

**THE SECURITY COUNCIL AND ITS POWERS
AND THE FUNCTIONS UNDER THE
CHARTER OF THE UNITED NATIONS**

DISSERTATION,,

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TABLE OF CONTENTS

PAGE

Table of Contents II

Preface VI

Introduction 1

Chapter 1 8
HISTORY OF THE UNITED NATIONS

1. League of Nations 8
2. Weakness And Failure Of The League of Nations 11
3. United Nations 13
4. Purposes And Principles of The United Nations 14
5. Principal Organs Of The United Nations 15
6. The General Assembly 6

Chapter 2 19
THE SECURITY COUNCIL

1. Competence Of The Security Council Under The Charter Of The United Nations 19

2.	Comparison Between The Principle Of "Collective Security" Under The Covenant Of The League Of Nations And Under The Charter Of The United Nations	21
3.	Whether The Security Council Jurisdiction Is Limited By Art 2(4)	37
4.	Difference Between "Danger To International Peace And Security" And A "Threat To The Peace"	42
5.	Definition Of Aggression	48
6.	The Extent of Domestic Jurisdiction Limitation On The Competence Of The Security Council	56

Chapter 3

60

POWERS AND FUNCTIONS OF THE SECURITY COUNCIL UNDER THE CHARTER OF THE UNITED NATIONS

1.	Obligation Of Member States To Settle Their Disputes By Peaceful Means	60
2.	Investigation	65
3.	Settlement Of Disputes	70
4.	Reference Of Disputes To International Court Of Justice	72
5.	Provisional Measures Of The Security Council	73

6.	Mandatory Economic Sanctions	79
7.	Voluntary Economic Sanctions	
8.	Military Measures	85
9.	Obligation of Member States To Carry Out the Decisions Of The Security Council	97
10.	Elective Function	98
11.	Supervisory Function	99
12.	Constituent Function	100

Chapter 4

A GEOPOLITICAL ANALYSIS OF THE SECURITY COUNCIL

102

1.	The Power Of Veto	103
2.	Double Veto	108
3.	Veto And The Cold-War Era	110

Chapter 5

POST COLD WAR ERA AND THE UNITED NATIONS

113

1.	Unipolar Hegemony Of The United States	114
2.	The Gulf War And The United Nations	116
3.	United Nations And The Crisis in Bosnia Herzegovina	121

4.	The Succession Of Bosnia Herzegovina And The In-Action Of The United Nations Security Council	125
5.	OIC And The Crisis in Bosnia Herzegovina	141
6.	United Nations And The Palestine Qustion	149
7.	Libya, Another Victim Of The Security Council	157
8.	United Nations "Humanitarian" Intervention in Somalia	161

Chapter 6

173

THE REFORMS OF THE UNITED NATIONS

CONCLUSION	190
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SELECT BIBLOGRAPHY	197
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Preface

The idea of writing my dissertation on *The Security Council and its Powers and the Functions under the Charter of the United Nations* occurred to me shortly after the collapse of the Communist bloc which marked the end of the Cold War era. The Cold War which lasted for over forty years virtually paralysed the entire UN system. I was further motivated to write on this topic when for the first time in the Post-Cold War era, actions were taken by the U.S and its Western allies on a very massive and unlimited scale to repel Iraqi invasion of Kuwait under the aegis of the United Nations, which had put the Security Council once again at the very center of hopes and concerns about the shape of a New Order in Post-Cold War era.

The Serbian aggression against Bosnia, where an entire nation is dispossessed, deported and put to death and the inaction of the international community and of the Security Council are yet other stronger factors which inspired me to evaluate the powers, practice and effectiveness of the Security Council in the Post-Cold War era.

The aim of this dissertation is to prove that the end of the Cold War has not made the Security Council more effective as it was widely expected during the Cold War era, that once the rivalry of the Superpowers comes to an end the Security Council would be able to carry out properly its functions of maintaining international peace and security. This perception proved to be false because the collective security is still subservient to the

national interest of the permanent members of the Security Council, particularly the U.S which emerged as the preeminent international power after the collapse of the Cold War. Almost every action so far taken by the Security Council, after the end of the Cold War, is the manifestation of the American predominant policy of protecting its national interest. The U.S, now the remaining superpower exclusively dictates the decisions of the Security Council.

Another objective of my dissertation is to urge nations, particularly the Muslim countries who feel more insecure than ever, to take advantage of the opportunity that lie before them and to press for substantial reforms of the United Nations Security Council existing shape. It is indisputable that the prosperity of the world community depends upon the representative character of the UN in general, and of the Security Council in particular. It is imperative that decision of the international community should enjoy popular support.

In discussing the powers and functions of the Security Council under the Charter of the United Nations, I have tried to be objective in studying the ideal and the reality of the Charter provisions. Therefore, I have chosen conflict analysis approach which has the advantage of looking in greater detail at the Security Council's practice in a particular area where every individual conflict, dispute or situation may be analysed in terms of political considerations and in terms of the effectiveness of the Security Council.

Furthermore, I have divided my work mainly into two parts. The first part, mostly deals with practice and effectiveness of the Security Council in the Cold War era, while the second part of my works is basically confined to the Security Council's practice and effectiveness in the Post-Cold War era in which more frequent resort is made to the Council to deal with the questions of threats to international peace and security.

Before entering into the substance, I would like to thank my learned supervisor, Dr. Sheikh Showkat Hussain, Lecturer at the Kulliyah of Laws in International Islamic University for his tremendous academic contribution towards the completion of my work. I also would like to thank Mazlinda Abdullah for her patience in typing, arranging, and organising my dissertation. My further thanks goes to S.Ditmann of San Francisco, who provided me with recent and relevant materials which were of very great help to me.

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INTRODUCTION

Under the United Nations collective security system as originally envisaged, the Security Council was to be the organ through which international peace and security was to be maintained. It was given pacific powers in the Charter of the United Nations to act on behalf of all states, even if this meant using force itself. The founders of the United Nations realised that without basic agreement among the great powers on important international issues there could be no effective co-operation in the maintenance of peace or the application of sanctions against an aggressor. For this reason, the Charter provided that substantive decision would require the unanimous vote of the five permanent members of the Security Council. It was assumed by those who drafted the Charter that the five great powers who were given permanent membership in the Council would cooperate in most such matters. This assumption proved false. Almost immediately there developed a sharp rift between the Soviet Union and the Western powers, and use of the veto to prevent what it considered adverse action by the Council.

The predecessor of the United Nations had failed to keep world peace primarily because the idea of collective security was far weaker than the individual states' desires to protect their national interests. Although the Covenant of the League of

Nations did contained provisions for collective security and possibly collective military sanctions against offending states, but the League was doomed to failure because sovereign states naturally saw national interests as a paramount over collective interests. Such consideration of national interests resulted in the dilution of the League's power to such an extent that the question of imposition of sanctions under Article 16 became not one for the consideration of the League's Council or Assembly, but for each individual members.

The United Nations on the other hand, at the time of its foundation, was seen by many as a prototype world government, or at least as a mean of eliminating one of the major plagues of international community, namely war. But the geopolitical division of the world into two competing power blocs has effectively set the limits as to the areas in which the Security Council could properly carry out its functions of maintaining international peace and security.

Evaluating the United Nations performance today is a confusing and contradictory enterprise. The United Nations was established to sustain a common allied front against aggression, yet bloc voting and ideological rivalry had frequently paralysed or politicised the organisation when warfare broke out, as was the case during the Iraq-Iran War (1980 - 1988).

Iran was a victim of a large-scale armed attack by Iraq but was not supported, even normatively, by the United Nations

because many government intensely disliked the Khomeini regime in Teheran or were hostile to both belligerents. The two superpowers initially claimed that they favoured neutrality, but directly and indirectly they began providing arms to both sides.

As the Cold War got underway, the United Nations initially looked like a willing instrument of Western interests, especially during the Korean War (1950-1953) in which action taken in defense of South Korean was fought under United Nations flag but was otherwise operationally conducted as if it was wholly United States War.

Both the United Nations and the U.S. have changed considerably in the past four decades, moving in divergent directions. The United Nations in 1990 is, in many respects, quite different from the vision of its United States founding fathers in 1945.

Between 1968 and 1988, the United States government mounted a continuous attack on the United Nations as inefficient and ineffectual and, worse as a "dangerous place" of apposition to democracy and freedom, a citadel of anti-Zionism, and virtual outpost of Third World Marxism and Soviet geopolitics.

The Soviet Union in the early history of the United Nations, heavily relied on its Security Council veto power to confine United Nations operations within narrow bounds and a strict construction of the Charter principles and procedures. The

United Nations was perceived by Moscow as a political instrument for promoting Western interest. But by the second half of the 1980s under Gorbachev, especially since 1987, the Soviet Union has become a remarkably forthcoming member of the United Nations, proposing serious considerations of a new vision of a comprehensive global security system.

Government of the Non-Western World, the so called Third World, often emerged assertive from the decolonizing process of the postwar era. The changed composition of the United Nations membership undoubtedly contributed to disenchantment with the organisation on the part of Western World. The new members of the United Nations from Asia and Africa, together with those from Latin America, put forward new demands and claims for the restructuring of the United Nations Security system.

In the light of the above observation, I have divided my dissertation into six chapters which deal primarily with the competence of the Security Council in terms of relevant Charter provisions, and its powers, practice over the past four decades and its effectiveness in the maintenance of international peace and security.

In discussing the constitutional powers of the Security, I have undertaken conflict analysis approach where each individual conflict, dispute, or situation will be analysed, inter-alia, in terms of political considerations.

Chapter I concentrates on the brief history and formation^{of} the League of Nations with short reference to the factors which led to the failure of the League in carrying out its duties originally entrusted to it under the Covenant of the League of Nations. The League of Nations envisaged had failed to keep world peace primarily because the idea of collective security was far weaker than the individual States' desire to protect their national interest, therefore the League experience was an abortive attempt to realise the collective security system into a working system. The United Nations, in particular the Security Council, represented the World's second attempt at developing a feasible system of collective security. The establishment of the United Nations at the end of the Second World War which compelled the Nations to endeavour to form an international organisation so that mutual disputes could be resolved peacefully, would be also the subject of this Chapter. I will further discuss the purposes and principal organs of the United Nations under the same Chapter.

A brief history of the Security Council and a comprehensive comparison between the principle of "collective security" under the Charter of the United Nations and the Covenant of the League of Nations will be examined in Chapter II. An attempt will also be made to discover the limitations on the competence and jurisdiction of the Security Council. The definition of the terms used in Article 39 - 'threat to the peace', 'breach of the peace' and 'act of aggression' will be considered will be considered under this Chapter.

As examination of the powers, functions and effectiveness of the Security Council are the subjects of Chapter III. The Security Council, as one must recall, is the body upon which the Charter of the United Nations places the primary responsibility of the maintenance of international peace and security. Therefore, it has been given the power to identify the existence of threats to the peace, breaches of the peace and acts of aggression, as well as to determine what measures should be taken by States to restore international peace.

Chapter IV will identify the major geopolitical limitations imposed on the Security Council by political factors, as a result of the global and strategic interest of the superpowers which had and will often cause a paralysis in the Council as those interest are protected by veto. The impacts of veto power on the decision of the Security Council and other geopolitical limitation as provided by the Charter will be discuss also in this Chapter.

Chapter V will basically examine the end of the Cold War and its impact on the United Nations in general and on the Security Council in particular. The collective action taken in the Gulf War under the aegis of the United Nations has been perceived by many as still another example of the dominant role of power and national self-interest in international relations. In the light of the above statement, a comparison will be made between the Iraqi aggression against Kuwait and the similar situation in Bosnia Herzegovina, where the United Nations failed to take effective measures to halt Serbian aggression in former

Yugoslavia. This Chapter also discuss the unresolved question of 'Palestine, the United Nations "humanitarian" intervention in Somalia and the legitimacy of the trade embargo against Libya, as a result of its alleged involvement in terrorism.

The last Chapter (Chapter VI) deals with the reforms of the United Nations.

Many proposals have been made over the past years for changes in the structures of the United Nations but there were disregarded because of the existence of the Cold War. Now, after the end of the Cold War the reformers feel that the time has arrived to revise the United Nations Charter and to redefine international standards.

There are great deal of differences between the reforms proposed by the developing nations and those proposed by the United States and its Western allies. The developing countries want among other reforms, the security Council to be more representative and to take decision by majority voting.

On the other hand, the United States, Britain, France see no compelling reasons to revise the Charter and are admantly apposed to the democratization of the United Nations, particularly the Security Council. Within above framework, variuos ideas, models, and proposals of "how to move from here to there" will be fully addressed by this Chapter.

CHAPTER I

HISTORY OF THE UNITED NATIONS

1. League Of Nations

Just as World War I led to the formation of the League of Nations, World War II led to the establishment of the United Nations. Both of these World organisations were established with the objective of establishing peace and stability in the world.

As aptly pointed out by Philip Noel Baker, "the League of Nations is the first attempt in history to furnish international society of nations with a permanent and organic system of International Political Institutions. This attempt was an outcome of the World War"¹. The devastating effects of the first World War compelled all right - thinking scholars of the World to make endeavour to establish an International Organisation which may be based on respect for law¹.

Although the desire for the establishment of an effective international Organisation had been expressed long before the First World War, yet it took the real form in the treaty of Versailles, 1919. The Smuts Plan dated 18 December, 1918, suggested the establishment of a general conference or congress

of all the constituent states, in which public debates of general international interest will take place. General Smuts spelled out the functions of the proposed general conference as follows: The adoption of general resolutions; the adoption of general measures or codes of an international character dealing with questions like disarmament or world peace or rules of International Law". In addition to the conference, however, Smuts proposed the creation of a small body called the Council of the League which will have to be the executive and carry on the ordinary administration of the League. The permanent members of the Council were to have been the Great Powers - The British Empire, France, Italy, the US and Japan - and four additional members to have had rotating membership. Two of these members were to be designated from a penal comprising the 'important intermediate Powers below the rank of Great Powers and the other two from a penal comprising the 'minor states'". The Smuts Plan also made detailed provision for the operations of the Council, relation to the conference, the Secretariat and the International administrative bodies. Thereafter, the President of the US Mr Wilson also put forward his Second Draft, 10 January, 1919, which was largely inspired by the Smuts Plan. An official British Draft was also prepared for that purpose and was submitted to the League Commission. Ultimately, the American and British proposals were compiled in Joint draft known as "Hirst Millar Draft". This Joint draft was presented before the League of Nations Commission of the Peace Conference. On April 28, 1919, the Peace Conference accepted the draft which was finalised by the Commission and thus the Covenant of the League of Nations was

adopted. It is significant to note that the Covenant was kept as a part of the Treaty of Versailles, 1919.

The League of Nations was entrusted with the following functions:

- (i) The reduction of National Armaments to the lowest point consistent with the national safety.
- (ii) To preserve the integrity of all member states of the League against external aggression.
- (iii) To settle international disputes peacefully.
- (iv) To bring about peaceful changes in international relations.
- (v) Last but most important function of the League of Nations was to maintain international peace and security.

In this regard, the Covenant of the League of Nation was a multilateral treaty with two fold objectives of preserving international peace and security and promoting international co-operation².

2. Weakness An Failure Of The League Of Nations

Some important factors that contributed to the failure of the League of Nations can be summarised as follows:

- (a) One of the main defect of the Covenant the League of Nations was that all the decisions the Council were to be taken unanimously. Since the Nations were divided among groups, it was not possible to decide many matters by unanimous decision of the Council.
- (b) Although President Wilson of America contributed much for the establishment of the League, yet America could never become its member for the obvious reason that the Covenant of the League of Nations being a multilateral treaty, was never ratified by American Senate.
- (c) The covenant of the League of Nations provided that non acceptance of any amendment of the Covenant would mean that State would cease to be a member of the League. This provision proved to be a major setback for the League of Nations because in the course of time a number of states ceased to be its members.
- (d) The Covenant also provided for the withdrawal of any member state. The members could withdraw from the League of Nations by giving a two years notice. In the beginning, the

League of Nations sixty two (62) members which were reduced consequently to only thirty two (32).

- (e) Yet another serious cause for the failure of the League of Nations was that the great powers always considered their selfish interest over and above all things. As remarked by B.P. Potter. "The ultimate culprits in the failure of the League of Nations were the member states. It was not the League of Nations, but the Nations of the League which failed, in so far as there was failure."³

The League of Nations failed not because of the constitutional defects in its Covenant, but because of the members who failed to fulfil the obligations assumed by them under the Covenant. In April, 1946, the League of Nations was ultimately dissolved by a resolution of the Assembly. Before the dissolution of the League Statesmen of the World continued their efforts for the establishment of a more comprehensive and effective international organisation.

Sarkansas writes "The League experience was an abortive attempt to translate the collective security system into a working system"⁴. The United Nations, in particular, the Security Council, represent the world's second attempt of developing a feasible system of collective security.

3. United Nations

The Second World War compelled the Nations of the World to endeavour to establish an International Organisation so that mutual disputes could be resolved peacefully. This Organisation had its origin, indirectly, in the "Declaration by the United Nations" of 1 January, 1942⁵ which did not refer towards establishment of any world body, instead it concentrated on spelling out the Allied programme to be pursued against the Axis powers. Nevertheless, the idea of the United Nations was outlined in the Moscow Declaration of October, 1943⁶, in which the Big Four - China, United Kingdom, United States and Soviet Union recognised the necessity of establishing a general international organisation based on the principle of sovereign equality of all peace loving States, and open to membership for all such States, large and small, for the maintenance of international peace and security.

The ideal of collective security was behind this statement, though by juxtaposing the notion of a world body with that of the State sovereignty the clash between collective and national interest had not been removed. The major lesson of the League of Nations had not been learned.

Comprehensive proposals from the Big Four were discussed by those States at Dumbarton Oaks between August and October, 1944 resulting in a far-reaching and detailed agreement concerning the Organisation. They agreed that the Security Council should have

the function of maintaining international peace through collective measures if necessary. However, they also decided that the Great Powers should have a special voting rights which would ensure that no substantive decision would be taken by the Council without their unanimous concurrence. The right of veto was further refined at the Yalta Conference in February, 1945.

On 25 June, 1945, the San Francisco Conference was held and it was attended by a large number of States. In this Conference, the United Nations Charter was voted and was ultimately adopted unanimously by the States. The Charter did not come into force immediately after its adoption. It was provided that the Charter would come into force only when, China, France, Britain, United States, and Russia ratify it. This requirement was completed on 24 October, 1945. San Francisco Conference was attended by 51 States. These 51 States were original members of the United Nations. The first meeting of the United Nations General Assembly was held in London on 10 January, 1946, while only three months later there took place the last session of the League of Nations Assembly for winding up the League.

4. Purposes And Principles Of The United Nations

The United Nations outlines all the United Nations subsequent relationships and program. The charter also is a multilateral treaty establishing the pattern of agreements among and obligations of its members and, as such, is an important addition to international law. As a written constitution, the

Charter provides the United Nation's organisational structure, principles, powers and functions.

The preamble and Article I and II set forth the following major purposes and commitments:

- (1) To maintain peace and prevent war by collective measures and a respect for international law and to refrain from the use of force against another state.
- (2) to develop friendly relations and a respect for self-determination of people.
- (3) To achieve international co-operation in economic, social and cultural matters including a respect for human rights.
- (4) Not to intervene in matters essentially of domestic jurisdiction.

5. Principle Organs Of The United Nations

The United Nations Charter designates six agencies as principle organs of the United Nations (See Fig. 1.1). These are (1) the General Assembly; (2) the Security Council; (3) the Economic and Social Council; (4) the Trusteeship Council; (5) the Secretariat; and (6) the International Court of Justice.