years of Iran-Iraq War with human losses estimated at approximately one million people dead, the two countries agreed upon a proposed United Nations peace plan in August 1988 contained in Security Council resolution 598, which provides for the cessation of hostilities between the two countries. At the end of War, Iraq has rebuilt its Armed Forces.

On the second day of August in 1990, Iraqi Forces attacked Kuwait, promoting the Security Council to adopt on the same day the resolution 660 condemning the Iraqi invasion of Kuwait, demanding the immediate and unconditional withdrawal of all Iraqi Forces and calling on for direct negotiations between the two countries after the withdrawal, while on 6 August the Security Council issued resolution 661 to impose economic sanctions on Iraq, and not to deal with it commercially, militarily & financially with the exception of medical equipment and food products in specific cases. The Iraqi reaction represented in annexing Kuwait as Iraqi province on 8 August of the same year, while the Council issued resolution 662 on the illegality of the Kuwait annexation.

On 18 August, the Council passed resolution 464 demanding Iraq to immediately deport the foreigners detained in Iraq and Kuwait after Saddam's decision to use the "citizens of the aggressor states" as human shields in the face of any potential bombing, and in resolution 665 passed on 25 August, the Council has allowed the use of force against Iraq to enforce the UN resolutions.

On 15 September, the Security Council adopted resolution 666 on the transfer and distribution of food sent to Iraq and Kuwait under the auspices of the United Nations, the International Committee of the Red Cross and other international organizations, and the next day Council passed resolution 667 condemning unanimously Iraq for attacks on the headquarters and members of diplomatic missions in Kuwait, including the abduction of foreign nationals, who were in the headquarters (<sup>1</sup>).

On 24 September, Council adopted resolution 669 requiring the Sanctions Committee to examine all requests for assistance, submitted by countries affected by the embargo imposed on Iraq, and the next day, resolution 670 was adopted to impose an air embargo and prevent any Iraqi vessel docked in a foreign port from sailing, if they have violated the embargo imposed on 6 August.

On 29 October, the Security Council in resolution X no. 674 regarding Iraq, condemned the Iraqi practices in Kuwait and repressive practices against Kuwaitis.

A month later, Council has passed resolution 677, which condemns Iraq's attempts to change the demographic infrastructure of Kuwait, and calls upon Iraq to entrust to the United Nations with a copy of the Kuwaiti civil records, a next day Council has passed resolution 678, which gives ability to the Member States to cooperate with Kuwait in using "all necessary

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(<sup>1</sup>) United Nations' Website.

means", including the power to ensure Iraq's withdrawal from Kuwait, not later than 15 January 1991.

As a result of Iraq's non-response to the resolution of the Security Council, the International Military Campaign (involving 28 countries) began on Iraq at three o'clock morning in Iraqi time on 17 January 1991. On 28 February 1991, the United States announced a cease-fire, then the Security Council adopted -on the second day of March 1991- resolution 686, which calls on Iraq to immediately stop the Kuwait's annexation procedures, and to declare its responsibility for all damages caused by the invasion of Kuwait, whether in Kuwait or in the other states, as well as to release all the Kuwaiti detainees, and to provide all the necessary information to identify the equipment and chemical and biological weapons in Iraq and Kuwait, in order to determine their location <sup>(1)</sup>.

Iraq has complied with resolution 687 issued on 3 April for the ceasefire and the disarmament of weapons of mass destruction owned by Iraq, as well as inspecting those weapons in the Iraqi territories and forcing Iraq to pay compensations of its oil revenues and lift the ban on food.

Then, the Council has passed a resolution on 9 April stipulates on creating a United Nations mission to monitor the situation between Iraq and Kuwait, while Baghdad refused the resolution 706 issued by the Security Council on 15 August based on a proposal from France to allow Iraq to export oil gradually over six months, in order to buy food and medicine for civilians.

After finding documents indicate a program to building a hydrogen bomb, the Council adopted resolution 715 to subjugate the Iraq's military industry to the auspices of the UN, and after that the Security Council issued an ultimatum to Iraq to bear

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<sup>(1)</sup> Encyclopedia of Politics, Abdul Wahab Kayali, op. cit., p. 318 & 319.

"serious consequences" in the event of its refusal to the unconditional acceptance of all the United Nations resolutions.

But the crisis did not end to this point, where Iraq has expelled the American experts working in the Special Committee of the United Nations to disarm weapons of mass destruction after the adoption of Security Council resolution 1134 that threatens Baghdad to impose new sanctions, and then the Security Council in its resolution 1153 adopted on 20 February 1998 increased the amounts of oil that Iraq exports every six months from two billion dollars to five billion dollars within the "Oil for Food Programme".

Iraq has lost hope for lifting the sanctions imposed on it and announced on 31 October 1998 stopping its cooperation with the Special Committee of the United Nations, promoting the Security Council on 5 November to adopt resolution 1205, which calls on Iraq to resume its cooperation with the Special Committee, so Iraq has retreated its decision on 14 November as a result to a US threat to resort to force and air strikes into Iraq.

Moreover, in resolutions 1275, 1280 & 1281 in 1999, the Security Council announced the extension of the "Oil for Food Programme".

Resolution 1284 was adopted on 17 December 1999, which refers to Iraq's non-commitment to return all Kuwaiti and third-country nationals who were in Iraq on 2 August 1990 or later to their home countries. Also calls on Iraq to allow the Commission to immediately access and inspect unconditionally the areas, facilities, equipment, records and means of transport, which the Commission wishes to inspect, as well as all officials and employees who Committee would like to meet with. In addition, Iraq will bear all the costs relating to works of the Inspection Commission and the International Atomic Energy. In this resolution, Security Council encourages States and International

Organizations to provide educational aids to Iraq. As for the "Oil for Food Programme", Council prevented -under this resolution- the local procurement and cash flow from Iraq's oil revenues detained abroad strictly <sup>(1)</sup>.

Also, Council renewed the Programme in its resolutions 1302 & 1330 issued in 2000, and continued to renew the Oil for Food Programme in its resolutions 1352 & 1360 and other resolutions issued in 2001.

On the fourth day of June, Iraq halted oil exports for a month in protest at the Security Council resolution to extend the "Oil for Food" Programme for one month instead of six months, in order to discuss the implementation of smart sanctions on the state.

In addition to the above, in September, Iraq has expelled eight employees of the United Nations working in its territories, accusing them of spying for hostile states, referring to the United States and Britain, while the Security Council called on Iraq to provide explanations about this step.

The UN Security Council adopted the resolution 1409 unanimously on 14 May 2002, which allowed to loosen sanctions imposed on Iraq since it invaded Kuwait about 12 years ago, where the resolution allowed Iraq to import products for civilian use, but has kept the arms' import banned, and extended the "Oil for Food Programme" and postponed the vote on a new order of sanctions imposed on Iraq at the request of Syria (Non-Permanent Member State in the Council).

Since Bush's declaration of war on so-called terrorism after the events of 11 September 2001, he had threatened to use force and to launch a military strike on Iraq, then the US Congress

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<sup>(1)</sup> United Nations' Website.



approved on 11 October 2002 the request of President giving him the authority to use military force against Baghdad (<sup>1</sup>).

In resolution 1441, dated on 18 November 2002, the UN Security Council members unanimously approved a US-British draft resolution concerning the inspection on Iraqi weapons, which was considered an opportunity for Baghdad to finally disarm weapons of mass destruction it is accused of their possession. According to the time schedule covered by the resolution, from 15 to 18 June of this month, Hans Blix - the chief of Weapons Inspectors' Mission - and Muhammad Al-Baradei - the director of the International Atomic Energy Agency, would go to Baghdad with more than 20 technicians to work on arrangement of communications, offices and laboratories that will be used by the inspectors in their work. Also, resolution compels Iraq to send a detailed report on all its programs to develop unconventional weapons and their means of launching, in addition to the civil materials in its possession that might have military uses. This report would be sent no later than 8th day of next December. Under the resolution, on the 23th day of next month, arrive between 80 and 100 inspectors to Iraqi territories to start the work of the weapons inspection, and the inspection teams would provide a report after two months to the Security Council on the results of their work.

But Iraqi Trade Minister Mohammed Mehdi Saleh sees that the new draft resolution is not intended to verify that Baghdad possessed unconventional weapons, but is intended to provide a cover for the United States to take military action against Iraq. The Iraqi Minister expressed his regret because "the United States and Britain impeded the return of weapons inspectors of the United Nations until adopting a new resolution leads to a military attack on Iraq under an international umbrella.

### **Them**

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(<sup>1</sup>) Encyclopedia of Politics, Abdul Wahab Kayali, op. cit., p. 318 & 319.

## **Conclusion & Research Results:**

The Security Council is one of the most diverse organs of the United Nations, which was created based on Article 23 of the Charter of the United Nations, in order to maintain international peace & security, and which is the only organ that has the power and authority to issue binding resolutions to all Member States under the Charter, unlike other organs of the United Nations, which only make recommendations to various governments. The Charter of the United Nations created a Charter consists of six main organs, and one of these organs was the UN Security Council, which is the main responsible for maintaining international peace and security.

The UN Security Council consists of 15 members of the United Nations, including the five permanent members, and the ten remaining members are elected by the General Assembly for two years, and does not allow the election of one of the ten members once again directly, as there is a constant and permanent representative of each Member at the United Nations, so as to achieve continuity principle, which is an important engine for the management of the Security Council. Therefore, this research was conducted under the title: Role of the Security Council in International Disputes Resolution, and has reached the following results and recommendations:

### **Research results:**

- The permanent members are: United States, Russia, Britain, France and China, and there are five seats to African and Asian States, two seats for Latin America States, two seats for Western European and other States and one seat for Eastern European States.

- Functions and powers given to the Security Council are broader and comprehensive compared to other UN organs. The most important of these functions and powers is: to maintain international peace and security, in accordance with the foundations and purposes of the United Nations, and to discuss any dispute or situation which might lead to an international disagreement, and to recommend ways or terms of the settlement of this dispute.
- The objectives of the Security Council are: to maintain international peace and security; to investigate conflicts between States, which may lead to international disputes; and to emphasize on disputes resolution.
- Articles 34 & 35 of the Charter have organized the ways by which the Security Council can put its hand on a dispute or situation that threatens international peace and security:
- The Security Council 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, as stipulated in Article 34 of the Charter.
- Any Member of the United Nations may bring any dispute, or any situation of the nature referred to in Article 34, to the attention of the Security Council or of the General Assembly. A state which is not a Member of the United Nations may bring to the attention of the Security Council or of the General Assembly any dispute to which it is a party if it accepts in advance, for the purposes of the dispute, the obligations of pacific settlement provided in the present Charter, as stipulated in Article 35, paragraphs 1 & 2 of the Charter.

- By reading both above-mentioned Articles contained in the Charter, we find that the Charter gave to more than one body the right to submit the issue to the Security Council and that is a confirmation of the Charter on the duty of all States to maintain international peace and security. Firstly: the States parties to the dispute themselves; secondly: the UN Member States; thirdly: the Non-member States of the United Nations; fourthly: the General Assembly; fifthly: the Secretary General; and sixthly: the intervention by the Security Council itself.
- Article 36 and beyond addressed the means through which the Security Council to resolve the dispute threatening international peace and security, as Article 36 of the Charter of the United Nations stipulates that: "The Security Council may, at any stage of a dispute of the nature referred to in Article 33 or of a situation of like nature, recommend appropriate procedures or methods of adjustment."
- The legal disputes are always within the jurisdiction of the International Court of Justice and the Security Council should not be allowed to address them in any way, but recommends referring them to the Court and this a matter of respect to jurisdiction between the United Nations organs.

Thus, we conclude that in this case the Security Council determines the appropriate mean and recommends going with it. Also, we find that the prescription issued by the Council is a recommendation and, this leads us to know the intended recommendation and distinguish it from the resolution.

- The text of Article 36 refers to the Security Council power to make recommendations, and the recommendation is like a proposal issued by an international organization in order to take action or omission.

- Article 37 of the Charter of the United Nations stipulates that: "Should the parties to a dispute of the nature referred to in Article 33 fail to settle it by the means indicated in that 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 such terms of settlement as it may consider appropriate."
- Article 38 of the Charter of the United Nations stipulates that: "Without prejudice to the texts of Articles 33 to 37, the Security Council may, if all the parties to any dispute so request, make recommendations to the parties with a view to a pacific settlement of the dispute."
- The Security Council has a role in the investigation of international disputes resolution in accordance with article 34 of the Charter of the United Nations, as it stipulates that: "The Security Council 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."
- This Article authorizes the Security Council to intervene to investigate any dispute or any situation of the kind referred to in the same Article, as conducting an investigation in accordance with this Article poses a particular procedure can be established on its own initiative of the Security Council, for the purpose of addressing any dispute or situation.
- Security Council operations in Kosovo and East Timor in 1999 differ from other operations of other areas, which were assigned to several new operations, as well as wide powers given to them in order to perform their functions.

- The Security Council has been concerned with a number of issues related to the Arab States and issued a number of resolutions that concern them. Along with the Palestinian, Lebanon and Iraq issues, it has been concerned with the situation in the Islamic Republic of Iran, the situation between Israel and Tunisia, the situation in Western Sahara, the situation in Somalia, the situation in Libya and the situation in Yemen, where the Arab Region has enjoyed the lion's share of the UN Security Council resolutions for more than half a century, especially in Palestine, Lebanon and Iraq.
- When assessing the role of the Security Council, we will notice a change in the role of the Security Council during the Cold War, a change in the role of the Security Council in the structure of the International Order, an increase in the activities of the Security Council after the Cold War, and in the change nature of the UN peacekeeping operations.
- Also when assessing the role of the Security Council, we will find examples of failure in the system, such as a legalization of illegal means, an abuse of veto power and Hariri assassination case.

## **Research recommendations:**

- The research presents three alternative ways for reforming the UN Security Council:

- \* First one: to make a comprehensive reform of the system of collective security in the process of radical reform of all the decision making structures and mechanisms of the United Nations.

- \* Second one: to continue the current situation with overcoming the disadvantages of "veto" power.

- \* Third one: to perform some non-root adjustments on the Security Council in response to growing international pressures looking forward to the Council reform.

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**Conclusion**

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