GLOBALISATION, NATIONAL DEVELOPMENT and the LAW

Edited by
D.A GUOBADIA
EPIPHANY AZINGE

Published 2005

by

The Nigerian Institute of Advanced Legal Studies
University of Lagos Campus
Akoka
P. M. B. 12820
Lagos

for

The Nigerian Association of Law Teachers.

ISBN 978 – 2353 – 84 – 1

Printed by NIALS Press, Abuja.

Contents

13

FOSTERING INTERNATIONAL PEACE AND SECURITY: THE DIFFERENT FACETS OF THE PEACE PROCESS AND THE CONTINUING CHALLENGES OF THE UNITED NATIONS

by

Messrs Ohurogu, C.C. & Olagunju, A.G.
(Lecturers in Law, Department of Jurisprudence and International Law, Faculty of Law, Lagos State University, Ojo)

Introduction

At the apogee of his facist power, Benito Mussolini (1838-1945)[1] declared that *perpetual peace was neither possible nor desireable...* "War was to man what maternity was to woman." It may be tempting to dismiss this statement as the ranting of a war monger, but events of years past give even the most optimistic advocate of peace, some worries.

Humanity cannot, in spite of the difficulties in achieving perpetual peace, abandon hope. Every effort will be harnessed to achieve global peace, for without peace, there cannot be development. Peace and security are the basis for human existence without which life itself becomes meaningless. World leaders are aware of this, yet political, selfish economic and military considerations have led mankind to wars in which several innocent souls perished.

There are levels of peace, just as there are levels of society and existence. The focus of this paper is the United Nations and its role in fostering global peace and security.

The world body is faced with several challenges some of which appear incapable of solution, given the differences existing among the member nations and the apparent unwillingness of the more powerful nations to give up some areas of sovereignty needed to foster a more powerful supranational body capable of tackling headlong, the numerous challenges to global peace and security.

1. Mussolini ruled Italy between 1922 and 1944.

Also, the absence of an enforcement regime has been a major issue whenever the role of the United Nations role in global peace and security is in issue. Without enforcement, the laws and court adjudication often lead to nothing.

In this paper, we attempt to put the issues of global peace and security in perspective, beginning by tracing the efforts made by nations and alliances in the pre-UN era, to achieve peace, to the era of the League of Nations – the precursor of the United Nations. We also discuss the various legal agreements, the declarations on peace, the codification of laws respecting peace and security, drawing where possible, pertinent criticisms of the various instruments adopted by the global community in achieving peace and security. Finally, we will examine the challenges and prospects of a peaceful world.

Peace and Security

Peace is said to be 'the tranquility enjoyed by a political society internally, by the good order which reigns among its members and externally by the good understanding it has with all other nations.'

'Applied to the internal regulations of a nation, peace imports, in a technical sense, not merely the state of repose and security as opposed to one of violence or warfare, but also a state of public order or decorum.'[2] *The New English Dictionary* and Thesaurus[3] define security as 'the state of being secure... a protection or safeguard.' To be secured is to be 'free from danger; safe, stable, confident, assured...'

Security in this sense is synonymous with stability, reliability, confidence, prosperity, protection, etc. It is not only a feeling of being physically secure, it includes security of life itself, the components of what goes to make life worth living, an assurance of socio-economic well being and freedom from fear in all its ramifications.

Peace engenders security of life and property, growth and development. It is essential for the citizens of every nation to live in peace and feel secure internally and externally. External security comes about when nations live in peace with one another. The continued quest for peace and security is the primary mandate of the United Nations. This

2. *Catlette v. U.S. C.C.A.W.Va.*, 132 F.2d 902, 906 cited in *Black's Law Dictionary*, Sixth Ed. (1990) at page 1130.
3. New Edition, (Geddess and Grosset), (2000) at page 527.

quest for peace and security started long before the creation of the United Nations in 1945, it has continued ever since.

Pre-UN Attempts at Fostering Peace and Security

For at least two centuries, nation-states have been concerned about the rising costs and hazards of war and the advantages of creating a more stable and secure society. This began with the formation of alliances and execution of treaties seeking to foster peace, mutual security and cooperation.

Establishing an interstate organisation for the prevention of wars has been an idea that can be traced to as early as the 14th century. Many scholars and writers have been concerned as to the desirability of this and how it can be achieved.

One of such writers was Pierre Du Bois[4] who suggested the creation of an international arbitration and the establishment of an international judiciary to help maintain good interstate relationships and settle disputes.

Likewise in the *Letters of Erasmus (1466-1536),* mention was made of the desirability of creating some schemes for the establishment of a league of peace. Hugo Grotius (1583-1645) in the 17th century wrote the volumes on the laws of war and peace, while the French writer Abbe de St. Pierre proposed, in the 18th century, the creation of a federation of 19 states for the maintenance of peace.

The German philosopher, Emmanuel Kant writing on perpetual peace, suggested that something in the nature of a federation between nations for the sole purpose of doing away with war was the only rightful condition of things reconcilable with individual freedom.

Creation of Alliances

Moving from the theoretical schemes expounded by the various writers and philosophers, a step was taken towards some joint action by the creation, in September 1815, of the Holy Alliance, formed by Russia, Prussia and Austria.

Amongst other things, these nations undertook to remain united 'by the bonds of a true and indissoluble fraternity' and 'to consider each other as fellow country men... on all occasions and in all places, to lend each

4. Pierre Duboise: "Recovery of the Holy Land" (circa 1305) cited in A.A. Appadorai, *The Substance of Politics* 11th ed. 1975, *O.U.P.* at page 149.

other aid and assistance; and towards their subjects and armies, lead them in the same spirit of fraternity with which they are animated, to protect religion, peace and justice.'

Many rulers of Europe signed the treaty and were admitted to the Holy Alliance. This alliance was however vague in its terms and many of the signatories did no more than pay lip service to the provisions, hence its failure.

Russia, Prussia, Austria and Britain signed the Treaty of Chaumont in 1814. The treaty was a formal culmination of the military alliance of the four against France, and it bound the signatories first, to overthrow Napoleon and then remain in alliance for 20 years in order to maintain the territorial and political settlement to be reached after the overthrow.

An alliance of the Four (the Quadruple Alliance) was formed in November 1815 at the close of the Napoleonic Wars and the signatories pledged to maintain by force, for a period of twenty years, the arrangements previously reached at Chaumont, Vienna and Paris.

This arrangement created the so called concert of Europe, because the four powers also agreed to periodic meetings of their representatives for the purposes of consulting upon their common interests and for the consideration of the measures most salutary for the maintenance of the peace of Europe[5] and exclusion of the House of Napoleon Bonaparte from France.

The Concert failed mainly because members could not reconcile their different viewpoints. This Union of powers became more apparent than real, and so in 1822 it became ineffective.

As alliances gave way to alliances, the various nations could not achieve peace and security. Wars raged on and the escalating costs of war and the loss of lives became worrisome to the world powers. An attempt was again made to convene, this time, a conference to discuss peace and disarmament. This was the next phase in the search for global peace and security.

5. See David Thompson: *Europe Since Napoleon,* Pelican Book, revised ed. (1985) at page 96.

The Hague Conferences and Agreements on Peace

At the initiation of the Tsar of Russia, a conference aimed at promoting peace and disarmament was convened in 1899 at The Hague. This conference was to reconvene years later in 1907. The 1899 conference had 26 nations in attendance and though it was announced as the 'First International Peace Conference,' it was rather a conference to cut back the unbearable costs of an arms race.

The follow up conference at which 44 nations were present, could only reconvene in 1907, because Japan and Russia, two major participants in the earlier conference, were already at war. The Agreements were full of loopholes. They were clearly not binding without equivocation and were saturated with vague escape clauses designed to enable the signatories avoid legal restraints.

Rather than accepting a clear legal obligation to arbitrate their disputes or to have them settled in a court of law, the parties agreed only to 'use their best efforts,' 'as far as possible 'or' as far as circumstances allow.' Separate Reservations made it clear that nothing was considered binding, if in the opinion of the states concerned it affected their 'honour 'or' vital interest.'[6]

The conference therefore failed to achieve its primary aim due to these irreconcilable ambiguities and loopholes and the mutual suspicion with which the parties regarded each other. This does not mean that there were no achievements in the direction of peace, disarmament and development of international law jurisprudence. The conference resulted in the establishment of an international tribunal in The Hague, which contributed to the settlement of many international disputes by Arbitration – the Hague Convention for Pacific Settlement of International Disputes was hailed. Similarly, the Hague Convention which prescribed humanitarian rules for the conduct of war was an acclaimed contribution of the Hague Conference.

These agreements reflected the widespread public desire for a less violent regime for resolving conflict, yet within a decade, nations were engaged in a world war which cost the lives of 10 million soldiers and an estimated 10 million civilians.

6. For comments and citations on The Hague Conference, see Ferencz: *Enforcing International Law,* vol. 1, (1983) pp. 36-39 and Docs, 19 & 20.

The failure of the Hague Conference, according to the US President, Theodore Roosevelt in 1910, was as a result of the failure of the Conference to create an executive or International Police Power to enforce the decision of an arbitration court and to prevent violence between nations.[7]

Establishment of the League of Nations

The League of Nations was established in 1919 to promote international cooperation and to achieve international peace and security, following the four years of the bloodiest fighting ever seen on earth and a public outcry to prevent all future wars.

The League desired to remove the causes of war, to lay down procedures to resolve disputes among nations and to collectively sever all relations with any treaty breaking-states. The formation of the League of Nations was one more step to mobilise international law in the cause of peace.

The principles of the Covenant included the obligation of member states to "promote international cooperation, achieve international peace and security... not to resort to war... to establish international law as the actual rule of conduct and the maintenance of justice..."

Desirous of removing the cause of war, the Covenant of the League of Nations demanded the reduction of national armaments to the lowest possible level consistent with national safety, the manufacture and the distribution of all armaments would be placed under international controls.

The League declared any threat of war as a common concern. Members were to take any dispute to arbitration and have it settled in a judicial manner; no war was to be declared against any state which complied with the award, decision or recommendations of the judicial arbitration. The League agreed that aggression will be repelled by collective and economic sanctions or failing which collective military might may be applied.

Recognising that the organisation of peace was as essential as the prevention of war, the members agreed to secure and maintain fair and humane conditions of labour; the well-being and development of the

7. Theodore Roosevelt's speech while accepting the Nobel Prize for Peace in 1910, culled from the *New York Times* of May 6, 1910 at page 4, cited in Ferencz, B.: *New Legal Foundations for Global Survival*, (1993) at page 3.

people of the colonies and territories within the central powers lost in the 1914-18 war, formed a sacred trust of civilisation. Members agreed that the tutelage of such people was to be entrusted to advanced nations who were to exercise such tutelage as mandatory on behalf of the League.

The League achieved some success in minor spheres of activity. It helped to settle interstate disputes when such states were genuinely attached to peace, for example the frontier dispute between Turkey and Iraq (1924-26); the dispute between Columbia and Peru over the Leticia Trapezium (1931-5).

It also helped through the Mandate system to improve the standard of colonial administration; it helped focus attention on the necessity for fair treatment of minorities; it also administered with some degree of success, the territories of Saar and the City Danzig; the Permanent Court of International Justice (PCIJ) delivered over 60 judgments and opinions and became reputed for its impartiality; it made great efforts through the creation of the International Labour Organisation, to improve the condition of labour globally and helped promote international cooperation in economic and social matters.

All these and more notwithstanding, the League failed in its primary purpose of maintaining international peace and security. It failed to settle disputes between powerful states. In the years 1931-3, the Sino-Japanese war was fought following the invasion of Manchuria by Japanese troops in 1931. The Commission of Inquiry set up by the League submitted its report and recommendations which Japan refused to abide by and later withdrew from the League.

Also in the years 1934-6, Italy invaded Abyssinia in disregard of her international obligation; the League offered a solution, which Italy rebuffed. Fifty states joined together in a historic event, to impose sanctions on Italy in accordance with the Article 16 of the League Covenant.

The League was further weakened by the failure of America to join it. With the withdrawal of Japan, Germany and Italy, the League could not prevent World War II which would cost another 40 million lives.

The League could have succeeded in its primary object, if the statesmen of the powerful nations had been prepared to use the power of their state on the side of collective security. "Statesmen preached big things, but did little. Political hypocrisy reached its zenith. The promoters

of war were preaching peace."[8] Summing up this political game, Ben Ferencz declared that "principle was held hostage to politics. The League did not fail the nations, the nations failed the League."[9]

The Kellog-Briand Pact

The General Treaty for the Renunciation of War as a National Policy was signed in Paris in 1928 to mark the tenth year of the end of World War I. This treaty which was eventually ratified by almost all countries, condemned recourse to war and agreed that the settlement of all disputes of whatever nature or origin would "Never be sought except by Pacific means."

Though the treaty renounced war, the parties, especially US and Britain ensured that the treaty did not really restrict their capacity to wage war whenever they saw it fit. They insisted on separate interpretations and reservations that their right to self defense would not be limited and only they could decide when they would go to war and for what purpose.

The Kellog Pact illustrates the pattern of illusion and disillusion that blocked the path towards creating binding laws of peace. The one page General Treaty for the renunciation of war would have been a better legal document and might have had some deterrent effect if, instead of saying that peaceful settlement would be "sought," it clearly stated that all disputes would be settled only by peaceful means."[10]

Thus like the Covenant of the League of Nations, the Paris Pact (Kellog-Briand Pact) failed to ensure peace. The Agreement contained deliberate ambiguities, exculpating reservations and having no enforcement system.

The Era of the United Nations and Peace

The next major legal instrument to achieve global peace was the Charter of the United Nations framed at San Francisco. The Charter which set up the United Nations and its various organs, was a product of the initiatives of the United States President then, Franklin D. Roosevelt and the British Prime Minister Winston Churchill who, while the second world war was still raging, met on board a ship and signed the Atlantic Charter.

---

8. A.A. Apadoral: *The Substance of Politics,* at p. 155.
9. Ben Ferencz: *ibid,* at page 4.
10. B. Ferencz: at p. 8.

The Charter called for the establishment of a wider and permanent system of general security after the conclusion of the war. Four other nations including the Soviet Union signed the Atlantic Charter and work commenced on the draft of the Charter of the new world body whose name "the United Nations" had been chosen by Roosevelt. On October 24, 1945, the Charter was signed.

The preamble of the Charter affirms the determination of "we the peoples of the United Nations," to save succeeding generations from the scourge of war." It also reaffirms "faith in the fundamental human rights," in the equal rights of men and women and of nations large and small.

From what can be gleaned above, one can quickly notice that the representatives in San Francisco, took cognisance of the fact that the failure of the League of Nations (the precursor of the UN) to maintain peace and security when needed, led to two most ravaging wars (the First and Second World Wars) in quick succession within the same century. It was in order to avert this kind of disaster that the United Nations came into existence just at the close of the Second World War.

The Charter of the UN

The Charter talks of establishing conditions for the maintenance of justice and the respect for treaty obligations, the promotion of social progress and of better standards of life and the practice of tolerance and so on. Though the sentiments expressed are noble, the preamble does not impose specific legal obligations.

At this juncture, a cursory look at the Charter proper, will leave no one in doubt that the fear of anything that will destablise world peace and security was more than paramount in the minds of members present at San Francisco Bay.

Article 1 which states the purposes and principles of the organisation amplified it thus:

(1) to maintain international peace and security and to that end; take effective collective measures for the prevention and removal of treats to peace and for the suppression of acts of aggression or other breaches of the peace, and to bring by peaceful means and in conformity with the principles of justice and international law,

adjustments or settlement of international disputes or situations which might lead to a breach of the peace;

(2) To develop friendly relations among nations based on respect for the principle of equal rights and self determination of peoples and *to take other appropriate measures to strengthen universal peace;*

(3) To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character and in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion; and

(4) To be a center for harmonising the actions of nations in the attainment of these common ends.

Further to the purposes and principles of the UN, the Charter in Article 2 provides that the organisation and its members, in pursuit of the purposes stated in Article 1, shall act in accordance with the following principles:

2(1) the organisation is based on the principle of sovereign equality of its members;

(2) all members, in order to ensure to all of them rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter;

(3) All members shall settle their international disputes by peaceful means in such a manner that international peace and security are not endangered;

(4) All members shall refrain from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations;

(5) All members shall give the United Nations every assistance in any action it takes in accordance with the present Charter and shall refrain from giving assistance to any state against which the United Nations is taking preventive and enforcement action;

(6) The organisation shall ensure that States which are not members of the United Nations act in accordance with these principles so far as may be necessary for the maintenance of international peace and security;

(7) 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 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.

This provision is meant to preserve the sovereignty of each member as enshrined in Art. 2(1) mentioned above and also the principle of non-interference in domestic matters of each member state. This principle is however limited to such matters tagged *domestic* which do not threaten world peace. If they do, the application of measures under Chapter VII of the Charter overrides.

As can be read from the Charter of the United Nations, copious provisions relating to peace and security were made. But, like the previous International Agreements before it, the Charter of the UN is full of ambiguities, leaves much room for those wishing to escape the consequences of their breach to do so smartly.

For instance, though the Charter speaks of the organisation being based on the sovereign equality of states, it grants, elsewhere, the permanent members (P.5) a preferred position by vesting in them the veto power. This power was exercised in the Cold War era at every conceivable occasion.

Again, whereas the Charter obliges members to settle their international disputes by peaceful means, Article 51 affirms the inherent right of individual or collective self-defense. Millions of innocent lives have been lost in wars fought on apparent self-defense.

As a declaration of guiding principles, the Charter is fine, but as a legal instrument to prevent sovereign states from going to war, it is, as has been proven inadequate.

The Charter of the International Military Tribunal

Shortly after the signing of the UN Charter, the victorious allied forces (the U.S., U.K., USSR and France) met in London and finalised plans to set up a trial at Nuremberg, of the major German war Criminals. They agreed on a Charter for an International Military Tribunal. The IMT Charter listed three categories of crimes, which the tribunal was to try:

1. Crimes against peace-planning or waging a war of aggression;

2. War crimes-violations of laws and customs of war;

3. Crimes against humanity-extermination, persecution on political, racial or religious grounds, and similar inhuman acts whether or not in violation of the domestic law of the country where perpetuated.

In articulating the crimes against peace and of crimes against humanity contained in the Charter of the International Military Tribunal, both the tribunal and the prosecution made references to "the law of humanity and the dictates of the Public Conscience."

The Hague Convention of 1899 and 1907, the Geneva Protocols of 1924 for the Pacific settlement of International Disputes, a Pan American Conference condemning aggression, the Kellog-Briand Pact as well as various resolutions of the League of Nations were all cited as evidence of an emerging law of peace which denounced aggression as a crime.[11]

The first General Assembly of the United Nations was to unanimously affirm the principles of International Law which condemned the aggression and crimes against humanity, confirmed in the Charter and judgment of the Nuremberg Tribunal.[12]

This Tribunal and its Charter were to become a model for a similar Charter which set up the Tokyo War Crimes Tribunal for the trial of

11. Ben Ferencz: New Legal Foundation for Global Peace, *supra* at, p. 10.
12. GA Res.95(1) of December 1946.

Japanese leaders. Thus past international agreements to maintain peace, imperfect as they were, became mobilised to form a legal shield against both aggression and massive inhumanity, as international law took a step forward.

The Duty upon the Individual to Maintain International Peace and Security under the UN System

While it may be said that the duty to foster international peace and security is upon states, as subjects of international law, the latter recognises that states do not act in abstract but through human persons. Thus, it imposes duties and liabilities upon individuals in this regard.

The significance of this came to the fore with the Nuremberg and Tokyo trials mentioned above. In fact the allies quickly jettisoned the theoretical argument as to whether individuals (rather than states) should be subjects before the Nuremberg and Tokyo International war Tribunals.

Article 7 of the Charter (or Agreement) setting up the Nuremberg Tribunal of 8 August, 1945 provided that:

> "The official position of the defendants, whether as Heads of states or responsible officials in government departments, shall not be considered as freeing them from responsibility of mitigating punishment."[13]

Among the offences brought against such officials were offences against peace, crimes against humanity, crimes against the laws of war and conspiracy to commit these crimes. The trials and subsequent conviction of those individuals brought before these tribunals convincingly show that individuals (as well as states) could be held for violation of international peace and security against the traditional background that only states could be the 'subjects' of international law.

This shows how far the United Nations can go on any issue that threatens world peace and security. Commenting further on this, Starke, while referring to the principles as laid down by the Tribunal, stated that:

13. The same provision is also found in the Charter of 19th January 1946 which constituted the Tokyo Tribunal on the same issue.

> "In these principles, as formulated, the references are to 'persons' as being guilty of crimes against the peace and security of mankind. In the light of these principles too, one point has been clarified, namely, that international law can reach over and beyond traditional technicalities, and prevent guilty individuals sheltering behind the abstract of the state."[14]

The United Nations Mechanisms for Peace and Security in the Period of the Cold War

Following World War II, ideological differences and rivalry between the capitalist and socialist states taunted the approach to legal and political problems and hampered the speed of change towards a more peaceful World Order.

The overall UN system for maintenance of Peace and Security remained largely paralysed throughout the Cold War era. The Security Council of the UN whose primary responsibility it is to maintain International Peace and Security under the collective Security System provided for in Article 24 of the UN Charter could not effectively discharge its functions and mandates under Chapter VII of the Charter.

Between 1946 and 1989 (the Cold War era), the Security Council held a total of 2903 meetings, and adopted 646 Resolutions, whereas in the post Cold War era (1990 to 1999), for instance it held 1182 meetings, plus innumerable consultations and adopted 638 Resolutions.[15]

The newly liberated African Nations which had gained independence under the decolonisation process, which in itself was a legal measure to ensure global peace and tranquility, remained suspicious of the legal system which had kept them in subjugation for long. Persistent hostilities between the Arabs and Israelis further impacted on the search for Global Peace and Security.

Notwithstanding this, the UN made some definite strides in the continued effort to create peace and to eradicate those features that created perpetual conflict and a state of insecurity.

14. J.G. Starke, *Introduction to International Law,* (9th ed.) p. 60.
15. For further discussions on this, see Steiner and Alston: *International Human Rights in Context,* 2nd ed. O.U.P. (2000), p. 651.

The organisation, through its various organs, especially the General Assembly, the Security Council and the International Court of Justice struggled to set the pace towards world peace, in spite of the various dark shades in the period of the cold war era.

Some legal declarations concerning peace were made and there was a clear-cut movement towards the codification of International Laws affecting peace. Though the declarations were not legally binding, they sought to re-enforce the peaceful obligations of the UN and earlier international legal agreements.[16]

Among these Declarations were:

The Universal Declaration on Human Rights (1948),[17] which among other things, declared that all human beings are born free and equal in dignity and rights and proclaimed the right to life, liberty and security of the person (Art. 3) and the right to a standard of living adequate for the health and well being of himself and his family.

This Declaration was supplemented by two International Covenants on Civil and Political Rights and on Economic Social and Cultural Rights and their protocols. These legal protections of human rights became tools in the advancement of peace and security and have been viewed as important in the evolutionary movement towards universal peace.

The Declaration on Friendly Relations (1970) is an example of the efforts of the United Nations to clarify the Charter's principles relating to world peace. The General Assembly passed the Declaration of the principles of international law concerning friendly relations[18] following the completion of the work of the special committee appointed to clarify some issues on the Charter.

16. B. Ferencz: 'The Future of Human Rights in International Jurisprudence: An Optimistic Appraisal,' *10 Hosfstra Law Rev.*, (1982) p. 397.
17. Adopted and proclaimed by the UN. General Assembly Res. 217A(iii) on 10 December, 1948.
18. UN.GA.Res. 2625 (XXV) 24 Oct. 1970.

The Committee, after several years was able to reach a consensus clarifying issues such as prohibitions against the threat of force, the obligation to settle disputes by peaceful means, the duty not to intervene in matters within the domestic jurisdiction and right to self determination.

It is pertinent to point out that the Resolution adopting the Declaration was passed without vote. The members were unanimous.

The opening paragraph of the Declaration stated that the General Assembly... Solemnly proclaims the following principles: The principle that states shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations.

The declaration went further to state that threat or use of force constitutes a violation of international law and the charter of the United Nations. A war of aggression is regarded as a crime against peace for which there is responsibility under international law.

Every State is enjoined to refrain from threats or the use of force, and from propaganda for wars of aggression and to refrain from organising, instigating, assisting, or participating in acts of civil strife or terrorist acts.

States are enjoined to settle their international disputes by peaceful means and in such a way that international peace, security and justice are not threatened. To this end, settlement by means of negotiation, conciliation, mediation and arbitration, etc. are encouraged.

The Declaration also restated among others, the principle of sovereign equality of states and the fulfillment of obligations assumed by them in accordance with the Charter.

The General Assembly Declaration on the Preparation of Societies for life in Peace.[19] This declaration which was adopted in 1978 provided *inter alia* that 'Every nation and every human being, regardless of race, conscience, language or sex, has the inherent right to life in peace.'

19. UN.GA.Res. 33/73 December 15, 1978.

The Manila Declaration on Peaceful Settlement of International Disputes[20] reaffirmed the Charter's principle, which obligates states to settle their disputes by peaceful means and declared that 'they shall live together in peace with one another... neither the existence of a dispute nor the failure of a procedure of peaceful settlement shall permit the use or threat of force.'

The Right of Peoples to Peace was solemnly declared in 1984[21] and this, proclaimed that 'the peoples of our planet have a sacred right to peace.' The preservation of this right to peace and the promotion of its implementation constitute a fundamental obligation of each state.' The General Assembly urged all states 'to do their utmost in implementing the right of peoples to peace.'

Finally in 1987, the General Assembly reached an Agreement on a Declaration on the enhancement of the effectiveness of the principle of refraining from the threat or use of force in international relations.[22]

This declaration, adopted unanimously, reaffirmed previous peace declarations and the obligations of states to settle disputes by peaceful means and to maintain international peace.

In its Article 2, the declaration echoed the position that the principle of refraining from the threat or use of force was 'universal in character and binding, regardless of each state's political, economic, social or cultural system or relations of alliance.

This unanimous declaration reflected a new mood amongst states that had for four decades engaged in forceful political and ideological differences. It encouraged the Security Council and the Secretary-General to begin to take a more active role in maintaining peace.[23]

Aside from its proclamation of legal obligations, the declaration urged that the Security Council and the Secretary General, be given every assistance in enhancing the effectiveness of the Charter security system.

This paper will now discuss some of the movements towards a codification of international laws affecting peace carried out under the United Nations General Assembly in the cold war era and then consider

20. Report of the Special Committee on the Charter. GAOR 37th Sess.Supp.No. 33(A/37/33) 1982.
21. UN.GA.Res. 39/11, 12 November 1984, UN Pub.88 XIV at 403.
22. GA Res.44/22, 18 Nov. 1987.
23. J.J. Channey: 'Universal International Law,' *87 AJIL* (1993), 529.

the roles of the Security Council and the ICJ in fostering global peace and security.

Attempts at Codification of Laws

With the improved relations between the super-powers, it has become relatively easier to reach an agreement in a few legal instruments purporting to clarify or codify binding norms of international behaviour that affect peace and security even if a complete consensus remains lacking. This has not always been the case, as nations, divided on political and ideological differences, paralyse the work of the UN General Assembly and in most cases allow their individual selfish motives to thwart global good.

Following the horrors of World War II, states passed a resolution which condemned genocide as an international crime.[24] Thereafter, a group of legal experts drafted a covenant defining the crime of genocide.[25] The Draft, which was accepted in 1948, condemned genocide as an international crime but did not make provisions for an international court to deal with the crime and those committing it.

In adopting a convention on genocide, the members of the United Nations moved in a right direction towards codifying substantive laws dealing with issues of international crimes that threaten peace and security. However, as Professor Chaumont observed, 'by rejecting the principles of international punishment, the committee rendered the Draft Convention purposeless.'[26]

Unfortunately, the law did not go far enough and the expressed determination to halt genocide was soon forgotten. It raised its ugly head in various forms in Uganda, Kampuchea, Iran, Iraq, the former Yugoslavia and other parts of the globe.[27]

Meanwhile all that the ICJ has been able to do is assert its jurisdiction to interpret the Genocide Treaty and to issue provisional measures calling on all parties to prevent such crimes.[28] This could not be enforced so the

24. UNGA Res.96(1), 11th Dec. 1946.
25. UN.Doc.A/362, August 1947.
26. Professor Chaumont was the French delegate at a meeting of the committee in Nov. 10, 1948.
27. Ferencz, B.: *ibid.*, at 21.
28. The ICJ case concerning Application of the convention on the prevention of the crime of genocide, Order of April 8, 1993.

crime continued and in 1994, the world witnessed another horrific event in Rwanda in the form of ethnic cleansing in which almost a million souls were lost.

Another attempt at codification of laws relates to the definition of the crime of aggression. This crime has been recognised since the time of the League of Nations, without a proper definition of what constitutes the crime.

In Art. 1, aggression is defined as 'the use of armed force by a state against the sovereignty, territorial integrity or political independence of another state, or in any other manner inconsistent with the Charter of the United Nations, as set out in the definition.'

Art. 2 provides that the first use of armed force in contravention of the charter is *prima facie* evidence of aggression.

Article 5 declares aggression as a 'crime against peace,' while Article 6 emphasises that the use of force is permissible if consistent with the Charter. To prove the level of inconsistency in world politics marked by the ideological divide, Article 7 declared that the definition of the crime of aggression cannot prejudice 'anything done in the pursuit of the right to self determination, freedom and independence... particularly by peoples under colonial and racist regimes or other forms of alien domination.'

The consensus definition of aggression was given as "an exquisite example of how conflict can be consummated by consensus."[29] The consensus definition, with its infirmities, reflected the fears, doubts and hesitation which still plague the international community. Seen in its proper historical perspective however, it symbolised and encouraged a determination and a direction for change which was persistent and irreversible.[30]

International law on terrorism has been one other area in which an attempt at codification has not been very successful, as a result of the differences in ideology of members of the United Nations.

Terrorist acts have bedeviled civilisation and threatened peace and security from time immemorial.[31] Efforts to curb modern acts of terrorism by the rule of law are of fairly recent vintage.

29. J. Stone: *Conflict Through Consensus*, 1977 at p. 71.
30. Ben Ferencz: *ibid.*, at 23.
31. For instance, the assassination of Archduke Ferdinand in Sarajevo in 1914 triggered world war 1, while the 1934 assassination of the King Alexander of Yugoslavia by a nationalist who demanded the self determination of Croatia, threatened peace in Europe.

A Pre-UN Draft Convention to curb terrorism in 1935, failed to materialise as it did not receive the needed signatories to enter into force. In the 60s, following a spate of hijackings that threatened air travel, a Convention was drawn up in 1963, dealing with offences and certain other acts committed aboard aircrafts.[32] This Convention failed to create a legal obligation to try offenders.

Another Convention signed in The Hague[33] improved on the Tokyo Convention in requiring states to either try the offender without exception whatsoever or to extradite him.[34] The extradition was made subject to conditions provided for by the law of the requested states.[35] This meant that hijackers could escape punishment by finding asylum in any country that was sympathetic to their goals. Extradition could be refused and local trial might be a mockery.

The political climate was such that many nations refused to accept any accord that would require trial or extradition of persons committing political offences. Other Conventions dealing with terrorism suffered the same fate.

The 1973 Convention on the prevention and punishment of crimes against internationally protected persons including diplomatic agents, provided in its preamble that the "Convention would not in any way prejudice the exercise of the legitimate right to self determination and independence, in accordance with the purpose and principle of the Charter."[36]

The Convention against the taking of Hostages was adopted in 1979[37] and declared hostage taking to be an international crime. It however provided a loose end when it declared that the Convention did not apply to the hostage-taking "in which the people are fighting against colonial

32. ICAO Doc.8364, 14 Sept, 1963.
33. Convention on the suppression of unlawful seizure of aircrafts, Dec. 16, 1970.
34. Article 7.
35. Article 8(3).
36. GA. Res. 3166 (XXVIII)14 Dec 1973.
37. GA. Res. 34/146(XXXIV) 1979, reprinted in 18 L.M. 1456(1979).

domination and alien occupation and against racist regimes in the exercise of the right to self determination."[38]

A successful attempt to draft an overall Convention to define and eliminate terrorism is yet to succeed. This menace continues to hold the world in perpetual fear and threatens global peace and security.

Can there ever be a justification for resort to terror to achieve any goal? Those who have argued in defense of terrorism say that those who resort to unconventional violence are merely responding to injustice and it is their persecutor that should be treated as criminals.

Violence in support of a justified cause is not to be regarded as criminal. On the contrary, those who resist oppression, are heroic freedom fighters-regardless of the means they have adopted.

While there may be some merit in this argument, its basis is very weak and arguments have been advanced to the contrary, that while the cause of discontent must be explored and very honest effort made to satisfy legitimate grievances, there is no justification for merciless murder of innocent and defenseless people including children; humanity must not be subjected to a reign of terror in which innocent lives are put in jeopardy or kept in constant insecurity and fear because parties to a conflict cannot agree on what is just.

The life blood of terrorism is fear. Instead of a sense of security, a pervasive anxiety and foreboding is generated everywhere. Terrorism, in all or any of its forms, cannot be tolerated if there is to be peace and security in the world. [39]

The Security Council, Global Peace and Security

Under and by the Article 24 of the Charter, the Security Council has the primary responsibility to maintain international peace security system. Article 24(1) provides that "in order to ensure prompt and effective action by the United Nations, its members confer on the Security Council primary responsibility for maintenance of international peace and security and agree that in carrying out its duties under this responsibility, the Security Council acts on their behalf."

The specific powers of the Security Council are contained in Chapters 6, 7, 8 and 12 of the UN Charter. Chapter 6 (Articles 33-38), deals with

38. Art. 12.
39 B. Ferencz: *op. cit.* at page 27.

pacific settlement of disputes. Here, the concern of the Security Council relates to the dispute, the continuation of which is likely to endanger the maintenance of international peace and security. Disputes which do not reach this threshold are, legally speaking, not the proper concern of the Security Council.

Under Article 33, parties to any dispute likely to endanger the maintenance of international peace and security are mandated to "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."

Whenever the Council is seized of any dispute, its first duty is to call upon the parties to settle the dispute in accordance with Article 33. This Article leaves the individual states to choose among the various means, it does not provide any further means to enable parties to do so. The acceptance of any means of settlement is based on voluntary submission... dispute settlement relies primarily on the parties to select the means for settlement and subsequently to achieve the process. If they do not act, another body can substitute for them.[40]

By Article 37, where parties to a dispute fail to settle it by the means indicated in Article 33, they are to refer such to the Security Council and if the Council deems that the continuation of the dispute is in fact likely to endanger the maintenance of international peace and security, it shall decide whether to take action under Article 36 or recommend such terms of settlement as it may consider appropriate.

In the exercise of its power under Article 33, the Security Council has since taken varied actions in cases brought before its notice by the parties or one of them. For example, in carrying out its duties to investigate disputes and determine whether a situation is in fact likely to endanger international peace and security, the Security Council, relying on Article 34, affirmed, following the complaint of an armed invasion of Taiwan (Formosa),[41] its duties to investigate any situation likely to lead to international friction or to give rise to a dispute, in order to determine whether the continuance of such dispute or situation may endanger

40 See Roy S. Lee: "A Case for Facilitation of the Settlement of Disputes," *German Year Book of International Law*. Vol. 34 (1991) at p. 139.
41. Security Council Res. 87 (1950) of 29 Sep. 1950).

international peace and security and likewise to determine the existence of any threat to peace.

Acting still under Article 34, the Council, in 1975,[42] requested the Secretary-General to enter into immediate consultations with parties concerned in the western Sahara dispute and to report to the Council on the result of its consultations, in order to enable it adopt appropriate measures to deal with the situation.

The Council in the India-Pakistan question, acting also under Article 34, established an independent Commission for India and Pakistan to *inter alia* 'investigate the facts pursuant to Article 34 of the Chapter.'[43] A similar Commission was set up on the Greek question.[44]

Chapter 7 (Articles 39 -51) embody the strength of the Security Council. This Chapter lays down what the Security Council should do when peace is broken and includes compulsory adjudication and enforcement action.

Chapter 7 powers of the UN Security Council are too wide to be covered within this paper. However, it is instructive to note that whereas regular Resolutions of the Security Council are not binding on all parties, specific resolutions made pursuant to the exercise of Chapter 7 powers are binding. In other words, the power of the Security Council to lay down binding rules is limited to Chapter 7.

Article 39 provides that the Council shall determine the exercise of any threat to the peace, the breach of the peace, or act of aggression and shall make recommendations, or decide what measure shall be taken in accordance with Articles 41 and 42 to maintain or restore international peace and security.

Article 40 provides that in order to prevent aggravation of the situation, the Security Council may before making recommendations or deciding upon the measures provided in Article 39, call upon the parties to comply with such provisional measure as it deems necessary or desirable. Without prejudice to the rights, acclaims or positions of the parties concerned. The Security Council shall duly take account of failure to comply with such ... measures.

42. At its 180th Meeting.
43. Official Record of the Security Council. Third year supplement of Nov. 1948 pp. 64 & 65.
44. *Ibid.*, Second Series, no. 28 at the 87th Meeting. pp 700-701.

Article 41 provides that the Security Council may decide what measures not involving the use of armed force are to be employed to give affect to its decisions and may call upon the members of the United Nations to apply such measures. These may include complete or partial interruption of the economic relations and rail, sea, air, postal... and the severance of diplomatic relations.

Article 42 provides that should the Security Council consider that measures provided in Article 41 would be inadequate, or have proven to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain international peace and security. Such action may include demonstrations, blockades and other operations by air, sea or land forces of members of the United Nations.

In pursuance, the Security Council has applied economic sanctions and blockades in a number of cases. In recent times one can recall the imposition of sanctions on Somalia in 1992 which ultimately led to a cease fire among the warring factions in Mogadishu. In 1992 sanctions were imposed on Libya following her failure to hand over those suspected to have masterminded the Lockerbie air bombing in which several innocent souls perished. This lasted until recently in 2004, when Libya agreed to hand over the suspects. May be they have outlived their usefulness?

We can also recall the sanctions imposed on the military junta in Haiti following the unconstitutional overthrow of the elected civilian government of Aristide, which forced the junta to vacate. Also in 1996, sanctions were placed on Sudan for harboring the infamous Osama Bin Laden, and few weeks after that, Bin Laden departed Sudan as a result of the effects of the sanction which the Sudanese government did not wish to suffer. In Sierra Leone, following the imposition of sanctions in February 1997, the military junta responded by signing an agreement in Guinea, Conakry to restore the government of Tijane Kabar, the Taliban in Afghanistan faced sanctions. Also sanctions were imposed on Iraq, on Liberia, etc. The Iraqi situation later led to the use of military force twice, in 1990 and 2003.

The use of armed forces, the occasion when such can be warranted, the contribution of troops and the functions of the Military Staff Committee and other enforcement measures are included in the remaining Articles of Chapter 7 and time will not permit us to traverse them.

However, it is pertinent to mention that the UN Security Council authorised the use of force against North Korea in 1950 just as it did in the Gulf war against Iraq.

The Council was greatly hampered during the cold war era, but by the end of that era, member states were able to endorse a radical expansion in the scope of collective intervention just as series of ethnic and civil wars swept across the globe.

Chapter 8 (Articles 52-54) relates to procedures under regional agencies and arrangements. Thus in discussing procedures for peaceful settlement of disputes, the main Charter responsibilities of the Security Council are embodied in Chapters 6 and 8, while Chapter 7 deals mainly with peace enforcement mechanisms.

Conclusion

We have seen that humanity needs peace and security to achieve happiness and true human dignity. From time immemorial, peace and security have been subjected to serious threat and humanity has grappled without much success to achieve perpetual peace.

The United Nations came at a time when the world needed a strong government to put in check the excesses of the belligerent spirits. It has been saddled with this huge responsibility without a Court that can give judgments that are enforceable and without an enforcement mechanism. Not even the Military Staff Committee envisaged under Article 47 could function as a result of the ideological divide among the nations.

Happily the cold war is over and the Security Council is becoming more committed to its role of maintaining international peace and security. In the last decade, it has applied its powers to create the International Criminal Tribunal in Rwanda and former Yugoslavia with the mandate to try those in breach of international humanitarian law, who commit crimes against humanity and those who commit genocide.

Also it has expanded its peace keeping mandates and this is helping restore peace and security to war torn nations and bring succor to the civilian populace in an endangered climate.

One can also recall with gladness the various efforts of the Secretariat of the United Nations in advancing global peace. For instance, at the request of the Security Council Summit of 1992, the then Secretary General, Boutros Ghali, prepared the conceptual foundation of a UN role

in peace and security.[45] He outlined five interconnected roles he hoped the United Nations would play in the fast changing context of post cold war international politics.[46] These will surely make the UN more pragmatic.

We can only urge, like every peace lover, that all the issues that have hampered peace and threatened security in the world, be objectively addressed by the world leaders so that our generation and future generations may indeed be saved from the scourge of war.

45. *An Agenda for Peace*, (NY: United Nations, 1992).
46. *Ibid.*, at pages 11, 13-34.