A CRITIQUE OF THE ROLE OF THE UNITED NATIONS SECURITY COUNCIL IN PROMOTING PEACE AND SECURITY UNDER INTERNATIONAL LAW

BY

Henry Mbutu NAH
LLM/LAW/3471/2011-2012

BEING A POSTGRADUATE LL.M. DESERTATIONPRESENTED TO THE FACULTY OF LAW, AHMADU BELLO UNIVERSITY, ZARIA. IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE AWARD OF MASTER OF LAWS DEGREE (LL.M).

NOVEMBER, 2015

DECLARATION

I declare that the work in this Thesis entitled A Critique of the Role of the United Nations Security Council in Promoting Peace and Security under International Law has been carried out by me in the department of Private law. The information derived from the literature has been duly acknowledged in the text and a list of references provided. No part of this thesis was previously presented for another degree or diploma at this or any other institution.

---------- ----------

Henry Mbutu NAH. Date

CERTIFICATION

This thesis entitled,A CRITIQUE OF THE ROLE OF THE UNITED NATIONS SECURITY COUNCIL IN PROMOTING PEACE AND SECURITY UNDER INTERNATIONAL LAW by Henry Mbutu NAH meets the regulations governing the award of the degree of master of Laws (LL.M) of the Ahmadu Bello University, and is approved for its contribution to Knowledge and literary presentation.

Dr. I. F. Akande ---------- ----------
Chairman, supervisory Committee Signature Date

Dr. K. M. Danladi ---------- ----------
Member supervisory Committee Signature Date

Dr. K. M. Danladi ---------- ----------
Head of Department Public Law Signature Date

Prof. K. Bala---------- ----------
Dean, School of Postgraduate StudiesSignature Date

ACKNOWLEDGEMENTS:

First and foremost I would like to thank my excellent supervisors, Dr I.F Akande and Dr K.M. Danladi, for their invaluable help throughout this process. Their concise and constructive feedback, encouragement, and seemingly endless patience have been greatly appreciated.

I would also like to express my gratitude to Dr and Mrs Njiforti for their immeasurable guidance, support and encouragement throughout this programme. May God never fail to reward them immeasurably too.

Much gratitude is also shown to my dear daughter Keizer Leah Betenyi Nah, and her mother Kwarla Mburli for their understanding and moral support.

Appreciation is also given to Mr Nkwatoh Louis S. who sacrificed a lot for me to see that I achieve this task.

My profound appreciation goes to my uncle Pa Nwatoh Francis who dedicated his time to do a proper editing of this work.

Sincere appreciation is also extended to anybody who in any little way contributed to the success of this work. Remarkable ones are Chuo Adamu Nsango, Njiforti Victor, Nah Charles, Tafon Elizabeth, Nah Alice and Nah Florence.

I will also like to appreciate all my course mates who took time to clarify my doubts on a host of issues.

DEDICATION

I dedicate this book first of all to the Mighty God who gave me the courage, endurance and patience throughout this programme, then to my beloved Sister, Nah Winifred Betenyi, for her financial support and encouragement throughout my studies.

ABSTRACT

The international community saw the need for unity, peace, cooperation, and a state of security. This task was given the UNSC. But due to its inability to handle the plethora of breach of peace situations the world is experiencing creates a lot of doubts as to the seriousness of this body to carry on the task assigned her. Some of the question this research intends to answer is to see how committed the Security Council members are in maintaining and promoting world peace and security. With their over looming interest will the world experience a better peace and security situation than before? The objectives of this research is to examine the effectiveness of the UNSC in its principal role of maintaining peace and security given the high level of breach of peace situations the world is experiencing. The methodology used in this work is the doctrinal method. Some of the findings arrived at in this research is the lack of means sufficient enough to carry out its functions. The veto power of the permanent five members of the Security Council is a hindrance to this body`s function. To proffer some solutions, rebel and terrorist group`s funds should not only be frozen after they are discovered. They should be sent to the coffers of the UN to help resolve security issues in the areas that are unstable or that they breached the peace. The General Assembly's most important attempt so far to prevent the paralysis of the United Nations in measures of collective security was the Uniting for Peace Resolution of 3rd November, 1950. This resolution attempted to counter the hindrance of the Security Council caused by the excessive use of the veto and the negligence of previous recommendations by the General Assembly.

TABLE OF CONTENT

DECLARATION.....ii

CERTIFICATION……...iii

DEDICATION v

ABSTRACT……..vi

ACKNOWLEDGEMENT.....iv

TABLE OF CONTENTS.....viii

LIST OF ABREVIATIONS.....xii

LIST OF STATUTES…….…….....xiv

CHAPTER ONE

GENERALINTRODUCTION..... 1

1.1Introduction.....1

1.2Statement of the Problem.....4

1.3 Aims and Objectives of the Research.....5

1.4Scope and Limitations of the Research.....6

1.6 Research Methodology.....6

1.7 Literature Review.....7

1.8 Justification of the study……..…….23

1.9Organisational layout 24

CHAPTER TWO
CONCEPTUAL CLARIFICATIONS.....26

2.1Introduction.....26

2.2Meaning and Nature of International law.....27

2.3Meaning and Nature of the Concept of Peacemaking.....30

2.4Meaning and Nature of the Concept of Peacekeeping.....37

2.5 The development of peace keeping in International Law.....40

2.5Meaning and Nature of the Concept of Peace enforcement.....42

2.6 The development of peace enforcement in International Law.....43

2.6The Meaning and Establishment of the SC of the United Nations..... 48

2.7The Concept of Security.....50

2.7.1 The Development of Security in International Law.....55

CHAPTER THREE

THE ROLE OF THE SC IN PROMOTING PEACE AND SECURITY IN INTERNATIONAL LAW.....58

3.1Intriduction.....58

3.2The Legal basis of Peacekeeping in International law.....59

3.2.1 The UN Charter.....59

3.2.4 Security Council mandates.....61

3.3The Role of the SC in International Law.....64

3.3.1 Maintenance of international peace and security.....64

3.3.2 United Nations Security Council Proactive Role in Promoting Peace and Security…..67

A. Measures taken to stop terrorist funding and other activities……....68

1. Criminalization of terrorism financing……...70

2. Freezing assets of terrorists and terrorist organizations…….71

3. Reporting obligations……72

4.Weapons and explosives……72

5. Checking International terrorism……...72

B. Measures taken by the Security Council to promote disarmament……..73

1. Measures taken to checkmate proliferation of small arms and light weapons……74

2. Nuclear and chemical Weapons Control Strategy……75

3. Nuclear Non-Proliferation Treaty……76

4. Efforts to ban nuclear tests……78

5. Chemical weapons……..…..81

C. Measures taken to promote human rights activities in the world……...…84

1. Gender based protection……..…85

3.4An assessment of the achievements of the UNSC in selected areas.....89

3.4.1Africa.....91

3.4.1.1Libya.....91

3.4.1.2Democratic Republic of Congo.....96

3.4.1.3Rwanda.....98

3.4.1.4Darfur (Sudan) 105

3.4.2 Asia.....110

3.4.2.1 Iraq.....111

3.4.2.2 Afghanistan.....117

CHAPTER FOUR

LIMITATIONS OF THE UNSC AND A CRITIQUE OF ITS ROLE IN PROMOTING PEACE AND SECURITY.....123

4.1Introduction.....123

4.2Limitations of the UNSC.....124

4.2.1 Limitations deriving from the text of the UN charter.....125

4.2.2 Limitations deriving from the ‘purposes and principles of the UN charter.....128

4.2.3 Limits fashioning to discretionary powers.....133

4.2.4 Limits based on jus cogens.....137

4.3Critique of the role of UNSC in Promoting Peace and Security.....141

4.3.1 SCmanner of functioning..... 141

4.3.2 Thestructure of the UNSC.....143

4.3.3 Arm arsenal of UNSC permanent members.....144

4.3.4 Veto power of permanent members.....145

4.3.5 Its double standard attitude.....147

4.3.6 Undermining the Purposes and Principles of the United Nations.....150

4.3.7 The resources of the SC.....152

4.3.8 A no UN standing Army.....153

4.4Misuse of the veto power in International Law and Consequences.....154

4.4.1 Bypass of SC authorisation for Peacekeeping.....154

4.4.2 Veto used to protect the interest of the Permanent five.....155

4.4.3 Non veto holder's states rush to ally with one or more P-5 member.....155

4.4.4 General Assembly Learns to Bypass SC with Creation of Uniting for Peace Resolution 156

4.4.5 Use of the Veto in Nuclear Weapons Control.....157

4.4.6 Use of the veto to block the amendment of the Charter.....158

4.4.7 Use of the veto tocontrol the Council's agenda.....159

4.4.8Veto used to decide if a situation is substantive or procedural as it suits them……..159

4.4.9 Work of UNSC done by other bodies…….160

CHAPTER FIVE

5.0 SUMMARY RECOMMENDATIONANDCONCLUSION ……...161

5.1 Summary.....161

5. 2 Findings.....162

5.3 Recommendations …….....166

5.4 Conclusions.....167

5.5 References……160

List of Abbreviations

ANDS Afghanistan National Development Strategy

AIA -Afghan Interim Authority

Alliance of Democratic forces for the liberation of Zaire/Congo(ADEL),

AMIS African Union Mission in Sudan

ANDS- The Afghanistan National Development Strategy

CEDAW -Discrimination against Women

CTBT-Comprehensive Nuclear Test-Ban Treaty

DEVAW- Declaration on the Elimination of Violence against Women

DPA- Department of Public Affairs

DPKO- Department of Peacekeeping Operations

DSRSG- Deputy Special Representatives of the Secretary-General

DUF- Directives on the Use of Force

EAD- Electoral Assistance Division

FARS- Framework for Afghanistan's Reconstruction Strategy

FAO the Food and Agriculture Organization

GBV- Gender Based Violence.

GA- General Assembly

ICGLR- International Conference on the Great Lakes Region

ICRC- International Committee of the Red Cross

ICTY- International Criminal Tribunal for the former Yugoslavia

IDPs- Internally Displaced Persons

IHEC- Independent High Electoral Commission

IMTF- Integrated Mission Task Force

ISAF- International Security Assistance Force

JCMB- Joint Coordination and Monitoring Board

MAD- Mutual Assured Destruction

MoU- memorandum of understanding

MONUC United Nations Mission in the Democratic Republic of the Congo

NAC- North Atlantic Council

NATO North Atlantic Treaty Organization

NFZ- non fly zone

NGOs -Non-governmental organizations

NMOG- I Neutral Military Observer Group I

NRMDD- National Revolutionary Movement for Democracy and Development

OHCHR- Office of the United Nations High Commissioner for Human Rights

P-5- Permanent Five

PE- Peace enforcement

PEO- Peace enforcement operations

PSO- Peace and Security Operations

RCD The rebel movements the Congolese Rally for Democracy

ROE- Rules of Engagement 33

RRR- Relief, Recovery, and Reconstruction.

SADC South African Development Community

SC- Security Council

SRSG- the Special Representative of the Secretary-General

TA- Transitional Authority

UN-United Nations

UNAMA Afghanistan called United Nations Assistance Mission in Afghanistan

UNAMI United Nations Assistance Mission for

UNAMID-United Nations/African Union Hybrid Operation in Darfur

UNAMIR United Nations Assistance Mission for Rwanda,

UNMIS United Nations Mission in Somalia

UNDP- U.N. Development Program

UNEF- United Nations Emergency Force

UNESCO-United Nations Education Scientific and Cultural Organisation

UNFPA- The United Nations Population Fund

UNHCR-United Nations High Commission for Refugee

UNIDIR- United Nations Institute for Disarmament Research

UNICEF-The United Nations Children's Fund

UNOPS- United Nations Office for Project Services

UNOMUR United Nations Observer Mission Uganda-Rwanda

UNSC-United NationsSecurity Council

UNSCR- UN Security Council Resolution

UNSMIL- United Nations Mission in Libya

UNTSO- United Nations Truce Supervision Organization

WFP- World Food Program

List of Statutes

UN Charter; 26 June 1945.

UN, GAR 1000 (ES-1) of 5 November 1956

UNGA Resolution 46/39 of 6 December 1991

UN, SC Res. S/RES/713 (1991)

UNGA Resolution of 16 November 1984 (UN Doc. A/RES/39/14) and UNGA

UNGA Resolution 46/30 of 6 December 1991

UN, GAR/377 (V) of 3 November 1950

UN, SC Res. S/RES/660 (1990),

UN, SC Res. S/RES/661(1990),

UN, SC Res. S/RES/678 (1990). SC

UN, SC Res. S/RES/748 (1992).

UN, SC Res. S/RES/883 (1993)

UN, SC Res. S/RES/766 (1992).

UN, SC Res. S/RES/770 (1992), SC Res. S/RES/771 (1992). For further resolutions pertaining to the Former Yugoslavia,

UN, SCR/912 (1994) of 21 April 1994

UN, SCR/918 (1994) of 17 May 1994

UN, resolution 929 (1994) of 22 June 1994

UN, SCR/1325 (2000) on women, peace and security:

UN, SCR/1612 (2005) on the protection of children in armed conflict

UN, SCR/1674 (2006) on the protection of civilians in armed conflict

UN, (2006) Security Council resolution 1715 (2006) of 9 October 2006,

UN, UN Security Council Resolution (UNSCR) 1970 on 26 February

UN, SCR 2022, December (2011),

UN, UNSCR 2040 ,12 March (2012)

UN, UNSCR 2095,14 March (2013)

UN, SC Resolution 731

UNGA Resolution 46/39

UN, SCR 573 (1985)

UN, SCR 611 (1988)

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Introduction

The International community continues to experience human suffering on a scale unparalleled in human history despite all efforts made at international, regional and sub-regional levels. This stems primarily from some complex and often prolonged conflicts which initiatives to address the peace, security and stability challenges by the United Nations (UN), the international community and a range of regional and sub-regional organizations have failed to prove the efficacy of these organizations, which nonetheless, continue the battle to find a lasting solution. The plight of every society nowadays is to attain a reasonable level of economic growth, better standard of living and peace at all cost. No society can achieve these objectives without a reasonable level of peace and security. Peace and Security are virtues that are desired by individuals, families, countries, continents and the world as a whole. A peaceful and secured environment is a safe haven for investors which will definitely trigger economic growth and development. No investor will like to invest his hard earned savings in an unsecured environment. That is why so many countries spend huge resources both financial and human in order to ensure that there is peace and security so as to attract investors.

The cost of maintaining peace and security is far less expensive than halting war or breaches of peace. It is estimated that the United Nations spent about 200 billion dollars on several military interventions in 1990 in Bosnia Herzegovina, Somalia, Rwanda, Haiti, Persia Gulf, Cambodia and El Salvador of which a preventive approach would have cost her just the sum of 130 billion dollars.[1]

[1] Anna. A.,(2005) *Transforming Conflict and Building Peace*. Sida Publishers, Sweden; p. 1

This is to reiterate the fact that peace and security is gold. These virtues are neededat every level if mankind must sit and ponder of the future. Governments have never stopped at any level to put all their efforts together to ensure that there is peace and security in their countries. That is why there is the police force, the soldiers and private security providers trained in different specialties and fields; all with the aim of providing peace at its highest level. Governments have not stopped at anything to give their security agents proper training, to organize refresher programs for them and to send them to foreign countries for better security skills.

Despite the efforts made at the national levels to maintain and promote peace and security, the international community has not relented in its efforts to ensure that peace and security is at its maximum level at every corners of this earth. That is why the creation of the League of Nations[2] (LON) was so important to foster world peace and security. It failed in the mission for which it was created witnessed by two world wars that led to untold human and material loss. The LON lost credibility in the eyes of the international community. The United Nations Organisation[3] (UNO) was then created to replace the LON with the principal objectives being to maintain international peace and security[4]. The United Nations(UN) through the Security Council[5] (SC) has been doing a lot in its bid to maintain and promote peace and security worldwide. Regional organizations too, do help in the maintenance of international peace and security. This was recognized, encouraged and authorized by the founders of the United Nations

---

Kofi, A. A., (2002) *Prevention of Armed Conflict; Report of the Secretary General. UN Publication*, New York P. 36

[2] Alan, B., (2000) *The Unfinished Nation*. Mc Graw Hill, Boston Massachusett, 3rd Edn p. 69.
See also Boger, L. W., (1977) Imperialism At Bay; Oxford University Press; Oxford p. 263
See also The league existed from 1920 to 1946. The first meeting was held in Geneva, on November 15, 1920, with 42 nations represented. The last meeting was held on April 8, 1946;

[3] Alan, B.; p 160 op. cit p.2
See also Boger, L. W.; P.864 Op cit p. 2

[4] Art. 1(1) *UN Charter* ;26 June 1945.Available at http://www.UN.org/aboutun/Charteraccessed on 3/4/ 2013 at 2:03pm

[5] ibid Art. 24

and the drafters of its charter (UN) and is articulated in Chapter VIII[6]. Some of these regional bodies are the Organization of Security and Cooperation in Europe (OSCE), the Economic Community of West African States (ECOWAS),the Southern African Development Community (SADC), North Atlantic Treaty Organisation (NATO) made up of an alliance of 26 countries from North America and Europe, African Union (AU), The Organisation of American States (OAS) etc.

The SC has been taking various measures to arrive at its objectives of maintaining peace and security which is its principal task since it was created[7]. Weapons monitoring and checks have been greatly embarked upon[8], sanctions applied in certain circumstances and military interventions in other circumstances, no fly zone, arms embargo etc. In some instances the SC has intervened in a country's territorial jurisdiction with tangible reasons to maintain and promote peace and Securitywhile in others, there has been no tangible and objective reason for intervention or interventions to protect the interest of a member (Libya, Iraq). At some instances, the SC has had a very tough time in getting a general agreement from its permanent members in intervening[9]. The various interventions by the SC or any of the regional or sub regional bodies have been bedeviled by huge financial, material and human loss both at the level of the intervening body and the fighting groups.Mankind's efforts to achieve this have been plagued by terrorism, attack of smaller state (weaker) by bigger and more powerful states.

[6]Ibid
[7]Art. 24 UN Charter op. Cit p. 2
[8] Press TV news; Wednesday 16 Jan 2013, 800am
UN, The Disarmament Commission of the UN functions ;available at http://www.undoc.org/disarmament accessed on 08/10/2015 at 12:15pm
UN,The International Atomic Energy Agency (IAEA) available at http://www.undoc.org/disarmament accessed on 08/10/2015 at 2:15 PM
[9] The case of the Syrian crisis

Since the failure of the League of Nations and the creation of the United Nations, the Security Council has always had as task the maintenance of international peace and security.The big issue is that warring situations are still experienced in many parts of the world like Syria, Central African Republic and South Sudan; terrorism in Mali, Somalia, Nigeria, Kenya etc. There is the quest and stockpileofWeapons of Mass Destruction (WMD)by some countries like North Korea, Iran, Israel, India, and Pakistan that is further rendering SC efforts in the maintenance of peace and security more difficult.All these situations and events bring to the writer much doubt as to effectiveness of the Security Council of maintaining and promoting world peace and security.These and many other questions are the researcher`s point of focus in the course of this work.

1.2 Statement of the problem

Since the signing of the UN Charter on October 24th 1945, and the assigning of the various task in it to the various bodies, the SC has been at work performing its own task of maintaining peace and security. Due to changing human activities, interests, priorities and time, many concepts, ideologies, philosophies, and norms have also changed. Some international law scholars are of the opinion that the members of the Security Council (SC) are acting on their own interest[10] in pursuing the work assigned to them. According to these scholars, if the SC was doing her job well, the world would not have been in such a chaotic state in which it is today[11]. To some Scholars the SC is doing the job assigned to her very well. That the aspect of bias is not in any way found in the agenda of this body. The SC is executing the main purpose for which the

[10] Le Debate Panafricain ,Afrique Media;.(live) Sunday 24 Feb. (2013); 12:30 PM
Pascal, T.,(2003)*The Security Council at the Dawn of the Twenty First Century; To What Extent is it Willing and Able to Maintain International Peace And Security*, UN Publication, Geneva, Switzerland P.25
[11] Le Debate Panafricain. Afrique Media; Op cit. p.4

UN was created. i.e., to maintain world peace and security and thus stop the world from experiencing another scourging war like World War One (WW I), andWorld War Two (WW II).

Since 1945 with the creation of the UN and given the mandate to maintain world peace and security to the SC, the world has experienced so many situations of breach of the peace that has reshaped the reasoning the world powers. The Security Council has been facing a number of challenges in the course of performing its duty of promoting and maintaining world peace. Some challenges like the Israel-Palestine constant unrest and given the number of UN resolutions Israel has ignored or broken, and international laws broken, in addition, the issue of UN Security Council reform and the difficulties encountered, the issue of the veto which is the biggest stumbling block to any kind of agreement on really serious matters, the challenge of Cooperative Security and National Interest also looms among the security members.[12] These issues have caused the researcher to develop some doubt as to the effectiveness of the UNSC in performing its functions as prescribed by the UN Charter.

1.3Aim and objectives of the study

The aim of this research is to examine the effectiveness of the SC functions ofmaintaining peace and security in the world. This work aimsat unveiling the entire task of theUNSC of maintaining and promoting world peace and security. That is, the degree of its commitments in instances where there is a breach of the peace, threat to the peace and acts of aggression and the necessary measures taken in such circumstances. It is also to study the various measures undertaken by the UNSC to promote world peace and security. It is the interest of this work to look into the thingsthat are causing the Security Council not to perform its functions

[12]Lyall, M., (2014) Challenges Facing the UN Security Council: Past, Present and Future. Chatham House available at www.chathamhouse.org accessed on 4/11/2015 at 2:30 PM

well. In this light, therefore, proffer some recommendations that may be considered by the council for a better and peaceful world.

The objectives of this study is to,

1. examine the effectiveness of the UNSC in its principal role of maintaining peace and security given the high level of breach of peace the world is experiencing.
2. examine the measures to take in a breach of peace situation given the political nature of the UNSC manipulation of issues with its veto power that delays the adoption of faster measures to handle such situations.
3. contribute to topical discourse on the analyses of peace and security which are the primary role of the UNSC that came up with the fall of the League of Nations to take over the functions of the defunct body;

1.4Scope of the Study

Peace and Security are concepts that are highly studied, preached, promoted and encouraged to be practiced in international law and the international Community as a whole. The scope of this research covers the role of the Security Council in maintaining peace and securitybesides the other functions it performs. The SC proactive functions in the area of peace and security are also examined in the scope of this work. The power given her by the Charter of the United Nations also comprises the scope. The scope of this work will also cover situations from 1994 during the Rwandan genocide era to bombing of the world Trade Centre and the Arab Spring. Analyses on this topic are done taking references from various corners of the world. International agreements, treaties, resolutions and laws have helped in carrying out this study.

1.5Methodology of the research.

The methodology adopted in this work is doctrinal. Resort here is made to relevant provisions of international law, international law text books, United Nations documents, journals on international law, regional instruments, statutes, law reports, resolutions, UN Charter, treaties, protocols, conventions and internet materials.

1.6Literature review

While a considerable number of studies have been conducted on the UNSC, they do not address, at least in comprehensive terms, a proper functioning of the Security Council and whether it is succeeding in its mission and to what extent it is playing her mandated function. This literature review focuses mainly on recent material on this topic, including text books, edited books and journals written on peace and security issues of the UN. It also lists relevant articles on peace and security in the UN Charter. Few of such literature will be reviewed below.

Oppenheim, L., in his bookThe Future of International Law[13] looks at the present peace and security state of the world today basing his idea on the Charter of the UN. He writes that the authors of the UN Charter proposed that the organization should seek to "save succeeding generations from the scourge of war." Understandably, they had in mind avoiding world wars and other large interstate conflicts. Sixty years later, there have been hardly any horrifying wars among the militarily strongest states. This fortunate outcome probably has had less to do with the functioning of the United Nations system than with the perceived costs of interstate war in the nuclear age, and increasing doubts about the economic advantages of conquest. According to this writer, the major threats to international peace and security are radically different today from

[13]Oppenheim, L., (2010) *The Future of International Law*, Oxford University Press, London. P. 43

those anticipated by the framers of the UN Charter. Today, international institutions must be reformed to address two principal sets of security threats. The first in the North is terrorist use of weapons of mass destruction (and especially nuclear weapons) in major urban areas. The second is in the South, where there is internal war, state collapse and consequent personal insecurity; violently abusive government; in some cases, risk of attack by strong states or neighbours. What worrythe most today are these weapons that are frequently being used by terrorist and insurgents. They do not manufacture them. They are manufactured and sold by these big powers and they are obviously used by these inhumane fellows.

During situations of breach of the peace, strong and powerful states benefits from the smaller and militarily weaker states and subject them to annexation.[14] or direct control exercised by major powers playing great games in the international community or fighting wars with each other. Nonetheless, the same technological advances that have helped to bring about major power peace have created a new security threat that will grow worse as technology improves and scientific knowledge spreads. This writer points out that interstatewar is generally disfavoured by WMD, but the horrific destructive potential of these weapons makes them more attractive for terrorist use by non-state or state-supported actors, and also a vastly greater concern.

The main security threats in the rest of the worldOppenheim, L., points out are quite different. Since 1945, about22 million people have died as a direct result of civil wars, almost entirely outside the economically most developed countries. This figure does not include the many millions killed in one-sided massacres orchestrated by governments, such as in Rwanda, Argentina, Cambodia, and Uganda under Amin and Obote. By comparison, about 3.3 million people were killed in interstate wars in this period. These three problems are internal war, mass killing by governments, and interstate war andrepresent the major security risks for much of the

[14]The case of Russia in Crimea is a glaring example.

developing world, in decreasing order of global severity. These latter problems are indirectly related to one of the early successes of the United Nations system; the promotion and management of mainly peaceful decolonisation in Africa, Asia, and the Middle East. The UN Charter was signed by 51 countries in a world with about 60 independent states. Today there are 191 members, half of whom gained independence since 1960. Decolonisation filled the international system with new states whose economies and administrative structures were often fragile and underdeveloped. These states have been especially prone to civil war and abusive rule. This author argues that the UN system, or a redesigned parallel or alternative system with some similar basic commitments, is potentially more valuable for promoting peace and security now than it ever was during the Cold War.

Whether the UN in its present form is the best body to perform these functions is a difficult question that this research attempts to give a response to. On the one hand, the thrust of what is required to meet the new international security threats runs against two premises of the UN Charter. The Charter sought to regulate interstate relations, but not "internal" matters such as civil war and its effects, or national decisions about armaments programs. Second, the Charter conceived of the UN as an organization open to all states irrespective of the form of government. This writer argues that some of the new security challenges such as preventing human rights abuses by governments, and authorising the use of force might be better met by an organisation with membership limited to democracies.On the other hand, the UN Charter has proven a powerful yet flexible document. It may be possible to suggest effective solutions to the new challenges within its basic structure. This writer failed to discuss the various means of handling dispute like peacemaking, peace keeping and peace enforcement when there is a breach of peace situation.

To proceed, Murphy,J.F., inThe Evolving Dimensions of International Law hard choices for the world community (2010)[15] explains that, as is well known, the primary motivation of the founders of the United Nations was to create an international institution that would be more effective than the League of Nations was in maintaining international peace and security. Under the U.N. Charter the Security Council is given the "primary responsibility for the maintenance of international peace and security,"and it was the vision of the founders of the United Nations that the permanent members of the Security Council, especially the United States and the Soviet Union, would continue the cooperation that characterized their actions during World War II and be the backbone for the efforts of the new institution to prevent and, if necessary, to suppress by armed force aggression and other threats to and breaches of the peace. With rare exceptions the vision of the founders has not been realized. To be sure, the record is not one of consistent failure. From time to time various permanent members have played key roles in efforts to meet aggression or threats to the peace.

The High-level Panel's report sets forth a large number of wide-ranging recommendations for possible reform of the United Nations, including structural reforms. Of the recommendations for structural reforms, the one that has received the greatest attention is that the Security Council be expanded along the lines of two possible models. One would add additional permanent members without a veto, along with further term-limited members; the other would add only additional term-limited members. Both would expand the total size of the Security Council to twenty-four members. He also mentioned that The United Nations, sadly, has drifted far from its founding vision. Its Charter neither calls for a democratic council nor relegates the collective use of force to a last resort. It was a wartime document of a military

[15]Murphy,J.F.,(2010) The Evolving Dimensionsof International Lawhard choices for the world community;Cambridge University Press, Cambridge. p. 114

alliance, not a universal peace platform. A key question arising from these developments is where do we go from here? If the permanent members of the Security Council will not fulfil their responsibilities, or at best do so only sporadically, who or what shall enforce the peace? Various possibilities have been suggested. These include, among others, a renewed commitment on the part of the permanent members to fulfill their responsibilities; a greater role for more "robust" U.N. peacekeeping; greater involvement in peace enforcement by regional agencies, including especially the African Union; an alliance of democratic states, including one with its own institutional military capability; and somecombination of these possibilities. He pointed out that the founders of the United Nations recognised the possibility that a permanent member might itself create a threat to or breach of the peace.This writer only pointed out the various shortcomings of the UNSC in maintaining peace and security but did not tell us how the problem should be resolved as far as their functions are concerned. He did not say what measures are to be taken if the UNSC fail to carry out its responsibility of maintaining world peace and security.

In addition, Manusama, K., in his bookThe United Nations Security Council in the Post-Cold War Era Applying the Principle of Legality. (2006) [16] looks at this topic tracing its roots from the Covenant of the League of Nations, the Kellog-Briand Pact, and the UN Charter that did not seek to abolish the use of force entirely. Due to the continuing need for force in certain cases, the right to use it was centralised in the Security Council as an exception to Article 2(4) of the UN Charter. Thus, Article 2(4) of the UN Charter must be read in conjunction with other provisions of the Charter, and more specifically the provisions on the collectivesecurity system. Collective security developed from the nineteenth century system from the balance of power and coincides with the development of an increasingly strict prohibition on the use of force.

[16]Manusama, K., (2006) The United NationsSecurity Council in thePost-Cold War EraApplying the Principle of Legality.Martinus Nijhoff Publishers, Leiden. P.97

Although the collective security system is ultimately characterised by the centralised use of force, it has multiple functions and employs divergent means at its disposal.

According tothe writer, the collective security system as laid down in Chapters VI and VII of the UN Charter reflects that both peaceful and forceful means can be employed by the Security Council to maintain or restore international peace and security. Although the UN Charter in its Chapter VI does not contain coercive measures, strictly speaking, it can be regarded as one of the non-military measures available to the Council. Article 42 of the UN Charter authorises the Security Council to use force on two conditions. First, as noted, forceful Security Council action must be preceded by a determination that the situation constitutes a threat to or breach of the peace or act of aggression in accordance with Article 39. It must be noted that, based on the difference in language between Articles 2(4) and 39 and the political discretion of the Council to make such a determination, there is no necessary link between or identity of the two. Secondly, Article 42 attaches the condition that the Security Council shall consider whether or not "measures provided for in Article 41 would be inadequate or have proved to be inadequate" before it decides on any military action. However, as the wording of the provision reflects, the Council does not need to apply the Article 41 measures before resorting to the forcible measures under Article 42, as it must be able to act promptly, efficiently and effectively. Thus, having made the determination, e.g. that a threat to peace exists, it can choose to take military action immediately if it considers that measures other than the use of force would not be sufficient to restore or maintain peace and security. The effectiveness of such a system is largely dependent on the means at the disposal of the responsible organ. Article 43of UN Charter provides for the conclusion of special agreements between the UN and the member states to provide armed forces to take Security Council military enforcement action. The writer

notes that, no such agreements have ever been concluded or are likely to be so in the near future. The Cold War animosity and the veto power blocked any chance of obtaining a consensus on the modalities of a UN standing army. Yet, as Franck notes, "when an arm intended to effect an institutional purpose is amputated, the Organization tends to grow a replacement." Peacekeeping is an example of such a replacement, as is the use of force by states following authorisation by the Security Council. This hybrid form of the lawful use of force and its resemblance to collective self-defense has sparked much academic debate on the source and nature of such actions. Theauthor did not say in this work of the effects and consequences of collective use of force in international law by the SC as a means of maintaining world peace and security. He has also made of the use of the veto power to hamper collective use of force but did not expound on the effect of this veto power in International Law.

Also, another International law erudite on the World stage John Rourke in his book International Politics on the World Stage,[17]saysthe opening words of the UN Charter dedicated the organization to saving succeeding generations from the scourge of war, which has twice brought untold sorrow to mankind. The UN attempts to fulfill this goal by creating norms against violence, by providing debate as an alternative to fighting, by intervening diplomatically to avert the outbreak of war or to help restore peace once violence occurs, by instituting diplomatic and economic sanctions, by dispatching UN forces to repel aggression to act as a buffer between warring countries, and by promoting arms control and disarmament. One way that the UN helps promote international peace and security is by creating norms against violence, and other forms of violence. To accomplish this, the UN works in such areas as promoting the concept of nuclear nonproliferation through the International Atomic Energy Agency, (IAEA) limiting chemical and biological weapons, and promoting rules for the restrained conduct of war when it occurs.

[17]Rourke, J.T., (2000),*International Politics on the World Stage*,UniversityofConnecticutpress, Connecticut, p. 246

Countries that signed the Charter pledged to accept the principles that armed forces shall not be used save in the common interest and further agreed to refrain in their international relations from the threat or use of force except in self defense. This writer has given pertinent idea on how peace issues should be managed. He has vehemently rejected the use of force as a means of resolving dispute. This is because no war has ever come to an end without the parties coming to the negotiation table.Providing a debate alternative is the second peace-enhancing role of the UN and some other International Governmental Organisations (IGOs) is serving as a passive forum in which members publicly air their point of view and privately negotiate their differences. This author fails to bring out the various techniques that should be used at the negotiating table to bring peace and security.

More so, Brabandere, D. E., in Post-conflict Administrations in International Law (2009) [18] sees territorial administration under the Trusteeship System established under Art. 81 of the UN Charter as a way to ensure social justice, economic empowerment and above all bring peace and security to the international community. Interestingly, at that time, Article 24 of the UN Charter, in which UN Members confer on the Security Council the primary responsibility for the maintenance of international peace and security, was seen as the legal basis for the administration of the Colonial Territories. It was argued that the situation presented a threat to international peace and security, and that, considering that the Security Council was given the responsibility to deal with the situation on the basis of Article 24 of UN Charter, that provision was sufficient to authorise the exercise of administrative powers by the UN. This can in fact be

[18]Brabandere, D. E., (2009) *Post-conflict Administrations in International Law*, Martinus Nijhoff Publishers, Leiden, Netherlands. p.37

seen as an application of the doctrine of 'implied powers' which is currently one of the legal bases of Security Council action with regard to the administration of territory.

While the context in which the Trusteeship System was envisaged cannot be compared to the peace-building missions themselves, the purpose of the trusteeship system reveals similarities with post-conflict administrations and reconstruction. The trusteeship system's main purpose was the progressive transfer of former colonies towards independence or self-government. Article 76 of the UN Charter contains the basic objectives of the System: the furtherance of international peace and security, the promotion of the political, economic, social and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence. In addition, encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion, and guaranteeing equal treatment in social, economic, commercial and justice matters for all UN Members and their nationals were main aims of the trusteeship system. Article 39 of the UN Charter states that "the Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations". But the SC in the case of Sierra-Leon failed to see that there was an impending breach of peace and security and did not even give the ECOMOC forces the authority to go keep the peace there when it was demanded. ECOMOC entered on its own authority until when it was succeeding that the SC granted her the authority and backdated it.

This article gives the Security Council first the power to deal with a given situation; that is, a threat to the peace, a breach of the peace or an act of aggression and secondly the power to make recommendations to the parties concerned. Operations authorised under Article 39 of the UN Charter the writer says, are therefore, based not only on the Security Council's

recommendatory power, but also on the consent of the state concerned. Next to recommendations, Article 39 of the Charter also gives the Security Council the power to decide, after determining a threat to the peace, a breach of the peace or an act of aggression, to take 'measures' in accordance with articles 41 and 42 of the Charterexampleswhich obviously do not exclude other measures. If the Security Council considers that the measures provided for in Article 41 would be inadequate or have proved to be inadequate, the Security Council can authorise military action under Article 42 of the UN Charter. Such military action may include such demonstrations, blockades, and other operations by air, sea or land forces, as may be necessary to maintain or restore international peace and security. This article is thus the appropriate legal basis for the military components of peace-building operations and international administrations, as evidenced in the case of Afghanistan mentioned above, in which the military and civil missions were established under distinct resolutions.

The latest operations in which the UN was invested with far-reaching administrative competences were all authorised by the Security Council. Nevertheless, the question whether the General Assembly is competent to authorise the establishment of a peace-building missions is still relevant to a certain extent, given that several precedents were established by the General Assembly. This was the case with the administration of West Iran, the 'Council for Namibia' and the proposed administration of Jerusalem. One has to keep in mind that the circumstances of the specific case will directly influence the establishment of administrativemissions by either the General Assembly or the Security Council. The UN Charter specifies that, besides the general functions entrusted to it, the General Assembly "may consider the general principles of co-operation in the maintenance of international peace and security, including the principles governing disarmament and the regulation of armaments, and may make recommendations with

regard to such principles to the Members or to the Security Council or to both". Article 11(2) of the UN Charter further states that "the General Assembly may discuss any questions relating to the maintenance of international peace and security brought before it by any Member of the United Nations, or by the Security Council, and, except as provided in Article 12, may make recommendations with regard to any such questions to the state or states concerned or to the Security Council or to both". Accordingly, with regard to its capacity to deal with a situation, the General Assembly is competent to discuss all matters relating to the maintenance of international peace and security, and to make recommendations in that regard, except when the Security Council is exercising the functions assigned to it by the UN Charter in respect of that dispute or situation. This author has not pointed out here how the world will look like if the UNSC fails to determine a situation as a threat to the peace, breach of the peace or acts of aggression.

Furthermore, Caflisch, L., (2007)[19] tries to look at the way the Security Council manage peace and security in the world by referring situations to the International Criminal Court. Article 13(b) of the Statute gives the Security Council an express power to refer cases to the Prosecutor in a "situation in which one or more of such crimes appears to have been committed". This is one of the ways in which the Prosecutor may be seized of a case under the Statute. Article 13(b) of the Statute requires that the Council resolution making the referral has to be adopted under Chapter VII of the UN Charter. In order to adopt a Chapter VII resolution, the Security Council must make an Article 39 determination that a particular situation constitutes a threat to, or breach of, the peace or act of aggression. What this means is that the Security Council must make an Article 39 determination that the commission of these crimes either in themselves or as part of a broader situation constitutes a threat to, or breach of, the peace or act of aggression, and as such that a

[19]Caflisch, L., (2007) Promoting Justice, Human Rights and Conflict Resolution through International Law: Martinus Nijhoff Publishers. Leiden, The Netherlands. P.426

referral to the Prosecutor is necessary. This links the peace and security mandate of the Security Council to the justice mandate of the ICC. As such, this may potentially constitute an impediment to the independent functioning of the ICC. In fact it is unclear why Article 13(b) obligates the Security Council to have to adopt a Chapter VII resolution, as opposed to a non-Chapter VII resolution, in order to make a referral to the Prosecutor. If it was to ensure that the referral decision would be subject to the power of veto of the permanent members, then it was not required as a matter of United Nations law. The power of veto over Security Council decisions pertains to all "nonprocedural" matters, in accordance with Article 27(3) of the Charter. The writer stresses that it is inconceivable that a non-Chapter VII decision by the Council to refer a situation to the Prosecutor for consideration for prosecution could be characterized as a matter of Security Council procedure, and thus not be subject to a veto. The reason why this Chapter VII requirement is being questioned by this writer is that it raises the spectre of whether the Security Council will be willing simply to accept a decision by the Prosecutor or even possibly the Court not to proceed with a trial of at least one person from the situation that has been referred. The ICC Statute has raised the stakes by requiring a Chapter VII decision and thus, arguably, raised the expectation of members of the Security Council that effective action in the form of a prosecution or at the very least an investigation will follow.This writer leaves a loophole of what will happened if the ICC does not see any reasonable evidence to try the matter referred to by the UNSC.

In addition, Roht-Arriaza[20] writes that in 1970, the U.N. General Assembly in a resolution on war criminals and crimes against humanity noted that such crimes were still being committed in various parts of the world and that thorough investigation, as well as the arrest, extradition, and

[20]Roht-Arriaza,N.,(1995)Impunity and Human Rights in International Law and Practice, Oxford University, Press, Inc. London P. 52

punishment of persons guilty and the establishment of criteria for compensation of victims, were important elements in the prevention of such crimes and in the safeguarding of international peace and security. It called on states to take appropriate measures to arrest and extradite war criminals and persons who have committed crimes against humanity and to agree that such crimes should not be subject to statutes of limitation.

He points out that, three years later, the General Assembly adopted the Principles of International Cooperation in the Detection, Arrest, Extradition, and Punishment of Persons Guilty of War Crimes and Crimes Against Humanity. The Principles do establish a duty to prosecute, preferably by the state in which the crimes were committed. They indicate that "crimes against humanity, wherever they are committed, shall be subject to investigation and the persons against whom there is evidence . . . shall be subject to tracing, arrest, trial and, if found guilty, to punishment." Roht-Arriaza,N.,(1995)leaves us with the dilemma that despite the stringent measures at curbing this inhumane way of treatment of mankind by some individuals the punishment given them is still mild so what harsher method should be added?

Over, W.,(2004) in his book[21] says in practice, “peace and security” issues remained the decisive motivation for actual interventions over the past few decades. For example, interventions in Haiti and Kosovo in the late 1990s were decided by the legal justification of peace and security for the region. Humanitarian reasons were viewed only as add-ons. Hence, the debate between global security and democratic aims was not fully resolved in the new century. A dispute of equal importance involved the often-heated discourse among humanitarian interventionists. One faction felt that human rights and humanitarian aid was an entitlement for all, irrespective of whether particular groups or nations were harming their own or other peoples the international

[21]Over, W.,(2004) World Peace, Mass Culture, and National Policies; Praeger London,P.100

community according to him has to intervene for the sake of promoting peace and security. However, these goals are also enhanced significantly, perhaps decidedly, by meaningful attention to the standards set forth in the UN Universal Declaration of Human Rights and its subsequent conventions. He says that prescient observers have insisted, long-term peace and security will occur only when basic inequalities are overcome worldwide. This rather straightforward truth can be realized by following various paths, as long as there is a general acknowledgment that the hitherto opposing factions must work sincerely and consistently for both general approaches.

To go further, Merav.D.,(2010)[22] expressing his mind on the fact that the world will enjoy a better peace and security if nuclear weapon is eliminated. He point out that in 2009, President Barack Obama declared that the United States was committed to seeking "the peace and security of a world without nuclear weapons." He qualified this commitment, however, by stating that "This goal will not be reached quickly perhaps not in my lifetime." He also added that "as long as nuclear weapons exist, the United States will maintain a safe, secure, and effective arsenal." In a speech to the German Parliament on April 27, 2009, Steinmeier announced that he "shares this vision" of "peace and security in a world without nuclear weapons," referring to the appeal of the four senior statesmen of January 2009. More explicitly, he called for "truly renewing the core of the Nuclear Non Proliferation Treaty," e.g. "the nuclear disarmament of the atomic powers on the one side, and the prevention of nuclear proliferation on the other", "a verified cutoff of nuclear material", and progress on an international fuel cycle center. This writer points out how on April 27, 2009, the opposition parties the Greens, Free Democrats (FDP), and the Left filed petitions demanding the withdrawal of U.S. tactical nuclear weapons from Europe and ending NATO's nuclear sharing. Their calls were rejected by the votes of the governing CDU-SPD

[22]Merav.D.,(2010) Reducing and Eliminating Nuclear Weapons: Country Perspectives on the Challenges to Nuclear Disarmament available at www.fissilematerials.org accessed on 10/08/2015 P.87

coalition, although Foreign Minister Steinmeier spoke in favor of a withdrawal of all nuclear weapons from Germany.

To proceed, Belachew, G.,(2009)[23] on his part argues that if the interest of the major global players that constitute the P5 of the UN Security Council and champion in international peace and security, how can we understand that they themselves contribute to the perpetuation of the Congolese conflict? He says china began to show its interest in the DR Congo immediately after Laurent Kabila took power. In mid-December 1997 Kabila visited China and announced that the DR Congo government had chosen china as a model for Congo because the Chinese economy is growing rapidly, and it was transforming itself through its own efforts. In 2007 china agreed to lend the democratic republic of Congo $5 billion to modernize its infrastructure and mining sector. Accordingly, $3 billion were earmarked for strategic highway and railroad projects, whereas $2 billion was earmarked to revive Congo's mining sector of copper, cobalt, gold, nickel, uranium and diamonds (Reuters 2007). But at the same time China is one of the leading arms exporters to Congo (Control Arms Campaign 2006). Various business enterprises violate the OECD guidelines for multinational corporations. Of 85 business enterprises that have violated the principles according to a report in 2002, 21 companies are Belgian, 12 South African, 10 British, 8 American, 5 Canadian and 4 each for Germany and Zimbabwe. Various individuals with close ties to Presidents Joseph Kabila, Paul Kagame, Robert Mugabe and Yoweri Museveni of DRC, Rwanda, Zimbabwe and Uganda; Victor Bout (the notorious former Soviet military major who retired from the service in 1993 and became an international arms dealer); and a number of Antwerp-based diamond dealers were reportedly connected to illegal business in Congo (Nzongola-Ntalaja 2004: 17) this writer fails to show in this work how to deal

[23]Belachew, G.,(2009)Anatomy of Violence Understanding the Systems of Conflict and Violence in Africa; Ashgate Publishing Ltd, Farnham Surrey, England P.123

with the permanent five powers who are mandated to keep peace and security and they turn around to put their interest first and thus breach the peace.

To conclude, Dekker,G.N.,(2001)[24] in his book says that the international community must cooperate in the maintenance of peace and security. He says one of the first areas where the necessity of co-operative behaviour between States has been recognised is in the maintenance of international peace and security. As a guiding principle, it can be upheld that most of the time most of the States benefit most from a situation of international peace and security. At the same time, he says it should be acknowledged that in exceptional circumstances the international community as a whole will benefit more from (limited) warfare than from a peace situation in which a State is allowed to pose a serious threat to international peace and security; the collective security system of the United Nations (UN) is based on this concept. He stresses that the concept of the system of collective security is based on the renunciation of force, except in self-defence, on commitment to the peaceful settlement of international disputes and on the obligation to support collective measures, both military and non-military, to defeat any threat to the peace, breach of the peace, or act of aggression. The Charter provides that disputes shall be settled peacefully in such a manner that international peace and security, and justice, are not endangered and prohibits the threat or use of force by States in their international relations against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the UN. This writer does not bring out in this work why countries continue to amass ammunition especially the very destructive types despite international recognition of collective security. He did not also bring out the way they have committed to eradicate these dangerous weapons.

[24]Dekker,G.N.,(2001) The Law of Arms Control: International Supervision and Enforcement , Martinus Nijhoff Publishers,Hague, The Netherlands.P.37

1.7 Justification of the study

The international community is experiencing situationsofwar in many countries like Syria, Central African Republic, South Sudan, IraqandLibya; terrorism is witnessed in Mali, Somalia, Nigeria, Kenya etc. There is mad quest for Weapons of Mass Destruction (WMD) and stockpile of it in countries like North Korea, Iran, Israel, India, and Pakistan.[25]Regional bodies like North Atlantic Treaty Organisation (NATO) and ECOMOG turn to perform this function of peacekeeping much better than the UNSC entrusted with such primary responsibility. Even the desire of these regional bodies to carry on this function is sometimes frustrated by the attitude of the UNSC that refuse to give them the authorization as per the UN Charter[26].All these situations and events bring to the researcher much doubt about the Security Council performance ofits duties as intended and thus spur up this research.

Also, countries have contributed a lot to see that the Security Council achieves its goal. Contributions have been made in terms of finances, human capital, armaments, land ceded for military operations and other material contributions. This study is thus carried out to see if the works carried out by the Security Council is commensurate with the efforts put in by the member countries and the desire of the international community.This work also sought to see if much effort should be made in terms of the contribution and in what ways it should be made to see that the SC upgrades her efforts to see that the world is in peace and security; the route to any development.

[25]SIPRI, (2013) SIPRI Yearbook 2013, Armament Disarmament and international Security. The main exporters of major arms 2008-2012, 1 USA, 2. Russia, 3. Germany, 4. France, 5. China, 6.UK, available at http://www.sipriyearbook.org accessed on 21 August 2015 at 4:26 pm

[26] Art. 53(1) UN Charter op cit. p.2

1.8 Organisational layout

In this thesis, there are five chapters. The first chapter deals with the general introduction. This includes the problem of the research, aims and objectives, the scope of the research, the methodology, literature review, justification of the study and then the organizational layout.

Chapter two of this work deals with conceptual clarification. Here, concepts like the meaning and nature of international law, meaning and nature of concepts of peacemaking, peacekeeping and peace enforcement are elucidated. Then peace and security are also conceptualized and explained.

Chapter three unveils the role of the SC in promoting peace and security in International Law. Here,issues discussed are the legal bases of peacekeeping in international law, then the Meaning and Establishment of the SC of the United Nations. This is followed by the role of the SC of the UN, and thenan assessment of the achievements of the UNSC in selected areas.Case study is selected from Africa and Asia. In Africa,the researcher looked at the cases of Libya, Rwanda, Democratic Republic of Congo and Darfur. In Asia, studies is conducted on Iraq and Afghanistan.

In chapter four, the limitations and criticisms of the UNSC are examined. Here, this workexamined the limitations deriving from the text of the UN Charter, then the limitations deriving from the purposes and principles of the UN Charter. This is followed by the limits fashioned to discretionary powers. Under this head, an analyses of the critique of the UNSC is done wherein elucidation is made on aspects like the arm arsenal of the permanent members, the SC manner of functioning, its double standard attitude, its resources, structure, and veto power of

the permanent members. This research also saw how a misuse of the veto power has changed the attitude of the international players.

Chapter five concludes this work with summary,recommendation andconclusion. In it, the summary of the thesis, followed by the findings and then the recommendationsare examined.

CHAPTER TWO

CONCEPTUAL CLARIFICATIONS

2.1 Introduction

In the course of writing on this subject matter, the writer came into contact with complex concepts that need some definitions, explanations, and clarifications for readers to know what the writer mean about these particular terms. Sometimes, terms have different meanings and interpretations depending on the topic under which they are being discussed. Conceptual clarifications are concerned with explaining the meaning of concepts. Some would dismiss such undertakings as mere semantics. Without clear concepts, however, scholars are apt to talk past each other, and policy-makers find it difficult to distinguish between alternative policies. Scholars have argued that the elucidation of the language of educational works is by no means an idle exercise in semantics, but in many instances a most effective way to solve substantive problems of research. Conceptual explication attempts to specify the logical structure of given expressions: Taking its departure from the customary meanings of the terms, explication aims at reducing the limitations, ambiguities, and inconsistencies of their ordinary usage by propounding a reinterpretation intended to enhance the clarity and precision of their meanings as well as their ability to function in hypotheses and theories with explanatory and predictive force.[27] Terms like diplomacy, war and balance of power discussed widely may confuse the reader because they may well be treated under international law, political science and international relations and other subjects and they will well suit under such topics and these concepts may slightly be handled differently. Thus in other to let the readers know the specific concept under which a particular term falls, it needs to be specified. It is important and necessary for such conceptual clarifications to be made as they are done below.

[27]David, A.B., (1997) *The concept of security: Review of International Studies*.P.7 available athttp://www.crikey.com.au/2013/08/04/ viewed on 04/08/2013 at 2:13 pm

2.2 Meaning and nature of International Law

International law governs relations between nation-states. It is composed of international treaties and conventions, general customs, and generally accepted principles of law and equity. Although few organizations in international law are empowered to enforce international law, nations are expected to comply with, and they generally do. If they do not, they are likely to damage their international relationships. In addition, the violated subjects may complain to the United Nations (UN), which may issue a declaration condemning the violation or may act to remedy the situation (as occurred when Iraq invaded Kuwait in 1990). However, the UN has insufficient money, personnel, and will to intervene in all violations of international law. Thus, it is the responsibility of the states to follow prescribed rules and principles[28].

International law is also defined as the legal system governing the relationships between nations; more modernly, the law of international relations, embracing not only nations but also such participants as international organizations and individuals (such as those who invoke their human rights or commit war crimes)[29].

International law also termedpublic international law orlaw of nations has its classic definition[30] as that body of rules that govern the relations between states. This is because at that time, it was considered that only states had rights and obligations under international law. It cannot also be upheld that states are the only concern in international law. This definition cannot be taken as very adequate and complete description of the intent, purpose and scope of international law today. International law also comprises rules that relate to the functioning of international institutions or organizations, their relations with each other and their relations with

[28]Burgess, M., (1997) *Encyclopedia of Conflict Resolution,* ABC-CLIO Inc, California, P. 152
[29] Garner, B. A., (2oo4)*Black's Law Dictionary*. West Publishing Co.USA, 9th Edn. p 892
[30]Laden, M. T., (2007) *Materials and Cases on Public International law*. ABU press, Zaria. p 1

states and individuals. International law is also defined[31] as the legal system governing the relationships between nations; more modernly, the law of international relations, embracing not only nations but also such participants as international organizations and individuals (such as those who invoke their human rights or commit war crimes). International law governs relations between nation-states. It is composed of international treaties and conventions,[32] general customs, and generally accepted principles of law and equity. Although few organizations in international law are empowered to enforce international law, nations are expected to comply with, and they generally do. If they do not, they are likely to damage their international relationships. In addition, the violated subjects may complain to the United Nations (UN), which may issue a declaration condemning the violation or may act to remedy the situation (as occurred when Iraq invaded Kuwait in 1990). However, the UN has insufficient money, personnel, and will to intervene in all violations of international law. Thus, it is the responsibility of the states to follow prescribed rules and principles.

Certain rules of international law[33] can be said to extend to individuals and non state actors so long as their rights and duties are the concern of the international community of states. International law lays down the rules governing the territorial rights of states (relating to land, sea and air space),the international protection of the environment, international trade and commercial relations, the use of force by states, human rights and humanitarian law.

By the writer`s own reasoning, International law is the body of rules which are legally binding on states in their intercourse with each other. These rules are primarily those which govern the relations of states, but states are not the only subjects of international law.

[31]Garner, B.A., (2oo4)op. cit. P.20
[32] Burgess, M., (1997) op. cit p.20
[33] Ladan, M.T.,(2007) op. cit P.21

International organisations and, to some extent, also individuals may be subjects of rights conferred and duties imposed by international law.

Debate has been going on whether international law is really law. International law experts, lawyers and jurists like John Austin who lived in the 19th C said international law is not law on the justification that it is only positive law which is law because law is a body of rules for human conduct enforced by a sovereign political authority on members of an independent political society from whom he receives habitual obedience. Disrespect of the order of the sovereign body is backed by sanctions. The sovereign being politically superior owes obedience to no superior.[34]

Since these characteristics are missing at the international level, Austin concludes that international law is but positive international morality analogous to rules of a club and binding on states because they agree to bind by it. His criticism has been on too close a comparism of international law with the municipal law which he knew best. It can mentioned here that in municipal law, customary law is never promulgated and is binding by virtue of a long period of observance. Although there is no international parliament issuing legislation binding on all states, on all issues, there is an increasing number of international legislation through treaties which did not exist in Austin's days. His views were limited by his own definition of law.[35]

International law is also looked upon by some jurists and international law lawyers as a weak system of law because it has in many ways an entirely different nature from municipal law. International law possesses neither a legislative, executive nor a judiciary organ in the sense attributed to municipal law. It does not have a court in the sense that municipal law has nor does

[34]Ibid
[35]Ibid

it have its own police or army for the purposes of enforcing its will as such. The rules of international law are brought about mainly through the medium of international agreements, often called treaties. Such agreements could be bilateral or multilateral. Such agreements bind only those states that are parties there to except they incorporate rules of customary international law.States generally respect international law because of their interest it serves and because it is treated as a part of the law of the land in many jurisdictions.[36]

International law is therefore law with its own characteristics and because international institutions like the UN and the international court of justice treats it as legally binding and not just as a set of ethical rules. The ICJ decides cases submitted to it in accordance with the rules of international law.[37]

2.3 Meaning and nature of the concept of Peacemaking

Toproceed with the meaning and nature of the concept of peacemaking, this workhas to look at the meaning of the word peace. This word has been defined by various academic dictionaries in different ways but leading to the same contextual meaning.The Macmillan English Dictionary[38] define peace as a situation in which there is no war in countries or groups, a situation in which people are pleasant and do not cause trouble, a calm quiet situation in which you are not annoyed by noise or other people, a state when you are calm and have no worries.Peace has also been defined in theBlack's Law[39] Dictionary as a state of public tranquility;freedom from civil disturbance or hostility or breach of the peace. It is also defined by this same dictionary as the termination or absence ofarmed conflict between nations.

[36]Ibid
[37] Ibid
See also -Rourke, T.J., (2000) *International Politics on the World Stage*, MC Graw-Hill, Connecticut, 8th edn. p 381
[38]Norton, M., (1994) *The Principles of Keeping the Peace*, Prega Publishers, London, 4th Edn. P. 1043
[39] Ibid

Encyclopedia of Conflict Resolution[40] sayspeace is defined in many different ways. Some people see peace in a positive way: as order, harmony, and cooperation, for instance. Others see peace in a negative way: as the absence of conflict, tension, or war. Likewise, some view peace as a concept referring to relations between nations, and others extend the notion to relations between individuals or even within one individual (as in "peace of mind")

When survey is made on various parts of the world we are confronted with images and cultures of violence. Societies appear to be tearing themselves apart and the attitudes and values in these societies seem to be based on self-interest, private accumulation and the competitive drive for power and resources. This 'cultural logic' promotes exclusion on a fundamental level and feeds a cycle of poverty, debt and economic marginalization. By extension, this logic also generates and regenerates the vicious cycles of perpetual violence that the world is currently witnessing. Any effort to arrest these vicious cycles requires an intervention at the level of culture, with specific reference to how people perceive themselves and their responsibilities, in relation to others. Until significant steps can be taken to reduce the adherence to a culture of violence and exclusion, the world will continue to postpone genuine peace. But where does the world begin in an attempt to reverse this persistent and pernicious culture of violence?In order to initiate the social reconstruction of war affected communities, a key step would be to find a way for members of these communities to 're-inform' themselves with a cultural logic that emphasizes sharing and equitable resource distribution. This, in effect, means emphasizing the importance of reviving cultural attitudes and values that can foster a climate within which peace can flourish.

[40] Ibid

Peacemaking refers to a negotiation process that attempts to resolve a conflict between people, groups, or nations[41]. It is contrasted with peacekeeping, which refers solely to activities designed to stop violence, and peace building, which tries to change people's negative attitudes about and social relationships with a former opponent or enemy. Although people may refer to interpersonal negotiation as peacemaking (as in "I am trying to act as a peacemaker in this marriage"), more often the term refers to negotiating a resolution to international conflicts or protracted ethnic conflicts within one nation-state, such as Syria, Iraq, Nigeria and Afghanistan

Peacemaking can be done by representatives of the parties negotiating directly, but it is often aided by the intervention of one or more neutral third parties who act as mediators. Sometimes these mediators are high-profile people, such as Jimmy Carter; sometimes they are low-profile people, such as members of the peace churches that is,the Quakers, the Mennonites, or the Brethren; who engage in peacemaking efforts out of religious beliefs rather than national interests.[42]Like former UN Secretary General Kofi Atta Annan who tried to make peace between the Rebels and the government of Syria.Due to some impediments he resigned.Another diplomat; Ambassador Lakhdar Brahimi came in and also resigned giving way for the SC to appoint a different person.

No matter what their incentive, however, the goals of peacemakers are the same. It isto bring about a permanent end to hostilities by reconciling the interests and/or needs of the parties in conflict. Usually this cannot be done until the conflict is "ripe" for resolution, meaning that the parties have determined that they cannot prevail by continuing the violence. Once they have decided that, peacemakers can help craft and implement a settlement agreement that is

[41]UN,(2006)*Overview of Peacemaking circle*, Availaible athttp://www.un.org/peace, Accessed on 13 April, 2013: 12:47pm
[42]Ibid

acceptable to all sides. Any such agreement must then be followed by peace-building efforts, which try to heal the psychological or social wounds created by the conflict and bring the parties back together as partners rather than enemies.[43]

Peacemaking technique is a means that is used to bring people together to better understand one another, build and strengthen bonds and solve community problems. Peacemaking provides a way for people to have conversation and to work through conflict or differences in a safe and productive way. Peacemaking circle process is being used for decision-making, problem- solving and conflict-resolution in school, neighborhood, workplace, family and juvenile, legal system and above all conflict among subjects of international law.

Peace making process is a way of talking together where

1. Everyone is respected
2. Everyone gets the chance to talk without interruption
3. Everyone explain themselves by telling their stories
4. Everyone is equal.-no person is more important than anyone

The peacemaking process is strong enough to contain any anger, frustration, joy, truth, conflict, opposite opinion and strong feelings. In the peacemaking process, everyone sits in chairs placed in a circle facing each other, without a table or other furniture between them. An object called talking piece is passed from person to person around the table. Each person expresses himself when he is given the chance to. Everyone else listens without interruption until the person talking

[43]Burgess, M.,(1997) op.cit at p.20

finishes then the next person is given the opportunity to express his own mind in this order to the last person.[44]

Peacemaking circle provide a process for bringing people together as equal to talk about very difficult issues and painful experience in an atmosphere of respect and concern for everyone. Peacemaking technique creates space in which all people, regardless of their role, can reach out to one another as equals and recognise their mutual interdependence in the struggle to live in a good way and to help one another through the difficult path in life.

Peacemaking techniques are built on the tradition of talking in circles where each member talks facing all the other members who are listening. This is common among indigenous, aboriginal people and peacemaking process whether of national or international standard. Most occasions, an aid for talking (talking piece) is used that will make the speaker more audible and the only person given the opportunity to express himself at that particular time. The talking piece is passed from person to person consecutively around the circle to regulate the dialogue. The person holding the talking piece has the undivided attention of everyone else in the circle and can speak without interruption. The use of the talking piece allows for the full expression of emotion, deeper listening, thoughtful reflection, and an unrushed pace. Additionally, the talking piece creates space for people who find it difficult to speak in a group.[45]

---

[44]Rourke, T.J., (2000) op. cit. P. 24

See also Holbrooke,R., (2009) *The Principles of Peacemaking*, Availaible at http://www.peacekeeping.com/nature. Accessed on12 /05/2012; 12:15 pm

See also Fleitz, H.F., (2002) *Peacekeeping Fiascoes of the 1990s*, Praeger Publishers, West port, p 22

[45]Donald, M.S., (1993) *Peacekeeping, Peacemaking and Peace-Enforcement: The U.S. Role in the New International Orde*r: UN publication. p. 20

See also Grant, D., (2004) *Peacemaking, Peacekeeping and Peace building: Concepts Complications and Canada's Role*: Canada, Parliamentary Library P. 3

See also Murithi, T., (2006) *Practical Peacemaking Wisdom from Africa: Reflections on Ubuntu*:The Journal of Pan African Studies, vol.1, no.4, P. 26-37,Availaible athttp://www.JPAS.org, Accessed on13/08/2013 at 2:34 pm

Participants are seated in a circle of chairs with no table. Sometimes objects with meaning to the group are placed in the center as a focal point to remind participants of shared values and common ground. (Like the Rwanda genocide few skeletons could be placed in the mist of the Hutus and the Tutsis in the course of peacemaking). The physical format of the circle symbolizes shared leadership, equality, connection, and inclusion. It also promotes focus, accountability, and participation from all.[46]

The circle process typically involves four stages which are:

a. Acceptance-The community and the immediate affected parties determine whether the circle process is appropriate for the situation.
b. Preparation-Separate circles for various interests (family social workers) are held to explore issues and concerns and prepare all parties to participate effectively. Thorough preparation is critical to the overall effectiveness of the circle process. Preparation includes identifying possible supporters in the network of the issue to participate in the process.
c. Gathering –All parties are brought together to express feelings and concern to develop mutually acceptable solutions to issues identified.
d. Follow-up Regular communication and check-ins are used to assess progress and adjust agreement as conditions change.

Peacemaking circles are facilitated by keepers who are responsible for setting a tone of respect that supports and honors every participant. All circles are guided by the following commitments participants make to one another;

[46]Donald, M.S., (1993) op. cit p. 28

What comes out in circle stays in circle. Personal information shared in circle is kept confidential except when safety would be compromised. Parties allspeak with respect, speak only when you have the talking peace, speak in a good way about good and difficult feelings and leave time for others to speak.

Peacemaking process has a format that makes it very effective for its objectives. It has the following format:

1. Shared leadership equality; Placing everyone in a peacemaking circle minimizes structural distinctions between victors and vanquished and sets a tone of equal participation and equal capacity to teach and learn among all participants.
2. Visual contacts among all participants at all times-in a circle no one is looking at anyone else's back. It is easier to listen and hear when there are sight and sound lines among participants.
3. Focus; The structure of the circle focuses attention on the participants and task of the circle and reduces distinctions.
4. Connection; The peacemaking circle links all participants to one another encouraging the sense shared effort or common purpose.
5. Respect/accountability; Because everyone in the peacemaking circle can see everyone else, disrespectful behavior such as side conversations or demeaning non - verbal actions are discouraged. If it happens, it becomes obvious to everyone in the circle.
6. Input and participants from all; Use of the technique of going around the circle providing each person with a chance to speak ensures that everyone has an opportunity to be heard and reduces domination of discussion by a small number of people.

7. Inclusion; In a peacemaking process, no one feels isolated or left out.[47]
8. Guidelines; Circle participants to meet the needs of the group create guidelines. Guidelines institute a covenant defining how people will interact and share space and time as a group.[48]

2.4 Meaning and nature of the concept of Peacekeeping

Peacekeeping[49] involves the prevention or termination of violence within or between nation-states through the intervention of third-party neutral military, police, or civilian observers. Unlike peacemaking, which involves the resolution of the issues in conflict, the goal of peacekeeping is simply the cessation of violence. Although often carried out by military personnel, peacekeeping is usually not done in a threatening or coercive manner. Rather, it is usually carried out by simply positioning neutral military units between the warring factions. Peacekeepers are generally taught that they are not to use force unless absolutely necessary, and then to use it only as a deterrent or to maintain a buffer between warring factions. They must not get drawn into the conflict and certainly must not fight on one side against the other. Since the military units are usually small and only lightly armed, they cannot be effective unless the conflicting parties themselves desire a cessation of violence. If they do not (as the Serbs did not in 1994, for instance), peacekeeping is unlikely to be effective.[50]

Simply put, peacekeepers are people helping the parties to a conflict to resolve their differences peacefully. The presence of these people, soldiers, military observers or civilian police, encourage hostile groups not to use arms and instead to keep negotiating for peaceful settlement of disputes. Most UN peacekeepers are often referred to as "blue helmets" because of the blue colour helmets they wear while on duty and they have been soldiers, volunteered by

[47] ibid
[48] Walter, D., (2011). *The Evolution of Peace and Stability Operations Overview*, Canadian Military, Ontario, P. 8
[49] Rourke, T.J.,(2000) op. cit p.24
[50] Burgess, M. op., (1997 cit p.20

their Governments to apply military discipline and training to the task of restoring and maintaining peace: monitoring cease-fires, separating hostile forces and maintaining buffer zones. Civilian police officers, electoral observers, human rights monitors and other civilians have joined UN peacekeepers in recent years. Their tasks range from protecting and delivering humanitarian assistance, to helping former opponents carry out complicated peace agreements.[51]

Also important to effectiveness is a clear mandate that is accepted by all the parties to the conflict. The mandate must be so sufficiently precise that the peacekeeper's role is unambiguous and possible to carry out. If the mandate is broad and ambiguous, the peacekeepers themselves can become involved in a conflict over what they can and cannot, or should or should not, do. This seriously jeopardizes their effectiveness.[52]

Although peacekeeping can be done by any national or international force, United Nations (UN) peacekeeping teams are the most well known. The earliest use of UN peacekeeping was in Jerusalem in 1948 to facilitate the end of Israel's war of independence with the Arabs. The concept was considerably expanded in 1956, however, when the first true UN peacekeeping force was deployed to oversee the cessation of hostilities in the Suez war. Overall, the UN was involved in 13 such efforts during its first 40 years of operation.

Beginning in 1989, the number of UN peacekeeping operations increased dramatically. In 1995, over 70,000 UN peacekeepers were involved in 17 locations around the world, including Cyprus, Lebanon, Kuwait, Pakistan, the Golan Heights, the western Sahara, Georgia, Liberia, Haiti, Tajikistan, Angola, Croatia, Bosnia-Herzegovina, and Rwanda. This increased level of

[51]UN, (1999)*Peacekeeping in the New Generation*; UN publication,Availaible athttp://www.un.org/Depts/dpko12:14 pm Accessed on 13/08/2013 at 4:35 pm
[52]Donald,M.S., (1993) op.cit P.28

activity has strained the UN's ability to organize, train, and deploy peacekeeping teams. Many of the teams do not have adequate access to personnel, funding, or training and cannot carry out their missions as successfully as they would like.[53]

Traditionally, peacekeeping operations fall into two main categories: observer missionsand peacekeeping forces. Observer missions usually consist of unarmed military and civilian personnel who monitor the implementation of cease-fire agreements. The UN Observer mission started in 1948in the Middle East when the UN wanted to adopt a plan to divide and create a Jewish and an Arab state.This was then known as the United Nations Truce Supervision Organization (UNTSO)which in the real sense, was an observer mission.[54]The UNTSO is more than 50 years old in the Middle East trying to keep the peace between Israel and the neighbours.Peacekeeping forces are composed of lightly armed forces, and include fully equipped infantry contingents.[55]They are seen all over the world especially in Africa in countries like Central Africa Republic, South Sudan, and Darfur.

2.5The development of peace keeping in International Law

Question has always been asked how the first UN peacekeeping operation started. The first UN peacekeeping operation that is the United Nations Truce Supervision Organisation (UNTSO), an observer mission, was established in 1948, in the Middle East. Earlier in 1947, the United Nations adopted a plan to divide Palestine and create a Jewish and an Arab State. On 15 May 1948, the British administrative power formally ended its control over Palestine, and within 24 hours the State of Israel was proclaimed. Fierce hostilities broke out immediately between the Arab and Jewish communities. Count Bernadotte of Sweden, who was appointed by the United

[53] UN,(2006)*Peace Building; Peacekeeping in Cyprus*; Peacemaking;Availaible athttp://www.un.org/peaces, Accessed on 18/04/2013 2:02pm
[54]UN, (1999)op. cit p.31
[55] Ibid

Nations to mediate the conflict, was able to negotiate a cease-fire. But as the hostilities continued and the number of Palestinian refugees fleeing Israel grew, the Security Council decided to create a Truce Commission to supervise the cease-fire. Count Bernadotte was to be assisted in this by a group of military observers. Unfortunately the Count was assassinated in the Israeli-held sector of Jerusalem on 17 September 1948. He was succeeded by Ralph Bunche of the United States, who took over as Acting Mediator. He directed the military observers and laid down the operation procedure. Today, more than 50 years later, UNTSO remains in force, helping to keep peace between Israel and its Arab neighbours.

Peacekeeping operations are normally set up by the Security Council, the UN organ with primary responsibility for maintaining international peace and security[56]. The Council decides the operation's size, its overall objectives and its time frame. As the UN has no military or civilian police force of its own, Member States decide whether to participate in a mission and, if so, what personnel and equipment they are willing to offer. Under the present structure, this can take considerable time for the actual forces to be authorized and reach their destination. In some cases, peacekeepers have been sent to places where there was no peace to keep. In Sierra Leone while monitoring a peace agreement, contempt rather than cooperation was experienced by UN soldiers who were abducted; some were later killed. In Somalia, the parties repeatedly violated ceasefire agreements, and UN personnel became targets for murder, kidnapping and intimidation. Those who committed these crimes knew well that casualties can undermine support for a peacekeeping operation among the nations providing troops for it. Even in cases where there was a peace agreement, as in Angola and in Cambodia, peace-keepers have had to contend with

[56] Art. 24(1) UN charter,Availaible athttp://www.un.org,Accessed on13/08/2013 at 12:35 pm

recalcitrant rebel groups for whom war was a profitable enterprise, since these groups controlled valuable export commodities, such as diamonds, drugs and timber.

While each UN Peacekeeping operation is unique**,** all Peacekeeping operations have the following common features:-

1. all require the consent of parties involved in a dispute;
2. none can be imposed unilaterally or from outside;
3. none involve military enforcement measures or coercive actions, except in the very limited circumstances of self-defence or defence of civilian populations;
4. all involve the deployment in the field of existing UN staff and of personnel (military and/or civilian) made available to the Secretary-General by governments;
5. all are under the operational command of the Secretary General of the UN; all are deployed to help control and resolve international conflicts or, increasingly, internal conflicts having an international dimension.[57]

The traditional concept of UN peacekeeping, as it was first developed, was to deploy in a 'buffer zone'- separating fighting forces, e.g. in the Golan Heights between Israeli and Syrian forces. Today, its meaning has changed, its role widened and its responsibility broadened. Most of the peacekeeping operations now are multidimensional, requiring each to carry out a variety of functions involving peacemaking and peace-building. The former UN Secretary-General, Kofi Annan, in his 1999 report on the Work of the Organization, thus summarized these functions as follows:

> While some traditional peacekeeping operations remain, peacekeepers throughout the decade of the 1990s have been involved in the broader post-

[57]Brabandere, D. E., (2009)*Post Conflict Administration In international law*; Martinus Nijhoff Publishers, Leiden, Netherlands p. 123

> conflict peace-building processes associated with the implementation of peace agreements. This involves the return and reintegration of refugees and internally displaced persons, reconciliation, rebuilding judicial systems, strengthening the promotion and protection of human rights, electoral assistance and assistance in rebuilding war-torn political, economic andsocial infrastructures, as well as more traditional peacekeeping tasks.[58]

Peace keeping here transcends efforts to stop war and laying down of arms. It goes further to arrange for peace agreements and seeing into its implementation. The peace keepers see into it that the internally displaced persons are repositioned, the refugees are reintegrated, a confident judicial system is restored and above all it is seen that a free, fair and transparent electoral system is put in place that will lay down a strong foundation for a buoyant economy and a political and social equality.

2.5 Meaning and nature of the concept of peace enforcement

Peace enforcement (PE)[59]operations are military intervention operations in support of diplomatic efforts to restore peace or to establish the conditions for a peace keeping force between hostile factions that may not be consenting to intervention and may be engaged in combat activities. Peace enforcement implies the use of force or its threat to coerce hostile factions to cease and desist from violent actions. Units conducting peace enforcement, therefore, cannot maintain objective neutrality in every instance. They must be prepared to apply elements of combat power to restore order, to separate warring factions, and to return to the environment to conditions more conducive to civil order and discipline.[60]

PE operations normally take place under the principles of Chapter VII of the UN Charter. They are coercive in nature and are conducted when the consent of all Parties to the conflict has

[58]UN, (1993) op. cit P.30
[59] Rourke, T.J.,(2000) op. cit p.24`
[60]Brooks, R., (1996)*Combined Action Platoons: A Strategy for Peace Enforcement*,Availaible athttp://www.cap.org/peace, Accessed on 15/05/2013; 2:24 pm

not been achieved or might be uncertain. They are designed to maintain or re-establish peace or enforce the terms specified in the mandate. In the conduct of PE, the link between military and political objectives must be extremely close. It is important to emphasise that the aim of the PE operation will not be the defeat or destruction of an enemy, but rather to compel, coerce and persuade the parties to comply with a particular course of action. The provision of adequate military forces to establish a coercive combat capability is critical to any decision to deploy Alliance forces on a Peace and Security Operations (PSO).[61]

2.6 The development of peace enforcement in International Law

The meaning of the term peace enforcement is often misunderstood. Consider thatwhen soldiers are performing enforcement actions under a UN Security Councilmandate, they are still called peacekeepers. The term's origins are found in the UNCharter under Chapter VII and Articles 39, 41, and 42. Article 47[62] goes on to outlinethe procedures for managing "breaches of peace and acts of aggression". It establishesa Military Staff Committee to manage the armed forces placed at the disposal ofthe UN Security Council. Unfortunately, the Member States that comprise theMilitary Staff Committee never came to an agreement on how the UN would

[61]Eriksen, J. H. et al.,(2001)*NATO Unclassified, Peace Support Operations*,Availaible at http://www.nato.org, Accessed on 23 /05/2013; 2:33

[62]1. There shall be established a Military Staff Committee to advise and assist the Security Council on all questions relating to the Security Council's military requirements for the maintenance of international peace and security, the employment and command of forces placed at its disposal, the regulation of armaments, and possible disarmament.

2. The Military Staff Committee shall consist of the Chiefs of Staff of the permanent members of the Security Council or their representatives. Any Member of the United Nations not permanently represented on the Committee shall be invited by the Committee to be associated with it when the efficient discharge of the Committee's responsibilities requires the participation of that Member in its work.

3. The Military Staff Committee shall be responsible under the Security Council for the strategic direction of any armed forces placed at the disposal of the Security Council. Questions relating to the command of such forces shall be worked out subsequently.

4. The Military Staff Committee, with the authorization of the Security Council and after consultation with appropriate regional agencies, may establish regional subcommittees.

usemilitary forces placed at its disposal.Boulden, J., in her book[63]provides an in-depth and excellent overview of peaceenforcement operations. Her analysis focuses on the three missions listed in the title,but in the introduction she states that the impact of the Cold War prevented theCharter's intent of enforcement action from becoming a reality. With the end of theCold War there was renewed optimism on the use of the UN's security arrangements.The first real use of the term peace enforcement came inJanuary 1992 in Boutros Boutros Ghali's (former UN Secretary General's) report to the UN Security Council. The reportmore commonly known as An Agenda for Peace, outlined procedures for the use of"peace enforcement forces" by stating that Member States should place at the UN'sdisposal volunteers to manage broken or ineffective cease fires. He also stated thatthe forces must be more heavily armed than peacekeepers and undergo extensivepreparatory training. Such forces would be under the command of the UN SecretaryGeneral.In his report, Boutros Boutros Ghalidefines preventive diplomacy, peacemaking,peacekeeping, and post conflict peace building, but does not define peace enforcement.In his supplement to the *Agenda for Peace*, published in 1995, he further stated that "Even though the use of force is authorized under Chapter VII of the Charter, theUnited Nations remains neutral and impartial between warring parties…" Laterin the same supplement he stated: Such actions support the Charter and the latest analyses on modern peace operations.

One of the achievements of the Charter of the United Nations was to empower the Organization (UN) to take enforcement action against those responsible for threats to the peace, breaches of peace or acts of aggression. Neither the Security Council nor the SecretaryGeneral at present has the capacity to deploy, direct, command and control operations forthis purpose, except perhaps on a limited scale.

[63]Boulden, J., Peace Enforcement: The United Nations Experiencein Congo, Somalia, and Bosnia,

A clear definition of peace enforcement did not emerge until the British and theAmerican military doctrines on peacekeeping were published in 1994. Armies developdoctrine to guide the training of military forces, and in such documents, define terms.The US Army's Field Manual 100-23 of December 1994 defined preventive diplomacyand peace building along the lines described in AgendaforPeace[64]. The manualalso defined peace enforcement as, "the application of military force or the threatof its use, normally pursuant to international authorization, to compel compliancewith generally accepted resolutions or sanctions." The British field manual, WiderPeacekeeping, published in September 1994 defined peace enforcement as: "operationscarried out to restore peace between belligerent parties who do not all consent tointerventions and who may be engaged in combat activities". The British manualalso addressed consent of the warring or belligerent parties in some detail. Consentof the local parties is the critical difference between peacekeeping and peace enforcement.In August 2000, Ambassador Lakhdar Brahimi submitted his report on the Panelof United Nations Peacekeeping.[65]

This report, done by an experienced panel of peacekeepers, was the most comprehensivereview of UN peacekeeping done to date. The panel recommended: "thatconsent of the local parties, impartiality, and the use of force only in self defenseshould remain the bedrock principles of peacekeeping".

In this report Brahimi goes on to describe spoilers andmanipulation of the peace process. The report states: "In the past, the United Nationshas often found itself unable to respond effectively to such challenges. It is a fundamentalpremise of the present report, however, that it must be able to do so". Brahimilater recommends that the mandate must authorize the use of force and those bigger,better-equipped forces, and more costly forces should be used to present a

[64]Eriksen, J. H. et al.,(2001)op. cit p.34
[65]UN, (2000) Brahimi Report. Available at www.un.org.-Brahimi-report-un-shtml. Accessed on 23/04/2014 at 1:00pm

morecredible deterrent threat. The Brahimi Report goes on.[66] "Where enforcement actionis required, it has consistently been entrusted to coalitions of willing States, withauthorization of the Security Council, acting under Chapter VII of the Charter".

This brief review of the term peace enforcement does not clarify whether the UN should or should not do peace enforcement operations. It even muddies the waterfurther. In fact, the Brahimi Report implies that the UN should develop the capacityto conduct peace enforcement. In some UN circles there are discussions about "robustpeacekeeping." By this they mean providing UN forces with the necessary authorityand capability, both size and combat equipment, to conduct enforcement actions.[67]If one analyzes past missions, general trends emerge. The trend is that regional organizationsor coalitions of the willing are more suitable in conductingpeace enforcementmissions.Such actions support the Charter[68] and the latest analyses on modern peaceoperations.[69]

Peace-enforcement unit's forces mission under Article 43[70] would be to respond to outright aggression, imminent or actual. Such forces are not likely to be available for some time to come. Cease-fires have often been agreed to but not complied with, and the United Nations has sometimes been called upon to send forces to restore and maintain the cease-fire. This task can on occasion exceed the mission of peace-keeping forces and the expectations of peace-keeping force contributors. I recommend that the Council consider the utilization of peace-enforcement units in clearly defined circumstances and with their terms of reference specified in advance. Such units from Member States would be available oncall and would consist of troops that have volunteered for such service. They would have to be more heavily armed than peace-

[66]Ibid
[67]Ibid
[68]UN Charter op. Cit P.2
[69]Eriksen, J. H., (2001) op. cit, P.34
[70] UN Charter. op. cit P.2

keeping forces and would need to undergo extensive preparatory training within their national forces. Deployment and operation of such forces would be under the authorization of the Security Council and would, as in the case of peace-keeping forces, be under the command of the Secretary-General. I consider such peace-enforcement units to be warranted as a provisional measure under Article 40 of the Charter. Such peace-enforcement units should not be confused with the forces that may eventually be constituted under Article 43 of the Charter to deal with acts of aggression or with the military personnel which Governments may agree to keep on stand-by for possible contribution to peace-keeping operations. Diplomacy will continue across the span of all the activities dealt with in the present report; so that there may not be a dividing line between peacemaking and peacekeeping. Peacemaking is often a prelude to peace-keeping - just as the deployment of a United Nations presence in the field may expand possibilities for the prevention of conflict, facilitate the work of peacemaking and in many cases serve as a prerequisite for peace-building.[71]

2.6.1The meaning and establishment of the SC of the United Nations

The year was 1945 and the second war enveloping much of the globe in the last 30 years was coming to an end. In this environment, representatives from China, Great Britain, the Soviet Union, and the United States met at the Dumbarton Oaks mansion in Washington D.C. for the initial discussions that would lead to the creation of the United Nations. The representatives were well aware of the guiding principles of the League of Nations, and also of its multiple failures. Though many felt that the League of Nations had the capacity to discuss significant international affairs, the body was not constructed in a manner which was able to produce successful measures to deter aggression and prevent conflict. Firstly, the United States, by now a prominent global

[71]UN, (1992)*An Agenda for Peace Preventive diplomacy, peacemaking and peace-keeping*: Report of the Secretary-General pursuant to the statement adopted by the Summit Meeting of the Security Council. Availaible athttp://www.un.org/peace Accessed on 18/05/2013 2:32 pm

power, did not join the organization, although the organization was originally the Woodrow Wilson's, (the president of the United States at the time) idea after World War I. This handicapped the League from the beginning by preventing it from achieving maximal financial backing and international political support. Secondly, there was no clear division of duties between the League's Assembly and Council committees. Thus, tasks were often mismanaged.

Additionally, all resolutions required a unanimous vote to pass, a rarity in the arena of international politics. Since there was no clear sense of collective security, individual Member States of the League continued the policy of pursuing narrowly defined interests of their own country's foreign policy. In 1945, the nations represented at Dumbarton Oaks were mindful of these failings of the League of Nations. The representatives acknowledged the consensus that the newly proposed international organization should contain a principal organ tasked specifically with promoting international peace and security. After careful consideration at the San Francisco Conference later in 1945, delegates from countries that would become the first member states of the United Nations came to the conclusion that a smaller body acting as the United Nations' defense advisor and operations executioner, specifically charged with "the maintenance of international peace and security," should be commissioned. Thus, the United Nation's Security Council was born[72].

The Security Council is comprised of fifteen member states, with five nations holding permanent seats[73] and ten holding rotating elected seats.[74] The permanent five members are China, France, Great Britain, the Russian Federation and the United States and are often referred

[72]UN, *Dumbarton Oaks and Yalta;* available athttps://www.un.org/en/aboutun/history/dumbarton_yalta.shtml Accessed on 13/08/2013 at 4:33 pm
[73]Art. 23(i) of the UN Charter op.cit p.2
[74]Ibid Art. 23(ii)

to as the "P-5" Members. The five permanent members retain veto power over any resolution discussed in the Security Council. These permanent members were given veto powers primarily to ensure that no P-5 member would attack another P-5 Member as well as to ensure that the leading nations were in unanimity before taking action on a particular issue, establishing a unanimous coalition of the powerful. The ten nonpermanent member states are elected for a period of two years with five rotating out each December. These states are represented geographically, whereby there are three African, two Latin American, one Arab, one Asian, one Eastern European and two Western European states on the Security Council at any given time.

Furthermore, Member States on the Council are mandated by the United Nations Charter[75] to have a representative from each of their states present at the organization's headquarters in New York City so that the Council may operate "continuously" without delay or hesitation. Current members of the Security Council include: Permanent Seats: China, France, Russian Federation, United Kingdom and the United States; The current non-permanent elected members are:Argentina, Australia, Chad, Chile, Jordan, Lithuania, Luxembourg, Nigeria, Republic of Korea, Rwanda.Accordingto Art. 24(1) of the UN Charter, the Council acts on behalf of all member states and its decisions are binding[76] on all member states (Art 2(5), 25, 39)[77] and to some extent, non-members (Art. 2(6)[78].

2.7 The concept of Security

[75]Ibid Art. 28(1)
[76]UN, History of the UNSC; available at http://www.doxunsc.com/history, 18/06/2013, 7:18pm
[77]UN Charter op. cot p.34
[78] Ibid

Security means safety of a person, a group, or a nation. At the individual level, it is a psychological state as well as a physical state[79]. In the international sphere, security has traditionally been defined in military terms, usually related to maintaining existing state boundaries. This definition became increasingly inadequate, however, as attempts to defend boundaries caused states to build up huge arsenals of weapons, which actually diminished, rather than increased, the security of their populations. (This was caused, in part, by the increasing threat of war by accident, if not by choice, as well as the drain that the arms buildup put on other aspects of the countries' economies, environments, and social structures.) It also neglected the security threats of internal strife between racial and ethnic groups.[80]

Now, security is being more broadly defined to include military, economic, political, and social threats as well as threats to the health of a nation's citizens or its environment. This concept is often referred to as comprehensive security, as opposed to military security.[81]

Another new term is common security. This term, which was coined by the Palme Commission in 1982, refers to the understanding that arms races and their concomitant mutual fear and suspicion do not add to security but detract from it. Common security thus refers to "a commitment to joint survival, to taking into account the legitimate security anxieties of others, and to working cooperatively in a number of ways to maximize the degree of interdependence between nations: in short, to achieve security with others, not against them." Nevertheless, most discussions of common security maintain the military security, rather than the broader comprehensive security, focus. Attention is paid to the development of no provocative defense and military confidence-building measures, rather than broader social, economic, or political

[79]Burgess, M., (1997) op. cit. p.21
[80]Ibid
[81]Ibid

ties.Another military approach to security is collective security, which calls on all members of a security community (such as the United Nations or a regional organization) to renounce the use of force against its own members and to guarantee that all members of the community will come to the aid of another if it is attacked either from the outside or from a defecting member of the security group. This idea was fundamental to the League of Nations as well as the United Nations[82].

There are othersecurity related techniques, features or terminologies that this work will not be complete if the researcher does not delve a bit into them. These are words like deterrence, equal security, common security, balance of power and collective security.

Balance of power has been a great security feature since the advent of the state system. Although the meaning of the term "balance of power" appears self-evident, it may be understood in several ways. It may describe the general character of an international system where States, in the absence of a higher authority regulating relations between them, seek security by creating power arrangements that reduce the risk of attack upon them, a process that has tended to produce offsetting coalitions against emerging concentrations of power anywhere in the system. It may refer to a situation in which equivalent power is held by two or more nations or groups of nations and to a policy of promoting the creation or preservation of such equivalence in power. Also, it is sometimes understood as a system of international relations in which agreed arrangements are made by States concerning the operation and adjustment of their power relationships, which may be reflected either in a lower or higher level of armaments[83].

[82]Ibid
[83] UN, (2004)Concepts of Security, United Nations: Availaible athttp://www.un.org. Accessed on 28/04/2013 4:23 pm

Deterrence is a security strategy whose objective is to dissuade a potential adversary from initiating war, by threatening the use of force in order either to deny an adversary from gaining his objectives by military means or to punish the adversary should he seek to do so. In effect it seeks to persuade an adversary that the risks and costs of acts of aggression will exceed any gains that might be obtained from such acts. If war is not avoided, deterrence has failed. Deterrence has probably been practiced since the earliest stages of human existence. Although the use of deterrence is not supported by all the major Powers or for that matter by various other countries, it remains an important tool because, with the proliferation of nuclear weapons and the growth in the size and destructive capacities of arsenals of conventional weapons, the pursuit of national policies designed to sustain deterrence inevitably has major implications for other countries and for broad international security. In the view of some States, conventional deterrence depends for its effectiveness primarily on the possession by States of military capabilities that are structured for self-defence of their national territory, so as to deny an adversary the prospect of securing territorial, political or economic gains by the use of military force. In their view, nuclear deterrence, in contrast, relies mainly on the possession of offensive nuclear capabilities that would be used to punish an adversary in the event that that adversary was to initiate conflict. In the view of some other States, conventional deterrence is based on the same negative features as nuclear deterrence. They consider that the creation of highly precise weapons of great destructive power on the basis of the most modern technology, which in their destructive capacity approach nuclear weapons, lead to lowering the threshold between conventional and nuclear deterrence; the plans providing for the use of such weapons by a nuclear weapon State or by its ally against targets in the territory of a presumed adversary would lower the "nuclear threshold" and would inevitably increase the risk of nuclear war.[84]

[84] Ibid

Equal security is a security technique that seeks to establish bilateral arms negotiations that parties may agree upon. For example, in a joint communiqué issued on 29 May 1972 the United States and the Soviet Union declared their intentions to limit strategic offensive arms "and to conduct them [their negotiations] in a spirit of goodwill, respect for each other's legitimate interests and observance of the principle of equal security". This strategy would seem to embrace the notion that neither State has the right to claim exclusivity or to demand for itself any special privileges or advantages. Indeed, it has been stated that mutual security between the two major nuclear-weapon States can only be assured by equality. However, questions have been raised as to its exact meaning and wider applicability. Critics maintain that this feature does not address the security concerns of medium-sized and small States, particularly in the light of the wide disparities in military capabilities that exist in the world.[85]

Collective security as technique in security matters understood in this study is based on a global commitment to international peace and security undertaken as a legal obligation of all nations. It is the first attempt to institutionalize and enforce the rule of international law to enhance the security of all nations. The international community, acting together, is committed to move promptly to encounter any act of aggression by one nation against another. "The catchphrase in collective security is 'all for one and one for all.'"[86]

Collective security implies an acknowledgement that security is indivisible. It provides protection of national interests and sovereignty in a collective manner and leads to the strengthening of international security. As a concept it aims at a broader objective than just the absence of war by taking into account the wider requirements of international peace and security. It is based on renunciation of force, except in self-defence, commitment to the peaceful

[85] Ibid
[86] ibid

settlement of international disputes and obligation to support collective measures, both military and non-military, to defeat aggression.[87]

A major problem with the concept of collective security is that on a number of occasions, States have been reluctant to fulfill their obligations, which is the basic condition for the functioning of the system. In the case of the League of Nations this lack of political will was aggravated by the absence of an effective enforcement mechanism and by the lack of universality in the League.

Within the United Nations special voting powers have been accorded to five States as permanent members of the Security Council. Collective security action by the United Nations requires the concurrence of the five permanent members of the Council: a negative vote by anyone of the five States "vetoes" the proposed action. However, the "veto" provision reflects the original assumption that the great Powers would maintain a co-operative working relationship among them and, therefore, only use the veto in exceptional circumstances. In practice, however, disagreements between the permanent members have in a number of cases led to the use of the veto, which, in turn, has prevented collective security action. The view has been expressed that the veto power has been abused. Another reason why the collective security system of the United Nations has not always functioned as effectively as expected is the lack of political will to cooperate.[88]

2.7.1The Development of Security in International Law

The concept of security has evolved considerably over the years. Traditionally, security was defined primarily at the nation-state level and almost exclusively through the military dimension.

[87]ibid
[88]Burgess, M.,(1997) op. cit p.22
See also UN,(2004) op. cit, P.40

This focus on external military threat to national security was particularly dominant during the Cold War.[89]

The interwar period was of significance to the development of security studies. During this period scholars stressed that democracy, international understanding and arbitration were the main ways to promote peace and security. These scholars emphasized the importance of international law and institutions rather than military force. The new international system was viewed as a 'community of power' in which all states would cooperate in the common cause of providing security and justice for all rather than engaging in competition and coercion.[90]

In the first decade after the Second World War academic interest in security studies increased significantly. Although questions of national security were usually treated within the broader framework of international relations and foreign policy, this period has been described as 'the most creative and exciting period in the entire history of security studies'. Two major graduate schools devoted exclusively to international affairs were founded in the United States, one at the Johns Hopkins University and one at Columbia University. Influential research centres focusing on national security were established at Yale, Columbia and Chicago. During this period two major academic journals were founded, *International Organization* (1947) and *World Politics* (1948), both of which have been functioning as a platform for scholarly debate on national security.[91]

Although scholars were well aware of military instruments of statecraft, at this stage the field of security studies was not yet as preoccupied with deterrence and nuclear weaponry as it

[89]Baldwin, D.A., (1995) 'Security Studies and the End of the Cold War', *World Politics*, vol. 48, no. 1, pp. 117-141
[90]Fox, W.T.R., (1949) 'Interwar International Relations Research: The American Experience', *World Politics, 2,* pp. 67-79.
[91] Ibid

would become during the Cold War era. Baldwin[92] identifies four recurrent themes during the period 1945-1955. First, security was viewed not as the primary goal of all states at all times but rather as one among several values, the relative importance of which varied across time and space. Second, national security was viewed as a goal to be pursued by both military and non-military techniques of statecraft. Third, emphasis on caution and prudence with respect to military policy were commonplace. Fourth, much scholarly attention was devoted to the relationship between national security and domestic affairs, such as the economy, civil liberties and democratic political processes. This relatively broad notion of security reflects in certain respects the contemporary debate in security studies on the 'broadening' and the 'deepening' of security. Considering these overlaps, the question can be raised why the work of scholars prior to 1955 has been almost entirely ignored. It is as if the field came to be so narrowly defined in later years that the questions addressed during these early years were no longer considered to belong to the field of security studies. In the following section researcher discusses the development of concepts of security during the Cold War.

Throughout the Cold War era, several different approaches to security were developed in relation to the conflict between the 'East' and 'West'. The driving force in this debate was the presence of nuclear weapons which altered international relations and security studies fundamentally because of its destructive force. For the first time in history weapons were produced that were capable of destroying the entire world. This historical discontinuity in weapons technology had a profound effect on academic and policy discourse. For instance, it is noted that 'the sheer destructiveness of nuclear war has invalidated any distinction between

[92] Ibid

winning and losing[93]. Thus, it has rendered meaningless the very idea of military strategy as the efficient employment of force to achieve a state's objectives.' In reaction to this argument, several strategists have claimed that the use of nuclear weapons in small-scale conflicts would be impossible. The tremendous effect of these weapons outweighed the objectives pursued by the initiating state.Four dominant approaches to security during the Cold War can be identified: balance of power, bipolar world, containment and deterrence which will be discussed below.

CHAPTER THREE

THE ROLE OF THE SECURITY COUNCIL IN PROMOTING PEACE AND SECURITY ININTERNATIONAL LAW

3.1 Introduction

The Security Council(SC) has been given the mandate by the UN to maintain world peace and security. Its duty to do this stretches through the powers of negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of its own choice. As Article 33(1) of the UN Charter states, "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." This is of great importance since the

[93]Sigal, L., V., (1979) "Rethinking the Unthinkable," *Foreign Policy,* no. 34 (Spring 1979), p. 39.

Charter preaches pacific settlement of disputes before a resort to force. The Charter inArticle 42 also gives the SC the power to enter into war in another country for the purpose ofmaintaining international peace and security. The SC is also given the powers to monitor and destroy any weapon of mass destruction in the corners of the world to ensure a level of security. The SC`s effort to maintain international peace and security is backed by a greater authority and it always works within this backing else its functions will always be seen as illegal. This body has existed for years; it has done much work and has a lot of successes. This chapter examines the legal basis of Peacekeeping in International Law, the role of the Security Council in International Law, andan assessment of the achievements of the UNSC in selected areas

3.2 The legal basis of Peacekeeping in International Law

The SC does not just engage in peacekeeping operations without some authority backing it. Its legal backings are the UN Charter, Human Rights, International Humanitarian Law and the Security Council Mandates. An in depth discussion of this for a proper understanding is necessary as seen below.

3.2.1 The UN Charter

The Charter[94] gives the United Nations Security Council primary responsibility for the maintenance of international peace and security.In fulfilling this responsibility, the Security Council may adopt a range of measures, including the establishment of a United Nations peacekeeping operation. The legal basis for such action is found in Chapters VI, VII and VIII of

[94] *UN Charter*op.cit p.33

the Charter. While Chapter VI deals with the "Pacific Settlement of Disputes", Article 33(1)[95] states that, "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". This calls for a peaceful settlement of dispute before resort to force.Chapter VII[96] contains provisions related to "Action with Respect to Threat to the Peace, Breaches of the Peace and Acts of Aggression". It states that,

> Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.[97]

This measure is the use of force which is legally backed by the Charter. Chapter VIII of the Charter also provides for the involvement of regional arrangements and agencies in the maintenance of international peace and security[98]provided such activities are consistent with the purposes and principles outlined in Chapter I of the Charter. And by Article 53,[99] no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council.

[95] Ibid
[96]IbidArt.33(1)
[97]Ibid Art.42
[98]IbidArt. 52
[99] Ibid

United Nations peacekeeping operations have traditionally been associated with Chapter VI of the Charter. However, the Security Council need not refer to a specific Chapter of the Charter when passing a resolution authorising the deployment of a United Nations peacekeeping operation and has never invoked Chapter VI. In recent years, the Security Council has adopted the practice of invoking Chapter VII of the Charter when authorizing the deployment of United Nations peacekeeping operations into volatile post-conflict settings where the State is unable to maintain security and public order. The Security Council's invocation of Chapter VII in these situations, in addition to denoting the legal basis for its action, can also be seen as a statement of firm political resolve and a means of reminding the parties to a conflict and the wider United Nations membership of their obligation to give effect to Security Council decisions.

Linking United Nations peacekeeping with a particular Chapter of the Charter can be misleading for the purposes of operational planning, training and mandate implementation. In assessing the nature of each peacekeeping operation and the capabilities needed to support it, Troop Contributing Countries (TCCs) and Police Contributing Countries (PCCs) should be guided by the tasks assigned by the Security Council mandate, the concept of operations and accompanying mission Rules of Engagement (ROE) for the military component, and the Directives on the Use of Force (DUF) for the police component.[100]

[100]UN. (2010). *United NationsPeacekeeping Operations Principles and Guidelines;* Availaible athttp://www.un.org/depts/dpko, Accessed on 18/05/2013 1:33 pm
See AlsoRourke, J., (2000)*International Politics on the World Stage,*University of Connecticut press, Connecticut, p.20

Although the United Nations Charter gives primary responsibility to the Security Council for the maintenance of international peace and security, the General Assembly Resolution 377 (V) of 3 November 1950, also known as the "Uniting for Peace" resolution[101], states that:

> ...if the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression, the General Assembly shall consider the matter immediately with a view to making appropriate recommendations to Members for collective measures, including in the case of a breach of the peace or act of aggression, the use of armed force when necessary, to maintain or restore international peace and security.

General Assembly resolution 1000 (ES-1) of 5 November 1956[102] authorizing the establishment of the First United Nations Emergency Force (UNEF I) was adopted under procedure established by the "Uniting for Peace" resolution.[103]

3.2.2Security Council mandates

United Nations peacekeeping operations are deployed on the basis of a mandate from the United Nations Security Council. The tasks that a United Nations peacekeeping operation will be required to perform are set out in the Security Council mandate. Security Council mandates differ from situation to situation, depending on the nature of the conflict and the specific challenges it presents. Since United Nations peacekeeping operations are normally deployed to support the implementation of a cease-fire or a more comprehensive peace agreement, Security Council mandates are influenced by the nature and content of the agreement reached by the parties to the conflict.[104]

---

[101] UN, *GAR/377 (V) of 3 November 1950*available at http://www.un.org/depts/dpko18/05/2013 1:33 pm
[102]UN, *GAR 1000 (ES-1) of 5 November 1956* available at http://www.un.org/depts/dpko18/05/2013 1:33 pm
[103]UN. *United NationsPeacekeeping Operations Principles and Guidelines*; Op. cit p.56
[104] Ibid

Security Council mandates also reflect the broader normative debates shaping the international environment. In this regard, there are a number of cross-cutting, thematic tasks that are regularly assigned to United Nations peacekeeping operations on the basis of the following landmark Security Council resolutions:

Security Council resolution 1325 (2000) on women, peace and security;[105] In this resolution the UNSCbears in mindthe purposes and principles of the Charter of the United Nations and the primary responsibility of the Security Council under the Charter for the maintenance of international peace and security. It expressesconcern that civilians, particularly women and children, account for the vast majority of those adversely affected by armed conflict, especially as refugees and internally displaced persons, and increasingly are targeted by combatants and armed elements, and recognizing the consequent impact this has ondurable peace and reconciliation. In this light, it calls on the stake holders to recognize, include and involve the important role of women in the prevention and resolution of conflicts and in peace-building, and stressingthe importance of their equal participation and full involvement in all efforts for the maintenance and promotion of peace and security, and the need to increase their role in decision-making with regard to conflict prevention and resolution.[106]

Security Council resolution 1612 (2005) on children and armed conflict.[107] This resolution on children and armed conflict strongly condemnsthe recruitment and use of child soldiers by parties to armed conflict in violation of international obligations applicable to them and all other violations and abuses committed against children in situations of armed conflict. It welcomesthe efforts undertaken by United Nations peacekeeping operations to implement the

[105]UN, *SCR/1325 (2000) on women, peace and security*: available at http://www.un.org/ res/ wn viewed on 13/5/ 2013
[106]Ibid
[107]UN, SCR/1612 (2005) *on the protection of children in armed conflic*t available at http://www.un.org/ res/ wn viewed on 13 may 2013

Secretary-General's zero-tolerance policy on sexual exploitation and abuse and to ensure full compliance of their personnel with the United Nations code of conduct, requests the Secretary-General to continue to take all necessary action in this regard and to keep the Security Council informed, and urges troop-contributing countries to take appropriate preventive action including pre-deployment awareness training, and to take disciplinary action and other action to ensure full accountability in cases of misconduct involving their personnel.[108]

Security Council resolution 1674 (2006) on the protection of civilians in armed conflict.[109]This resolution recalls that deliberately targeting civilians and other protected persons as such in situations of armed conflict is a flagrant violation of international humanitarian law, reiteratesits condemnation in the strongest terms of such practices, and demands that all parties immediately put an end to such practices. It reaffirms alsoits condemnation in the strongest terms of all acts of violence or abuses committed against civilians in situations of armed conflict in violation of applicable international obligations with respect in particular to (i) torture and other prohibited treatment, (ii) gender-based and sexual violence, (iii) violence against children, (iv) the recruitment and use of child soldiers, (v) trafficking in humans, (vi) forced displacement, and (vii) the intentional denial of humanitarian assistance, and demands that all parties put an end to such practices. Reaffirmsthe need to maintain the security and civilian character of refugee and internally displaced person camps, stressesthe primary responsibility of States in this regard, and encouragesthe Secretary-General where necessary and in the context of existing peacekeeping operations and their respective mandates, to take all feasible measures to ensure security in and around such camps and of their inhabitants[110].

[108]Ibid
[109]UN, SCR/1674 (2006) *on the protection of civilians in armed con*flict available at http://www.un.org/ res/ wn viewed on 13 may 2013
[110]Ibid

3.3 The role of the Security Councilin International Law

The UNSC is a very important body of the UN. It has wider powers and many functions. Its nature, structure and functioning is enshrined in the UN Charter.[111] It exercises its functions sometimes individually and at other times jointly with other UN bodies. Since this workis dealing with the functions of the UNSC as regards maintenance and promotion of international peace and security,the United Nations Security Council maintenance and Proactive Role in in fostering international Peace and Securityis be examined here under and the other functions is only listed.

3.3.1Maintenance of international peace and security

The Security Council has primary, but not exclusive, responsibility for the maintenance of international peace and security. Indeed, the UN Charter declares as one of its purposes in Article 1, 'to bring about by peaceful means and in conformity with the principles of justice and International law, adjustment or settlement of International disputes or situations which might lead to a breach of the peace'. To this end, the UN Charter recognized the Security Council as the organ with primary responsibility for international peace and security (Article 24), the maintenance of which would be realized in three ways. First, as outlined in Article 26 of the UN Charter, was the formulation of plans for the regulation of armaments. Second, international disputes or situations which were likely to endanger international peace and security would be settled in a peaceful manner following methods set out in Chapter VI of the Charter although 'decisions' of the Security Council would be framed as 'recommendations' and as such could have no legally binding effect on the members of the UN. Third, the Security Council was

[111] Chapts.V, VI, VII, and VIII, UN Charter op. cit p. 2

empowered to take enforcement action to deal with threats to the peace, breaches of the peace and acts of aggression[112]and by Article 25[113] agreed to accept and carry out the decisions of the Security Council. The International Court in the Namibiacase drew attention to the fact that the provision in Article 25 of the UN Charter was not limited to enforcement actions under Chapter VII of the Charter but applied to "decisions of the Security Council" adopted in accordance with the Charter'. Accordingly a declaration of the Council taken under Article 24 in the exercise of its primary responsibility for the maintenance of International peace and security could constitute a decision under Article 25 of the Charter so that member states would be expected to act in consequence of the declaration made on their behalf. Whether a particular resolution adopted under Article 24 actually constituted a decision binding on all member states was a matter for analysis in each particular case, 'having regard to the terms of the resolution to be interpreted, the discussions leading to it, the Charter provisions invoked and, in general, all circumstances that might assist in determining the legal consequences of the resolution of the Security Council'. Under the Charter, the role of the Security Council when dealing with the specific settlement of disputes specifically under Chapter VI[114] differs from when the Council is contemplating action relating to threats to or breaches of the peace, or acts of aggression under Chapter VII[115]. In the former instance there is no power as such to make binding decisions with regard to member states.[116]

[112]Bourantonis, D., (2005)*The History and Politics of UN Security Council Reform;* RoutledgeLondon, Britain. P. 4
[113] ibid
[114] Ibid
[115] Ibid
[116]Abhishek, A., (2010) *Role of UN in Maintenance of International Peace & Security*. http://www.roleunpeace.comAccessed on 11/5/ 2013; 1:33pm.

In pursuance of its primary responsibility, the Security Council may, by Article 34[117], 'investigate any dispute, or any situation which might lead to International friction or give rise to dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of International peace and security'. In addition to this power of investigation, the Security Council can, where it deems necessary, call upon the parties to settle their dispute by the means elaborated in Article 33.[118] The Council may intervene if it wishes at any stage of a dispute or situation, the continuance of which is likely to endanger International peace and security, and under Article 36(1)[119] recommend appropriate procedures or methods of adjustment. But in making such recommendations, which are not binding, it must take into consideration the general principle that legal disputes should be referred by the parties to the International Court of Justice. Where the parties to a dispute cannot resolve it by the various methods mentioned in Article 33,[120]they should refer it to the Security Council by Article 37[121]. The Council, where it is convinced that the continuance of the dispute is likely to endanger International peace and security, may recommend not only procedures and adjustment methods, but also such terms of settlement as it may consider appropriate.

Once the Council, however, has determined the existence of a threat to, or a breach of, the peace or act of aggression, it may make decisions which are binding upon member states of the UN under Chapter VII[122], but until that point it can under Chapter VI issue recommendations only. Under Article 35(1)[123] any UN member state may bring a dispute or a situation which might lead to International friction or give rise to a dispute before the Council, while a non-

[117] UN Charter, op. cit p.31
[118] Ibid
[119] Ibid
[120] Ibid
[121] Ibid
[122] Ibid
[123] Ibid

member state may bring to the attention of the Council any dispute under Article 35(2)[124] provided it is a party to the dispute in question and 'accepts in advance, for the purposes of the dispute, the obligations of pacific settlement provided in the present Charter'. It is also possible for third parties to bring disputes to the attention of the Council.

3.3.2United Nations Security Council Proactive Role in Promoting Peace and Security

The United Nations Security Council has done and is still doing a lot in the maintenance and the promotion of peace and security in the world. It has intervened in situations where there is the breach of the peace, threat of the peace and acts of aggression in so many instances. It has also taken important measures to regulate and control situations that will threaten or lead to difficulties in the maintenance of peace and security. This topic intends to examine the various efforts the UNSC has done to prevent an actual breach of the peace and thus helps in the promotion of world peace and security. This section examines the measures taken to stop terrorism funding, to ensure disarmament and to promote human rights activities in the world through its agencies and other non-governmental oreganisations.

A. Measures taken to stop terrorist funding and other activities

The UNSC has not only taken measures to physically confront terrorist and stop their activities in certain instances but has taken measures to see that their atrocities are stopped to ensure that there is security to both human and material property. The Security Council has taken a number of resolutions and conventions to put terrorist and their activities in serious hardship all in a bid to promote world peace and security.

[124] Ibid

The first measure of its kind directed to checkmate terrorist financing was on 28 September, 2001 where in, the UN Security Council adopted Resolution 1373, in which it decided that all States should prevent and suppress the financing of terrorism, as well as criminalize the willful provision or collection of funds for such acts.[125]

This resolution started as a Convention in 1999 and was later adopted by the UNGA in Resolution 54/109 of 9 December 1999. The United Nations Security Council finalized it in to Resolution 1373 (2001) that led to a broader and wider application and a focused follow up of its implementations. It created obligations to signatories of the Convention in the sense that it prohibits any person(s) from directly or indirectly, unlawfully, and willfully providing or collecting funds with the intention that they should be used, or in the knowledge that they are to be used, to carry out an act that constitutes an offense under one of the nine treaties.[126] The convention makes it unnecessary that the funds were actually used to carry out an offense. It also prohibits any act intended to cause death or serious bodily injury to a civilian, or to any other person not actively involved in a situation of armed conflict, when the purpose of such act is to intimidate a population, or to compel a government or an international organization to either do, or to abstain from doing a specific act.

Persons are prohibited from attempting, participating in, organizing, contributing to, having knowledge of, or directing others to commit such offenses. Under no circumstances are the above offenses justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious, or other similar nature.[127]

[125] Center for Nonproliferation Studies; (2010) Inventory of International Nonproliferation Organizations and Regimes Available at http://www.cns.npo.org Accessed on 27th/09/2015 at 4:37 PM
[126] Art 2 International Convention for the Suppression of the Financing of Terrorism (1999) Available at http://www.un.org/sc/ctc Accessed on 30th/09/2015 at 3:35 PM
[127] Ibid Art 6

Seeing in to the enforceability of this Convention, it obligates each State Party to establish the aforementioned offenses as criminal offenses under its domestic law[128], thus making them punishable by appropriate penalties, including prosecution or extradition. Each State Party shall take necessary measures to establish its jurisdiction over the offenses if such offenses are committed in the territory of that State, on board a vessel flying the flag of that State, an aircraft registered under the laws of that State or operated by the government of that State, by a national of that State, in the territory of or against a national of that State, against a government facility of that State abroad, in an attempt to compel that State to do or abstain from doing an act, by a stateless person who has his or her habitual residence in the territory of that state, or if an offender is within its territory and there are no other Parties whom have claimed jurisdiction.[129] By the time this convention entered into force in 10 April 2002, it had 173 parties to it and four countries that had signed without ratification. Almost all of these parties have one or more of its provision that are inserted into its laws.[130] This topic examines the Criminalization of terrorism financing, freezing assets of terrorists and terrorist organizations, reporting obligations of countries, prohibiting Weapons and explosives to terrorists and International terrorism check.

1. Criminalization of terrorism financing

The Convention requires each party to adopt measures so as to establish under its domestic law the offenses of the financing of terrorist acts set out in the Convention and "to make these offences[131] punishable by appropriate penalties[132] which take into account the grave nature of the offences."[133] Financing of terrorism is defined as an offense established when a person "by any

[128]Ibid Art 18
[129]Art 7(1)b Ibid
[130]Center for Nonproliferation Studies; Ibid
[131]Art 1(c)
[132]Art 1(b)
[133]Art 4

means, directly or indirectly, unlawfully and willfully, provides or collects funds with the intention that they should be used or in the knowledge that they will be used in full or in part, in order to carry out a terrorist act as defined in the Convention."[134] It also pays attention to the manner in which legal entities such as banks are held liable for the financing of terrorist acts.[135] In addition to the commission of the offenses defined in the Convention, the Convention requires the criminalization of attempts to commit these offenses. The Convention requires also that the participation as an accomplice in a defined offense, the organization of such an offense, or direction of others to commit such an offense be criminalized.[136] The intentional contribution to the commission of such an offense by a group acting with a common purpose, under certain defined circumstances, is also to be criminalized.[137] Each State Party shall take necessary measures to establish its jurisdiction over the offenses if such offenses are committed in the territory of that State, on board a vessel flying the flag of that State, an aircraft registered under the laws of that State or operated by the government of that State, by a national of that State, in the territory of or against a national of that State, against a government facility of that State abroad, in an attempt to compel that State to do or abstain from doing an act, by a stateless person who has his or her habitual residence in the territory of that state, or if an offender is within its territory and there are no other Parties whom have claimed jurisdiction.[138]All this is with the intention to stop those who want to indulge into terrorist activities because they will well be abreast with what will befall them if they do so.

2. Freezing assets of terrorists and terrorist organizations

[134]Art 4
[135]Ibid Art. 1(c)
[136]Art. 2(4). Suppression of the Financing of Terrorism Act 2001, Suppression of the Financing of Terrorism Act available at http:www.undoc.un accessed on 4/10/2015 at 2:15 PM
[137] Ibid Art. 2, (5)(a) and (b).
[138]Ibid Art. 2,(5)(c).

The Resolution imposes on states an obligation to freeze without delay funds and other financial assets of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts.[139] The obligation extends to entities owned or controlled directly or indirectly by such persons. The Resolution does not mention the earlier resolutions of the Security Council that established the obligation to freeze the assets of named individuals and entities, nor does it refer to any list of such individuals or entities issued under the earlier resolutions. As a result, the general obligation to freeze assets of terrorists under the Resolution is independent of the regime established by these earlier resolutions. The general obligation to freeze terrorist assets under the Resolution is similar to the obligation contained in the Convention to take measures for the freezing of funds used or allocated to commit terrorist acts.[140] The Resolution and the Convention give considerable latitude to states in the design of an appropriate freezing, seizure, and confiscation regime.

3. Reporting obligations

The Resolution in very broad terms requires States to "prevent and suppress the financing of terrorism"[141]and, more specifically, obliges them to prohibit persons under their respective jurisdictions from making funds, financial assets, economic resources, to name a few, available to terrorists. Under standard money-laundering laws, banks and financial institutions are under a legal obligation to report suspicious transactions to authorities. It would be germane that these obligations bind banks and financial institutions, financial intermediaries generally.[142]

[139]Ibid Art. 1(c).
[140] Legal Department International Monetary Fund (2003)Suppressing The Financing of Terrorism: A Handbook for Legislative Drafting: International Monetary Fund P.22
[141]Ibid Art 1(a)
[142] Ward, C. A., 'Building capacity to combat international terrorism: the role of the United Nations Security Council', Journal of Conflict & Security Law, vol. 8, no. 2 (2003), p. 291.

4. Weapons and explosives

The requirement that all States refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, in particular by eliminating the supply of weapons to terrorists[143], has led to take a closer look at the existence of laws or regulations which deal with the export, import, sale, possession, carrying and disposition of weapons and explosives. In this context the implementation of sub-paragraph 2(a)[144] of the Resolution will also depend on the full implementation of Article 15 of the International Convention for the Suppression of Terrorist Bombing.[145]

5. Checking International terrorism

The provision of Art.2 (d) of the Resolution[146] is very crucial. It seeks to "prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their Citizens". This resolution also calls upon all States to improve their national capabilities to detect, deter, and disrupt illicit trafficking in nuclear materials throughout their territories, and calls upon those States in a position to do so to work to

[143]Ibid Art. 2(a)
[144] UN (1997)International Convention for the Suppression of Terrorist Bombings.Available at http://www.undoc.org/terrorism. Accessed on 8/10/2015 at 9:00 pm
[145] ibid
[146]UN (2001)Resolution 1373, . Suppression of the Financing of Terrorism Act available at http:www.undoc.un accessed on 4/10/2015 at 2:15 PM

enhance international partnerships and capacity building in this regard.[147] It further urges all States to take all appropriate national measures in accordance with their national authorities and legislation, and consistent with international law, to prevent proliferation financing and shipments, to strengthen export controls, to secure sensitive materials, and to control access to intangible transfers of technology.[148] But impression is given to the fact that transborder aspects of terrorism are not dealt with by the domestic legislation of many countries.[149] As in the case of the financing of terrorism, it is observed that criminalization of the acts listed in sub-paragraph 2(d) of the Resolution is one efficient ways to prevent and suppress terrorist acts. Again, it is emphasised that actual or attempted resultant acts of terrorism, within or outside the territory of the State, should not be necessary to constitute the preparatory acts punishable offences attracting severe penalties.[150]

B. Measures taken by the Security Council to promote disarmament

The need to live in an environment armament free is one of the objectives of the United Nations Security Council. With the quest by some countries to have very dangerous weapons[151] , the international community and the Security Council in particular has taken many resolutions and conventions to see that countries engage in the reduction of the quality and quantity of armament they possess. This area of the research seeks to examine how the UNSC has

[147]Ibid Art.26
[148]Ibid Art.27
[149]Wainwright, J.,(2006) Some aspects of compliance with UN Security Council Resolution 13731available at www.thecommonwealth.org - /shared_asp_files/uploadedfiles/ . accessed on2/10/2015 at 1:33pm
[150]Ibid
[151]Boothby,D.,(2002) INTERNATIONAL RELATIONS STUDIES and the UNITED NATIONS The United Nations and Disarmament

checkmated the proliferation of Small arms and light weapons, nuclear weapons and knowledge of some of these ammunitions which are mostly used to breach the peace, threatens the peace and commits acts of aggression in various corners of the world.

1. Measures taken to checkmate proliferation of small arms and light weapons

The use of small arms and light weapons in conflicts and war has a major bearing on regional and international peace and security and national stability. The alarming dissemination and illicit transfer of such weapons and the serious threat they pose require States to ensure strong and effective supervision of all aspects of trade in such weapons.[152]The UNSC also note the significance of small arms and light weapons as the most frequently used weapons in the majority of recent armed conflicts[153] and thus sees the need to control their production, sale and movement with them.

The UNSC welcomes efforts and encourages the establishment or strengthening, where appropriate, of sub regional and regional cooperation, coordination and information sharing mechanisms, in particular, trans border customs cooperation and networks for information sharing, with a view to preventing, combating, and eradicating illicit transfer, destabilizing accumulation and misuse of small arms and light weapons.[154]

It calls on States to eliminate the supply of weapons, including small arms and light weapons, to terrorists, and demands their cooperation in controlling the traffic in such weapons.[155]The Council has promised to assist in capacity building for host governments if deemed necessary by the Council, and upon request by the host governments, to implement

[152]

[153] Preamble UN (2013) Resolution 2117 on small arms and light weapons, available at http://www.unduc.org accessed on 05/10/2015 at 1:15 PM

[154]Ibid Art.1

[155]Ibid Art. 9

commitments under existing global and regional instruments and to address the illicit trafficking of small arms and light weapons, including inter alia through weapons collection, disarmament, demobilization, and reintegration programmes and enhancing physical security.[156]This resolution stresses the point that states, intergovernmental, regional and sub-regional organizations in a position to assistance in capacity-building are encouraged to do so to enable States Parties to fulfill and implement the Treaty's obligations.[157] It Urges United Nations agencies operating in a State or region in relation to which the Council maintains an arms embargo to provide the utmost assistance to the work of relevant sanctions committees, experts groups, peacekeeping operations and other relevant United nations programmes to checkmate these weapons.[158]The Security Council calls upon states to consider signing and ratifying the Arms Trade Treaty as soon as possible[159] and thus keep to the spirit of the arms deal.

2. Nuclear and chemical Weapons Control Strategy

After the dropping of nuclear bomb over Hiroshima and Nagasaki and the resultant devastating effect, the international community saw the need to checkmate the production and ownership of such dangerous weapon. Resolutions and treaties have been brought up and so many nations have adhered to them to keep up with the objectives of the regulations drafters and thus ensure the world is in a reasonable state of peace. With the ending of the Cold War in the late 1980s and early 1990s, the threat of a major nuclear exchange receded, and the two major nuclear powers, Russia and the United States, themselves took steps to reduce their nuclear stockpiles, which represented some 98 percent of the world's nuclear weapons.[160] By the end of

[156]Ibid Art. 4
[157]Ibid Art. 19
[158]Ibid Art. 8
[159]Ibid Art. 19
[160]Boothby,D.,(2002) op.cit P.73

the century, it was estimated that the nuclear stockpiles had been reduced by approximately half, to less than 30,000 warheads.[161]

3. Nuclear Non-Proliferation Treaty.

The issue of nuclear non-proliferation has received major attention over the years. The Treaty on the Non-Proliferation of Nuclear Weapons (NPT) was adopted in 1968, came into force in 1970, and was extended indefinitely in 1995. The treaty has 187 States Parties, including the original five nuclear-weapon states, but Cuba, India, Israel and Pakistan are not members.[162]

According to the treaty, all States Parties, including the nuclear-weapon states, commit themselves "to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control."[163] The non-nuclear-weapon states, for their part, undertake not to receive or control any nuclear weapons or other nuclear explosive devices and not to seek or receive any assistance in manufacturing such weapons or devices.[164] In return for this undertaking, the treaty provides for all Parties to "facilitate, and have the right to participate in, the fullest possible exchange of equipment, materials and scientific and technological information for the peaceful uses of nuclear energy."[165] The latter clause is implemented through the International Atomic Energy Agency (IAEA), situated in Vienna.[166] The IAEA is charged with two tasks under the NPT: to assist countries in developing nuclear power and technology for peaceful uses and to operate a

[161]Boothby,D.,(2002) op.cit. P. 73
[162] Ibid
[163]Art. VI of the NPT.
[164]Article II of the NPT.
[165] Article IV, (2) of the NPT.
[166]http://www.iaea.org.

safeguards system with a view to preventing a diversion of nuclear energy from peaceful uses to nuclear weapons or other nuclear explosive devices.[167]

The importance of the NPT cannot be over-emphasized. It serves as the anchor of all the efforts to constrain the development and spread of nuclear weapons. At the same time, however, it has aroused significant criticism among some of the non-nuclear-weapon states who have pointed out that, while they have kept their side of the bargain, the nuclear-weapon states have not carried out their undertaking in Article VI[168], and that there are still more nuclear weapons than there were when the treaty was signed in 1968.[169]

The implementation of the treaty is reviewed every five years at a major conference held at the United Nations in New York. The Sixth Review Conference took place in 2000 at a time when progress on disarmament negotiations had been very slow, both bilaterally between the United States and the Russian Federation, and multilaterally in the Conference on Disarmament. Moreover, the US Senate had rejected the Comprehensive Test Ban Treaty, and the declared intention to proceed with a US National Missile Defense System threatened abrogation of the bilateral Anti-Ballistic Missile Treaty with Russia.[170]

A breakdown in the Conference would have seriously undermined the credibility of the NPT only five years after it had been indefinitely extended, largely at the wish of the nuclear-weapon states. The Non-Aligned countries continued to press for a convention on nuclear weapons that would contain a specific timetable for their eradication, a demand that the nuclear-weapon states have always stoutly resisted.[171] However, a more central view was taken by the "New Agenda

[167]Art. III(i) of the NPT.
[168]Boothby,D.,(2002) op.cit P. 73
[169] Ibid
[170]Ibid
[171]The current status of these and other disarmament-related treaties can be found at http://disarmament.un.org/TreatyStatus.nsf.

Coalition," consisting of Brazil, Egypt, Ireland, Mexico, New Zealand, South Africa and Sweden, and eventually compromises were reached on meaningful forward action that were acceptable to the nuclear-weapon states. An important element was the acceptance by the Conference as a whole of a call for "an unequivocal undertaking by the nuclear-weapon states to accomplish the total elimination of their nuclear arsenals, leading to nuclear disarmament." By this, the nuclear-weapon states reaffirmed their political commitment to the goal of the elimination of nuclear weapons without giving any dates by which that goal might be achieved.

4. Efforts to ban nuclear tests.

The banning of nuclear testing has been pursued for many years. Although nuclear-weapon technology is now such that warheads can be designed, developed, and manufactured without the need for testing, as time passes the warheads age and doubts arise about their reliability. In some cases, there may also be a need to test trigger mechanisms and other refinements, although much can be achieved in sophisticated laboratory testing. Bans on testing strictly limit qualitative development of nuclear weapons, particularly on countries at the early stages of nuclear-weapons acquisition. There is therefore considerable interest on the part of both established nuclear-weapon states and non-nuclear-weapon states in banning tests as a means to curb proliferation.[172]

The first such treaty was a multilateral convention that prohibited certain types of tests and entered into force in 1963, the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water. This was followed by two bilateral treaties between the United States and the Soviet Union: the Treaty on the Limitation of Underground Nuclear Weapon Tests, which placed a 150-kiloton limit on the yield of an underground explosion (the Threshold

[172] Ibid

Test Ban Treaty), and the Treaty on Underground Nuclear Explosions for Peaceful Purposes (the Peaceful Nuclear Explosions Treaty).[173]

But these were not enough. In Article I of the Partial Test Ban Treaty, the parties undertook to conclude "a treaty resulting in the permanent banning of all nuclear test explosions." The achievement of such a treaty, with universal membership and of unlimited duration, would be a major contribution to the maintenance of international peace and security. However, despite considerable efforts since 1963 to negotiate a treaty acceptable to all, the goal has so far proved elusive. The principal stumbling block for many years was that of reliable verification, but eventually a worldwide system of on-site inspections and seismic, infrasound, radionuclide[174] and hydroacoustic[175]stations, and laboratories was devised.

One of the major achievements of the United Nations in the nuclear field is the Comprehensive Nuclear Test-Ban Treaty (CTBT),[176] which was overwhelmingly adopted by the General Assembly after years of planning, hard work, and lobbying by many non-governmental organizations (NGOs) that advocate arms control. It was not only an achievement for curbing nuclear weapons but also for halting nuclear contamination of the environment, even by underground testing. In 1996, the CTBT was opened for signature in New York. By Article I of the Treaty, each State Party would undertake not to carry out any nuclear-weapon test or any other nuclear explosion, and would prohibit and prevent any such nuclear explosion at any place under its jurisdiction or control. Article II[177] provided for the establishment of the Comprehensive Nuclear Test Ban Treaty Organization, based in Vienna, to ensure the

[173] Ibid
[174]A radionuclide is a type of atom that exhibits radioactivity and can be monitored.
[175]Hydroacoustics is the use of quasi-continuous acoustical and optical measurements to monitor physical and biological entities underwater.
[176]For more information on the treaty, its signature, ratification and status, as well as the commission that prepared it, see http://www.ctbto.org.
[177]Comprehensive Nuclear Test-Ban Treaty

implementation of its provisions including international verification of compliance. Article XIV[178] declared that the treaty would enter into force 180 days after ratification by all the 44 states which included all known nuclear weapon-capable countries. The need to obtain ratification by all 44 states is a major bar to the achievement of agreement on the CTBT being translated into a successful Treaty.[179]

Both India and Pakistan declined to sign the CTBT in 1996, and in 1998, following a change of party in government in New Delhi, India conducted nuclear-weapon tests. Within weeks, India's tests were followed by those of Pakistan, and so both countries openly acknowledged that they had developed a nuclear-weapon capability.[180]

As of the beginning of 2002, 164 states had signed the Treaty and 89 had ratified it. France, Russia and the United Kingdom had ratified, but China and the United States had not. Israel had signed but not ratified, and neither India nor Pakistan were signatories.[181] On October 13, 1999, the US Senate voted 51- 48 to reject the CTBT. President Clinton declared, "By this vote, the Senate majority has turned its back on 50 years of American leadership against the spread of weapons of mass destruction." According to the opponents, their negative vote was because the treaty was not verifiable, that other countries could not be trusted to implement the treaty faithfully, and that it was fatally flawed.[182] Although not yet in force, the fact that so many of the Member States of the United Nations have signed the CTBT and half the membership has ratified it is in itself a powerful statement of world opinion. While every sovereign state has a right to decide what is in its own security interest, the wide and overt expression of support for the CTBT among the members of the United Nations illustrates the role of the world body in

[178] Ibid
[179] Boothby,D.,(2002) op.cit P. 73
[180] Ibid
[181] Ibid
[182] See The New York Times, October 15, 1999.

providing a source of political pressure and moral suasion. The United States adopted legislation in 1992 by which it declared a moratorium on nuclear testing. Despite not ratifying the Treaty, the United States has observed its provisions by continuing its moratorium. The principal reason underlying the present US moratorium is that the United States has not needed to conduct any nuclear explosive tests, although by 2002 there was a growing discussion in Washington that tests may be required in the next few years for scientific and technological reasons.[183]

5. Chemical weapons

Chemical weapons have been in existence for centuries: In 431 BC, Spartan armies used burning sulfur in sieges of cities with the objective of disabling the defenders. During World War I in Europe, both sides used gases such as chlorine, phosgene and "mustard gas," blistering the lungs, eyes, and skin of soldiers and resulting in 1,300,000 casualties, of which about 100,000 were fatal. The horrifying effects led to widespread revulsion and, in 1925, to an international agreement signed in Geneva, the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare.[184]

Although this Protocol was generally observed during World War II, there were reports of use by Japan in China, and by Egypt against Yemen in the early 1960s. Subsequently, the United States used chemical defoliants in the war in Viet Nam to destroy the forest cover of Viet Cong forces. In the 1980s' Iran-Iraq war, Iraq used chemical weapons against Iranian troops and against Kurdish insurgents, and following the defeat of Iraq in the Gulf War of 1991, very large quantities of Iraqi chemical weapons were found and destroyed by the UN Special Commission established by the Security Council to eliminate Iraq's arsenal of weapons of mass destruction.

[183] Bennett R., (2006). "Preemption Paradox", Bulletin of the Atomic Science, Vol. 62, No. 4, P.44
[184] Ibid

A further dimension was added in 1995 when a Japanese terrorist group, Aum Shinrikyo, used sharpened umbrella tips to puncture plastic pouches of the nerve agent sarin in the Tokyo subway, causing 12 deaths and injuring 5,000.[185]

Chemical weapon agents are not particularly difficult to manufacture and virtually any country with a reasonably modern chemical industry could produce ingredients that, if used together, could constitute such weapons or serve as precursors to them. For example, triethanolamine is a precursor chemical for nitrogen mustard gas and can be found in a variety of lotions, ointments, and detergents (including shampoos, bubble baths and household cleaners), as well as in industrial lubricants and surfactants.[186]

During the 1970s and 1980s, recognizing the dangers of existing stocks and the growing risks of proliferation, the international community sought through the Conference on Disarmament in Geneva to build on the 1925 Protocol to negotiate an agreement to ban the production of chemical weapons and eradicate existing stocks. Progress was slow, partly because of an impasse between the United States and the Soviet Union, and partly because of the search for a reliable system of inspections and verification. Multilateral negotiations proceeded more or less in parallel with bilateral negotiations between the two major chemical weapons-possessor states that resulted in a bilateral agreement signed by the Soviet Union and the United States in June 1990. Further multilateral work led to agreement within the Conference on Disarmament in September 1992 and the UN General Assembly adopted the text of the convention by consensus on January 13, 1993. The outcome was the Convention on the Prohibition of Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, more usually

[185] Jennifer K. E.,(2003). "Weapons of Mass Destruction Counterproliferation: Legal Issues for Ships and Aircraft," CRS Report for Congress, Congressional Research Service, Washington, D.C.P.42
[186] Ibid

known as the Chemical Weapons Convention[187] (CWC), which was opened for signature in Paris on January 13, 1993, and came into force on April 29, 1997. As of December 31, 2001, a total of 174 states had signed the Convention, of which 145 had ratified or acceded to it.[188]

The CWC is regarded as the first globally verifiable multilateral disarmament treaty. It prohibits the development, production, acquisition, retention, stockpiling, transfer and use of all chemical weapons, which are defined in the Convention as all toxic chemicals and their precursors, unless they are intended to be used for purposes not prohibited by the Convention. The definition also includes munitions and devices specially designed to release toxic chemicals, as well as any equipment specially designed for delivering chemical munitions or devices.

An important part of the Convention is the provision of extensive verification mechanisms by which all declared chemical weapons and their production facilities are subject to systematic inspections. These include provisions for a high level of intrusiveness and challenge inspections. This means that those in charge of verification can carry out immediate inspections if there is a suspicion that some violation of the agreement is taking place. For the Member States to agree to such an aggressive oversight mechanism indicates the seriousness of their determination to eliminate these weapons. The verification regime also extends to commercial chemical industry operations with the purpose of deterring, preventing, and, if necessary, detecting attempts to by-pass the ban by using so-called "dual-use" technologies and chemicals.[189]

Another major task is the destruction of existing stocks, which is carried out under rigid control. Various deadlines have been set for the completion of destruction, but the amounts of chemical weapons to be destroyed in the Russian Federation and in the United States are such

[187]For more information about the CWC and the Organisation for the Prohibition of Chemical Weapons, see http://www.opcw.org.
[188]Ibid
[189]Ibid

that there may have to be extensions. It has been estimated that the costs of destroying US and Russian stocks may amount to some $20 billion.[190]

To implement the Convention, a special organization was established, the Organisation for the Prohibition of Chemical Weapons (OPCW), with headquarters in The Hague, the Netherlands, and a staff of some 500 persons.[191] The CWC is a good example of multilateral cooperation, carefully and painstakingly negotiated, designed to establish and promote confidence between its States Parties in the interests of maintaining international peace and security. It illustrates vividly the positive product of the members of the international community working together to achieve benefits for all.[192]

C. Measures taken to promote human rights activities in the world

The international community is quite aware that most situations of breach of the peace have been as a result of human rights violation. The human rights of each and every person are so important that so many laws have been enacted to protect and promote them. Various countries have enshrined human rights provisions in their constitutions given the importance it makes to them. The United Nations sees it as a very important aspect of its mission in the area of maintaining and promoting international peace and security. It has done a lot to see that the international community keeps respecting the human rights of each and every person and group.[193]

1. Gender based protection

[190] Ibid
[191] The OPCW has a website (http://www.opcw.org) containing a wealth of information from which this section has been drawn.
[192] Ibid
[193] Ibid

The UNSC seeing the need to protect sexual violence against women during conflicts drafted Resolution 1325 in 2010 to give this gender sensitive human being`s special protection and thus promote human rights. This resolution has four "pillars" that supportsits goals, they are: Participation, Protection, Prevention, and Relief and Recovery.[194]

The resolution calls for increased participation of women at all levels of decision-making, including in national, regional, and international institutions; in mechanisms for the prevention, management and resolution of conflict; in peace negotiations; in peace operations, as soldiers, police, and civilians; and as Special Representatives of the U.N. Secretary-General.[195]

It calls specifically for the protection of women and girls from sexual and gender-based violence, including in emergency and humanitarian situations, such as in refugee camps.[196]

The Resolution calls for improving intervention strategies in the prevention of violence against women, including by prosecuting those responsible for violations of international law; strengthening women's rights under national law; and supporting local women's peace initiatives and conflict resolution processes.[197]

As regards the manner of implementation of this resolution, in a statement in 2005, the Security Council called upon U.N. Member States to continue to implement Resolution it through the development of National Action Plans (NAP) or other national level strategies. This NAP process assists countries in identifying priorities and resources, determining their responsibilities, and committing to action. This resolution goes to give more impetus to resolutions 1820, 1888, 1889 and 1960 that had earlier covered this area.[198]

[194]United States Institute of Peace. Available at http://www.usip.org/gender_peacebuilding/about_UNSCR_1325 accessed on 10/10/2015 at 1:50pm
[195] Ibid
[196]Ibid
[197]Ibid
[198]Ibid

The United Nations Security Council has also done a lot in regulating certain aspects in international law. Some of the other subsidiary functions of the SC include;

1. **Investigate any dispute or situation which might lead to international friction;**

Following the Ukraine and Russia conflict over Crimea and other pro-Russian armed men that took control over other towns, SC and the international community as a whole became disturbed as that situation could lead to international friction. This is evidenced as USA and Japan were even accusing Russia of trying to cause the third world war.[199]

2. **Recommend methods of adjusting such disputes or the terms of settlement;**

The SC still went ahead to provide a road map in the17 April 2014 Geneva Accord for Ukraine and Russia to follow so that peace could reign following the above mentioned conflict.It demanded an immediate end to violence in eastern Ukraine and called on illegal armed groups to surrender their weapons and leave official buildings.[200]The European Union and G-7 passed some economic, military and diplomatic sanctions against Russia to help solve the crisis.[201]

3. **Formulate plans for establishing a system to regulate armaments;**

The SC through its disarmament commission created a United Nations Institute for Disarmament Research (*UNIDIR*).The Mission of the Institute is to assist the international community in finding and implementing solutions to disarmament and security challenges. Through its research and educational efforts, UNIDIR seeks to forward arms control and disarmament, contribute to

[199] BBC, *Russia says Kiev 'breaking Geneva accord' on Ukraine*available at http://www.bbc.com/news/world-europe-27100749 accessed on 29/04/2014 at 2:23 pm
[200]Ibid
[201]*Western sanctions against Russia over Ukraine* available at http://www.globalpost.com/dispatch/news/afp/140425/western-sanctions-against-russia-over-ukraine accessed on 28/04/2014 at 3:50 pm

conflict prevention and promote the development of a peaceful and prosperous world.[202] The Institute's driving Vision is that of a world, in which human security is ensured, where peace prevails over conflict, weapons of mass destruction are eliminated, conventional arms proliferation is avoided, and reduced military spending accompanies global development and prosperity as envisioned in Article 26 of the United Nations Charter. The most resent of this body`s work is the ongoing destruction of Syria`s chemical weapon. The UN Security Council unanimously adopted a resolution on 27/9/ 2013 to see this objective attained. In this case, more than 80 percent of chemical weapons have been removed for destruction outside the country, as testified by the Syria-based joint mission.[203] Since 1981, UN has given enough reasons for many countries to regularly report their military expenditure to the United Nations. This helps enhance transparency in armaments and contributes to international security by fostering trust and confidence among countries.[204]

4. Determine the existence of a threat to the peace or acts of aggression and to recommend what action should be taken;

The UNSC on its bid to take a resolution condemning Russia`s incursion in Crimea as an act of aggression was fruitless as Russia ambassador vetoed against the resolution.[205] This shows that it has identified Russian move in Crimea as an act of aggression. It has taken sanctions against Russia in many aspects touching. On April 1, NATO agreed to suspend "civil and military cooperation" with Russiatravel ban on some 55 Ukrainians and Russianofficials

[202] UN, (2014) UNIDIR available at http://www.unidir.org/, accessed on 25/03/2014 at 2:26 PM
[203]UN, (2014)Disarmamentavailable athttp://www.un.org/disarmament/WMD/Nuclear/NPT2015/PrepCom2014/accessed on 25/03/2014 at 2:16 PM
[204] UN, (2014) http://www.un-arm.org/Milex/Home.aspx accessed on 26/03/2014. 2:25 PM
[205]ACPA-New YorkSecurity Council Surprise As Russians Veto Sanctions Against Russia. Available athttp://www.satireandcomment.com accessed on 28/04/2014 at 01:05 pm

andeconomyfreezing of assets held in the EU in cash, cheques, bank deposits and stocks.Diplomatically, they severe ties with Russiafrom G-8 to G-7.[206]

5 Call on members to apply economic sanctions and other measures not involving the use of force to prevent or stop aggression;

One of the latest examples of this work is its resolutions 1929 (2010). Here the SC adopted certain measures relating to the Islamic Republic of Iran to force it to abandon its nuclear programme. These measures include ban trade in both medical and domestic goods and also including arms related materials.[207] The SC considered Irans possession of nuclear weapon in this region as an act of aggression. The objective of this is to force Iran to abandon its nuclear weapon programme and thus realize one of its greatest task of arms control.

6 To take military action against any aggressor;

The UNSC has not really carried out this duty lately. This is because the permanent members in one instant or the other carried out acts of aggression themselves and the SC finds it difficult to take action against that aggressor because the aggressor is bound to veto. This is the case of Russia in Ukraine. Or sometimes, the aggressor is a close ally to one of the permanent members of the UNSC. In this case, the P-5 will always protect her. Israel has carried so many acts of aggression in the Middle East and USA has always blocked SC attempt at criticizing or sanctioning against the act.

7 To recommend the admission of new members;

[206] *Western sanctions against Russia over Ukraine* available at http://www.globalpost.com/dispatch/news/afp/140425/western-sanctions-against-russia-over-ukraine accessed on 28/04/2014 at 3:50 pm

[207] UN, Security Council Committee established pursuant to resolution1737 (2006) available at http://www.un.org/sc/committees/1737/ accessed on 26/03/2014. 2:25 PM

TheSecurityCouncil recent exercise of this function,examinedthe application of the Republic of South Sudan for admission to the United Nations. It recommendsto the General Assembly that the Republic of South Sudan be admitted to membership in the United Nations.[208] The Committee also concluded its consideration of the application of Palestine for admission to membership in the United Nations. At its 111th meeting, the Committee approved the present report on its consideration of the application of Palestine for admission to membership in the United Nations.It has constantly published information on the global report on arms trade and on military expenditures.[209]

8 To exercise the Trusteeship functions of the UN in 'strategic areas';

The Trusteeship Council suspended operation on 1 November 1994, with the independence of Palau, the last remaining United Nations trust territory, on 1 October 1994[210]

9 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.[211]

This function was last done on the appointment ofMr. Ban Ki-moon as Secretary-General of the United Nations for a term of office beginning on 1 January 2007 and ending on 31 December 2011.[212]

3.4An assessment of the achievements of the UNSC in selected areas

[208]UN,(2011) Report of the Committee on the Admission of New Members concerning the application of the Republic of South Sudan for admission to membership in the United Nations available at http://www.un.org. accessed on 25/03/2014 at 2:16 PM

[209] UN, (2011) Report of the Committee on the Admission of New Members concerning the application of Palestine for admission to membership in the United Nations available at http://www.un.org. accessed on 25/03/2014 at 2:16 PM

[210]UN, (2008) TheUnited NationsToday, Asdf. United Nations, New York.P.12

[211] UN, (2000) *Basic facts about the United Nations*, Department of Public Information, New York. P. 14

[212]UN, (2006) Security Council resolution 1715 (2006) of 9 October 2006, Available at http://www.un.org . accessed on 26/03/2014 at 2:15 pm

The existence of the United Nations, from 1945 till date in the field of peace and security, would be a scholarly enterprise of several volumes. One is struck first of all by the sheer magnitude of all that has happened relating to the UN role in peace and security during these years. The texts, the problems, the events, the attempts, the developments, the successes, the failures, the new problems - come teeming upon each other. But, looking back over the last fifty years, it seems to me that certain trends and patterns are clearly discernible. The world cannot understand where it is now and what problems the United Nations faces today in the field of peace and security (especially with the complex situation the SC is facing today in Syria), without understanding what was intended, and what has actually occurred in the intervening period of time, and only then can it explore what is happening today and its degree of success. To look at the text of the Charter, and to remind ourselves of what was originally intended, is to see how far the world has come from the original ideas of the founding fathers. The United Nations Charter was intended to provide a comprehensive set of prescriptions on conflict resolution and the use of force. On the one hand there were the provisions for settling disputes between States, and the prescriptions as to when force could or could not be used. On the other was the intended capability of the United Nations itself to provide collective security, if necessary by enforcing the peace. Chapter VI of the Charter indicates the appropriate methods of settling international disputes and gives the Security Council certain powers in relation to these especially the use of force. It should be noted that all the regional and sub-regional interventions in the various areas of the world is a purely UNSC functions. This is because if the SC does not authorize such intervention, that body will not do so.[213]This Section of the work is going to examine the degree of success of some UNSC functionsin peacekeeping missions in Africa and Asia.

[213]Art. 53 UN Charter op. cit p.2

3.4.1 Africa

Africa is considered the place on earth where the worst forms of atrocities take place. Some worst forms of human suffering have been experienced in this part of the world. This community have witnessed genocide in Rwanda, terrorism in Nigeria, Somalia, Kenya,civil wars in Sierra Leone, LiberiaDemocratic Republic of Congo to name a few. A few of the UN intervention in some countries in Africa will be examined to see if such intervention has been fruitful.

a. **Libya**

The Libyan element of the Arab Spring began with an uprising in Benghazi on 15 January 2011 and the city was under the control of anti-regime forces by the third week of February. This prompted Gaddafi's notorious threat on 22 February to hunt down and destroy the opposition 'house by house'. For example, the town of Zawiya (30 miles from Tripoli) was bombarded and then captured by pro-regime forces exercising a level of brutality not yet seen in the conflict. The deliberate targeting of civilians by pro-regime forces was proven beyond doubt resulting in UN Security Council Resolution (UNSCR) 1970 on 26 February.[214]The resolution contain three main parts: it referred Libya to the International Court; it imposed economic sanctions on the regime and an arms embargo on Libya in general. The latter involved a formidable challenge given the size of the country[215]and its extensive land borders with several other nations; (Egypt, Tunisia, Algeria, Niger, Sudan and Chad) The United Nations Support Mission for Libya is a special political mission established in 2011 by the UN Security Council in its Resolution 2009 (September 2011) at the request of the Libyan authorities following six

[214]UN,*UN Security Council Resolution (UNSCR) 1970 on 26* February available atwww.unduc.org. Accessed on 13/07/ 2014, 4:26 PM

[215]Six times the size of the UK.

months of armed conflict to support the country's new transitional authorities in their post-conflict efforts.

The United Nations Support Mission in Libya (UNSMIL), under the leadership of a Special Representative of the Secretary-General (SRSG), supported by a Deputy SRSG, was mandated for an initial period of three months and extended for another three months thereafter. The Security Council, in its Resolution[216], expanded the Mission's mandate. The mandate was further modified when the Security Council extended the Mission for 12 more months following another Resolution[217]. On 14 March 2013, the mandate was further extended[218] to an additional 12 months.

The entry of UN in to Libya is stipulated under the United Nations Security Council Resolution (UNSCR) 2009 (2011) in which it;Decides to establish a United Nations Support Mission in Libya (UNSMIL), under the leadership of a Special Representative of the Secretary-General for an initial period of three months, and decides further that the mandate of UNSMIL shall be to assist and support Libyan national efforts to:

1. restore public security and order and promote the rule of law;
2. undertake inclusive political dialogue, promote national reconciliation, and embark upon the constitution-making and electoral process;
3. extend state authority, including through strengthening emerging accountable institutions and the restoration of public services;

[216]UN, *SCR 2022, December (2011*), available at http://www.un.org/News/Press/docs,Accessed on 18/06/2013, at 2:16pm
[217]UN, *UNSCR 2040 ,12 March (2012)* available at http://www.un.org/News/Press/docs,Accessed on18/06/2013 at 12:35 PM
[218]UN, *UNSCR 2095,14 March (2013*) available at http://www.un.org/News/Press/docs,Accessed on18/06/2013 at 3:24 pm

4. promote and protect human rights, particularly for those belonging to vulnerable groups, and support transitional justice;
5. take the immediate steps required to initiate economic recovery; and
6. coordinate support that may be requested from other multilateral and bilateral actors as appropriate;

   Following these objectives, the UNSMIL has done and is still doing a lot in this country to get it to its rail.[219]

The first concern was the country`s national unity and reconciliation. A Conference on Truth and Reconciliation was organized. This was titled "The Way Forward", held in Tripoli on 12-13 December 2012. It brought together Government officials, members of the Fact-Finding and Reconciliation Commission, members of the General National Congress, members of the Council of Wise Men (hukama), representatives from the Ministry of Martyrs and Missing Persons, civil society and victim groups, and individual experts. Participants hailed fromthroughout Libya. The SRSG exercised great joy due to the participant's commitment to reconciliation, national unity and peace.[220]

As concern the country`s defence, the UNSMIL, in collaboration with the Libyan authorities and in liaison with the international community, has facilitated reform initiatives through the development of Libya's first ever Defence White Paper. The White Paper process provides a useful mechanism to meet the significant challenges of rebuilding and restructuring

[219]UN, *United Nations in Libya*: Availaible at http://unsmil.unmissions.org/Default.aspx, Accessed on 24/06/2013 at 6:35 pm
[220]Ibid

Libya's armed forces that were marginalised during the former regime and largely destroyed during the revolution.[221]

The UNSMIL's support to defence sector reform in Libya aims to assist national efforts to identify the main risks and threats facing Libya, and to confirm the principal military tasks, doctrine and vision, civilian democratic oversight, overall command and control issues, and basic structure of the armed forces.[222]

To aid in Disarmament, Demobilisation & Reintegration (DDR), UNSMIL works with the UN Country Team and international actors to provide advice and assistance to the Libyan Government on DDR programmes for revolutionary fighters. Two international coordination meetings to share information on programmes for revolutionary fighters have been facilitated by UNSMIL with attendance from the Ministry of Interior, Ministry of Defense, Ministry of Labour, and the Warriors Affairs Commission for Rehabilitation and Development (WACRD). The meetings discussed options for assistance projects by the international community that could target revolutionary fighters. From October, 2013, UNSMIL will convene monthly DDR meetings to strengthen coordination between international actors and to help strengthen alignment with host nation priorities[223].

The reintegration of large numbers of revolutionary fighters remains one of the Government's highest and most difficult issues. DDR programmes need to go beyond insertion of revolutionary fighters into the security forces and include broader socio-economic programmes. At the request of the Libyan Government, UNSMIL submitted for consideration in August a Draft Terms of Reference for the Establishment of a High Committee on Disarmament, Demobilization and Reintegration for Revolutionary Fighters. These draft terms of reference

[221] Ibid
[222] Ibid
[223] Ibid

suggest a possible mandate and structure for such a Committee. Its main purpose would be to ensure the DDR process is planned in a coordinated manner by all ministries and agencies, ensures representation from civil society, is well managed, and clearly explained to the Libyan people. UNSMIL and the UN Country Team will continue to provide advice and assistance to the Libyan authorities in the critical area of DDR[224].

In its justice sector, the United Nations has offered technical advice and international experience regarding transitional justice. UNSMIL gave advice on the transitional justice law and has organized a national conference and several local workshops for assisting in the development of strategies for implementing transitional justice. UNSMIL released a report on 17 September 2012 entitled "Transitional Justice; Foundation for a New Libya", to advocate with the national authorities to promote a comprehensive transitional justice strategy aimed at promoting reconciliation which includes trials of former senior regime figures and others who committed serious violations; a dynamic truth-seeking process; reparations victim-oriented measures; and various institutional reforms.

In its bid to assist families with Missing Persons,UNMSIL has helped the Ministry of Assistance to Families of Martyrs and Missing Persons (MAFMMP) on the Ministry's strategy in formulating a law on missing persons. It has also offered technical support to victim organizations which support families of the missing.

To support Human Rights` Advocacy, the UNSMIL has conducted workshops in various parts of the country to strengthen the capacity of civil society groups in human rights monitoring and advocacy, to tackle issues in Libyan society such as torture or discrimination, or to enable civil society to have input into the constitutional process. UNSMIL is also collaborating with the national human rights institution Council for Civil Liberties and Human Rights. It should be

[224] Ibid

noted that the SC members take a decision and violate it with impunity. The resolution on Libya was taken to implement a no fly zone. Instead NATO forces started bombing Kaddafi and his soldiers and light and small arms were distributed to the protesters which further created a lot of insecurity. The SC was interested in toppling Gaddafi and his regime and its allies distributed arms carelessly that has led to skirmishes of insecurity till date in that country.

b. **Democratic Republic of Congo (DRC)**

Following the 1994 massacres in Rwanda and the establishment of a new government there, some 1.2million Rwandese Hutusincluding elements who had taken part in the genocide fled to the Kivu province of eastern Zaire, an area inhabited, amongst others, by ethnic Tutsis. There, a rebellion started in 1996, pitting Zairian Tutsis, led by Laurent Desire Kabila, against the pro-Hutu army of President Mobutu Sese Seko. Kabila`s Alliance of Democratic forces for the liberation of Zaire/Congo(ADEL), aided by Rwanda and Uganda, took Kinshasa, the capital, in 1997, establishing the Democratic Republic of the Congo. The civil war resulted in more than 450,000 refugees and IDPs[225].

In 1998, a rebellion against the Kabila government started in Kivu, and within weeks the rebels seized large areas of the country. Angola, Chad, Kenya, Namibia and Zimbabwe promised president Kabila military support. The Angolan army recaptured several towns in the south-west, and a rebel push towards Kinshasa was turned back with help from Angolan, Namibian and Zimbabwean troops. However the rebels maintained their grip on the eastern region. The rebel movements the Congolese Rally for Democracy (RCD), was supported by Rwanda and Uganda. The SC called for a cease fire and the withdrawal of foreign forces, and urged states not to

[225]UN, (2000) *Basic facts about theUnited Nations*. Op. cit p. 63

interfere in a country`s internal affairs. Uganda signed a peace agreement with the Kabila government in April 1999. In May, the RDC split into two factions[226].

Efforts by the Secretary General, the OAU and the South African Development Community (SADC) led in July 1999 to the Lusaka Ceasefire Agreement. Signed by the DRC along with Angola, Namibia, Rwanda Uganda and Zimbabwe, it provided for an end of hostilities and for the holding of an inter-Congolese dialogue. The two rebel factions signed the agreement in August. To help implement the agreement, the Council in August authorised the deployment of 90 UN military liaison officers to strategic areas in the country and to the capitals of signatory states[227].

To maintain liaison with the parties assistance in implementing the agreement and monitoring security conditions, the SC in November established the United Nations Mission in the Democratic Republic of the Congo (MONUC), incorporating the personnel it had authorized earlier on. In February 2000, the Council expanded the size and mandate of the mission, which was to monitor implementation of the ceasefire, support disarmament and demobilization, and provide support to the facilitator of the national dialogue, desigsnated with the assistance of the OAU. The Council authorized the use of force by MONUC to protect UN personnel and civilians under imminent threat of violent, and made the deployment of the mission to its authorized strength of 5,500 contingents on adequate conditions of access, security and cooperation. Continued fighting has up till date prevented full deployment and limited the functioning of the military observers in the field. But at least a huge section of the country is in peace and life is

[226]Ibid
[227]Ibid

much more stable than during the uprising,[228]though the Congolese forces are still battling with rebels in the Eastern part of the country.

c. **Rwanda**

Troubles were very glaring in Rwanda in 1973, when ethnic unrest and violence were at their height and Major-General Juvénal Habyarimana[229] took power in a military coup d'état. He founded the second Republic, dominated by a single party, the National Revolutionary Movement for Democracy and Development (NRMDD). Ethnic discrimination was institutionalized during this period through a policy known as "establishing ethnic and regional balance". Most of the country's political and social life became subject to quotas established according to "ethnic proportions", which determined the posts and resources allocated to the various ethnic groups.[230] As from 1973, regional rivalries were added to this ethnic antagonism.

Fighting between the Armed Forces of the mainly Hutu Government of Rwanda and the Tutsi-led Rwandese Patriotic Front (RPF) first broke out in October 1990 across the border between Rwanda and its northern neighbour, Uganda. A number of ceasefire agreements followed, including one negotiated at Aruhsa, United Republic of Tanzania, on 22 July 1992, which arranged for the presence in Rwanda of a 50-member Neutral Military Observer Group I (NMOG I) furnished by the Organization of African Unity (OAU). Hostilities resumed in the northern part of the country in early February 1993, interrupting comprehensive

[228]Ibid
[229]President Habyarimana was from the north
[230]10 per cent for the Tutsi

negotiationsbetween the Government of Rwanda and RPF, which were supported by OAU and facilitated by the United Republic of Tanzania.[231]

The United Nations active involvement in Rwanda started in 1993, when Rwanda and Uganda requested the deployment of military observers along the common border to prevent the military use of the area by RPF. The Security Council in June 1993 established the United Nations Observer Mission Uganda-Rwanda (UNOMUR)[232] on the Ugandan side of the border to verify that no military assistance reached Rwanda.

Meanwhile, the Arusha talks, brokered by Tanzania and OAU, reconvened in March 1993 and finally led to a peace agreement in August 1993. The comprehensive peace agreement called for a democratically elected government and provided for the establishment of a broad-based transitional Government until the elections, in addition to repatriation of refugees and integration of the armed forces of the two sides. Both sides asked the United Nations to assist in the implementation of the agreement. In early August 1993, NMOG I was replaced by an expanded NMOG II force, composed of some 130 personnel to operate as an interim measure pending the deployment of the neutral international force.[233]

In October 1993, the Security Council, by its resolution 872 (1993), established another international force, the United Nations Assistance Mission for Rwanda (UNAMIR),[234] to help the parties implement the agreement, monitor its implementation and support the transitional Government. UNAMIR's demilitarised zone sector headquarters was established upon the arrival

[231]UN, *UNOMUR*- available at: http://www.un.org/Dept/dpko/co-mission/unomur/htm. Accessed on 29-06-2013 at 2:16 pm
[232] Ibid
[233] Ibid
[234]UN, *UNAMIR*- available at: http://www.un.org/Docs/scres/1993/872epdf. Accessed on 29-06-2013 at 9:13 pm

of the advance party and became operational on First November 1993, when the NMOG II elements were absorbed into UNAMIR. Deployment of the UNAMIR battalion in Kigali, composed of contingents from Belgium and Bangladesh, was completed in the first part of December 1993, and the Kigali weapons-secure area was established on 24 December.[235]

The United Nations solicited troop contributions, but initially only Belgium with a half a battalion of 400 troops, and Bangladesh with a logistical element of 400 troops, offered personnel. It took five months to reach the authorized strength of 2,548. But because of many unresolved issues between the parties, implementation of the agreement was delayed. Consequently, the inauguration of the transitional Government never took place.[236]

It should be noted that the peace keepers were no so vigilant with rumours and secret reports that were furnished them as regards tension that was mounting between the Hutu and the Tutsi. The Hutu extremists were planning to cause massive atrocities in the country. As major General Dallaire[237] in a YouTube documentary admitted, an informer in the Rwandan government informed him that there was an impending destruction of the Harusha peace agreement and killing of Tutsi minority and Belgian peacekeeping forces.[238] In this way the Belgians will leave the place and they will be able to carry on their atrocities. General Dallaire said he informed Kofi Atta Annan who then was the head of the UN peacekeeping missions. But Annan claimed he did not get the information and was surprised if it had been manipulated upon by his intelligent service.[239] So no effective response to the rumor was given. This would have

[235]Ibid
[236] Ibid
[237] The then Commander of UN Peacekeeping mission in Rwanda.
[238]Documentary on Rwandan genocide available at https://www.youtube.com/watch?v=u3DrvrrSgHI accessed on 28/04/2014 at 4:00 PM
[239]Ibid

halted the massive killing and all criminal atrocities committed that began with the death of President Habyarimana.[240]

In April 1994, the Presidents of Rwanda and of Burundi were killed while returning from peace talks in Tanzania, when the Rwandese plane crashed, in circumstances that are still to be determined, as it was landing in Kigali, Rwanda's capital. This set off a tidal wave of political and ethnic killings: the Prime Minister, cabinet ministers and UNAMIR peacekeepers were among the first victims.[241]

The killings, targeting Tutsi and moderate Hutus, were mainly carried out by the armed forces, the presidential guard and the ruling party's youth militia, as subsequently confirmed by the Special Rapporteur on Rwanda of the United Nations Human Rights Commission. The RPF resumed its advance from the north and the east of Rwanda, and government authority disintegrated.An interim Government was formed, but failed to stop the massacres. With the RPF's southward push, the number of displaced persons and refugees increased tremendously. On 28 April alone, 280,000 people fled to Tanzania to escape the violence. Another wave of refugees went to Zaire. The United Nations and other agencies provided emergency assistance on an unprecedented scale.[242]

UNAMIR sought to arrange a ceasefire, without success, and its personnel came increasingly under attack. After some countries unilaterally withdrew their contingents, the Security Council, by its resolution 912 (1994)[243], reduced UNAMIR's strength from 2,548 to

[240]Ibid
[241]UN, *UNAMIR*- available at: http://www.un.org/Docs/scres/1993/872epdf. Accessed on 29-06-2013 at 9:13 pm
[242]Ibid
[243]UN, *SCR/912 (1994) of 21 April 1994*available at: http://www.un.org/Docs/scres/1994/9419085ehtm. Accessed on 29-06-2013 at 8:35 pm

270. Despite its reduced presence, UNAMIR troops managed to protect thousands of Rwandese who took shelter at sites under UNAMIR control.[244]

The Security Council, by adopting resolution 918 (1994)[245] of 17 May 1994, imposed an arms embargo against Rwanda, called for urgent international action and increased UNAMIR's strength to 5,500 troops. But it took nearly six months for Member States to provide the troops.To contribute to the security of civilians, the Council in itsresolution 929 (1994)[246]of 22 June 1994 authorized under Chapter VII of the United Nations Charter, a multi-national humanitarian operation. This established a humanitarian protection zone in south-western Rwanda. The operation ended in August 1994 and UNAMIR took over in the zone.

In July, the RPF forces took control of Rwanda, ending the civil war, and established a broad-based Government. The new Government declared its commitment to the 1993 peace agreement and assured UNAMIR that it would cooperate on the return of refugees.For their part, when the conflict broke out in April, UNOMUR observers had expanded their monitoring activities in Uganda to the entire border area. But the Security Council gradually scaled down the operation, and UNOMUR left Uganda in September.[247]

By October 1994, estimates suggested that out of a population of 7.9 million, at least half a million people had been killed. Some 2 million had fled to other countries and as many as 2 million people were internally displaced. A United Nations humanitarian appeal launched in July raised $762 million, making it possible to respond to the enormous humanitarian challenge.A

[244]Ibid
[245]UN, *SCR/918 (1994) of 17 May 1994* available at: http:/www.un.org/Docs/scres/1994/9421836ehtm.Accessed on29-06-2013 at 6:35 pm
[246]UN,*resolution 929 (1994) of 22 June 1994*available at: http://www.un.org/Docs/scres/1994/9426027ehtm. Accessed on 14-06-2013 at 1:14 pm
[247]Ibid

Commission of Experts established by the Security Council reported in September that "overwhelming evidence" proved that Hutu elements had perpetrated acts of genocide against the Tutsi group in a "concerted, planned, systematic and methodical way." The final report of the Commission was presented to the Council in December 1994.In the following months, UNAMIR continued its efforts to ensure security and stability, support humanitarian assistance, clear landmines and help refugees to resettle. But Rwanda supported ending the mission, stating that UNAMIR did not respond to its priority needs. The Security Council heeded that request, and UNAMIR left in March 1996.[248]

At a meeting organized by Rwanda and the United Nations Development Programme in 1996, international donors pledged over $617 million towards the reconstruction of the country. United Nations agencies have continued to provide humanitarian aid and to assist in the return of the refugees.On 8 November 1994, the Security Council established the International Tribunal for Rwanda[249]"for the sole purpose of prosecuting persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994". Located in Arusha, Tanzania, the Tribunal issued the first indictments in 1995 and held the first trials in 1997.[250]

UNHCR, Rwanda and the countries hosting some 1.7 million Rwandese refugees, namely, Zaire, Burundi and Tanzania, made a concerted effort to accelerate the voluntary return of refugees. From an average of around 5,000 a month through much of 1995, January 1996 saw

[248]Ibid
[249]UN, *UN special Tribunal for Rwanda*; available at: http://www.ictr.org/,Accessed on14-06-2013 at 6:25 pm
[250]Ibid

the number of returnees increase to more than 14,000. In the first three weeks of February alone, refugee returns topped 20,000.

Five years after the event, the United Nations and the whole international community remained accused of not having prevented the genocide. In view of the enormity of what happened, and the questions that continued to surround the actions of the United Nations and its Member States before and during the crisis, in March 1999 the Secretary-General, with the approval of the Security Council, commissioned an independent inquiry into those actions. The members included Ingvar Carlsson (former Prime Minister of Sweden), Han Sung- Joo (former Foreign Minister of the Republic of Korea) and Lieutenant-General Rufus M. Kupolati (rtd.) (Nigeria).The findings of the inquiry weremade public[251] on 15 December 1999. The inquiry concluded that the overriding failure in international community's response was the lack of resources and political will, as well as errors of judgment as to the nature of the events in Rwanda. Expressing deep remorse over the failure to prevent the genocide in Rwanda, the Secretary-General, in a statement on 16 December, said that he fully accepted the conclusions of the report. He welcomed the emphasis which the inquiry had put on the lessons to be learned and its recommendations to ensure that the United Nations and the international community could and would act to prevent or halt any other such catastrophe in the future.[252]

The United Nations Secretary General, Ban Ki-Moon, has acknowledged his organisation's failure to quell the 1994 Genocide against the Tutsi that claimed over one million lives. "We failed in Rwanda. The scale of the massacre almost defies comprehension. The world must never be allowed to forget the savage potential that lingers in the human heart," Ban said in

[251]Chimp, C.,(2012) Ban Commends Rwanda's Post-genocide Recovery. available at: http://www.un.org/News/dh/latest/rwanda/htm.Accessed on14-06-2013 at 7:45 pm
[252]Ibid

a press briefing shortly after he and the World Bank president Jim Yong Kim, visited the Gisozi Genocide Memorial.The UN chief also commended Rwandans for reconciling and rebuilding their nation after the genocide. "You are writing a different future. I commend the people of Rwanda for your brave recovery. In less than two decades you have reconciled and rebuilt. You stand as an example of humanity's capacity for human compassion and forgiveness," he stated.[253]

UN Secretary General Ban ki-Moon and World Bank president Dr. Jim Yong Kim, after meeting President Kagame in Kigali hailed Rwanda's commitment to end Gender Based Violence (GBV). Jim said that during his visit, he was impressed by two best practices: a housing project for disabled ex-combatants who include former FDLR militia and the government's commitment in fighting GBV. "I have never seen a country approach the issue of Gender based violence as you have.[254] Rwanda demonstrates the best example in women empowerment," He further said"I appreciate your commitment to your people. You are a great inspiration to me," he said, pledging to continue working with the UN. "I hope many African countries will emulate Rwanda." He also said "I have admiration for President Kagame for his leadership and commitment, not only in the region, but in making his people prosperous,'" he noted[255].

d. **Darfur**

The conflict taking place in Darfur has many interwoven causes. While rooted in structural inequality between the center of the country around the Nile and the 'peripheral' areas

[253] Ibid
[254] Ibid
[255] ibid

such as Darfur, tensions were exacerbated in the last two decades of the twentieth century by a combination of environmental calamity, political opportunism and regional politics. A point of particular confusion has been the characterization of the conflict as one between 'Arab' and 'African' populations, a dichotomy that one historian describes as "both true and false". Western powers have also been accused of covertly exacerbating tensions to counter recent Chinese-Sudanese oil cooperation and to deter further oil deals by China in the region. In the late fourteenth or early fifteenth century, the Keira dynasty of the Fur people of the Marrah Mountains established a sultanate with Islam as the state religion. The sultanate was conquered by the Turco-Egyptian force expanding south along the Nile, which was in turn defeated by the Muhammad Ahmad, the self-proclaimed Mahdi. The Mahdist state collapsed under the onslaught of the British force led by Herbert Kitchener, who established an Anglo-Egyptian condominium to rule Sudan. The British allowed Darfur de jure autonomy until 1916 when they invaded and incorporated the region into Sudan. Within Anglo-Egyptian Sudan, the bulk of resources were devoted toward Khartoum and Blue Nile Province, leaving the rest of the country relatively undeveloped. Issues exacerbated after Libyan President Muammar Gaddafi became focused on establishing an Arab belt across the Sahel and promulgated an ideology of Arab supremacy.

In early 2003, two local rebel groups the Justice and Equality Movement (JEM) and the Sudan Liberation Movement (SLM) accused the government of oppressing non-Arabs. The SLM, which is much larger than the JEM, is generally associated with the Fur and Masalit, as well as the Wagi clan of the Zaghawa, while the JEM is associated with the Kobe clan of Zaghawa. All these have from time immemorial provoked tension and violence amongst the Darfurians. How has the UNSC achieved in her mission in this war afflicted part of the world?

The UNSC and the African Union have been stationing Peacekeepers in this Sudanese region of Darfur since the conflict there went out of hand. The UNSC officials have taken so many Resolutions, made so many official and documented statements, held so many meetings and presented many reports on their efforts to resolve the conflict in Darfur. Some of the resolutions have gone a long way to bring much change to the lives of the Darfurians.[256]

In the UN SC RES 1556(2004)[257] it stated that the Security Council, having considered the latest developments and having taken into consideration the UN Security Council RES-1547 (2004),16 adopting the UN SC RES-1556 (2004)17, have called on the Government of Sudan to fulfill immediately all of the commitments it made in the 3 July 2004 Communiqué. The SC demanded that the Government of Sudan should fulfill its commitments to disarm the Janjaweed militias and apprehend and bring to justice Janjaweed leaders and their associates who have incited and carried out human rights and international humanitarian law violations and other atrocities, and further requests the Secretary- General to report in 30 days, and monthly thereafter, to the Council on the progress or lack thereof by the Government of Sudan on this matter. The SC further requestedthe Panel of Experts to continue to coordinate its activities as appropriate with the operations of the United Nations/African Union Hybrid Operation in Darfur (UNAMID) and with international efforts to promote the political process in Darfur, and to assess in its interim and final reports progress towards reducing violations by all parties of the measures imposed by paragraphs 7 and 8 of resolution 1556 (2005),[258] paragraph 7 of resolution 1591 (2005), and paragraph 10 of resolution 1945 (2010), progress towards removing impediments to the political process, threats to stability in Darfur and the region, violations of international humanitarian or human rights law or other atrocities, including sexual and gender-

[256] Ibid
[257] UN, (2000) Resolutions *and decisions of the SC*. UN publication. New York p.9
[258] Ibid

based violence and grave violations and abuses against children, and other violations of the above-mentioned resolutions, and to provide the Committee with information on the individuals and entities that meet the listing criteria in paragraph 3 (c) of resolution 1591 Resolution 2091 (2013) para 6.[259]

In its Resolution 1590 (2005),(2)[260]requestsUNMIS to closely and continuously liaise and coordinate at all levels with the African Union Mission in Sudan (AMIS) with a view towards expeditiously reinforcing the effort to foster peace in Darfur, especially with regard to the Abuja peace process and the African Union Mission in Sudan. It alsorequeststhe Secretary-General, through his Special Representative for Sudan, to coordinate all the activities of the United Nations system in Sudan, to mobilize resources and support from the international community for both immediate assistance and the long-term economic development of Sudan, and to facilitate coordination with other international actors, in particular the African Union and IGAD, of activities in support of the transitional process established by the Comprehensive Peace Agreement, and to provide good offices and political support for the efforts to resolve all ongoing conflicts in Sudan;

In the SC Resolution 1591 (2005)(2)[261], itemphasizesthat there can be no military solution to the conflict in Darfur, and calls upon the Government of Sudan and the rebel groups, particularly the Justice and Equality Movement and the Sudanese Liberation Movement/Army to resume the Abuja talks rapidly without preconditions and negotiate in good faith to speedily reach agreement, and urges the parties to the Comprehensive Peace Agreement to play an active and constructive role in support of the Abuja talks and take immediate steps to support a peaceful settlement to the conflict in Darfur.

[259] Ibid
[260] Ibid
[261] Ibid

The SC here, endorsesthe deployment of international monitors, including the protection force envisioned by the African Union, to the Darfur region of Sudan under the leadership of the African Union and urgesthe international community to continue to support these efforts, welcomesthe progress made in deploying monitors, including the offers to provide forces by members of the African Union, and stressesthe need for the Government of Sudan and all involved parties to facilitate the work of the monitors in accordance with the N'Djamena ceasefire agreement and with the Addis Ababa agreement of 28 May 2004 on the modalities of establishing an observer mission to monitor the ceasefire.[262] In a better and more mature way to bring peace to this region, the AU-UN had to establish three phases on how to arrive at their objectives.

a) Joint AU-UN Road-map for Darfur Political Process Convergence of Initiatives and Consultations Phase (May-June 2007)

The AU and UN aim to work with all national, regional and international actors to ensure that all initiatives currently underway converge and are integrated within the broader AU-UN framework by the end of June. Simultaneously, the AU and UN will continue extensive consultations on the political process and parties' positions with all stakeholders inside and outside Sudan.

b) Pre-Negotiation Phase (June – July 2007)

All parties in this phase are expected to demonstrate a serious commitment to the political process through accelerating preparations for negotiations in good faith.

c) Negotiation Phase (August 2007)

[262]UN, *SCR/1556 (2004)28 June (2007)*Availaible at http://www.un.org/Darfur; Accessed on 25 May 2013; at 5:56 pm

The implementation of Phase II in this road-map should have contributed to narrowing the gaps between the respective positions and determined the parameters of an all-inclusive agreement with broad ownership among all stakeholders.

Till date the UNSC has been doing a lot in a bid to bring an end to the Darfur conflict. Due to its intervention, the Darfurians have witnessed a lot of positive changes.

The Humanitarian Assistance team was able to supply huge consignment of food, medication and shelter to the displaced citizens.

1. Peace talks progresses every day and tension is lessening in the country.
2. Life has become normal in a large part of the region with workers going back to their offices and students returning to classrooms.
3. Close to 250 rebels on both sides decided to surrender their guns to the UN peacemakers.
4. Fighting and killing between the factions have greatly reduced with the presence of the peacekeepers.
5. There have been many supplies of basic needs to the IDPs and the afflicted.
6. Women have been greatly integrated in the key decision making positions in the country and their participations in the decision making are always taken into account.
7. So many children have dropped their guns as child soldiers and returned to school or reformation centers[263]

3.4.2Asia

Asia is a continent that has experienced a kind of warring situation amongst the countries. The world has witnessed the Iran Iraq war, Iran Kuwait war, tension between the two Koreans etc.

[263]UN,(2011) *Report of Secretary Generals Special Representative to Rwanda*, UN, New York, p. 14

The international community (UN) has intervened in a number of these countriesto safe and protect lives. Some of these countries have been discussed below.

a. Iraq

In 2003, the U.S. led a coalition into Iraq in response to the terrorist attacks in the U.S. in 2001. Shortly thereafter the UN Security Council passed resolution 1500 calling for the United Nations Assistance Mission for Iraq (UNAMI) in 2003. This one year program was developed in order to follow up after the Oil-for-Food Program. The UN was the target of a number of attacks in 2003; in August, rebels bombed UN headquarters in Baghdad, killing 23 mission staff members, including the Secretary-General's Special Representative in Iraq Sergio Vieira de Mello. Based on this violence, in August 2003, Security Council Resolution 1500 established the UN Assistance Mission for Iraq (UNAMI), a political mission administered by the Department of Political Affairs. In subsequent resolutions—1546 in 2004, 1770 in 2007 and 1883 in 2009—the Security Council expanded UNAMI's presence throughout the country and broadened its mission. UNAMI is made up of more than ten UN agencies and a handful of international partners. In July 2012, Security Council resolution 2061 extended UNAMI's mandate for another 12 months until July 2013. The Mission's mandate includes:[264]

1. Promoting and supporting political dialogue and national reconciliation;
2. Facilitating implementation of the International Compact for Iraq's reconstruction, including coordination with donors and international financial institutions;
3. Planning, funding and implementing reintegration programs for former members of illegal armed groups;

[264] UN, *UNAMI First Envoy*,Availaible athttp://www.unduc.org/security/issues/iraq/unrole/2008/0218iraqenvoy.htm; Accessed on 16-06-2013; at 5:34 pm

4. Contributing and coordinating humanitarian relief and reconstruction;
5. Assisting local and national government institutions;
6. Strengthening the rule of law and the justice system;
7. Advising Iraq's High Independent Electoral Commission to strengthen the processes for holding elections and referenda;
8. Coordination efforts for the first comprehensive census;
9. Reviewing and implementing constitutional provisions;
10. Reforming the economy for a more sustainable future;
11. Supporting the return of refugees and internally displaced persons;
12. Supporting UN agencies, funds, and programs contributing to carrying out the objectives in this mandate; and
13. Developing mechanisms to address human rights.

In 2007, the Security Council expanded the mission's mandate under resolution 1770 (2007). TheMission, alongside various UN agencies, funds, and program, support developing government and private sector capacity, guaranteeing human rights, and providing basic necessities. By 2005, the country began to make progress. With mission support, the Iraqi government conducted successful democratic elections.

To promotedialogue**,** since 2009, UNAMI has facilitated a dialogue between representatives from the Iraqi government and the Kurdistan regional government about disputed internal boundaries. This Task Force on Dialogue meets weekly to further the national reconciliation between the two sides. The United Nations Office for Project Services (UNOPS) also supports dialogue between leaders in civil society and government within Kurdistan. The Iraqi Council of

Representatives, the primary body of elected representatives in Iraq, frequently asks for UNAMI's technical support in facilitating round table discussions on Iraq's unfinished constitutional agenda, including the Federation Council, judicial reform, and laws regarding minorities.

Fosteringregionalinvolvement**,** on March 29, 2009, Iraq hosted the League of Arab States for its 23 summit in Baghdad. The Secretary General attended and held meetings with regional and national leaders. Relations between Iraq and Kuwait have improved, demonstrated through the development of a commission to "manage the navigation of the Khor Abdullah shared waterway." The UN began work on the Iraq-Kuwait boundary maintenance project based on the request of the two nation's governments, holding technical meetings and appointing delegations. UNAMI, UNESCO, and UNDP also facilitated engagement between Iraq and Iran on the issues of dust storms and drought.[265]

To encourage Human Rights**,** UNAMI in 2011, worked closely with the government to establish an Independent High Commission for Human Rights to promote and protect the rights of all Iraqis in accordance with international standards, which was successfully established in April 2012. In coordination with the Iraqi government, UNAMI also led human rights training sessions for government officials in the Ministries of Interior and Justice, civil society organizations such as the Iraqi Bar Association, and 200 journalists. UNICEF is also training Ministries of Human Rights, Justice, Youth and Sport, Labour and Social Affairs, Education and Health on the provisionoflegalassistancetodetained children.

[265]UN, *UN Role in Iraq*, Availaible athttp://www.un.org/iraq/political-issues-in-iraq/un-role-in-iraq.html, Accessed on 16-o6-2012, at 6:25pm
See also UN, (2012) *Second Report of the Secretary-General pursuant to paragraph 6 of resolution,* Availaible athttp://www.un.org/sgreport/UNAMI, Accessed on 16-06-2013 5:27pm

In February 2012, Iraq strengthened human rights laws with the support of UNAMI by creating the National Commission for People with Disabilities, a High Commission for Combating Human Trafficking, and a law approving Iraq's accession to the Arab Charter of Human Rights; all monumental steps for promoting human rights in the country.[266]

In order to support development programs**,** on March 14, 2011 The United Nations Children's Fund (UNICEF), The United Nations Population Fund (UNFPA), the United Nations Development Program (UNDP), and the Iraqi Government made a four year agreement in support of a new $600 million government agenda, known as the Country Program Action Plan. The UN country team will provide technical support for the implementation of this agenda, which focuses on developing a public sector with better education, water and sanitation, and health services through a public modernisation program. Together, the organisations will undertake the following projects: rehabilitating power stations, creating new ones, clearing mines, creating equal opportunity jobs, and initiating environmental programs. UN organisations also contribute to the development of the nation through employment, including UNIDO, which reopened 20 vocational centers and trained 7,000 Iraqis for agriculture and manufacturing jobs. Additionally, UN-Habitat will continue to support efforts to rebuild and promote housing developments. Already, the agency has trained 620 unemployed youth for construction jobs, worked with 160 contractors on management efficiency in order to construct 300 new homes, rehabilitate 2,460 housing units and 400 health centers and schools, and advised more than 500 Iraqi officials on urban government reforms.

On its endeavour to promote democracy**,** the mission provides support on both electoral and constitutional issues to the Board of Commissioners as it prepares for the elections of the

[266]Ibid

Governorate Council, scheduled for early 2013. Additionally the mission has provided capacity-building assistance to the Independent High Electoral Commission (IHEC), which overseas Iraqi elections. Various UN organisations including United Nations Development Program (UNDP) and UNOPS have focused on public outreach, public surveys, electoral security, and updating voter registration. The UN played a pivotal role in the selection process for the Commissioners of the Independent High Commission for Human Rights and the Independent High Election Commission.[267]

To help provide Critical Humanitarian Aid, the UN High Commissioner on Refugee's (UNHCR) assists refugees and IDPs providing humanitarian aid and mapping long-term solutions. As of June 28, UNHCR registered 1,765 individuals and interviewed 509 asylum seekers, granting 283 people refugee status. UNHCR, in coordination with UN-Habitat, also supports the immediate needs of internally displaced people and returnees, recently securing two pieces of land to build shelters for 700 families. In 2011, the UN Refugee Agency (UNHCR) and its partners coordinated the provision of clean water, shelter, and sanitation assistance to nearly 500,000 displaced persons.[268]

Providing Health and Nutrition**,** the UN Mission prioritizes proper health and nutrition. The World Health Organization (WHO) supports maternal health through a government program on health promotion. Additionally WHO, with the Food and Agriculture Organization (FAO) and U.S . Centers for Disease Control and Prevention, assists on a plan to address diseases contracted from animals. UNOPS focused on medical response in the Kurdistan Region through training and obtainment of medical supplies. WHO, UNICEF, World Food Program (WFP), and FAO

[267] ibid
[268] ibid

helped the government develop a nutritional plan, particularly for school food programs. WFP is helping keep 550,000 Iraqi school children healthy and in the classroom.[269]

To support Education and Employment**,** the UN supports programs that develop employment opportunities. World Food Program (WFP) scaled up a cash-for-work program to provide short-term employment opportunities to Iraqis in regions particularly hard-hit by violence. The UN Educational, Scientific, and Cultural Organization (UNESCO) focuses on youth by providing a project that trains 400 graduates on entrepreneurship and management skills and educational programs instilling Iraqis between the ages of 12-19 with civic values and life skills to help deter recruitment of young Iraqis by extremist groups. In cooperation with UNICEF and the Government of Iraq, UNESCO also conducted four workshops in January and February 2012 to train 140 educational statisticians and planners in the Ministry of Education in order to help Iraq formulate its own education quality improvement plans in the future.s[270]

On its bid to Protect Heritage**,**[271] in mid-February 2012, the Iraqi Marshlands was nominated as a World Heritage Site held in Amman. The nomination will help manage and restore the largest wetland ecosystem in the Middle East, and will make sure safe drinking water is a priority in a place where 20% of households and 43% of inhabitants of rural areas lack safe drinking water. Over the past few years, in its commitment to preserving Iraqi culture, UNESCO has led a rehabilitation effort of the Iraqi National Museum. The Special Representative of the Secretary-General (SRSG) for Iraq, Martin Kobler, said after a tour of the museum, "The power and role of culture are often underestimated, but culture is crucial for the development of society

[269] Ibid
[270] Ibid
[271] Pentoran,T., (2008) *Protection of Iraqi Assets*. Available at http://www.globalpolicy.org/security/issues/iraq/unrole/2008/1222 assets.htm 16-06-2013; 2:23pm

and should be supported and strengthened." In 2012, UNESCO began discussions with the Iraqi Minister of Tourism to improve the ministry's management of Iraq's cultural heritage.[272]

There are still great challenges faced by UNAMI. Amongst others, it faces humanrights abuses, landmines that are still widely and hiddenly planted,disputes over the Kirkuk oil area,government instability, manyrefugees and IDPs, andsectarian violence. It is putting all its efforts to see that these problems are solved.

b. **Afghanistan**

After the bombing of the world trade center on September 11 2001, USA decided to launch war against terrorism. She in conjunction with her allies but without the approval of the UN launched [273]an attack in Afghanistan being the base of AlQaeda she so much suspected as being behind the bombing. With much devastation and civilian casualties being enormous, the SC decided to send a mission to Afghanistan called United Nations Assistance Mission in Afghanistan (UNAMA)

On March 28, 2002, U.N. Security Council Resolution 1401 (2002) established the United Nations Assistance Mission in Afghanistan (UNAMA) as a political and "integrated" mission, directed and supported by the U.N. Department of Peacekeeping Operations, to help implement the Bonn Agreement. UNAMA aims to bring together two key elements—one with a political focus and the other dealing with humanitarian and development efforts. Lakhdar Brahimi, then Special Representative for the U.N. Secretary-General to Afghanistan, organized the Bonn Agreement and directed UNAMA until December 2004. UNAMA's mandate is renewed annually in March. U.N. Security Council Resolution 1868 (2009) extends UNAMA's

[272] Ibid
[273] The Stream, Aljazeera TV. Tuesday 18 June 2013, 8:00 am

mandate for another year until March 23, 2010. Significantly, U.N. Security Council Resolution 1806 (2008) expanded the mandate to include a "super envoy" concept that would represent the United Nations, the European Union, and the North Atlantic Treaty Organization (NATO) in Afghanistan. U.N. Security Council Resolution 1868 (2009) incorporates UNAMA's increased scope, which includes leading international civilian efforts to support the Afghan government, increasing cooperation with the International Security Assistance Force (ISAF), and developing greater political outreach with Afghan leaders[274].

Beginning in March 2008, the head of UNAMA, and Special Representative of the U.N. Secretary General (SRSG) for Afghanistan, with expanded powers over his predecessors, is Norwegian diplomat Kai Eide. Two new Deputy Special Representatives of the Secretary-General (DSRSG) for Afghanistan have recently been appointed: Peter W. Galbraith (of the United States) covers Political Affairs, and Robert Watkins (of Canada) covers Relief, Recovery, and Reconstruction (RRR). Mr. Watkins also serves as the U.N. Development Program (UNDP) Resident Representative, Resident Coordinator and Humanitarian Coordinator in Afghanistan. UNAMA has approximately 1,500 staff, of which about 80% are Afghan nationals. It coordinates all activities of the U.N. system in Afghanistan, which includes the participation of 18 U.N. agencies and several other organizations considered to be part of the U.N. country team UNAMA has eight regional offices and 12 provincial offices. The participants at the International Conference on Afghanistan in March 2009 emphasized that UNAMA should expand its presence into as many provinces as possible.

[274]Rhoda, Maget., (2009) *United Nations Assistance Mission in Afghanistan: Background and Policy Issues,* Availaible athttp://www.crs.govAccessed on14/06/2013, at 3:56 pm
See alsoUN, UN in Afghanistan, Availaible athttp://www.unama.unmissions.org/Default.aspx; Accessed on 23/ 06 /3013; at 6:45 pm

As concerns the Framework for Afghanistan's Reconstruction Strategy (FARS), it has resulted in implementing a number of agreements entered into. The Agreement on Provisional Arrangements in Afghanistan Pending the Re-establishment of Permanent Government Institutions, or Bonn Agreement, was signed in Bonn, Germany, on December 5, 2001. It was endorsed by U.N. Security Council Resolution 1385 (2001). Under U.N. auspices, Afghan participants met to outline a process for the political transition in Afghanistan. The Bonn Agreement established an Afghan Interim Authority (AIA) on December 22, 2001, which was made up of 30 members and headed by Chairman Hamid Karzai. An Emergency "*loya jirga*"[275] held in June 2002 replaced the AIA with a Transitional Authority (TA). The TA brought together a broad transitional administration to lead the country until a full government could be elected. A constitution, considered the most progressive in Afghan history, was approved at a "constitutional *loya jirga*"[276] in January 2004. Hamid Karzai was elected president in October 2004, and parliamentary and provincial elections were subsequently held in September 2005. The Bonn Agreement also called for the establishment of a Supreme Court of Afghanistan and a Judicial Commission. It requested the U.N. Security Council to consider authorizing the deployment of a U.N.-mandated security force, outlined the role of the United Nations during the interim period, and referred to the need for cooperation with the international community on a number of issues, including reconstruction, elections, counternarcotics, crime, and terrorism. The Bonn Agreement was fully implemented in 2005.

The Afghanistan National Development Strategy (ANDS), which was also signed by President Karzai in April 2008 and later presented as the "blueprint for the development of Afghanistan" at the donor's conference in Paris, France, on June 12, 2008, is a policy paper

[275] Traditional Afghan assembly
[276] ibid

created by the Afghan government. It builds on the Compact and follows a plan for establishing goals and measurable targets that are similar to the U.N. Millennium Development Goals. Focusing on the three issue areas identified in the Compact (security, governance, economic growth/poverty reduction), it looks ahead to a vision for Afghanistan in the year 2020 while identifying specific goals to be achieved over five years between 2008 and 2013. The ANDS envisions that most of the funding required would be provided by donors and that these funds would be distributed through the central government.

The Joint Coordination and Monitoring Board (JCMB) were established in 2008 and is the coordination body between the Afghan government and the international community. UNAMA is co-chair of the JCMB and has a central role in helping implement the development strategies outlined in the Compact and the monitoring activities put forward in ANDS. U.N. Security Council Resolution 1806 (2008) and U.N. Security Council Resolution 1868 (2009) direct UNAMA, in that capacity, to coordinate the work of international donors and organizations with an emphasis on aid effectiveness. The JCMB co-chairs reviewed the Compact and presented their findings at the June 2008 conference in Paris, stating that significant progress had been made in health and education, infrastructure and economic growth, and strengthening of Afghan national security forces. UNAMA's 2009 Mandate for the International Civilian Effort in Afghanistan.

In deciding to extendthe mandate of UNAMA until March 23, 2010, the U.N. Security Council emphasized specific priorities for UNAMA. It also asked the U.N. Secretary-General to report to the Security Council every three months on developments in Afghanistan. In addition, it requested the U.N. Secretary-General to establish benchmarks (drawing on the mandate and identified priorities) to determine progress in their implementation. The Secretary-General's June

2009 report was supposed to provide an update on the status of the benchmarks; instead, the U.N. Secretary-General requested a delay in finalizing the benchmarks until his September 2009 report. The priorities below are outlined in U.N. Security Council resolution 1868 (2009) as key areas of UNAMA's work in Afghanistan:

a) promote more coherent support by the international community to the Afghan government;
b) strengthen cooperation with ISAF;
c) provide political outreach through a strengthened and expanded presence throughout the country;
d) provide good offices in support of Afghan-led reconciliation programs;
e) support efforts to improve governance and the rule of law and to combat corruption;
f) play a central coordinating role to facilitate the delivery of humanitarian aid;
g) monitor the human rights situation of civilians and coordinate human rights protection;
h) support the electoral process through the Afghan Independent Electoral Commission;
i) support regional cooperation in working for a more stable and prosperous Afghanistan.

Many experts have placed significant emphasis on the need for credible, free, and fair presidential and provincial elections on August 20, 2009 in Afghanistan. The elections are seen as a potential benchmark in the promotion of good governance, and as an indicator of the confidence of the Afghan people and in consolidation of democracy in Afghanistan and thus calls for the full implementation of the role of UNAMA. The U.N. Security Council, and the participants at the March 2009 conference in The Hague, have called for the expansion of UNAMA's presence to each of Afghanistan's 34 provinces, to aid in building the capacity of the Afghans and to let the citizens manage their affairs. Recently Hamid Karzai (the former Afghan

President) has made an announcement about the transfer of military task to the Afghan soldiers as the US and allied forces will soon leave[277].

To conclude, the UN entered these areas with the intention to bring peace and security and thus better off the living conditions of the citizens. The UN also wanted to ensure a stable government is in place and ruling under a good atmosphere. In all these countries where the UNSC authorized peacekeeping operations, there has been just an average restoration of peace in the various places. There has been an appreciable achievement of peace in Rwanda. Respect for human rights and gender equality is on the rise. Breach of peace situations and use of arms whether light or small is almost absent. Darfur too is relatively stable now. Instancesoffrequent instability have not been heard for long time now. Libya, DR, Congo, Afghanistanand Iraq are still in great insecurity. Every day there is news of bomb blast attack or suicide bomber incidents either in Afghanistan or Iraq and now Libya.

[277] Aljazeera, op. cit p. 82

CHAPTER FOUR

LIMITATIONS OF THE UNITEDNATIONS SECURITY COUNCILAND A CRITIQUE OF ITS ROLE IN PROMOTING PEACE AND SECURITY

4.1 Introduction

From time immemorial, the concern of UN member states has been the weaknesses of the Security Council[278]. During the Cold War, the concern of many states was to reinforce the fledgling authority of the Council so that, by one means or another, full-scale superpower confrontation could be averted. The end of the Cold War released the full creativity of the Council, enabling it to act with far greater efficacy, and since 1991, the Security Council has asserted an expanded jurisdictional reach and authority, for instance, and in a manner which would have been unheard of only a few years before, the Council during the Gulf War condemned the Iraqi invasion of Kuwait, imposed economic sanctions on Iraq, and eventually authorized the use of force to expelIraqi troops from Kuwait.[279] It has also imposed economic and diplomatic sanctions on Libya,[280]taken an active role in the peace process in Cambodia,[281] and authorized the use of force forhumanitarian purposes in Somalia and Bosnia and Herzegovina.[282] These examples illustrate that enforcement powers of the Security Council are in reality very extensive. It was only the political contingency of the Cold War which led to their dormancy for much of the last four decades. A plethora of writers[283] have welcomed the rebirth

[278]Forsythe,P.D.,(2012)the UNSecurity Council and Human Rights.Freidrich-Ebet-Stiftung. P. 7. availaible at http://www.fes.de/GPol/en accessed on 24/09/2015

[279]UN, *SC Res. S/RES/660 (1990), SC Res. S/RES/661(1990), SC* Res. S/RES/678 (1990). SC available at http://www.unduc.org, view on 14/ 11 /2013 at 4:15pm

[280] UN, *SC Res. S/RES/748 (1992).* These sanctions were reinforced on 11 November 1993 by SC Res. S/RES/883 (1993), which provided for an extension of the measures on 1 December 1993 should Libya continue not to comply with resolutions 731 and 748. available at http://www.unduc.org, view on 14/ 11 /2013 at 3:16pm

[281] UN, *SC Res. S/RES/766 (1992).* available at http://www.unduc.org Accessed on 13/08/2013 at 2:24pm

[282]UN, *SC Res. S/RES/770 (1992*), SC Res. S/RES/771 (1992). For further resolutions pertaining to the Former Yugoslavia, Availaible athttp://www.unduc.org , Accessed on 13/08/2013 at 2:15 pm

[283]Hanns W. Maull, Professor and chair of foreign policy and international relations, University of Trier

of the Security Council, this is because certain aspects of recent Security Council practice have been controversial and raise a number of key issues. It has been highly criticised because of its shortcomings. Some of the key issues raised is to know if the Security Council must act with the unanimous support of its permanent members, if it has unlimited powers? If not, where do its prerogatives end? Does it respect the purpose and principles of the UN Charter? Where are the limits to those powers to be found? Indeed, the Security Council has in recent years adopted numerous resolutions whose legality, some feel, ought to be verified. This has been the case, for instance, with the adoption and the implementation of resolutions concerning Iraq, Libya, resolutions on the establishment of the International Criminal Tribunal for the former Yugoslavia (ICTY),concerning Somalia, and concerning the arms embargo relating to Bosnia and Herzegovina.[284]This work will expose some of the limitations of this body that makes it not go out of its directions and also do a constructive criticism of this body so that proper observations can be made from the shortcomings.

4.2 Limitations of the UNSC

The UNSC is not an all powerful body without end to its powers. Its powers have a limit. Since it is only a body out of the five organs of the UN system, it does not do all the works of UN. it only plays its own role and gives the other bodies the latitude to do their own. The limitations of this body stems from the text of the UN Charter but not limited to it. An examination of the SC limitations will be seen here below.

Nico Schrijver,Professor of Public International Law, Leiden University,
Daniel Deudney ,Associate professor of political science at Johns Hopkins University
[284]UN, *SC Res. S/RES/713 (1991)* available at http://www.unduc.org,Accessed on13/08/2013 at 3:33pm

4.2.1Limitations deriving from the text of the UN Charter

Nevertheless, it is clear that neither the text nor the spirit of the UN Charter conceives of the UN Security Council as unbound by law. The few other writers who have adverted to the problem are also clearly of the opinion that the Council cannot act arbitrarily. Thus Bowett notes that 'the Functions and Powers of the Security Council are stated in Articles 24–26 of the UN Charter.[285].

Article 25[286] stipulates that 'the Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter'. Although Article 25 functions to give Chapter VII[287] their binding force, the exact nature of its operation is open to question. In particular, it is not readily apparent whether the words 'in accordance with the present Charter' are related to the obligation of the members to accept and carry out the decisions of the Security Council or whether these words qualify the decisions to be accepted and carried out as binding only if they are taken inaccordance with the Charter. However, it seems clear that Article 25 of the UN Charter does not mean that members are obliged to carry out all decisions of the Security Council, and the article appears to reinforce the obligation upon the Security Council to adhere to the legal limits set by the Charter. Hence, there is room for the view that only resolutions which are intra vires[288] the UN Charter acquire binding force in terms of Article 25. Especially as Art. 24(2) of the Charter emphasises the point that"in discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations".This position is supported by Bowett who notes that: when the Security Council does act intra vires, the members of the organisation are bound by its actions and, under Article 25 of

[285] Bowett,D.,(1982) TheLaw of International Institutions,4th Edn Oxford University Press, London, p 33.
[286] UN Charter op. cit p. 2
[287] ibid
[288] Within the law

the UN Charter, they agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.

Additionally, when Article 25 is read together with Article 103 of the UN Charter, the decisions of the Security Council taken under Chapter VII of the UN Charter create binding obligations upon UN member states which prevail over any other inconsistent international obligations.[289]This does not end the matter, however, as the above formulation merely outlines the consequences which follow a conflict between binding Security Council resolutions and other inconsistent international obligations. It therefore presupposes the intra vires character of decisions of the Security Council without adumbrating the criteria by which Security Council decisions are to be categorized as lawful or otherwise. In the light of this, and as the Lockerbie decision concerned only provisional measures of protection, the International Court of Justice`s(ICJ) findings regarding Arts 25 and 103[290]will require a more thorough examination at the merits stage. Art.24(2)[291]also suggest restraints upon Security Council powers, stipulating that: "In discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations. The specific powers granted to the Security Council for the discharge of these duties are laid down in Chapters VI, VII, VIII and XII." This provision, once again, speaks the language of specific powers rather than absolute fiat. This means that the SC acts within limit and should it go above its stipulated functions, sanctions need be meted out. Although the interpretation of this provision is also not without difficulty, the limitations

[289]Art. 103 of UN Charter states;In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.
[290]UN Charter Op. cit p.2
[291] Ibid

contained in Article 24(2), which provides that the Council is bound to act only in accordance with the purposes and principles of the United Nations, continue to be meaningful.

In particular, and while the Council has a wide discretion with respect to making determinations under Article 39, it is not omnipotent, especially with regard to the measures it seeks to implement following its determination under Article 39. Thus, when the Security Council characterizes a situation as a threat to international peace and security and adopts certain measures in response, it is obliged to respect existing international law at least in terms of the implementation and application of those measures. Furthermore, powers attributed to United Nations organs may be exercised only with respect to the subject-matter prescribed by the constituent instrument, and in principle the political organs cannot make determinations in areas beyond this designated institutional competence.

In addition, Article 2[292] of the UN Charter suggests further limitations in providing that the 'purposes and principles of the UN Charter' shall bind 'the Organization and its Members.' Within this general obligation to respect the 'purposes and principles of the UN Charter', of particular relevance to the exercise of Security Council powers are those principles contained in Article 2(7)[293], concerning the 'reserved domain' of member states and Article 1 of the UN Charter, referring to the 'principles of international law and justice'. Despite this limitations as enshrined in the Charter, one begins to doubt how efficacious the Security Council especially its permanent members follow it.

[292] Ibid

[293] Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

4.2.2Limitations deriving from the purposes and principles of the UN Charter

Article 2(7)[294] of the UN Charter gives us one of the'purposes and principles of the UN Charter' that the Security Council is in general obliged to respect. This is pertaining to the sphere of domestic jurisdiction reserved to member states. Although Chapter VII measures constitute an express exception to the operation of Article 2(7), it is wrong to assume that the sphere of domestic jurisdiction of states and that of their component institutions disappears entirely once Chapter VII is invoked. A sphere of application of domestic jurisdiction for states persists, despite the overall subordination of Article 2(7) to Chapter VII of the UN Charter.

The interpretation of Article 2(7) in relation to the application of enforcement measures was at issue in *Prosecutor* v. *TihomirBlaskic*[295], concerning the power of the ICTY Office of the Prosecutor to issue subpoenaducestecum[296] to state officials and state organs in the former Yugoslavia. The Prosecutor's request for the discovery of documents relevant to the alleged crimes, which were said to be in the custody of Croatia itself, the Croatian Minister of Defence, the Republic of Bosnia and Herzegovina (one of the two entities within Bosnia and Herzegovina), and the Custodian of the Records of the Central Archive of what was formerly the Ministry of Defence of the Croatian Community of Herceg Bosnia, had clear ramifications for state prerogatives (especially in the realm of national security). However, the Appeals Chamber, despite acknowledging the legitimate national interests protected by Article 2(7), undertook only a partial analysis and thus failed to do justice to the complex interplay of forces at issue. It noted that:

[294] Art. 2(7) UN Charter op cit. p.31 provides that 'nothing contained in the present Charter shall authorise the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State … but this principle shall not prejudice the application of enforcement measures under Chapter VII'
[295](1997). 110 *ILR* 723–30
[296]Subpoena the corporate records.

"Admittedly, customary international rules do protect the national security of States by prohibiting every State from interfering with or intruding into the domestic jurisdiction, including national security matters, of other States." These rules are reflected in Article 2(7) of the UN Charter with regard to the relations between Member States of the United Nations and the Organization. However, Article 2(7) of the Charter provides for a significant exception to the impenetrability of domestic jurisdiction in respect of Chapter VII[297] enforcement measure. As the status of the international Tribunal has been adopted pursuant to this very chapter, it can pierce this realm.

No attempt was made to balance the particular powers of the ICTY and the Security Council against the statehood and jurisdiction of successor states to the former Yugoslavia and its component entities, even though it is doubtful whether Art. 2(7) can provide the rationale for disregarding entirely the jurisdiction reach of the institution of states. Furthermore, even if it's the case that the sphere of operation of Art. 2(7) is completelyprecluded by the adoption of a measure under Chapter VII (such as the adoption of the ICTY Statute undoubtedly was), the Appeals Chamber did not directly consider whether this could also apply to the consequent exercise of particular enforcement powers by the Office of the Prosecutor, an organ created by the ICTY Statute.

Another limitation in terms of the Security Council's general obligation to respect the 'purposes and principles of the United Nations Charter' includes, under Article 1, the obligation to respect 'principles of international law and justice'. As with Article 2(7)[298], Article 1 is made expressly subject to measures taken under Chapter VII. However, the Security Council can still

[297] UN Charter Op. cit . P.2
[298] Ibid

nevertheless not act in complete disregard of existing international law, even after Chapter VII has been invoked.

In particular, and while the Council has a wide discretion with respect to making determinations under Article 39,[299] it is not omnipotent, especially with regard to the measures it seeks to implement following its determination under Article 39. Thus, when the Security Council characterizes a situation as a threat to international peace and security and adopts certain measures in response, it is obliged to respect existing international law at least in terms of the implementation and application of those measures. Furthermore, powers attributed to United Nations organs may be exercised only with respect to the subject-matter prescribed by the constituent instrument, and in principle the political organs cannot make determinations in areas beyond this designated institutional competence.

One other area oflimitations is based on ratione materiae.[300]. This is expressed upon the Security Council's competence where the Council has made a determination of a threat to the peace, breach of the peace, or act of aggression which is in principle intra vires,problems of legality are entailed if, in the course of implementing this decision, it adopts a measure which is on its face incompatible with general international law or the normal application of multilateral standard-setting treaties.

An example of where this was alleged to have occurred is provided by negotiations between the Security Council and the Government of Libya following the Lockerbie incident. In

[299] ibid.
[300] By reason of the matter involved

Resolution 731[301], adopted by the Security Council under Chapter VII, the Council demanded the extradition of two Libyan nationals and thus made dispositions in an area governed by precise principles of public international law. Resolution 731 simply adopted the demands of the United Kingdom and the United States and made no reference to considerations of international law. One such principle is that extradition can only take place on the basis of an extradition treaty. In the case of Libya the two states demanding the surrender of two Libyan nationals do not have extradition treaties with Libya and have adopted the position that the Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation of 1971 was not applicable. Libya thus instituted proceedings in the International Court of Justice against the United Kingdom and the United States in respect of a dispute over the interpretation and application of the Montreal Convention.[302]

A further example may be found in the demarcation of boundaries following the Gulf War. The Security Council, in the aftermath of the conflict, determined that the situation constituted a 'threat to the peace' and was thus entitled to adopt wholecomplete array of measures in response, including the direction that the question of the boundary between Iraq and Kuwait be settled. However, the demarcation of boundaries is once again an area which is carefully regulated by well-established principles of international law. In this regard, however, numerous anomalies with regard to Resolution 687 of 3 April 1991 (where the Security Council purported to demarcate the Iraqi boundary) can be noted. As Brownlie explains:

[301]UN, SC Resolution 731. available at http://www.undoc.org/charter, Accessed on 14/09/2013 at 3:26pm
[302]Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. UnitedStates of America), Application, 3 March 1992, available at http://www.icj-cij.org. Accessed on 14/05/2013 at 6:34pm

> it is probable that the alignment as such was disputed and that, therefore, the adoption of a particular alignment by the Security Council involved rather more than a 'demarcation'. If this is correct, then the Security Council adopted a role which is inappropriate and incompatible with general international law … It is one thing to effect a restoration of Kuwaiti sovereignty on the basis of the *status quo* prior to Iraq's invasion. It is quite another to impose a boundary in the absence either of bilateral negotiation and agreement or an arbitration or reference to the International Court.[303]

As Hersch Lauterpacht has also observed, No rule is more firmly embedded in the practice of modern international law than the principle that States are not bound, in the absence of an agreement to the contrary, to submit their disputes with other States to final adjudication by a third party.[304]

Another illustration of limitations ratione materiae upon the competence of UN organs concerns purported dispositions of territory. The concern that United Nations organs conform to the UN Charter and refrain from any excess of powers in this manner is reflected in the written statement which France contributed to the *Namibia* advisory opinion. There, referring this time to the General Assembly, it contested the Assembly's subject-matter competence in the following terms:

> Nowhere in the text setting forth the functions of the General Assembly … can any mention be found of a competence enabling that organ to 'decide' whether this or that territory belongs to this or that State … The General Assembly has behaved as if it considered itself invested with legislative power on a universal scale, one which empowers it not only to formulate binding legal rules for all, even if they add to the Charter or modify it, but also to attach a power of sanction to those rules …

[25]Lauterpacht, H., (1958), *The Development of International Law by the International Court of Justice*.London, p158.
[304]Ibid

Thus we are faced with a decision of the General Assembly which was taken ultra vires.[305]

4.2.3Limits fashioning to discretionary powers

In this regard, it is possible to find, within the opinions of both learned writers and the jurisprudence of international courts, various devices which may assist in identifying limits to the exercise of Security Council powers under Chapter VII of the Charter.

One way of approaching the question of Security Council findings under Article 39 is to consider that the Council does not have a discretionary power so much as a margin of appreciation. This doctrine has implicitly figured in several ICJ dissenting or separate opinions for example, in the dissenting judgment of Judge Fitzmaurice in the *Namibia Case*[306], he argued that legality in the law and practice of the Security Council is essential, "because of the all too great ease with which any acutely controversial international situation can be represented as involving a latent threat to peace and security, even where it is really too remote genuinely to constitute one." "Without these limitations, the functions of the Security Council could be used for purposes never originally intended."[307]Which point out that the freedom entrusted to UN members is not unlimited and that, even if they have a discretionary right, they may not abuse it. This point was also emphasized by Judge Alvarez in the Corfu Channel (Merits) Case.[308] Judge Jennings, dissenting opinion concerning discretionary powers control stated that:

> The first principle of applicable law is this: that all discretionary powers of lawful decision-making are necessarily derived from the law, and are therefore governed and qualified by the law. This must be so if only

[305]UN,(1970), *Legal Consequences for States of the Continued Presence of South Africa inNamibia* (South West Africa) notwithstanding Security Council Resolution 276 Advisory Opinion, ICJ Rep. 1971, 16 available at http:// www.Oxfordscholarship.com/view/10.1093/acprof:oso, Accessed on 14/09/2013 at 8:24pm
[306] Ibid.
[307]Manusama, K.,(2006) op.cit p.11
[308]Corfu Channel (United Kingdom v Albania), Merits, ICJ Rep 1949, at 4 ff (9 April)

> because the sole authority of such decisions flows itself from the law. It is not logically possible to claim to represent the power and authority of the law, and at the same time, claim to be above the law.[309]

Judge Spender on his part stated that because the Charter is a multilateral treaty, "it cannot be altered at the will of the majority of the Member States." Thus, the right of the organs "to interpret the Charter gives them no power to alter it.''[310]

Gowlland-Debbas also speaks of an abuse of rights arising from failure by states to exercise their rights in good faith and with due regard to the consequences.A similar approach is suggested by BenedettoConforti, who argues that 'State behaviour cannot be condemned by the Council, and consequently, cannot be subsumed under Chapter VII measures, if that behaviour is not considered in some way a genuine threat to the peace by the International Community'[311] This suggests that the Council must therefore at least apply its powers of appreciation and identify some factual and logical matrix between the events in question and the Council's determination of threat to, or breach of, the peace. It thus cannot act arbitrarily, such as by determining literally anything to constitute a threat to peace and international security.This idea is supported by Judge Morelli who by him believe the principle of legality applicable, after which he quickly went on to discuss the aftermath of invalidity of certain acts.[312] The Court and the judges who appended their own views to that of the Court recognised that legality was a vital element in the actions of the UN organs and agreed that lawful action by an organ "must be based upon *intra vires* action."[313]Something resembling this doctrine seems to have been implicitly invoked by Libya in

[309]Ibid
[310]Ibid
[311]Conforti, B., (1993), 'Le pouvoir discretionnaire du Conseil' in Dupuy, J. (ed.), The Development of the Role of the Security Council; Dordrecht, Berlin, p. 51–60.
[312]Judge Morelli in the Certain Expenses opinion, cited in Erika, D. W., (2004) *The Chapter VII Powers of the United Nations Security Council,* Hart Publishing, Oxford, England, P.58
[313]Manusama, K., (2006)op.cit p. 11

Lockerbie, where, as mentioned above, it alleged that the Security Council had employed its power to characterize the situation for purposes of Chapter VII simply as a pretext to avoid applying the Montreal Convention.

Reflecting onimproper purposesconcerns, a few separate and dissenting opinions of the ICJ recognize the possibility of the Council's basing its decisions on purposes alien to the UN Charter.In particular, Judge Fitzmaurice, in his dissenting opinion in the *Namibia* opinion, expressed concern regarding the potential for the Security Councilto base its determinations upon ulterior purposes and said of Article 24 of the Charter that 'it does not limit the occasions on which the Security Council can act in the preservation of peace and security, provided the threat said to be involved is not a mere figment or pretext'. He added that certain limitations on the powers of the Security Council are necessary because of the all too great ease with which any acutely controversial international situation can be represented as involving a latent threat to peace and security, even where it is really too remote genuinely to constitute one. Without these limitations, the functions of the Security Council could be used for purposes never originally intended … such as where there was no threat to peace and security other than such as might be artificially created as a pretext for the realization of ulterior purposes. Of course, proof of such ulterior purposes may not always be easily ascertainable. However, this is a perennial problem when evaluating matters of such exceptional subjectivity as the presumed motives of international actors. In spite of this, Brownlie reiterates that 'a determination of a threat to the peace … cannot be used as a basis for action which if evidence so indicates is for collateral and independent purposes, such as the overthrow of a government or the partition of a State. Such

.

questions of *vires* are clear enough as a matter of principle, provided the evidence of collateral purposes can be marshalled.

Amidst the concern of judicial bodies to identify limits to Security Council powers, these bodies have also, on occasion, rejected certain suggested criteria as appropriate mechanisms for circumscribing the Council's powers of appreciation. For instance, it is clear that the legality of Security Council action cannot be evaluated on aretroactive basis in terms of the efficacy of the measures adopted. In *Prosecutor* v. *Tadić*,[314]the Appeals Chamber of the ICTY itself reasoned that the Security Council was not devoid of legal constraints, but nevertheless "enjoys a wide margin of discretion in choosing the course of action" and "evaluating the appropriateness of the measures to be taken". The ICTY, on the basis of a textual analysis of Article 41, considered that the provision formed the legal basis of the Council's authority to establish the Tribunal. However, although Article 41[315] may be non-exhaustive, the establishment of tribunals was not originally contemplated and does not seem to be in line with the basic premise of Article 41, namely that of coercing a state into compliance with demands made by the Security Council to counter a threat or breach of the peace, or act of aggression.[316]

It was argued before the Appeals Chamber that the establishment of the International Tribunal had in reality not promoted, nor was it capable of promoting, international peace, as the current situation in the former Yugoslavia demonstrated. In evaluating the appropriateness of the measures adopted by the Security Council, the ICTY held that:

> Article 39 leaves the choice of means and their evaluation to the Security Council, which enjoys wide discretionary powers in this regard; and it could

[314]Prosecutor v. Dusko Tadiç aka "Dule", Case No. IT-94-AR72, A.Ch., 2 October 1995, at paras. 28,31, cited in: Manusama, K., (2006) op cit p.110
[315] UN Charter op. cit p.2
[316]Ibid

> not have been otherwise, as such a choice involves political evaluation of highly complex and dynamic situations. It would be a total misconception of what are the criteria of legality and validity in law to test the legality of such measures *ex post facto* by their success or failure to achieve their ends.

It was also argued in *Tadić* that the Security Council had been inconsistent in creating this Tribunal while not taking a similar step in the case of other areas of conflict in which violations of international humanitarian law may have occurred. However, it is clear from the Appeals Chamber's acknowledgment of the Security Council's 'choice … involving a political evaluation of highly complex and dynamic situations' and its lack of regard to the inconsistencies suggested by the Security Council's acting to create the Tribunal while not taking similar steps in relation to other conflicts that the Security Council's *failure* to adopt Chapter VII measures in response to a situation alleged to constitute a threat to international peace and security could also not support an allegation of *ultra vires*.

4.2.4 Limits based on jus cogens

Although the Security Council may impinge on customary international law or treaty law when maintaining international peace and security, it is mostly agreed that these impingements find their limits in peremptory norms of international law, otherwise known as *ius cogens*. The first question that comes to mind is whether this approach would result in an over-extension of the role and purpose of the notion of *ius cogens*, which was initially developed in the context of treaty law[317].

In accordance with the principles of treaty law, a treaty is null and void if it is concluded in conflict with a peremptory norm of general international law (ie *ius cogens*). States parties

[317]DE Wet,E., (2004) The Chapter VIIPowers of the United NationsSecurity Council;Hart Publishing,Oregon Portland, p.187

have to eliminate as far as possible the consequences of acts performed in reliance on provisions in conflict with the peremptory norm, and should bring their mutual relations in conformity with the peremptory norm. If one were to use the prohibition against torture as an example, it would mean that any treaty that provides for the transfer of detainees from one country to another in order to facilitate torture practices during questioning, would be null and void. Where a treaty itself does not violate a *ius cogens* norm, but the execution of certain obligations under the treaty would have such effect, the state is relieved from giving effect to the obligation in question. The treaty itself would, however, remain valid. Thus, the obligations existing under an extradition treaty would fall away if it resulted in the extradition of a person to a country where he or she faced torture. The treaty itself would nonetheless remain intact.[318]

As the Charter also is a treaty, it seems logical that a similar rationale should apply. Thus, where the execution of an obligation under the Charter such as a binding Security Council decision would result in a violation of a *ius cogens* norm, member states would be relieved from giving effect to the obligation in question. The fact that the Charter is also the constitutive document of an international organisation with separate legal personality would not justify a deviation from this conclusion. The mere fact that the organisation itself can act independently from the member states does not change the fact that the obligations imposed by the organisation result from a treaty and may therefore not conflict with the norm of *ius cogens*. Any other conclusion would effectively allow states to circumvent their most fundamental international obligations by creating an international organisation. This, in turn, would undermine the logic that states cannot confer more powers to organs of international organisations than they can exercise themselves. For if states may not conclude an agreement in accordance with which they

[318] Ibid

can deviate from peremptory norms of international law themselves, they would also not be able to conclude an agreement that invests an international organisation with the power to do so.[319]

This line of argument does, however, presuppose that the delegation of powers by member states to the organisation is not a once-only event that coincides with its creation. Instead, it is an ongoing interaction as a result of which the powers delegated to the organisation are afterwards limited by the development of *ius cogens*. An organ such as the Security Council therefore has to take into account the evolution of new *ius cogens* norm when adopting enforcement measures. If the delegation of powers consisted of a single action that did not provide for any ongoing interaction (ie "progressive limitation"), the Security Council would not be bound to those *ius cogens* norms which developed after the entering into force of the Charter. These norms would only limit the powers of member states when acting individually and would not affect the powers previously conferred on the Security Council.[320]

Since the concept of *ius cogens* was only introduced in the Vienna Convention in 1969, it would effectively mean that none of the *ius cogens* norms that are currently recognised under international law would be applicable to the Security Council. As a result, states could instrumentalise the collective security system in order to engage in slavery, apartheid or even genocide, provided that the requisite majority inthe Security Council can be secured. In order to avoid such a clearly unacceptable situation, the conferral of powers on the Security Council has to be regarded as an ongoing interaction, to the extent that these powers are afterwards limited by the development of *ius cogens*.[321]

Although most authors agree that *ius cogens* binds states acting individually (unorganised) as well as collectively within the United Nations, some have submitted that the

[319]Ibid
[320]Ibid
[321]Ibid

latter is not the case. According to this line of argument the Security Council, if bound by *ius cogens*, would have to intervene against a party responsible for the violation of a *ius cogens* norm. This, in turn, implies that the Security Council would have to allocate responsibility for the violations of a *ius cogens* norm before resorting to enforcement measures. Such an obligation would run counter to the flexibility inherent to Chapter VII of the Charter, which does not require a legal evaluation of the positions of the parties by the Security Council before taking action. This argument is flawed in that it focuses on *iuscogens* in connection with the *subjects* against which Security Council action is taken, instead of the *type* of action to be undertaken by the Security Council. Section 2 of this chapter has already outlined that the Security Council neither has to resort to enforcement measures, nor does it—where it does decide to adopt such measures—first have to determine the substantive legal position of the parties, or limit the enforcement measures to those parties responsible for violations of international law.This does not change the fact, however, that in choosing the *type* of enforcement measures for maintaining or restoring international peace, the Security Council is bound by the norms of *ius cogens*.[322]

Although there is no clarity as to all the norms that would belong to *ius cogens*, a core of such norms has been identified by authors. It includesthe prohibition of the unilateral use of force, the right to self-defence, theprohibition of genocide, the prohibition of the violation of basic norms of international humanitarian law, the prohibition of racial discrimination and slavery, and the right to self-determination. Chapter 6 (2.2)and chapter 9 (2.1.2.), respectively, will argue that the right to life and the right to a fair trial during criminal proceedings (due process) can now also be considered as elements of *ius cogens*.[323]

[322]Ibid
[323]Ibid

4.3Critique of the role of United Nations Security Councilin promoting peace and security

Criticisms on the role of the SC in the promotion of peace and security in international law are based on issues such as the manner of functioning of this body, structure of the UNSC, arm arsenal of the permanent members, the veto power, the double standard attitude, undermining the purpose and principles of the UN, the resources of the SC and a no UN standing army as examined below.

4.3.1 SC manner of functioning

The SC functions some times in a bias manner. It has been accused of dragging its feet a lot when it is faced with problems in Africa and some parts of Europe. It either acts very late[324], acts with a lukewarm attitude or refuses to act at all. It was criticized for not acting in Bosnia and Kosovo.[325] The UN is said to have failed in Rwanda as would have halted the genocide crises.[326] United Nations Secretary General, Ban Ki-Moon, acknowledged his organisation's failure to quell the 1994 Genocide against the Tutsi that claimed over one million lives. "We failed in Rwanda. The scale of the massacre almost defies comprehension. The world must never be allowed to forget the savage potential that lingers in the human heart."[327] The lukewarm attitude of the SC was also seen in the Sierra Leon conflict that devastated the country and the SC did not want to send UN peacekeeping forces there and did not also want to authorize ECOMOG

[324]Bart, M.J., (2012) Variable Multipolarity and U.N. Security Council Reform;Vol. 53, Nu.2 P.454
See also The Rwanda Genocide. Ban Ki Moon himself said late intervention by the UN in Rwanda is a failure on the side of this organization. Availaible athttp://www.Aljazeera.com viewed on 26/ 05/2013 at 3:25pm
see also Ivan, S .A., (2007)*Revival of the Just War Theory*? In: Schmitt, M.N. and Jelena, P. (ed)International Law and Armed Conflict: Exploring the Faultlines. Martinus Nijhoff Publishers, Leiden. Ps.1-21
[325]Bart, M.J., (2012) op. cit p.115
[326]UN, (2004) David Malone, President of the International Peace Academy expressed this view in , World Chronicle, United Nations, New York, P2
[327]available at: http://www.newtimes.co.rw/news/index.php? Accessed on 14-06-2013 21:3 pm

intervention as the UN Charter requires prior authorization by the Council.[328] Afterwards the UN Security Council welcomed ECOMOG intervention issued and back dated the resolution there by, legitimising it.[329]If ECOMOG did not forcefully enter and restore the legitimate government and chase out the rebels, the SC would have waited for calamity and thus be apportioning blames or giving apologies later on.

Members of the UN are particularly offended by the Council's method of doing business behind closed doors. Part of the problem is a traditional practice of "informal consultations" that are not public and produce no minutes or reports. Worse still, the Permanent 5 often meet privately, excluding other Council members, while they work out resolutions and effectively decide most of the rest of the Council's business.Many complained that they had no advance notice of Council resolutions, even when the resolutions have had a great impact on their countries.[330]

The relations between the Security Council and the General Assembly (GA) are strained and it is not just because the Council is an exclusive club of fifteen members that does not necessarily act according to the best interests of the majority of the United Nations members. As Robert Hill pointed out, the fact that this club is able to pass binding resolutions whilst the resolutions of the GA with 193 members are not legally binding and the belief of many UN members that the

[328] Art. 53, UN Charter op. cit p. 31

[329]UN, S/FRST/1997/36 Statement by the President of the Security Council of United Nations, endorsing the initiative of ECOWAS in Sierra Leone. Sierra Leone: cited in Goldmann, M.,(2004)*African Solutions to African Problems;*Routledge, New York, p.112

[330]James, P., (2013)*Security Council Reform*; Global Policy Forum http://www.globalpolicy.org/visitctr/about.htm Accessed on14- 09- 2013 at 4:56 pm

UNSC is increasingly expanding its mandate are other contributing factors to this uncomfortable relationship.[331]

4.3.2The structure of the UNSC.

In view of the important functions, there can be little doubt that the Security Council should be an organ of limited membership, capable of acting timely, decisively and with the power to enforce its decisions[332] The size of the Council is not reflective of the UN‟ s growing membership and is at odds with the contents of Article 2 of the UN Charter; namely the "principle of the sovereign equality of all...Members". The structure of the SC is not compatible with the current realities of the world.[333]

With increase in the number of the members in the GA,(51 to 191) there is need to increase not only the number of the permanent members of the SC but also the non-permanent members to create some balance in the work load, cultural and geographical diversity. The regional representation of the Council has attracted much criticism as well. The UNSC has two Western European permanent members while Africa, the second most populous continent and South America has no permanent representatives. The number of seats in the council is supposed to be equal for every continent. Africa in its state as the world`s most unstable continent, the solution to its problems is determined by people who do not master the people's culture, tradition, terrain and a host of so many parameters needed to settle conflict in this area.This expansion would not only represent the increased UN membership, but it would also add a more

[331] Sahar, O., (2011)*The United Nations Security Council: Its Veto Power and Its Reform;* available at http://www.arts.usyd.edu.au/centres/cpacs Accessed on 14- 11- 2013 at 3:56pm
[332]Schrijver, O., (2007)*Reforming the UN Security Council in Pursuance of Collective Security;*Journal of Conflict & Security Law, Oxford University Press available at http://www.jstor.org/page/info/about/policies/terms.jsp Accessed on14- 11- 2013 at 4:13pm
[333]Sahar,O.,(2011)op. cit P.16

representative mix of ideas and proposed solutions to address security problems the world faces with a lot of objectiveness and fairness that will bring a long lasting solution.[334]

4.3.3Arm arsenal of UNSC permanent members.

Another weak point of the Council to be pointed out is that the permanent members of the Council, at least in the last decade, have occupied the first five positions of the top ten arms exporting countries in the world.[335]The p-5 members have huge stock pile of light and heavy arms, biological and nuclear weapons. Some of the members even protect some of their friendlycountries who are in possession of these weapons from condemnations and sanctions.[336] Article 26 of the UN Charter states that in order to maintain international peace and security, "the Security Council shall be responsible for formulating, with the assistance of the Military Staff Committee...plans to be submitted to the Members of the United Nations for the establishment of a system of the regulation of armament". Therefore, the P5 members of the Security Council are in charge of establishing a system of armament regulation and have to control that big trade. This conflict of interest does not allow the Security Council to fulfill its responsibility better. A unanimous decision cannot be arrived at in the SC on this Syrian crisis because Russia is protecting her interest there as the major arm seller to the Assad Regime. Jimmy Carter acknowledged and explained well in his 1976 presidential campaign, saying that "we can't have it both ways. We can't be both the world's leading champion of peace and the world's leading supplier of arms."[337]This is telling the international community that the great powers of the world can't be there to keep peace and at the same time, be the world`s leaders in arms production.

---

[334] Krasno,,J.S.,*Legitimacy, Representation, and Accountability: A Proposal for UN Security Council Reform*

[335]SIPRI,(2013) op.cit p. 17

[336]Isreal is always protected by USA from condemnation and sanctions of her nuclear weapons stockpile.

[337] Anup, S.,(2007) *The Arms Trade is Big Business, Global Issues* Website, http://www.globalissues.org/article/74/the-arms-trade-is-big-business, viewed on 28 August 2011

4.3.4The veto power of the permanent members

Nearly all UN members outside the P-5 feel very strongly about the veto. Many have advocated the limitation of veto use as a step towards a long process for veto abolition.[338]The concept of creating a global organization of member states dedicated to preserving international peace through collective security is highly violated with use of this veto.[339]The use of veto power has become distant from its initial reason. It has turned into a tool for protecting national interests of permanent members or their strategic allies. In this light important points are not being programmed on the agenda to be discussed at the SC meeting aimed at maintaining international peace and security. The members have used this veto to stop the condemnation of certain acts that threaten international peace and security. This power has been used by these countries at various times. Russia with its extended interest in the Balkan region, vetoed a resolution on Bosnia and Herzegovina and after 2008 Russia-Georgia crisis, blocked the passage of a resolution that intended to extend the UN Observer Mission's mandate in Georgia and Abkhazia. Moreover, together with China, it did not let the Security Council condemn human right abuses in Burma and Zimbabwe; both these being important economic allies.

In 1997 China vetoed a popular resolution which intended to authorise the deployment of observers to verify the ceasefire in Guatemala and in 1999 blocked a resolution regarding the extension of the operation of United Nations Preventive Deployment Force (UNPREDEP) in Macedonia. The reason for both of these negative votes was the political ties of Macedonia and

[338]Shairi, M.,(2005). *Voting for the Veto: India in a Reformed UN*The Foreign Policy Centre, London; United Kingdom Availaible athttp://www.fpc.org.uk/publications; Accessed on 14/03/2013at 8:34pm
[339]Calvero, P., (1945) *The United States and the Founding of the United Nations,* available at http://www.state.gov/r/pa/ho/pubs/fs/55407.htm, Accessed on 14/09/2013 28 11 2013, at 4:35pm

Guatemala with Taiwan. China used its veto power as a political weapon to punish countries for recognising Taiwan as an independent sovereign state.

The USA has been active in preventing the UNSC from adopting resolutions condemning Israeli settlement activities in East Jerusalem, asking for the withdrawal of Israeli forces from Gaza, calling the construction of security wall in the West Bank illegal and many other cases that involved condemnation of actions carried out by Israel. A new kind of veto is increasingly in use nowadays, countries are increasingly using threats of veto to keep an issue off the agenda of the Security Council and in order to protect their international legitimacy. This is known as "pocket veto" (namely the threat of the use of veto). Private meetings of the Permanent FiveOn April and June 2011, in the heart of the intense violence in the course of the Syrian crisis, Russia and China threatened to veto any resolution taken by the Council meant to condemn and call to halt Syria end its violent crackdown against protestors. Russia`s interest here is to maintain its position as major arm supply to Syria government and not to do justice of restoring peace in that war torn region.[340]

All in all, approximately one quarter of all the vetoes cast since the creation of the United Nations have been directed against applications for membership. Thus, the Soviet Union used its veto no less than 51 times to block the applications of Kuwait, Mauritania, Vietnam, North Korea, South Korea, Japan, Spain, Laos, Cambodia, Libya, Nepal, Ceylon, Finland, Austria, Italy, Portugal, Ireland and Jordan. The United States moreover blocked the application of Vietnam six consecutive times. China used its veto twice: to reject the membership of Mongolia

[340]News,Aljazeera TV,8:00 pm Sunday 27/05/ 2013

in 1955 and to reject the Bangladeshi application in 1972. The unbridled recourse to the veto to block new Member States is hard to reconcile with the goal of universality of the UN[341].

4.3.5 Its double standard attitude

The Security Council has often been criticized for pursuing double standards. The Saudi foreign minister Prince Saud al-Faisal while turning down non-permanent seat to the UNSC criticised this body as having "Work mechanisms and double-standards on the Security Council prevent it from carrying out its duties and assuming its responsibilities in keeping world peace."This thus affirms the double standard attitude criticized[342].The preamble of the U.N. Charter includes, however, the pledge of U.N. members to "reaffirm faith . . . in the equal rights . . . of nations large and small"[343] Article 2(1) of the U.N. Charter also places a duty upon both the United Nations (and its organs) and its members to act in accordance with the "principle of the sovereign equality of all its Members."[344] These obligations extend to all purposes of the U.N. Charter (enumerated under Article 1), including action for the maintenance of international peace and security.[345] Should the Council only respond to breaches committed by small or weak nations and fail to act when powerful nations commit similar or even more serious breaches, it would not fulfill its duty to maintain international peace and security and the respect for the principle of the sovereign equality of all U.N. members.[346] It must be remembered that Israel persistently, and without incurring any sanction, disregards SCR 487 (1981) which called on

[341]Jan, W. and Tom, R.,(2005)*Security Council Reform: A New Veto for a New Century*?available at http://www.irri-kiib.be,Accessed on12/4/2013 at 9:25 pm

[342] Angus, M., (2013) Saudis reject Security Council seat, angry over Mideast inaction Vailaible at http://www.reuters.com/article/2013/10/18/us-saudi-securitycouncil-idUSBRE99H0FL20131018. Viewed on 15/07/2015
See also Symonds, P.,(2013) Saudi Arabia turns down UN Security Council seat Availaible at http://www.eias.org/asian-news-outlook/saudi-arabia-rejects-unsc-non-permanent-seat Accessed 15/07/2014

[343]Preamble, UN Charter op. cit p.2

[344]Ibid Art. 2(1)

[345]Ibid Art. 1

[346]Like the US drone strike to various corners of the world that the SC has never commented on.

Israel to "urgently . . . place its nuclear facilities under the safeguards of the International Atomic Energy Agency" – a call reiterated by U.N. General Assembly resolutions - and noted that Israel "has not adhered to the Treaty on the Non-Proliferation of Nuclear Weapons".[347] This call was emphasised in late 2012 but she did not. Yet, no resolution by the Council has ever referred to such an act as a threat to the peace emanating from the possession by Israel of weapons of mass destruction[348] nor has any effective measure been undertaken by the Council to secure the quest of the international community for a nuclear-free zone in the Middle-East.[349] At various times in its short history, the State of Israel resorted to invasions (1985[350]and 1988[351]) in late January 2013, Israel carried out an air strike on Syrian but the SC did not condemn it as illegal.[352] Judging by the concern expressed by U.N. members and the extent of the efforts by the United Nations to deal with the conflict, there is hardly any doubt that the conflict has and continues to threaten international peace and security.[353]In spite of this persistent threat, the possession by Israel of weapons of mass destruction, and repeated and blatant breaches of the peace committed by the State of Israel, the Council has never determined that the situation in Israel-Palestine constitutes a threat to the peace, which could pave the way for U.N. enforcement measures for

[347]For example UNGA Resolution of 16 November 1984 (UN Doc. A/RES/39/14) and UNGA Resolution of 1 November 1985 (UN Doc A/RES/40/6)

[348]However, UNGA Resolution 46/39 of 6 December 1991 (and others adopted earlier and later) specifically refers to the danger to "international peace and security as a result of Israel's development and acquisition of nuclear weapons

[349]UNGA Resolution 46/30 of 6 December 1991, adopted without a vote on the establishment of a nuclear-free zone in the region of the Middle-East." (UN Doc. A/46/667), as well as UNGA Resolution 46/39 adopted on the same day on "Israeli nuclear armament" (with only US, Israel and Romania opposing the resolution).

[350]Condemned "vigorously" by SCR 573 (1985) as an "act of armed aggression perpetrated by Israel against Tunisian territory in flagrant violation of the Charter of the United Nations, international law and norms of conduct". The US drew back from such open support after an adverse global reaction, but it abstained from UN

[351]Complaint of Lebanon against Israel act of aggression though was vetoed by USA on 10/5/1988 14-1-0 S/PV. 2814 p. 58 S/19868

[352] Condemned "vigorously" by SCR 611 (1988) as an "aggression perpetrated on 16 April 1988 against the sovereignty and territorial integrity of Tunisia in flagrant violation of the Charter of the United Nations, international law and norms of conduct."

[353]In the debate preceding the vote on a draft resolution placed on the Council on 14 December 2001 (UN Doc S/2001/1199), a number of representatives (China, Singapore, Columbia, Bangladesh) referred to the conflict in the Middle East as endangering or threatening "international peace and security"..

the removal of that threat. Since 1967 alone, the United States vetoed over 40 attempts by the Council to address this situation.[354] Even modest attempts to reduce the level of violence in the area, such as through an international monitoring mechanism, have been vetoed by the United States.[355] The international community knows that USA with her allies Britain and France attacked Iraq on the pretext that she possessed weapons of mass destruction (WMD).We still see them exercising high threat against Iran and North Korea because of their arm development and possible possession of nuclear weapon. According to USA their own weapons are a threat to international peace and security while that of Israel, herfriend, is not.[356] During the Arab uprising, the governments in power of the various countries of Libya, Egypt and Syria were accused by Britain, France and USA of using excessive force to quell down the protesters. They argued that the attitude was anti democracy. At the same time, USA was supplying arms to the regime in power of Yemen and Saudi Arabia to use in suppressing the protesters. This attitude was democratic by them and could foster international peace and security.USA is engaged in fight against terrorism and Al-qaeda in particular. It is reported she is supplying armaments to the same Al-qaeda in Syria to fight Basha Al-Assad regime. Al-qaeda in Syria is no longer a threat to international peace and security. It is no longer a terrorist group.[357]

The nuclear 'double standard' is said to explain or excuse Iran's interest in obtaining nuclear-weapons capabilities. It is certainly possible that if no one else possessed nuclear weapons, Iranwould be more cooperative and the international community more insistent. But Iranian leaders insist that they do not seek nuclear weapons, and they have not said that the existence of nuclear weapons elsewhere is what motivates them to continue enrichment. Nor do

[354]Davidsson, E., (2003), The Security Council's Obligations of Good Faith; Florida Journal of International Law, Vol..XV, No4; pp.541-573, Availaible athttp://www.FJIL.org, Accessed on 14/09/2013 at 3:33 pm
[355]Ibid
[356]Double Standard, Press TV, Sunday 7:30am, 23/12/2012
[357] News, Press TV, Wednesday 800pm, 16/1/ 2013

they justify their refusalto comply with legally binding Security Council resolutions in these terms.[358359]

A related problem arises with the third of these criteria that of providing convincing evidence. Recent experience shows that states may view it in their interest to question the judgment of the IAEA and not immediately accept its conclusions. When Iran's clandestine nuclear programme was discovered, Russia, China and other states delayed action by insisting that the IAEA provide proofof Iran's intentions. The strong evidence of non-compliance presented by the IAEA was apparently not enough. Similarly, when the IAEA discovered that South Korea had performed undeclared reprocessing and enrichment experiments, the US, its close ally, lobbied other members of the agency's board of governors to ensure that it was not found in non-compliance with its safeguards agreement.

4.3.6Undermining the purposes and principles of the United Nations

China, France, Russia, the United Kingdom and the United States (the Permanent Five, or P-5), possess two crucial assets as members of the Council: a permanent seat[360]and the right of veto[361] which ensures their immunity against U.N. coercive action. Such aristocratic privileges are commonly seen as a price the international community conceded to these States for their undertaking - under the provisions of the U.N. Charter - to act in good faith for the maintenance of international peace and security. Can the P- 5 be trusted for this task? The following summary of acts and policies by the P-5 might position our mind.

[35869]Perkovich, G. et al.,(2009)*Abolishing Nuclear weapons a debate*; Carnegie Endowment,Washington.p.44available at http://www.CarnegieEndowment.org Accessed on 14/12/2013 at 4:45 pm

[360]Art. 23(1) UN, UN Charter op.cit p.31
[361]Art. 27(30), ibid

While the primary responsibility of the Council is to ensure international peace and security, the governments of the P-5 who dominate the Council are actually the world's main weapons exporters,[362]while their leaders act sometimes even as weapons super-salesmen.[363] The P-5are thus the main disseminators of tools of war among U.N. members. Such activity is hardly commensurable with their specific mandate under the U.N. Charter or with the purposes of the United Nations Organisation to work for international peace.

Each of the P-5 is a nuclear power.[364] The ICJ determined that nuclear weapons could hardly be used lawfully. As the possession, let alone deployment, of nuclear weapons is a latent threat to the peace, it follows that developing, stocking and deploying, nuclear weapons by any nation represents a threat to the peace.[365] The ICJ had moreover declared that the P-5 have not fulfilled their obligations to negotiate, in good faith, the elimination of nuclear arms.Global proliferation threats come from two main sources: large arsenals of nuclear, biological or chemical weapons held for decades by a small group of states, and the small number of weaponsnewly acquired or sought by several nations or groups that may have strong motivations for using the weapons they have[366].Each of the P-5 has committed at various times serious breaches of the U.N. Charter and of international law. Among such reported breaches figure acts

[362]*Themain exporters of major arms 2008-2012:* 1 USA, 2.Russia, *3*.Germany, *4*.France, 5.China, 6.UK cited inSIPRI Yearbook YearBook 2013Armaments, Disarmament and International Securityavailable at www.sipriyearbook.org ,Accessed on 14/11/2013 at 3:45 pm

[363]Grimmett, R. F. and Kerr, P. K.,*Conventional Arms Transfers to Developing Nations*, Available at www.crs.gov 2004-2011, accessed on 24/08/ 2012 at 5:33 pm

[364]*World Nuclear Forces 2013*; 1. USA, 2.Russia, 3.UK, 4.France, 5.China, 6.India, 7.Pakistan, 8. Israel, 9.North, 10. Korea, SIPRI Yearbook 2013 Armament Disarmament and international Security available at, www.sipriyearbook.org, Accessed on 14/11/2013 at 6:38 pm

[365]ICJ,(1996)*The legality of the threat or use of nuclear weapons* (Advisory Opinion),. By a vote 8:7 the Court ruled that "the threat or use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law."

[366]USA, Britain and France as permanent SC members jointly attacked Iraq in total violation of UN Charter and since then has made that country very unstable.US drone strikes in Pakistan, Afghanistan, Yemen and Somalia, All these have been considered as acts of aggression.

ofaggression[367], military occupation[368], international terrorism,[369]war crimes[370], and complicity with genocide.[371]

4.3.7 The resources of the SC

The Council cannot operate effectively while the UN is hamstrung by financial problems, as it has been for nearly ten years. The UN budget is actually relatively modest about $10 billion in all in 1994, or just $2 per global citizen for every activity from peacekeeping to population to child welfare and health. But several countries (particularly the US) have regularly owed hundreds of millions in arrears, pushing the UN close to bankruptcy.[372]

The Security Council has aggravated the UN's financial crisis by sharply increasing peacekeeping expenses, which jumped more than six fold in two years, from about $400 million in 1991 to about $2.5 billion in 1993. By way of comparison, the core "regular budget" of the organization was about $1.1 billion in 1991 and about $1.2 billion in 1993.[373]

[367]US drone strikes in Pakistan, Afghanistan, Yemen and Somalia have been considered acts of terrorism and aggression. The unauthorized entry into Pakistan and killing of Osama Bin Laden is considered an act of terrorism. Pevez Musharaf, former Pakistan President warned USA of that act of terrorism and next time will demand retaliation.News, PRESS TV, 7th May 2011, 7:00 PM

[368]Double Standard, Press TV,Sunday 8:00 AM, 29 September 2013. British troops in Argentina Malvinas Island is considered a form of military occupation

[369]U S drone strikes in Pakistan, Afghanistan, Yemen and Somalia have been considered acts of terrorism.

[370]Jordan. J. P.,(2007) *Beyond the Law: The Bush Administration's UnlawfulResponses in the "War" onTerror* Cambridge University Press P.17 where the ICRC labeled the Guantanamo prison interrogation process as "an intentional system of cruel, unusual and degrading treatment and a form of torture"

[371]"We in the United States and the world community did not do as much as we could have and should have done to try to limit what occurred." Bill Clinton statement of regret as a UNSC member
See also Patrick May accuses France not of helping the genocidaire*s-an* accusation that was explicitly denied in the parliamentary report but of supporting those who orchestrated the genocide.
Grunfeld. F. and Huijboom, A., (2007)*The Failure to Prevent Genocide in Rwanda*: The Role of Bystanders Martinus Nijhoff Publishers Leiden p232,234

[372]Erskine, C., (2013)Financial Reforms of the UN. available at http://www.globalpolicy.org/visitctr/about.htm accessed on 12/12/2013 at 5:44 pm

[373]Ibid

Security Council Permanent Members pay a special 22% increment over their regular assessment rate for peacekeeping operations. But the arrears of two leading members of the Council(the United States and Russia) prompt reformers to accuse these powers of irresponsibility. How, wonder the critics, can these powers agree to new spending for peacekeeping operations and then refuse to pay? New Zealand's Ambassador, Keating has proposed one kind of solution, suggesting that members in arrears should not be allowed to sit on the Council![374]The United States has asked that its peacekeeping assessment be cut from the present level of nearly a third of all costs. The new Republican Congress may simply refuse to pay this amount.[375]

4.3.8A no UN standing army

The Council does not have at its disposal any permanent military force, even a very small one. This is a serious disadvantage, especially since command and control of UN operations often devolves on Permanent Members, particularly the United States, further heightening the sense that one, or a few, great powers dominate the peacekeeping process. Brian Urquhart of the Ford Foundation, a former Under- Secretary General, has proposed that the UN construct a small, rapid-response force that could operate completely under UN command and respond quickly to emergency peacekeeping situations. Privately, high-ranking US officials are not opposed to this idea and some Pentagon and intelligence agency planners express a cautious approval. But at the policy level, because of strong Congressional opposition, the Clinton administration opposed such a move. Since the other members of the Permanent Five have reservations of their own, and reformers among the UN ambassadors are lukewarm at best, this

[374] Ibid
[375] Ibid

particular change is unlikely to emerge as part of the present reform movement. More likely, nations will set aside forces that can be called upon quickly by the UN in emergencies.

4.4 Misuse of the veto power in International Law andConsequences

The veto power of the UNSC permanent members has been a great subject of criticism too as regards its manner of functioning with this special privilege in the maintenance of peace and security in the world.The misuse of this veto power has provoked the international community to look at things differently as regard the norms of international interactions and diplomacy especially as concern the issue of maintaining peace and security. Some of the ways the international community has looked at things due to this veto privilege are examined bellow.

4.4.1Bypass of SC authorisation for Peacekeeping

The illegitimate usage of the veto privilege and threat of the hidden veto even in situations of breaches of the peace and flagrant violation of humanitarian law and leading to untold suffering has been experienced in so many situations. This has caused regional bodies to bypass the SC prior authorization for peace keeping intervention. The Economic Community of West African States (ECOWAS) intervened militarily in Liberia and Sierra Leone as a regional organisation, yet, without Security Council authorization.[376] NATO intervention in Kosovo too was without SC authorization.[377]Barak Obama even used bypassing SC authorization as precedence. He said so in his air strike campaign on Syria following the massive killing of

[376]Manusama, K.,(2006)The United NationsSecurity Council in thePost-Cold War Era: Applying the Principle of Legality, Martinus Nijhoff Publishers,Leiden. P.134
See alsoOkhovat, S.,(2011)*The United Nations Security Council: Its Veto Power and Its Reform* available at http://www.miat.org.auaccessed on 14/12/2013 P.24 at 3:55 pm
[377]Ibid

civilians with chemical weapons. He said he can do so without SC authorization because NATO did same in Kosovo without SC authorization.[378]

4.4.2 Veto used to protect the interest of the Permanent five

Another setback for the negative vote by the SC is that they use it more often to protect their ideology, hostility, suspicion and individual national interest and not for the sake of world peace.[379]ThePermanent five (P-5) members of the UNSC have relegated world interest to the background in favour of their own interests and intentions. Russia and China continuously veto concerning the Syrian crisis is to protect their interest. Russia is the main supplier of armaments to Syria. In the same light, China and Russia purchase a bulk of its oil from Syria.[380]

4.4.3 Non veto holder's states rush to ally with one or more P-5 member of the UNSC

Smaller states (Non veto holders) have made it a very importantpolicy to ally with one or more P-5 member to protect them in case of any decision to be taken against them in the SC. For this reason they violate international norms with impunity and go unsanctioned because any attempted resolution against them in the SC is vetoed by their ally. Indeed the events of the past fifteen years indicate that the P-5 have not shied away from casting such vetoes in order to protect countries with which they have close cultural, economic and/or political ties.[381] Since 1971 USA has used its veto power more than 20 times to block resolutions aimed at condemning Israel`s violation of agreements in the middle East most especially on the killing by Israeli forces

[378]News, Aljazeera TV op. cit p.120
[379]Kia, B. et al., op. cit P.108
[380]News, Aljazeera TV 8th September 2013, 3;00 Pm
[381]Wouters, J. and Ruys, T.,(2005)*Security Council Reform: A New Veto for a New Century*? available at www.irri-kiib.beAccessed on 12/ 12/2013 at 7:34 PM

of several United Nations employees and the destruction of the World Food Programme (WFP) warehouse. This was done with disregard that 12 members of the SC out of 15 voted for Resolution S/2002/1385 of December 20 2002.[382] Russia and China vetoed Resolution S/2008/447 of 11 July 2008 aimed at condemning the violence by the government of Zimbabwe against civilians after the elections of June 27 and demanding an immediate cease of attacks against and intimidation of opposition members and supporters.

4.4.4 General Assembly learns to bypass SC with creation of Uniting for Peace Resolution

Whenever the SC is faced with a decision to take on a breach of peace situation, it sometimes takes much time to an extent that untold human suffering and material loss is witnessed. All this is due to the poor usage of the veto power. In this light, the UNGA has adopted a strategy to bypass the authority and the primary responsibility of the SC to do this task through the Uniting for Peace resolution.[383] According to this resolutionwhich was condoned by the member states as well as the ICJ[384]the General Assembly could recommend measures where the Security Council, because of the veto power of the permanent members, failed to exercise its primary responsibility for the maintenance of international peace and security.[385] The consequence of the Uniting for Peace resolution is that the credibility of the SC on the usage of its veto power has been lost.

---

[382]Nahory, C.,(2008) *Subjects of UN Security Council Vetoes;*http://www.globalpolicy.org/security-council/security-council-as-an-institution/the-power-of-the-vetoaccessed on 26/03/2014. 2:25 PM
see also Wuthnow,J.,(2011) Beyond the Veto: Chinese Diplomacy in the United Nations Security Council

[383]Dapo, A. et al., (1950) "*Uniting for Peace" Old Questions and New Challenges for the U.N. Security System*: *The Role of the Security Council in the Light of the Charter's Reform*, Journal of InternationalLaw & Policy Vol. V p24

[384]ICJ Rep 1962, at 151

[385]Erika, W.,(2004) *The Chapter VII Powers of the United Nations Security Council*, Hart, Salters Boatyard,Oxford p. 46

4.4.5Use of the Veto in Nuclear Weapons Control

The attitude of some SC members towards the control of nuclear weapons is raising a lot of eyebrows in the international community. Only five countries in the entire world are authorized to possess nuclear weapons.[386] They are China, France, Russia, United Kingdom(UK), andUnited States of America (USA). USA, Russia, UK, France, China, India, Pakistan, Israel and North Korea in this order are the world leading countries in nuclear weapons possession.[387]America is very bitter about North Korea having Nuclear weapons. Through her (America) pressure, she has driven the UNSC to institute tough sanctions on Iran who is developing nuclear weapons. No attempt has ever been made on any instant to condemn or sanction Israel and India because they possess these weapons. Any attempt to sanction Israel in particular will be covered by US veto. This has pushed North Korea and Iran to press hard towards the acquisition and stockpile of this armament. All this attitude is due to US hidden veto protection on an impending condemnation on Israel's Nuclear weapons arsenal.

In 2003, Germany, the United Kingdom and France, with the High Representative, defined on behalf of Europe a strategy ofdialogue and sanctions based on one conviction: The international community cannot allow Iran to have a nuclear weapon. No one has a better strategy to offer, and if we should fail, we all know the catastrophic alternative facing us, which I summed up last year in a few words: the Iranian bomb or bombing Iran. I hope the dialogue with Iran will continue and that its leaders will realize the gravity of the stakes for their country.[388] Some workshop participants said that one of the factors explaining inaction by the UN Security

[386]UN, NPT Treaty on the Non-Proliferation of Nuclear Weapons; available at http://www.unduc.org/htmAccessed on 17/ 12/2013 at 4:45pm

[387]SIPRI,(*2013) SIPRI Yearbook 2013Armaments, Disarmament and International Security*; Oxford University Press, www.sipriyearbook.org Accessed on 17/ 12/2013 at 3:54 pm

[388]Codel, P., (2010)*Reducing and Eliminating Nuclear Weapons*: *Country Perspectives on the Challenges to Nuclear Disarmament*p.18available atwww.fissilematerials.orgAccessed on 23/12/2013

Council is the increasing importance of priorities other than non proliferation. China has made clear that it will veto any resolution adverse to North Korea.[389]Also, there was the fear that if Iran was referred to the Security Council, Russia and China would use their veto right to block any resolution adverse to Tehran, as was the case for North Korea, with no concrete outcome whatsoever.The tardiness of the Security Council in making the necessary decisions has mainly been due to the attitude of Russia and China**,** both of which have continued to threaten to veto any UNSC resolution adverse to Iran. Everyone agrees that a diplomatic solution to the crisis would be by far the best. But a weak and divided Security Council will not help in this regard.[390] In 2003, North Korea gave notice that it was withdrawing from the Nuclear none Proliferation Treaty, and in 2004 declared that it possessed nuclear weapons, without any move from the UNSC because of China threatening to use its veto right against any resolution adverse to North Korea.[391]

4.4.6 Use of the veto to block the amendment of the Charter

Citing the need to avoid conditions that led to the downfall of the League of Nations, the Permanent five members of the United Nations Security Council (UNSC) insisted on having individual vetoes over UN Charter amendments. Article 108 effectively provides each permanent member with a trump card that can overrule any efforts to weaken its formal power, although virtually all of the other 186 member states criticize the veto as inequitable. The veto has been and remains an obstacle to reform both because of the P-5's vested interests in preserving power

[389]Pilat,J. F., and Yost, D. S.,(2007)*NATOand the Future of the Nuclear Non-Proliferation Treaty,*NATO Defense College, Rome. p13
[390]Ibid
[391]Ibid

and because no provision in the charter requires them to relinquish this right.[392]In this light, the UN and its organs have undergone only a minute change not enough to meet the change of time and events.

4.4.7 Useof the veto tocontrol the Council's agenda

Permanent members use their hidden veto to control the Council's agenda and prevent the Council from taking up certain issues. Chechnya, Tibet, Xinjiang, Northern Ireland, Uganda and Colombia figure among the forgotten conflicts that the Council ignores. The Council never discusses crises that a P-5 member considers to be within its own exclusive sphere of interest.[393]

Even in earlier days, when the formal veto was used much more frequently, hidden vetoes kept key issues such as colonial wars and Cold War conflicts off the agenda. To prevent the Council from discussing taboo issues, permanent members carefully mould the monthly program of work during intense negotiations among the rotating president and the other Council members.[394]

4.4.8 Veto used to decide if a situation is substantive or procedural as it suits them

Though the UN Charter does not provide a right of veto on procedural matters, the P-5 insist on their right to set the boundaries of what may and may not be said. The P-5 argue implausibly but unshakeable that the Council makes a decision on substance (rather than a simple procedural move) when deciding what goes onto the agenda, thus making such a decision subject to a veto.[395]As seen above, the double veto arises in the classification of decisions as

[392]Thomas G. W.,(2003) *The Illusion of UN Security Council Reform :The Washington Quarterly* pp. 147–161.available at http://www.washjournalqrt.org accessed on 23/08/2013 at 07:45 PM
[393]Nahory, C., (2004), The *Hidden Veto*. Global Policy Forum. Available at http://www.globalpolicy.org/componentAccessed on 13/8/2013 at 4:44 pm
[394]Ibid
[395]Ibid

procedural or substantive. In this case, these holding of the privilege of interpretation may expand the range of the veto at will.[396]The veto highlighted, then, the clear and shared recognition that the collective security system could not deal with threats to peace emanating from the superpowers or affecting their vital interests.[397]

To conclude, any institution or body to which power is given must define the beginning and the end of such power. Such power also should be checked constantly in order that the holder should not go off hand. Criticisms should also be allowed to be made about important public bodies. These criticisms should be assessed to meet up with the necessary amendments to bring the body up to date. It is only with constructive criticism that objective amendments are made.

4.4.9Work of UNSC done by other bodies

Because of the poor usage of the veto power, important decisions that should be taken at the United Nations Security Council are being bypassed by some world organisations like the G-8 now G-7 with exclusion of Russia and NATO. If not of NATO the Kosovo crisis would have reached a regrettable level more than what the inhabitants of the area went through. The ECOMOC member states thought it very wise to intervene in Sierra Leone and stop the breach of peace situation there. The G-7 members saw the need to exclude Russia from the group to call her to order as she intrudes in the internal affairs of Ukraine.

---

[396]Hans, K.,(2008) *The Voting Procedure in the United Nations Security Council Examining a Normative Contradiction in the UN Charter and its Consequences on International Relations*

[397]Hurrell, A.,(2007) *On Global OrderPower, Values, and the Constitutionof International Society;* Oxford University Press, New York p.170

CHAPTER FIVE

SUMMARY,RECOMMENDATIONS AND CONCLUSION

5.1 Summary

This research examines the efforts of the UNSC in maintaining and promoting peace in international law. It delves on the obligation of this body to carry on this function and its commitment to achieve this goal. Chapter one of this research gives an introductory background on how the entire work looks like. It starts with the problem statement that reveals the constant breach of the peace situations, prolonged wars and experiences of untold human suffering that the UN is aimed at preventing. The UN Charter states this in its preamble. The task to prevent this kind of suffering and to maintain world peace and security was given the UNSC. Despite the role of this body, the world still experiences all the odds aimed at stopping. We then raise the objective to examine the effectiveness of the UNSC in its principal role of maintaining peace and security given the high level of breach of peace situations the world is experiencing today. The doctrinal methodology has been adopted to carry on this research. Some relevant literatures have been reviewed on this topic. This chapter also exposes the justification of this research which is the work of the regional bodies in the maintenance of peace and security that is becoming more accurate than that of the UNSC.

This then ushers in chapter two where clarifications of key concepts that are found in this research have been done. Key concepts like the meaning and nature of International Law, the meaning and nature of the concept of Peacemaking, peacekeeping and peace enforcement are seen. The nature of the UNSC and the concept of Security have also been seen.

Chapter three examines the role of the UNSC in promoting peace and security in international law. Under this topic two main issues are discussed. In the first place, the legal bases of

peacekeeping in international law are delved into. This sub head looks at the UN Charter and the Security Council mandates as the judicial authority of peace keeping in International law. The second is the role of the Security Council in International Law. Here, the functions of maintaining world peace and security and that if its proactive activities are examined besides the other functions it performs. The UNSC`s proactive role against terrorism, disarmament and human rights are examined under this head. An evaluation of some UNSC peace keeping missions in certain countries has been examined here.

Chapter four treats the limitations of the UNSC and its criticisms in its role in maintaining and promoting world peace and security. Under the limitations of the UNSC, aspects such as limitations derived from the text of the UN Charter, limitations deriving from the purposes and principles of the UN Charter, limits fashioning to discretionary powers and limits based on jus cogens are discussed. As regards its criticisms, point such as SC manner of functioning, the structure of the UNSC, Arm arsenal of UNSC permanent members and more are seen. This section also treats misuse of the veto power in International Law and Consequences.

Chapter five treats the summary, recommendations and conclusion. Here, a brief summary of every chapter is done. The findings got and the recommendations to them are also written in this topic.

5.2 Findings

In the course of this work, the researcher has come to take note of some important findings and observations that ifproper analyses are not madein terms of the cause of the problems, why the problems and a solution proffered to, will make this work fruitless. Some of the findings and observations arrived at are as discussed below.

1) The Council has for a long time been observed to lack means sufficient to fulfill its duty of maintaining international peace and security. For instance, in the aftermath of the war in Iraq launched in 2003, a High-Level Panel, convened by then U.N. Secretary-General Kofi Annan to consider revisions to the U.N. Charter and the Security Council, noted: "Decisions taken and mandates given have often lacked the essential components of realism, adequate resources and the political determination to see them through. The Secretary-General is frequently holding out a begging bowl to implement Security Council decisions."[398]Lack of a stand by military is a great problem to the SC in instances where it has to carry on prompt actions like the Rwandan genocide incident. This is because Countries usually delay when asked to send soldiers for situations like this. This statement clearly shows how desperate the SC needs sufficient resources to meet up with the challenges and difficulties of maintaining world peace and security it is going through.

2) The veto power of the P-5 is not a too good instrument for the UNSC if there needs to be transparency, objectivity, seriousness and above all earn international reputation and credibility in the workings of this body. It has often been argued that the use of the veto has blocked the ability of the Council to take effective, timely action to safeguard peace and prevent the massive loss of life. Several delegates argued that it is the duty of the Security Council under the Charter to bring about the peaceful settlement of disputes, and that if one great power could defeat the will of the remaining Council members through the use of its veto, that body could not perform its duties as expected. Due to the persistent misuse of the veto power, there has been much delay and sometimes no reaction by the SC to circumstances of threats to the peace, breaches of the peace and acts of aggression in the international community. This is witnessed in the 1994 Rwandan genocide and the ongoing

[398]High-Level Panel on Threats, Challenges and Change, *A More Secure World: Our Shared Responsibility*,

Syrian crises. The SC functioning and structure show the undemocratic nature of this body in the use of the veto power.

3) Moreover, the paucity of representation from the broad membership diminishes support for Security Council decisions. The international community is quite aware that the present structure of the UNSC is obsolete, that it does not provide adequate geographical representation, and that the monopolisation of the five permanent seats by the victorious powers at the end of World War II is no longer representative of the political, economic and military realities of the 21st century.[399] The whole of Africa as it is has no permanent representation at the UNSC. South America too does not have a permanent representative. Europe alone has three permanent members in the SC (Britain, France, and Russia). North America has one (USA) and Asia has one (China). This shows the unfairness and undemocratic nature of this body in terms of representation.

4) One cannot ignore the fact that progress towards reforming the Security Council will be made only if the member states can overcome the constitutional difficulty of amending the UN Charter. Any change in the Council's membership or in the voting power of its members requires the unanimous consent of the permanent five. The main drafters of the Charter, the United States, Britain and the Soviet Union, were not only responsible for the creation of the Security Council's structure but also for the insertion of a procedure for amendment of the UN Charter which requires the consent of the permanent five to any amendment.[400]Article 108 of the UN Charter stipulates that.

> Amendments to the present Charter shall come into force for all Members of the United Nations when they have been adopted by a vote of two thirds of the members of the General Assembly and

[399]Rodriguez, R.M.,(2010) A New Wave for the Reform of the Security Council of the United Nations: Great Expectations but Little Results, Master degree dissertation unpublished.P.23
[400] Ibid

> ratified in accordance with their respective constitutional processes by two thirds of the Members of the United Nations, including all the permanent members of the Security Council.

This law is of great set back to the UN in general and the SC in particular that has been given the primary task to maintain world peace and security and has not been subjected to any reasonable change since it was formed. This means that a member of the P-5 can veto any amendment to the Charter that does not suit her interest. There is no country on this planet earth that is as populated and complex to manage as the UN and more than 90% of these countries have effected some changes in their constitution several times to meet their country`s needs. The Brazilian DeputyAmbassador to UN, Regina Dunlop acknowledges this in this statement:

> When the UN was created, there were only 51 member states, we have 193 member states. The ratio then was one permanent seat for every ten member state. Now there is only one seat for forty member state. So the number of countries that became part of the organization has evolved fourfold and we still have the same structure, with the same characteristics without diversity and without proposionality and the same applies to non permanent members which have had a limited increase in number in 1965 and again the ratio is very far from what is from the beginning. So there is some disconnection somewhere.[401]

This statement emphasis the fact that the UN laws, its structures and functioning are obsolete and need amendment and the amendments can only be effective with better laws put in place.

5) Persistent internal dissensus has become so common in the UNSC pursuit of its mission of maintaining international peace and security if the P-5 members do not have common objective in the dispute. This was seen in Bosnia where the Security Council was unable to prevent the approximately 100,000 deaths and nearly half of the Bosnian population being displaced by the war. Its delayed response, as well as that of the international community, was widely perceived to be unacceptable in the contemporary world. In the final analysis,

[401]The Debate, Aljazeera TV, 24/09/ 2013 4:30 PM

collective action of the international community, authorized by the Security Council, was executed by a select group of actors; consisting of NATO. The Security Council also executed this unaccepted attitude in, Kosovo, Rwanda and now in Syria.

5.3 Recommendations

When problems are encountered in the course of a research, solutions abound to besuggested to them in order to meet up with the expectations of the research. The recommendations to the research problems encountered are as analysed below.

1) The SC has often suffered from inadequate means to attain its objectives of maintaining international peace and security. This can be solved by pressurising all the P-5 powers who owe the UN substantial sum of money not to attend UN meetings or not even to take part in SC deliberations. Rebel and terrorist group`s funds should not only be frozen after they are discovered. They should be sent to the coffers of the UN to help resolve security issues in the areas that are unstable or where there is breach of the peace. More so, there should be the creation of a standing army to aid the SC in quick response to breach of peace situations especially since command and control of UN operations often devolves on Permanent Members, particularly the United States. Brian Urquhart of the Ford Foundation, a former Under- Secretary General, has proposed that the UN should construct a small, rapid-response force that could operate completely under UN command and respond quickly to emergency peacekeeping situations.[402]

2) The international community is not at rest with this veto misuse that has dragged so many countries in the world into long periods of instability.It frustrates the Preamble of the UN

[402]James, A. P., (2013) *Security Council Reform: Arguments about the Future of the United Nations System*. Global Policy Forum available athttp://www.globalpolicy.org/visitctr/about.htm, Accessed on 14/11/2013

Charter[403]which stands for world peace. The General Assembly's most important attempt so far to prevent the paralysis of the United Nations in measures of collective security was the Uniting for Peace Resolutionof 3rd November, 1950. This resolution attempted to counter the hindrance of the Security Council caused by the excessive use of the veto and the negligence of previous recommendations by the General Assembly. Resolution 377 A (V) states that: "failure of the Security Council to discharge its responsibilities ... does not relieve Member States of their obligations or the United Nations of its responsibility under the Charter to maintain international peace and security"[404] The General Assembly has not been very active with this measure as it has been used just five times since its adoption in 1950. Why can it not bypass the SC and take resolutions that will end the Syrian crisis and any other? It should be prompt at using this resolution. The first time this was used was in the Korean War (1950) and the last time was in the Afghanistan conflict (1980).[405] The High-Level Panel highlights the responsibility of states for the welfare of its people as well as the collective international responsibility to protect. The panel confirms the competence of the Security Council to act under Chapter VII of the U.N. Charter when massive human rights violations occur, and urges the permanent members to refrain from using the veto in cases of genocide and large-scale human rights abuses.[406]With this strategy, this is going to prevent a situation where all the members must agree in order for an action to be taken. The exercise of the veto should at all times and on all SC deliberations be supported by substantial motivation, explaining the reasons why a resolution would affect the vital interests of the Security Council member in question. It is preferable that States should explain their motivations directly to the UN

[403] ''to save succeeding generations from the scourge of war…''
[404]Hans, K.,(1991)op.cit P.2
[405]Ibid
[406]UN,(2004) *The Report of the High-Level Panel on Threats, Challenges and Change* .Available at http://www.un.org accessed on 13 /12 /2014

membership in the General Assembly.[407] This is by making it that any use of the veto be finally completed in the General Assembly special meeting. This will make this body more democratic, transparent and give it more credibility.

3) Increased geographical representation will also mean an expansion of the Council which will give the Council reasonable representativeness, much accountability and better democracy. Although dead log like which countries within the regions would hold the permanent seats and how should they be chosen will come up. But this is not a so much important issue of debate for now. The essential for now should be the will to carry on such amendments. Critics argue that a country will always protect its own interest before others` and it will therefore be difficult for one country to represent a whole region. But every country in a region cannot be permanent members of the SC. Proponents argue that regional seats are the only way to ensure a more representative, democratic and fair Council and that this will make the Council more legitimate and also more functional.

4) The first and only reform of the Security Council happened in 1965 when the number of non-permanent members increased. The main reason for this reform was that the number of the UN Member States had more than doubled and had increased from 51 to 114. Since that reform, the number of the UN Member States has increased substantially again especially because after the fall of the Soviet Union many new members joined the UN. Today, the United Nations has 193 members. This also calls for reforms to meet up with prevailing circumstances of the world.[408] The advancement and civilization of the African continent necessitates a permanent seat in the SC. Europe alone has three seats in the SC, while Asia and America have one seat each. The UN Charter should be reformed to checkmate the

[407]Wouters, J. and Ruys, T., (2005) op. cit P.20
[408]Okhovat, S.,(2011) op.cit P.24

misuse of the veto power. Either this power is out voted or a reason for every veto is given to, debated and adopted by the General Assembly. There have been some proposals regarding the veto reform ranging from limiting its usage to the vital issues of national security, to its complete abolition, as well as requests for its extension to new permanent members.[409]

5) To resolve this issue of disunity in the UNSC when it comes to decision making on salient matters, the researcher`s humble submission is that the permanent members should endeavour to keep their differences far from the issues of the UN if they want to perform this function well. Members with their personal differences can always unite to take a decision for the sake of maintaining peace and securityand after that keep to their differences. Let international interest take priority over the states national interest. With this they will dispense good service to the international community.

[409]Ibid

Bibliography

Books

Anna Akerland, (2005) Transforming Conflict and Building Peace. Sida Publishers, Sweden; p.

1Akande, D. et al., (1950) "Uniting for Peace" Old Questions and New Challenges for the U.N. Security System: The Role of the Security Council in the Light of the Charter's Reform, Journal of International Law & Policy Vol. V p24

Baldwin, D.A., (1995) 'Security Studies and the End of the Cold War', World Politics, vol. 48, no. 1, pp. 117-141

Bart, M.J., (2012) Variable Multipolarity and U.N. Security Council Reform;Vol. 53, Martinus Nijhoff Publishers, Leiden. P.454

Boger, L. W., (1977) Imperialism At Bay; Oxford University Press; Oxford p. 263

Bourantonis Dimitris., (2005) The History and Politics of UN Security Council Reform; Routledge London, Britain. P. 4

Bowett, D., (1982) The Law of International Institutions, 4th Edn Oxford University Press, London, p 33.

Boulden, J., Peace Enforcement: The United Nations Experience in Congo, Somalia, and Bosnia,

Burgess, M., (1997) Encyclopedia of Conflict Resolution, ABC-CLIO Inc, California, P. 152

Brabandere, D. E., (2009) Post-conflict Administrations in International Law, Martinus Nijhoff Publishers, Leiden, Netherlands. p.37

Conforti, B., (1993), 'Le pouvoir discretionnaire du Conseil' in Dupuy, J. (ed.), The

Donald, M.S., (1993) Peacekeeping, Peacemaking and Peace-Enforcement: The U.S. Role in the New International Order: UN publication. p. 20

Deutsch, K. W., D. Singer (1964) "Multipolar Power Systems and International Stability" World Politics, Vo. 16, No. 3. (April), pp. 390-406

DE Wet Erika., (2004) The Chapter VII Powers of the United Nations Security Council; Hart Publishing, Oregon Portland, p.187

Faleti, F. A., (2009) Theories of Social Conflict. In: Gaya, S. B. University for Peace; Introduction to Peace and Conflict Studies in West Africa, Spectrum Books Ltd. Ibadan, p. 35-57

Fleitz, H.F., (2002) Peacekeeping Fiascoes of the 1990s, Praeger Publishers, West port, p 22

Fox, W.T.R., (1949) 'Interwar International Relations Research: The American Experience', World Politics, 2, pp. 67-79.

Gaddis, J.L., (1999) Toward the Post-Cold War World', Foreign Affairs, Spring 1999, pp. 102-122

Garner Bryan A., (2oo4) Black's Law Dictionary. West Publishing Co.USA, 9th Edn. p 892

Grant Dawson., (2004) Peacemaking, Peacekeeping and Peace building: Concepts Complications and Canada's Role: Canada, Parliamentary Library P. 3

Grunfeld. F. and Huijboom, A., (2007) The Failure to Prevent Genocide in Rwanda: The Role of Bystanders Martinus Nijhoff Publishers Leiden p232,234

Haas, E. B., (1953) "The Balance of Power: Prescription, Concept, or Propaganda?" World Politics, vol. 5 no. 4 (July), pp. 442-477

Hanns W. Maull, Professor and chair of foreign policy and international relations, University of Trier

Hans Köchler (2008) The Voting Procedure in the United Nations Security Council Examining a

Normative Contradiction in the UN Charter and its Consequences on International Relations

Held, D., A.,(1999) Global Transformations: Politics, Economics and Culture, Polity Press. Oxford: p.45

Hurrell, A., (2007) On Global Order Power, Values, and the Constitution of International Society; Oxford University Press, New York p.170

Ivan, S .A., (2007) Revival of the Just War Theory? In: Schmitt, M.N. and Jelena, P. (ed) International Law and Armed Conflict: Exploring the Faultlines. Martinus Nijhoff Publishers, Leiden. Ps.1-21

Jordan. J. P., (2007) Beyond the Law: The Bush Administration's Unlawful Responses in the "War" on Terror

Kennan, G., (1947) "The Sources of Soviet Conduct" Foreign Affairs, vol. 25, no.

Kofi Atta Annan., (2002) Prevention of Armed Conflict; Report of the Secretary General. UN Publication, New York P. 36

Krasno,,J.S., Legitimacy, Representation, and Accountability: A Proposal for UN Security Council Reform

Laden Mohammed Twafiq., (2007) Materials and Cases on Public International law. ABU press, Zaria. p 1

Lauterpacht, H., (1958), The Development of International Law by the International Court of Justice.London, p158.

Lebow, R. N.,and Stein, J. G., (1995) "Deterrence and the Cold War" Political Science Quarterly, vol. 110, no. 2 (Summer), p. 157-182.

Manusama, Kenneth., (2006) The United Nations Security Council in the Post-Cold War Era

Applying the Principle of Legality. Martinus Nijhoff Publishers, Leiden. P.97

Morgenthau, H.J. (1978) Politics Among Nations: The Struggle for Power and Peace, Fifth Edition, New York: P.34

Murithi Timothy, (2006) Practical Peacemaking Wisdom from Africa: Reflections on Ubuntu: The Journal of Pan African Studies, vol. 1, no.4, University of Cape Town Press, South Africa P.24

Murphy John. F., The Evolving Dimensions of International Law hard choices for the world community ;Cambridge University Press, Cambridge.2010 p. 114

Norton, M., (1994) The Principles of Keeping the Peace, Prega Publishers, London, 4th Edn. P. 1043

Nye, Jr., J.S., and Lynn-Jones, S.M., (1988) 'International Security Studies: A Report of a Conference on the State of the Field', International Security, vol. 12, no. 4, pp. 5-27.

Oppenheim, L., (2010) The Future of International Law, Oxford University Press, London. P. 43

Pascal, T., (2003) The Security Council at the Dawn of the Twenty First Century; To What Extent is it Willing and Able to Maintain International Peace And Security, UN Publication, Geneva, Switzerland P.25

Pilat, J. F., and Yost, D. S., (2007) NATO and the Future of the Nuclear Non-Proliferation Treaty, NATO Defense College, Rome. p13

Rhoda, M., (2009) United Nations Assistance Mission in Afghanistan: Background and Policy Issues, Availaible at http:// www.crs.gov Accessed on 14/06/2013, at 3:56 pm

Rosecrance, R. N., (1966) "Bipolarity, multipolarity, and the future," Conflict Resolution, vol. 10, no. 3, (September), pp. 314-327.

Rourke, J., (2000) International Politics on the World Stage, University of Connecticut press, Connecticut, p.20

Sigal, L., V., (1979) "Rethinking the Unthinkable," Foreign Policy, no. 34 (Spring 1979), p. 39.

Thomas G. W., (2003) The Illusion of UN Security Council Reform by The Center for Strategic and International Studies and the Massachusetts Institute of Technology; The Washington Quarterly pp. 147–161.

UN, (2000) Basic facts about the United Nations, Department of Public Information, New York. P. 14

UN, (2000) Resolutions and decisions of the SC. UN publication. New York p.9

Walter, D., (2011). The Evolution of Peace and Stability Operations Overview , Canadian Military,

UN, S/FRST/1997/36 Statement by the President of the Security Council of United Nations, endorsing the initiative of ECOWAS in Sierra Leone. Sierra Leone: cited in Goldmann, M.,(2004) African Solutions to African Problems; Routledge, New York, p.112

Afrique Media; Le Debate Panafricain.(live) Sunday 24 Feb. (2013); 12:30 PM

Aljazeera TV The Stream, Tuesday 18 June 2013, 8:00 am

Press TV news; Wednesday 16 Jan 2013, 800am

Electronic / Web Addresses

Abhishek Agrawal,. (2010) Role of UN in Maintenance of International Peace & Security. http://www.roleunpeace.com Accessed on 11/5/ 2013; 1:33pm.

ACPA-New York Security Council Surprise As Russians Veto Sanctions Against Russia. Available at http://www.satireandcomment.com accessed on 28/04/2014 at 01:05 pm.,

Anup, S.,(2007) The Arms Trade is Big Business, Global Issues Website, http://www.globalissues.org/article/74/the-arms-trade-is-big-business, viewed on 28

BBC, Russia says Kiev 'breaking Geneva accord' on Ukraine available at http://www.bbc.com/news/world-europe-27100749 accessed on 29/04/2014 at 2:23 pm

Brooks, R. Brewington., (1996) Combined Action Platoons: A Strategy for Peace Enforcement, Availaible at http://www.cap.org/peace, Accessed on 15/05/2013; 2:24 pm

Calvero, P., (1945) The United States and the Founding of the United Nations, available at http://www.state.gov/r/pa/ho/pubs/fs/55407.htm, Accessed on 14/09/2013 28 11 2013, at 4:35pm

Chimp Crente.,(2012) Ban Commends Rwanda's Post-genocide Recovery. available at: http://www.un.org/News/dh/latest/rwanda/htm. Accessed on 14-06-2013 at 7:45 pm

Codel, P., (2010) Reducing and Eliminating Nuclear Weapons: Country Perspectives on the Challenges to Nuclear Disarmament p.18 available at www.fissilematerials.org Accessed on 23/12/2013

David, A.B., (1997) The concept of security: Review of International Studies. P.7 available at http://www.crikey.com.au/2013/08/04/ viewed on 04/08/2013 at 2:13 pm

Davidsson, E., (2003), The Security Council's Obligations of Good Faith; Florida Journal of International Law, Vol..XV, No4; pp.541-573, Availaible at http://www.FJIL.org, Accessed on 14/09/2013 at 3:33 pm

Documentary on Rwandan genocide available at https://www.youtube.com/watch?v=u3DrvrrSgHI accessed on 28/04/2014 at 4:00 PM

Erskine Childers (2013) Financial Reforms of the UN. available at http://www.globalpolicy.org/visitctr/about.htm accessed on 12/12/2013 at 5:44 pm

Eriksen, J. H. et al., (2001) NATO Unclassified, Peace Support Operations, Availaible at http:// www.nato.org, Accessed on 23 /05/2013; 2:33

Grimmett, R. F. and Kerr, P. K., Conventional Arms Transfers to Developing Nations, Available at www.crs.gov 2004-2011, accessed on 24/08/ 2012 at 5:33 pm

Holbrooke Richards, (2009) The Principles of Peacemaking, Availaible athttp:// www.peacekeeping.com/nature. Accessed on 12 /05/2012; 12:15 pm

James, A. P., (2013) Security Council Reform: Arguments about the Future of the United Nations System. Global Policy Forum available at http://www.globalpolicy.org/visitctr/about.htm , Accessed on 14/11/2013

James, P., (2013) Security Council Reform; Global Policy Forum http://www.globalpolicy.org/visitctr/about.htm Accessed on14- 09- 2013 at 4:56 pm

Jan, W. and Tom, R., (2005) Security Council Reform: A New Veto for a New Century? available at http:// www.irri-kiib.be, Accessed on12/4/2013 at 9:25 pms

NahoryGiji Gya (2004), The Hidden Veto. Global Policy Forum. Available at http://www.globalpolicy.org/component Accessed on 13/8/2013 at 4:44 pm

NahoryGiji Gya (2008) Subjects of UN Security Council Vetoes; http://www.globalpolicy.org/security-council/security-council-as-an-institution/the-power-of-the-veto accessed on 26/03/2014. 2:25 PM

Okhovat, S.,(2011) The United Nations Security Council: Its Veto Power and Its Reform available at http://www.miat.org.au accessed on 14/12/2013 P.24 at 3:55 pm

Ontario, P. UN, (1999) Peacekeeping in the New Generation; UN publication, Availaible at http:// www.un.org/Depts/dpko 12:14 pm Accessed on 13/08/2013 at 4:35 pm

Pauline,J.,(2007) Pan African Studies, vol.1, no.4, P. 26-37, Availaible at

http://www.JPAS.org , Accessed on 13/08/2013 at 2:34 pm

Pentoran,T., (2008) Protection of Iraqi Assets. Available at http://www.globalpolicy.org/security/issues/iraq/unrole/2008/1222 assets.htm 16-06-2013; 2:23pm

Perkovich, G. et al., (2009) Abolishing Nuclear weapons a debate; Carnegie Endowment, Washington. P. 44 available at http://www.CarnegieEndowment.org Accessed on 14/12/2013 at 4:45 pm

Sahar Okhovat., (2011) The United Nations Security Council: Its Veto Power and Its Reform; available at http://www.arts.usyd.edu.au/centres/cpacs Accessed on 14- 11- 2013 at 3:56pm

Schrijver, O., (2007) Reforming the UN Security Council in Pursuance of Collective Security; Journal of Conflict & Security Law, Oxford University Press available at http://www.jstor.org/page/info/about/policies/terms.jsp Accessed on14- 11- 2013 at 4:13pm

Shairi, M., (2005). Voting for the Veto: India in a Reformed UN The Foreign Policy Centre, London; United Kingdom Availaible at http://www.fpc.org.uk/publications; Accessed on 14/03/2013at 8:34pm

SIPRI, (2013) SIPRI Yearbook 2013, Armament Disarmament and international Security. available at http://www.sipriyearbook.org accessed on 28 August 2013 at 4:26 pm

UN, (1970), Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 Advisory Opinion, ICJ Rep. 1971, 16 available at http://www.Oxfordscholarship.com/view/10.1093/acprof:oso, Accessed on 14/09/2013 at

8:24pm

UN, (1992) An Agenda for Peace Preventive diplomacy, peacemaking and peace-keeping: Report of the Secretary-General pursuant to the statement adopted by the Summit Meeting of the Security Council. Availaible at http://www.un.org/peace Accessed on 18/05/2013 2:32 pm

UN, (2000) Brahimi Report. Available at www.un.org.-Brahimi-report-un-shtml. Accessed on 23/04/2014 at 1:00pm

UN,(2003) Handbook on United Nations Multidimensional Peacekeeping Operations; Availaible at http:// www.un.org/peace Accessed on 18/05/2013, 1:45 pm

UN, (2004) Concepts of Security, United Nations: Availaible at http://www.un.org. Accessed on 28/04/2013 4:23 pm

UN, (2004) David Malone, President of the International Peace Academy expressed this view in , World Chronicle, United Nations, New York, P2

UN,(2004) The Report of the High-Level Panel on Threats, Challenges and Change .Available at http://www.un.org accessed on 13 /12 /2014

UN,(2005) The 2005 World Summit Outcome, Available at http://www.un.org accessed on 13 /12 /2014

UN, (2006) Overview of Peacemaking circle, Availaible at http://www.un.org/peace, Accessed on 13 April, 2013: 12:47pm

UN, (2006) Peace Building; Peacekeeping in Cyprus; Peacemaking; Availaible at http://www.un.org/peaces, Accessed on 18/04/2013 2:02pm

UN, (2008) The United Nations Today, Asdf. United Nations, New York. P.12

UN,The Disarmament Commission of the UN functions

UN, The International Atomic Energy Agency (IAEA)

UN. (2010). United Nations Peacekeeping Operations Principles and Guidelines; Availaible at http://www.un.org/depts/dpko, Accessed on 18/05/2013 1:33 pm

UN, (2011) Report of Secretary Generals Special Representative to Rwanda, UN, New York, p. 14

UN, (2011) Report of the Committee on the Admission of New Members concerning the application of the Republic of South Sudan for admission to membership in the United Nations available at http://www.un.org. accessed on 25/03/2014 at 2:16 PM

UN, (2011) Report of the Committee on the Admission of New Members concerning the application of Palestine for admission to membership in the United Nations available at http://www.un.org. accessed on 25/03/2014 at 2:16 PM

UN, (2012) Second Report of the Secretary-General pursuant to paragraph 6 of resolution, Availaible at http://www.un.org/sgreport/UNAMI, Accessed on 16-06-2013 5:27pm

UN, (2014) http://www.un-arm.org/Milex/Home.aspx accessed on 26/03/2014. 2:25 PM

UN, (2014) UNIDIR available at http://www.unidir.org/, accessed on 25/03/2014 at 2:26 PM

UN, (2014) Disarmament available at http://www.un.org/disarmament/WMD/Nuclear/NPT2015/PrepCom2014/ accessed on 25/03/2014 at 2:16 PM

UN, Dumbarton Oaks and Yalta; available at https://www.un.org/en/aboutun/history/dumbarton_yalta.shtml Accessed on 13/08/2013 at 4:33 pm

UN.,High-Level Panel on Threats, Challenges and Change, A More Secure World: Our Shared Responsibility,

UN, History of the UNSC; available at http://www.doxunsc.com/history, 18/06/2013, 7:18pm

UN, NPT Treaty on the Non-Proliferation of Nuclear Weapons; available at http://www.unduc.org/htm Accessed on 17/ 12/2013 at 4:45pm

UN, The Secretary-General's Bulletin on the Observance by United Nations Forces of International Humanitarian Law of 6 August (1999) (ST/SGB/1999/13) Availaible at http://www.un.org/depts/dpko. Accessed on 13/06 2013. 2:00 pm

UN, Security Council Committee established pursuant to resolution1737 (2006) available at http://www.un.org/sc/committees/1737/ accessed on 26/03/2014. 2:25 PM

UN, UNAMIR- available at: http://www.un.org/Docs/scres/1993/872epdf. Accessed on 29-06-2013 at 9:13 pm

UN, United Nations in Libya: Availaible at http://unsmil.unmissions.org/Default.aspx, Accessed on 24/06/2013 at 6:35 pm.

UN, UNAMI First Envoy, Availaible at http://www.unduc.org/security/issues/iraq/unrole/2008/0218iraqenvoy.htm; Accessed on 16-06-2013; at 5:34 pm

UN, UNOMUR- available at: http://www.un.org/Dept/dpko/co-mission/unomur/htm. Accessed on 29-06-2013 at 2:16 pm

UN, UN special Tribunal for Rwanda; available at: http://www.ictr.org/,Accessed on 14-06-2013 at 6:25 pm

UN, UN Role in Iraq, Availaible at http://www.un.org/iraq/political-issues-in-iraq/un-role-in-iraq.html, Accessed on 16-o6-2012, at 6:25pm

UN, UN in Afghanistan, Availaible at http://www.unama.unmissions.org/Default.aspx; Accessed on 23/ 06 /3013; at 6:45 pm

Wouters, J. and Ruys, T., (2005) Security Council Reform: A New Veto for a New Century? available at www.irri-kiib.be Accessed on 12/ 12/2013 at 7:34 PM

Wuthnow, J., (2011) Beyond the Veto: Chinese Diplomacy in the United Nations Security Council available at: http://www.newtimes.co.rw/news/index.php? Accessed on 14-06-2013 21:3 pm