



# **The Role Of United Nations In The International Humanitarian Law: A Critical Appraisal**

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## **ABSTRACT**

This article provides a critical assessment of the enforcement system of International Humanitarian Law, also referred to as the law of armed conflict or *jus in bello*, enforcement involves a variety of measures aimed at enforcing of IHL through the assignment of responsibilities for serious violations through courts or other mechanisms to provide reparations for serious IHL violations to affected individuals or states.

**Keywords:** United Nations, Humanitarian Law, Crime, War.

## **INTRODUCTION**

### **A. Historical Background**

The name “United Nations” coined by former United States President Franklin D. Roosevelt, was first used in the Declaration by United Nations of January 1942<sup>2</sup> during the Second World War, when representatives of 26 nations pledged their government to continue fighting together against the Axis powers. The United Nations is an international organization founded on October 24 1945 after the Second World War, by 51 countries committed to maintaining international peace and security, developing friendly relations among nations and promoting social progress, better living standards and human rights, the United Nations was the second multipurpose international organization established in the 20<sup>th</sup> century that was worldwide in scope and membership. Its predecessor, the League of Nations was created by the Treaty of Versailles in 1919 and disbanded in 1946<sup>3</sup>. Headquartered in New York City, the UN also has regional offices in Geneva, Vienna and Nairobi.

In addition to maintaining peace and security, other important objectives include developing friendly relations among countries based on respect for the principles of equal rights and self-determination of people, achieving worldwide cooperation to solve international economic, social, cultural and humanitarian problems, respecting and promoting human rights and serving as a centre where countries can coordinate their actions and activities toward these various ends.

The UN formed a continuum with the League of Nations in general purpose, structure and functions<sup>4</sup>; many of the UN’s principal organs and related agencies were adopted from similar structures established earlier in the century. In some respects, however, the UN constituted a very different organization, especially with regards to its objective of maintaining international peace and security and its commitment to economic and social developments. Cold War tensions between the United States and the Soviet Union deeply affected the UN’s security functions during its first 45 years. Extensive post World War II decolonization in Africa, Asia, and the Middle East increased the volume and nature of political, economic and social issues that confronted the organization. The Cold War end in 1991 brought renewed

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<sup>2</sup> Ward, Geoffrey C. Nothing to Conceal. The Roosevelts: An intimate History. Knopf Doubleday Publishing Group 2014 P. 397

<sup>3</sup><https://www.ukessays.com/history/a-league-of-nations-history-essay.php.yrefacessed> on 15 January 2021

attention and appeals to the UN. Amid an increasingly volatile geopolitical climate, there were new challenges to established practices and functions, especially in the areas of conflict resolution and humanitarian assistance.

Despite the problems encountered by the League of Nations in arbitrating conflict and ensuring international peace and security prior to World War II, the major Allied powers agreed during the war to establish a new global organization to help manage international affairs. This agreement was first articulated when U.S. President Franklin D. Roosevelt and British Prime Minister Winston Churchill signed the Atlantic Charter in August 1941. The name United Nations was originally used to denote the countries allied against Germany, Italy, and Japan. On January 1, 1942, 26 countries signed the Declaration by United Nations, which set forth the war aims of the Allied powers.

The United States, the United Kingdom and the Soviet Union took the lead in designing the new organization and functions. The first major step toward the formation of the United Nations was taken between August 21 – October 7, 1944 at the Dumbarton Oaks Conference, a meeting of the diplomatic experts of the big three powers plus China (a group often designated the “Big Four”) held at Dumbarton Oaks, an estate in Washington D.C. Although the four countries agreed on the general purpose, structure, and function of a new world organization, the conference ended amid continuing disagreement over membership and voting. At the Yalta Conference, a meeting of the Big Three in a Crimean resort city in February 1945<sup>5</sup>, Roosevelt, Churchill, and Stalin laid the basis for charter provisions delimiting the authority of the Security Council. Moreover, they reached a tentative accord on the Soviet republics to be granted independent memberships in the UN. Finally, the three leaders agreed that the new organization would include a trusteeship system to succeed, the League of Nations mandate system.

The Dumbarton Oaks proposals with modifications from the Yalta Conference formed the basis of negotiations at the United Nations Conference on International Organization (UNCIO) which convened in San Francisco on April 25, 1945 and produced the final Charter of the United Nations. The UN Charter was unanimously adopted and signed on June 26 and promulgated on October 24, 1945.

## **B. Purpose of the United Nations**

Article 1 of the UN Charter entrusts the United Nations with maintaining international peace and security and empowers the Security Council to take necessary action to maintain and to restore peace<sup>6</sup>. In carrying out this duty, the Security Council must act in accordance with the purposes and principles of the United Nations Article 1 of the Charter, like Article 55, enjoins the UN “to promote and encourage respect for human rights and for fundamental freedom for all. The Charter’s notion of “human rights and fundamental freedom for all” also includes what the United Nations itself has called “human rights in armed conflicts”,<sup>7</sup> and what is referred to as “international humanitarian law.” Both human rights law and international humanitarian law set limits to violence against human life and dignity. While human rights standards apply in all circumstances, humanitarian law is law devised specifically for armed conflicts. Thus, the two bodies of law have a distinct *raison d’etre*, sometimes they share a common basis and overlap.

The United Nations Charter entered into force on October 24, 1945 establishing the UN as successor to the League of Nations. Initially the UN position remained the same as that of the League of Nations focus on the maintenance of peace and little interest for the development of the law of armed conflict in general.<sup>8</sup>

In 1949, the International Law Commission as the organ specially charged with the condition and progressive development of international law decided not to place the law of armed conflict on its agenda as any attention devoted to that branch of International law, might be considered as indicating a lack of confidence in the capacity of the United Nations to maintain international peace and security. Though attention was given to the prosecution of war criminals and the problems posed by the atomic bomb. However, from the outset, the United Nations bodies have cited conventions and protocols, and have urged states to ratify, or be guided by

<sup>5</sup> August-October 1945

<sup>6</sup> Article I of the UN Charter

<sup>7</sup> UNGA Resolution 2444 (XXIII) of 19 December 1968 entitled “Respect for human rights in armed conflicts”

<sup>8</sup> Consisting of the Chief of Staff (or Deputies) of U.S., China, France, USSR

them. In the 1960s, the UN broadened its involvement in the building of a system of International Humanitarian law. A new phase began in cooperation, interaction, and mutual support of humanitarian initiatives between the United Nations and the International Committee of the Red Cross (ICRC).

The Preamble of the UN Charter Reads:

We the people of the United Nations determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of human person, in the equal rights of men and women, and of nations large and small and to establish conditions under which justice and respect for the obligations arising from treaties maintained and to promote social progress and better standards of life in larger freedom...<sup>9</sup>

The first two paragraphs of the preamble to the UN Charter are quite explicit, as they provide that the people of the United Nations are determined to save succeeding generations from the scourge of war, which twice has brought untold sorrow to mankind and to reaffirm faith in the fundamental human rights, in the dignity and worth of the human persons, in the equal rights of men and women and of nations large and small, this has further accentuated the main purposes of the UN which could be summarized thus:<sup>10</sup>

1. To maintain International peace and security through effective, collective measures for the prevention and removal of threats to peace, and to bring about by peaceful means and in conformity with the principles of justice on International law, adjustment or settlement of international disputes which might lead to a breach of peace
2. To develop friendly relations among nations based on respect for the principles of equal rights and self-determination of people and to take other appropriate measures to strengthen universal peace
3. To achieve international cooperation in solving international problem of an economic, social, cultural or humanitarian character and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.
4. To be a centre for harmonizing the actions of nations in the attainment of these common ends.

The purpose of the United Nations is mainly to achieve International peace and security and in furtherance of this, the UN through its General Assembly and other main organs have time and again made resolutions. These resolutions are a formal expression of its opinion, will or intent, in other word, recommendation as to what measures are to be taken in furtherance of its purpose.

In a series of resolutions, the General Assembly<sup>11</sup> in 1970 agreed that fundamental human rights as accepted in international law and in international instruments continue to apply in situations of armed conflict, set in motion the drafting of an international agreement or the protection of journalists on dangerous assignments. It was affirmed that participants in resistance movement and freedom fighters should, if arrested be treated as Prisoners of War, the bombardment of civilian populations and the use of chemical and bacteriological weapons were condemned.

The UN has also sponsored and endorsed other international agreements, conferences and conventions, for instance in 1963, the General Assembly approved the treaty banning nuclear weapon tests in the atmosphere, in outer space and under water. The parties to the treaty stated that they seek to achieve the

<sup>9</sup> Preamble to the United Nations Charter signed in San Francisco, California on June 26, 1945

<sup>10</sup> Article I of the UN Charter

<sup>11</sup> Resolution 2252

discontinuance of all test explosions of nuclear weapons for all time and that they will desire to put an end to the contamination of the environment by radioactive substances.

The Convention on the Prevention and Punishment of the Crime of Genocide approved by the General Assembly in 1948, was one of the earliest steps in this field. The Convention confirms that genocide, whether committed in peace or in war is a crime under international law which the state parties undertake to prevent and punish offenders.

In 1950, at the direction of the General Assembly, the International Law Commission formulated principles of International law recognized in the Charter of the Nuremberg Tribunal which judged war offenders. These are a few examples of the United Nations role in the development of International Humanitarian Law. However, in spite of the resolutions and conventions, armed conflict both international and internal remained the cruelest reality of the century.

Article 2 (4) of the UN Charter provides that:

All members 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 purpose or the United Nations

The principle enunciated by this provision is regarded as binding upon all states since it is now regarded as a principle of customary international law.

Analysis of Article 2(4)

Threat or use of force "This phrase raise a question of whether the term "force" means only "armed force" or whether it covers situations in which violence is employed which falls short of the technical requirement of war as well as economic force.

Shaw's opinion is that the term "force" covers violent situations which falls short of war<sup>12</sup> According to Akerhurst<sup>13</sup> "War" has a technical sense in international law and states often engage in hostilities while denying that they are technically in a state of war, such hostilities can range from operations, such as the Anglo-French attempt to occupy the area surrounding the Suez Canal in 1956. Article 2 (4) applied to all force regardless of whether or not it constitutes a technical state of war.

In 1974, the General Assembly approved the Charter of Economic Rights and Duties of states which specified "no state shall use or encourage the use of economic, political or any other type of measure to coerce another state in order to obtain from it the subordination of sovereign rights." Therefore the "threat or use of force" include armed force, economic force, political force and much more and Article 2 (4) prohibits it.

Against the territorial integrity or political independence of any state, this raises a question as to whether the use of force for any purpose apart from that aimed at the territorial integrity or political independence of any state makes it legal? According to Akerhurst,<sup>14</sup> this terminology opens up with the possibility of arguing that force used for a variety of purposes is legal because it aimed against the territorial integrity or political independence of any state. The General Assembly in 1965 stated that " the principle of non -intervention is in fact the search for an idea of equality and sovereignty of states.

Whether or not this principle of non-intervention has achieved its purpose, which is the search of an idea of equality and sovereignty of state is suspect, because states have continued to intervene by force in the affairs of other states. For instance, the intervention of the USSR in Afghanistan in 1978, which was condemned by the Security Council of the United Nations. A Security Council draft resolution which deplored the USSR intention and called for the withdrawal of USSR troops was voted by the USSR<sup>15</sup>. A General Assembly Resolution of January 14, 1980 re-affirmed that respect for the sovereignty, territorial integrity and political independence of every state is a fundamental principle of the Charter. It appealed to all states to refrain from

<sup>12</sup> Shaw M: International Law 4<sup>th</sup> ed. Cambridge C.U.P (1997) at P.511

<sup>13</sup> Akerhurst, P. Modern Introduction to International Law 7<sup>th</sup> edition, London, Routledge (1977) at P.309

<sup>14</sup> Ibid

<sup>15</sup> The vote on January 7, 1980 was by 13 to 2 (GDR,USSR)

any interference in the internal affairs of another country and called for unconditional and total withdrawal of the foreign troop from Afghanistan.

The exception here is that collective action by the United Nations and the use of force in self-defence must be proportionate, it would seem that Article 2 (4) has effectively prohibited the use of force by states. The argument that wars no longer exist as a legal condition seem void. It is important to note that the prohibition of war in Article 2(4) is based on the Analysis of Article 2(7) of the UN Charter.

Article 2(7) of the UN Charter provides:

Nothing contained in the present charter shall authorize the United Nations to interfere in the matters which are essentially within the domestic jurisdiction of any state or shall require the member to submit under the present Charter, but this principle shall not prejudice the application of enforcement measure under Chapter VII.

It follows from the nature of states that while a state is supreme internally, that is within its own territorial frontiers, it must not intervene in the domestic affairs of another nation. The provision of non-intervention in the domestic affairs of another nation shields certain state activities from the regulation of international legal control and within the exclusive sphere of state management, including the setting of conditions for the granting of nationality and the elaboration of the circumstances in which aliens may enter the country. According to Shaw,<sup>16</sup> whether a matter is within the domestic jurisdiction of a state or not is to be determined by international law, changing principles of international law may limit or reduce the extent of domestic jurisdiction of states as matters of internal regulation may also have internal repercussions and thus fall within the ambit of international law.

In the Anglo-Norwegian Fisheries case,<sup>17</sup> it was stressed ‘‘although it is true that the act of delimitation is necessarily a unilateral act, because only the coastal state is competent to undertake it, the validity of delimitation with regard to other states depends on international law.’’ In *Nottebohm case*,<sup>18</sup> the court remarked that no state may plead its municipal law as a justification for the breach of an obligation of international law. State sovereignty within its territorial limits is the undeniable foundation of international law and the world political and legal system. The principle of respect for the sovereignty of states cannot be separated from the principle of prohibition of the use of force and non-intervention in the affairs of other states.

### **C. Performance of the United Nations**

In practice, various UN bodies deal routinely with questions relating to International Humanitarian Law. The origin of this practice, is probably Resolution XXIII of the International Conference on Human Rights (Tehran, 1968). Which became General Assembly Resolution 2444 (XXIII) of 19 December, 1968. Under the title ‘‘Respect for human rights in armed conflicts,’’ that resolution codified basic humanitarian principles applicable in all forms of armed conflict and at the same time gave decisive impetus to the process which eventually led to the adoption in 1977, of the two protocols additional to the Geneva Conventions.<sup>19</sup> There are also various resolutions of the UN General Assembly calling on states to become party to the 1977 Protocols<sup>20</sup>. In ‘‘An Agenda for peace’’, the UN discussed the need for ‘‘an integrated approach to human security’’ and emphasized the necessary commitment of the United Nations human rights system to the achievement of a peaceful order<sup>21</sup>. The General Assembly took the matter up

<sup>16</sup> Ibid

<sup>17</sup> ICJ Report 1951

<sup>18</sup> ICJ report 1956

<sup>19</sup> Protocol additional to the Geneva Conventions of 12 August, 1949 and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol), And Protocol Additional to the Geneva Conventions of 12 August, 1949 and relating to the Protection of Victims of Non-International Armed Conflict (Protocol II)

<sup>20</sup> The most recent is UNGA resolution 48/49 of 9 December 1994, entitled ‘‘Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the Protection of Victims of Armed Conflicts’’

<sup>21</sup> An agenda for peace preventive diplomacy, Peacemaking and Peace-Keeping, report by the Secretary-General of 31 January 1992 UN Doc\_A/47/277-S/241 II paras. 16 and 18

in its 1992 session and adopted a resolution entitled “An Agenda for peace preventive policy and related matters” with the following preamble paragraph:

Emphasizing that international peace and security must be seen in an integrated manner and that the efforts of the organization to build peace, justice, stability and security must encompass not only military matters, but also, through its various organs within their respective areas of competence, relevant, political, economic, social humanitarian, environmental and developmental aspects.”<sup>22</sup>

This statement reveals the clear intention of the UN’s highest body to include humanitarian considerations in its approach to safeguarding or restoring international peace and security. According to Article 89, there have been serious violations of the Geneva Convention or Protocol 1, the state’s party to those treaties must undertake to act jointly or individually, in cooperation with the United Nations and in conformity with the United Nations Charter. Article 89 is but an expression of *ergo omens* character of international humanitarian law. In its Final Declaration, the International Conference for the protection of War Victims (Geneva 1993) took up idea of Article 89 and stressed the obligation of the participating states to act in cooperation with the UN and in conformity with the UN Charter to ensure full compliance with international humanitarian law in the event of genocide and other serious violations of this international humanitarian law.<sup>23</sup>

It is necessary to distinguish three ways which various UN bodies have been called upon to work for strengthening of international humanitarian law:

- (a) Reaffirmation and progressive codification of international humanitarian law (standard setting)
- (b) Ensuring prosecution and punishment of persons who have committed serious violation of that law, and
- (c) Increasing respect on the part of parties to specific conflicts for their obligations under international humanitarian law.

War having been outlawed, the regulation of its conduct has ceased to be relevant.<sup>24</sup> The International Law Commission of the United Nations refused in 1949 to make any effort to modernize the laws of war. The decision was taken that codification of international humanitarian law should not be pursued within the organization, and the UN thus opted out of an important chapter of international law.

The history of the two Additional Protocols of 1977 is slightly different, insofar as the United Nations played a much more active role in the codification process. Two reports drawn up by the UN Secretary General at the request of the General Assembly had a major influence on the process which eventually led to the adoption of two treaties. In the past the United Nations General Assembly was not very often confronted with issues relating to international humanitarian law. There was however the above mentioned landmark adoption in 1968 of Resolution 2444 (XXIII) under the title “Respect for human rights in armed conflicts” That resolution set out three basic principles which in the General Assembly’s view, must guide any future codification of international humanitarian law, the limited right of belligerents to choose methods and means of combat, the prohibition of attacks on the civilian population and the principle of distinction between combatants and non-combatants.<sup>25</sup> Resolution 2444 (XXIII) also marks the starting point for the process of drawing up the two 1977 protocols.

During the same session of 1968, the General Assembly adopted another resolution of great import for humanitarian policy, this time regarding a specific situation to which the Geneva conventions apply, the conflict in the Middle East. Through Resolution 2443 (XXIII) the General Assembly established the “special

<sup>22</sup> An agenda for Peace: Preventive diplomacy and related matters, A/RES/47/120 A 1992, 6<sup>TH</sup> preamble paragraph.

<sup>23</sup> International Conference for the Protection of War Victims (Geneva 1993), Final Declaration, Para.1.6.

<sup>24</sup> Yearbook of the International Law Commission, 1949, p.281

<sup>25</sup> UNGA Resolution 2675 (XXIII) of 9 December 1970 entitled “Basic Principles for the protection of civilian populations in armed conflicts.”

committee to investigate Israeli practices affecting the human rights of the population of the occupied territories,<sup>26</sup> a clear humanitarian law issue, despite the reference to human rights’.

The purpose of the two criminal courts established recently by the Security Council, one for the former Yugoslavia,<sup>27</sup> and the other for Rwanda<sup>28</sup> is to prosecute persons responsible for serious violations international humanitarian law in the armed conflicts in those countries. Though it would prefer to see a permanent tribunal in lieu of ad hoc courts, the ICRC nevertheless fully supports these measures and welcomes the activities of the two.

The United Nations Security Council (UNSC) is one of the principal organs of the United Nations, the six organs are: the General Assembly, Security Council, Economic and Social Council (ECOSOC), Trusteeship Council, International Court of Justice (ICJ) and the UN secretariat,<sup>29</sup> along with various specialized agencies and affiliated organizations. The Security Council is charged with ensuring international peace and security,<sup>30</sup> recommending the admission of new UN members to the General Assembly and approving any changes to the UN Charter, its powers include establishing peace keeping operations, enacting international sanctions, and authorizing military action. The UNSC is the only UN body with the authority to issue binding resolutions on member states.

The UN Security Council was created after the World War II to address the failings of the League of Nations in maintaining world peace. It held its first session on 17 January, 1946, and in the ensuing decades, was largely paralyzed by the Cold War between the United States and the Soviet Union and their respective allies.

The Security Council consists of fifteen members, of which five are permanent, China, France, Russia, United Kingdom and the United States of America. These were the great powers, or their successor states, that were the victors of World War II. Permanent members can veto any substantive resolution, including those on the admission of new member states or nominees for the office of Secretary General. The remaining ten members are elected on a regional basis to serve a term of two years.<sup>31</sup> The body’s presidency rotates among its members.

Resolutions of the Security Council are typically enforced by UN peacekeeping military forces voluntarily provided by member states and funded Independently of the main UN budget. As of March 2019, there are thirteen peacekeeping missions with over 81,000 personnel from 121 countries with a total budget of nearly \$6.7 billion.

The Security Council was largely paralyzed in its early decades by the Cold War between the US and USSR and their allies, and the Council generally was only able to intervene in unrelated conflicts.<sup>32</sup> (A notable exception was the 1950 Security Council resolution authorizing a US – led coalition to repel the North Korean invasion of South Korea, passed in the absence of the USSR). In 1956, the first UN peacekeeping force was established to end the Suez Crisis, however, the UN was unable to intervene against the USSR’s simultaneous invasion of Hungary following that country’s revolution. Cold War divisions also paralyzed the Security Council’s Military Staff Committee, which had been formed by Articles 45 – 47 of the UN Charter to oversee UN forces and create UN military bases. The Committee continued to exist on paper but largely abandoned its work in the mid – 1950s.

In 1960, the UN deployed the United Nations Operation in the Congo (UNOC), the largest military force of its early decades, to restore order to the breakaway state of Katanga, restoring it to the control of the Democratic Republic of the Congo by 1964.<sup>33</sup> However, the Security Council found itself by passed in favour of direct

<sup>26</sup> UNGA Resolution 2443 (XXIII) of 19 December 1968

<sup>27</sup> SC Resolution 827 (1993)

<sup>28</sup> SC Resolution 955 (1994)

<sup>29</sup> Article 7 of the UN Charter

<sup>30</sup> Article 24 of the UN Charter

<sup>31</sup> Article 23 of the UN Charter

<sup>32</sup> Morris, J. United Nations Security Council Reforms: A Counsel for the 21<sup>st</sup> Century, *Security Dialogue*, 31, 3 September 2000, 256-268.

<sup>33</sup> Charter of the United Nations Chapter VII: Action with Respect to Threats to the Peace, Breaches of the Peace and Acts of Aggression

negotiations between the super powers in some of the decade's larger conflicts, such as the Cuban Missile Crisis or the Vietnam War.<sup>34</sup> Focusing instead on smaller conflicts without an immediate Cold War connection. The Security Council deployed the United Nations Temporary Executive Authority in West New Guinea in 1962 and the United Nations Peacekeeping Force in Cyprus in 1964, the latter of which would become one of the UN's longest running peacekeeping missions.<sup>35</sup>

After the Cold War, the UN saw a radical expansion in its peacekeeping duties, taking on more missions in ten years' time than it had in its previous four decades. Between 1988 and 2000, the number of adopted Security Council resolutions more than doubled, and the peacekeeping budget increased more than tenfold. The UN negotiated an end to Salvadoran Civil War. And launched a successful peacekeeping mission in Namibia, and oversaw democratic elections in post-apartheid South Africa and post-Khmer Rouge Cambodia. In 1991, the Security Council demonstrated its renewed vigor by condemning the Iraqi invasion of Kuwait on the same day of the attack, and later authorizing a US-led coalition that successfully repulsed the Iraqis.<sup>36</sup> Undersecretary-General Brian Urquhart later described the hopes raised by these successes as a "false renaissance" for the organization, given the more troubled missions that followed.

Though the UN charter had been one nation against another, in the early 1990s, the UN faced a number of simultaneous, and serious crises within nations such as Haiti, Mozambique and the former Yugoslavia.<sup>37</sup> The UN mission to Bosnia faced worldwide ridicule for its indecisive and confused mission in the face of ethnic cleansing. In 1994, The United Nations Assistance Mission for Rwanda failed to intervene in the Rwanda genocide in the face of Security Council indecision.

In the late 1990's UN authorized international interventions took a wider variety of forms. The UN mission in the 1991-2002 Sierra Leone Civil war was supplemented by British Royal Marines, and the UN authorized 2001 invasion of Afghanistan was overseen by NATO.<sup>38</sup> In 2003, the US invaded Iraq despite failing to pass a UN Security Council resolution for authorization, prompting a new round of questioning of the organization's effectiveness. In the same decade, the Security Council intervened with peace keepers in crises including the war in Darfur, in Sudan, and the Kivu conflict, in the Democratic Republic of Congo. In 2013, an internal review of UN action in the final battles of the Sri Lankan had suffered "systemic failure." In November/December 2014, Egypt presented a motion proposing an expansion of the NPT (non-proliferation treaty) to include Israel and Iran, this proposal was due to increasing hostilities and destruction in the Middle East connected to the Syrian conflict as well as others. All members of the Security Council are signatories to the NPT, and all permanent members are.

The Security Council has been criticized on many fronts, particularly for the lack of will to prevent ethnic massacres in Bosnia and Rwanda, this was attributed to the UN's lack of reliable military resources, one can conclude that announcing a new peacekeeping mission without ensuring that sufficient armed forces will be available has proven to be a recipe for humiliation and disaster.<sup>39</sup> A 2005 RAND Corporation study found the UN to be successful in two out of three peacekeeping efforts. It compared UN nation-building efforts to those of the United States, and found that seven out of eight UN cases are at peace. Also in 2005, the Human Security Report documented a decline in the number of wars, genocides and human rights abuses since the end of the cold war, and presented evidence, though circumstantial, that international activism mostly spearheaded by the UN-has been the main course of the decline in armed conflict since the end of the cold war.

The Security Council's effectiveness and relevance are questioned by some because in most high-profile cases, there are essentially no consequences for violating a Security Council resolution. During the Darfur crisis,

<sup>34</sup><https://www.ukessays.com/essays/history/introduction-to-the-Vietnam-war-history-essay.php?vref=I> Accessed 10 August 2020

<sup>35</sup> Morrie, Mac Queen, United Nations Security Force in West New Guinea (UNSF), The Oxford Handbook of United Nations Peacekeeping Operations, July 2015

<sup>36</sup> Powell, Colin 'Transcript of Powell's UN Presentation February 6, 2003, CNN. <http://edition.cnn.com/2003/US/02/05/sprj.irq.powell.transcript/index.html> accessed on 16 May, 2021

<sup>37</sup> Article 29 of the UN Charter

<sup>38</sup> Afghanistan profile (BBC, 30 September 2012 <http://www.bbc.uk/news/world-south-asia-12024253> accessed on 16/03/2021

<sup>39</sup> UNSC Resolution 1318 of 7 September, 2000



Janjaweed militias, allowed by elements of the Sudanese government, committed violence against an indigenous population, killing thousands of civilians.<sup>40</sup> In the Srebrenica massacre, Serbian troops committed genocide against Bosniaks, although Srebrenica had been declared a UN safe area protected by 400 armed Dutch peacekeepers.

In his 2009 speech, Muammar Gaddafi criticized the Security Council's veto powers and the permanent members of the Security Council.<sup>41</sup> The UN Charter gives all three powers of the legislative, executive and the judiciary branches to the Security Council. In his inaugural speech at the 16<sup>th</sup> Summit of the Non-Aligned Movement in August 2012, Ayatollah Ali Khamenei criticized the United Nations Security Council as having an "illogical, unjust and completely undemocratic structure reform of the body. The Security Council has been criticized for failure in resolving many conflicts, including Cyprus, Sri Lanka, Kosovo and Israeli-Palestinian conflict, reflecting the wider short-comings of the UN. For example, at the 68<sup>th</sup> session of the UN General Assembly, New Zealand Prime Minister John Key heavily criticized the UN's inaction on Syria, more than two years after the Syrian civil war began.<sup>42</sup>

#### **D. CONCLUSION**

It is for the Security Council to take into consideration matters referred to it by the General Assembly and publicly justify its decision as to whether or not to take action in light of applicable provisions of the UN Charter and international law. The General Assembly may discuss any questions relating to the maintenance of international peace and security and make recommendations to member states and the Security Council on any such questions. However, the rights of the General Assembly are subject to the provision of Article 12 of the UN Charter. While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests. Following World War II, the victorious allied governments established the first international criminal tribunals to prosecute high-level political official and military authorities for war crimes and other wartime atrocities for the prosecution of prominent members of the political military, judicial and economic leadership of Nazi Germany who planned, carried out, or otherwise participated in the holocaust and other war crimes. The trials were held in Germany, and their decisions marked a turning point between classical and contemporary international law.

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<sup>40</sup> The very word, 'janjaweed' is in Arabeyes, an insult for Arabs, a 'janjaweed' is a thief, someone who works for himself-not the tribe. The origin of the word is pure speculation, some say it is a combination of jawad (horseman), jim (the G3 rifle) and jinn (devil). Others say it passed into common currency as a result of the exploits of a notorious robber from the Shattiya tribe, nicknamed Hamid Janjaweed, in West Darfur in the 1970s. it is generally agreed that janjaweed was popularly translated as 'devils on horseback'.

<sup>41</sup> Muammar Ghaddafi's first address to the United Nations in 40 years

<sup>42</sup> New Zealand Prime Minister, John Key's speech to the United Nations Security Council, September 21, 2016