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Structural Reforms in the United Nations Organization

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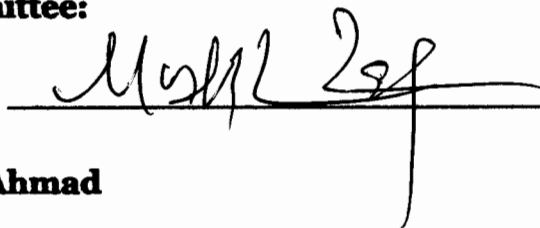
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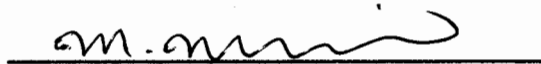
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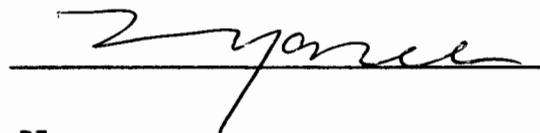
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Dedicated to

**My Amazing Late Mother
Farzana Kauser
Ammi, your dreams are our aspirations...**

**&
My Father
Mr. Zahoor-ul-haq Abbasi**

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ABSTRACT

The issue of reforming the United Nations Organization for countering its incompetence not only stirs great interest among individuals and states, but also causes dispute among states. The issue of reforms remains unresolved, as states continue to safeguard their own vested interests. It continues to be a cause of great debate, especially after the frequent failure of the UN to act effectively on various international issues. The effective working of the UN, the reforming of the UN, and the replacement of the UN are interrelated topics in context of comprehension of the issue.

This thesis is an attempt to explain the defects in the working of the UN, the consequences of ineffectiveness, and the need for the effective world organization, with the help of the principles of international law, leading cases, and historical world events. The thesis concludes that the UN is increasingly failing to achieve the lofty goals set out in its Charter. The abolishment of the UN will lead to chaos and its presence is needed more than ever. To bring the structural reforms is not an easy task, but certainly it is easier than creating a new international organization.

The defected UN is futile and a cause of desperation among weak states. The ineffective UN and its unimplemented decisions are beneficial for ideologically driven terror groups. The UN should be reformed to secure the help and assistance of all states to deal with all international issues. The delay is unjustified and is making the world insecure. Though, reforms are the ultimate solution, effectiveness can be secured by creative use of powers by all organs of

the UN. The proactive role of the universally represented General Assembly is crucial for effective working.

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- Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter), Advisory Opinion of ICJ 1962, 151. (See Page. No. 71 and 74).
- Corfu Channel Case, (United Kingdom of Great Britain and Northern Ireland V. Albania) Judgment of April 9th , 1949, ICJ Reports 1949, 4 & Judgment of December 15th 1949, ICJ Reports 1949, 244. (See Page No. 34).
- Legal Consequences of the construction of a wall in the Occupied Palestinian Territory, Advisory Opinion, ICJ. Reports 2003, 428. (See Page No. 76-77).
- Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, ICJ Reports 1996, 226. (See Page No. 33, 38, and 91)
- Military and Paramilitary Activities in and against Nicaragua, (Nicaragua V. United States of America) Jurisdiction and Admissibility, ICJ Reports 1984, 392. (See Page No.32, 33, and 85).
- Western Sahara, Advisory Opinion, ICJ Reports 1975, 12. (Page No. 76).
- Nuclear Tests Case, New Zealand v. France, ICJ Reports 1974, 457. (See Page No. 35).
- Fisheries Jurisdiction Case, United Kingdom of Great Britain and Northern Ireland V. Iceland Jurisdiction of the Court. ICJ Reports 1973, 3. (See Page No. 35).

Acronyms

AL: Arab League

ASEAN: Association of South East Asian Nations.

AU: African Union

CEDAW: Convention on Elimination of all forms of Discrimination against Women.

CoW: Coalition of Willing.

CTBT: Comprehensive Nuclear test Ban Treaty

ECJ: European Court of Justice

ECOSOC: Economic and Social Council

EU: European Union

G4: Group of Four

GA General Assembly

GATT: General Agreement on Tariffs and Trade

GDP: Gross Domestic Product

GRULAC: Group of Latin America and Caribbean Countries

ICJ: International Court of Justice

LoN: League of Nations

NATO: North Atlantic Treaty Organization

OIC: Organization of Islamic Countries

P5: Permanent Five.

SAARC: South Asian Association for Regional Cooperation

SC: Security Council

SG: Secretary General

UCG: United for Consensus Group

UK: United Kingdom

UN: United Nations Organization

UNAMIR: United Nations Assistance Mission for Rwanda

UNEP: United Nation Environment Programme

UNHRC: United Nation Human Rights Commission

UNICEF: United Nations Children Fund

UPR: Uniting for Peace Resolution

USA: United States of America

USSR: Union States of Soviet Russia.

WHO: World Health Organization

WMD: Weapon of Mass Destruction.

WTO: World Trade Organization

INTRODUCTION

The world community experienced World War II that resulted in loss of estimated 61 million lives, including heavy civilian casualties.¹ The urgent need of international cooperation was felt to save future generations from the “scourge of war”.² The idea of peaceful co-existence translated into creation of the United Nations Organization.

The Charter of the United Nations was signed by fifty one states³, and came into force on 24th October 1945.⁴ The Charter was result of great deliberation at San Francisco Conference⁵ between the victorious Allied powers of World War II. The Conference was sponsored by USA, UK, China, and USSR, and they invited other states that adhered to the Declaration by the United Nations⁶ of January 1, 1942.⁷ The Charter is a fundamental and guiding document of the organization.

¹Second World War World War II Fatalities”, World War II pages. <http://www.secondworldwar.co.uk/casualty.html> (Accessed: 3 June. 2010).

² Preamble of the UN Charter, 1945.

³ The fifty one original signatory states of the UN Charter are: Argentina, Australia, Belgium, Bolivia, Brazil, Byelorussian Soviet Socialist Republic, Canada, Chile, China, Colombia, Costa Rica, Cuba, Czechoslovakia, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, France, Greece, Guatemala, Haiti, Honduras, India, Iran, Iraq, Lebanon, Liberia, Luxembourg, Mexico, Netherlands, New Zealand, Nicaragua, Norway, Panama, Paraguay, Peru, Philippine Commonwealth, Saudi Arabia, Syria, Turkey, Ukrainian Soviet Socialist Republic, Union Of Soviet Socialist Republic, Union of South Africa, UK, USA, Uruguay, Venezuela, Yugoslavia. Poland was also the original signatory of the UN Charter. Though, Poland was not represented in the conference but was signatory of the United Nations declaration of 1st January, 1942's. So, the space on the Charter was reserved for the signature of its representative.

⁴ The Charter of the UN was signed on June 26, 1945.

⁵ United Nation Conference on International Organization, also known as San Francisco Conference was held on April 25 to June 26, 1945 and was attended by fifty governments including France, United States of America, United Kingdom, Soviet Union, and China.

⁶ US President, Franklin G. Roosevelt coined the word “United Nations” to refer to the alliance of states fighting the Axis Powers. The term was first used on January 1, 1942 in the “Declaration by United Nations”, when twenty six states signed the Atlantic Charter and pledge to continue the war efforts. (See official UN page: <http://www.un.org/aboutun/history.htm>)

⁷ “Proceedings: Inventory of the United Nations Conference on International Organization San Francisco, 1945.” Hoover Institution Archives. (retrieved from <http://www.oac.cdlib.org/data/13030/jz/tf2f59n5jz/files/tf2f59n5jz.pdf>) (Accessed: 15th June, 2010).

The Charter not only describes purposes, organs, structure, functioning, membership criteria, procedure of the UN, but like other constitutions it also provides the amendment procedure of the Charter.

Chapter XVIII of the UN Charter deals with the issue of amendments. According to Article 108⁸ of the Charter, amendments are possible only if ratified by two third of the member of the General Assembly (GA). The affirmative votes of the five permanent members (P5) of the Security Council (SC) are also necessary for amendments. The P5 are empowered to use their veto power to squash the procedure of amendments.⁹ A conference to review the Charter can be called by the two third member of the GA and seven members of the SC at a fixed date and place.¹⁰

The drafters expected that Charter will be reviewed within the first ten years of its signing. They cautiously also added the provision that if review conference has not been held till the tenth session than proposal to call such conference should be presented into 10th session of the GA. The proposal should than be approved by the majority of the GA and seven¹¹ members of the SC. The original¹² Article 109 (3) of the UN Charter states that:

⁸ Article 108: "Amendments to the present Charter shall come into force for all Members of the United Nations when they have been adopted by a vote of two thirds of the members of the General Assembly and ratified in accordance with their respective constitutional processes by two thirds of the Members of the United Nations, including all the permanent members of the Security Council."

⁹ China, France, Russia, USA, and UK are Permanent members of the UNSC.

¹⁰ Article 109 (1) of the UN Charter, 1945.

¹¹ Originally the vote of seven members of the SC was necessary, but later through an amendment in 1965 it was increased to nine.

¹² Later amended and required number of the seven members was increased to nine in 1965.

"If such a conference has not been held before the tenth annual session of the General Assembly following the coming into force of the present Charter, the proposal to call such a conference shall be placed on the agenda of that session of the General Assembly, and the conference shall be held if so decided by a majority vote of the members of the General Assembly and by a vote of any seven members of the Security Council."

Historical perspective of reforms

Outline of establishing an international organization was discussed in a meeting held between China, USA, UK, and USSR at Dumbarton Oaks Estate in Washington DC in 1944.¹³ The meetings resulted into a document titled "Dumbarton Oaks Proposals for a General International Organization", which gave proposal for the structure of the world organization.¹⁴ Much of the original drafting of the UN Charter was held in these meetings;¹⁵ and basic structure, organs, the status of the permanent states was decided.¹⁶ Only the matters of the SC and veto were left undecided.

Issues related to the SC and veto power of the Permanent members were discussed in the Yalta conference of 1945 by leaders of US, UK, and USSR.¹⁷ The three leaders decided the voting procedure of the SC in the agreement reached as result of Yalta conference. It was decided that each member of the SC will have

¹³Dumbarton Oaks Research Library and Collection."The Dumbarton Oaks Conversations." http://www.doaks.org/about/the_dumbarton_oaks_conversations.html. (Accessed: 3 July 2010).

¹⁴History of the Charter of the United Nations: Dumbarton Oaks and Yalta <http://www.un.org/en/aboutun/charter/history/dumbarton.shtml>.

¹⁵ Scott, Shirley. "The Failure of the UN to Hold a Charter Review Conference in the 1950s: The Future in the Past?," ANZLH E-Journal (2005), http://www.anzlhsejournal.auckland.ac.nz/pdfs_2005/Scott.pdf. (Accessed: 3 June, 2010).

¹⁶History of the Charter of the United Nations: Dumbarton Oaks and Yalta. <http://www.un.org/en/aboutun/charter/history/dumbarton.shtml>. (Accessed: 4 June 2010).

¹⁷Ibid.

one vote, and procedural issues will be decided by seven votes. They also agreed that matters related to the SC will be decided by seven votes including the concurring votes of the permanent members.¹⁸

As a result, at the San Francisco Conference the participants were presented with fundamentally finalized draft of the Charter, as most of the drafting was done in various previously held meetings.

Attempt to reform the propose structure of the UN started from the San Francisco Conference, where many states objected the setup of the SC and veto power. States like Australia, Cuba, and New Zealand objected the status of permanent member of the SC and veto power. The Cuban representative, Guillermo Belt Ramirez spoke against the status of permanent members, and called for democracy and equality among all states.¹⁹ Similarly, the representative of New Zealand, Peter Fraser also criticized the veto power. He termed it a tool of defense in the hand of aggressor and threat to smaller states.²⁰

The idea of review conference emerged as a compromise between the P5 and states opposing the veto power. The US representative presented the idea to include provision regarding review conference in the Charter to persuade

¹⁸ I (C) of the Agreement of Yalta Conference discussed the voting procedure. It states that:

"1. Each member of the Security Council should have one vote.

2. Decisions of the Security Council on procedural matters should be made by an affirmative vote of seven members.

3. Decisions of the Security Council on all matters should be made by an affirmative vote of seven members, including the concurring votes of the permanent members; provided that, in decisions under Chapter VIII, Section A and under the second sentence of Paragraph 1 of Chapter VIII, Section C, a party to a dispute should abstain from voting."

(Retrieved from <http://avalon.law.yale.edu/wwii/yalta.asp>)(Accessed: 9th May, 2010).

¹⁹ He was speaking at Seventh Plenary Session of San Francisco Conference on May 1, 1945. "Proceedings: Inventory of the United Nations Conference on International Organization San Francisco, 1945." Hoover Institution Archives. (retrieved from <http://www.oac.cdlib.org/data/13030/jz/tf2f59n5jz/files/tf2f59n5jz.pdf>) (Accessed: 15th June, 2010).

²⁰Ibid.

opposing states to sign it.²¹ Smaller states also strongly opposed the veto power of the P5 in matters related to amendments in the Charter and calling the Review Conference.²² Smaller states were against the concept that one permanent member can oppose and jeopardize the prospect of any future opportunity to amend the UN Charter.²³

The US Secretary of State, John Foster Dulles, who was also a member of the US delegation at the San Francisco conference, recognized that many states were compelled to sign the Charter at San Francisco conference after the addition of provision assuring a future opportunity to review the Charter in light of experience.²⁴ The states were made to choose between the unbalanced UN and threat of bleak future with no prospect of international cooperation.²⁵ When offered with such stark choices states signed the Charter with the hope to get an opportunity to amend it within a decade in accordance with Article 109.

The issue of review Conference came under discussion on June 1955, during a meeting held in San Francisco to commemorate the tenth anniversary of the signing of the Charter. ²⁶ Later, the issue was debated during 10th session of the GA, and as a result, the GA passed a resolution 992 (X) on 21 November 1955. In this resolution the GA decided that the Review Conference shall be held on

²¹ Shahriar Mahmoud Sharei, "United Nations Security Council Reform: Can Article 109 of the UN Charter come to Rescue?" (Paper Presented to: the Council Members and the Board of Directors of: Democratic World Federalists, World Alliance to Transform the UN, and the World Federalist Movement, April 2, 2010).

²² Ibid, 10.

²³ Scott, Shirley. "The Failure of the UN to Hold a Charter Review Conference in the 1950s: The Future in the Past?" ANZLH E-Journal (2005), http://www.anzlhsejournal.auckland.ac.nz/pdfs_2005/Scott.pdf. (Accessed: 3 June, 2010).

²⁴ Ibid.

²⁵ Ibid, 71.

²⁶ UNs Treaty Collection: "Articles 108 and 109." (http://untreaty.un.org/cod/repertory/art108-109/english/rep_supp1_vol2-art108-109_e.pdf. (Accessed on 5 May, 2010).

undecided “appropriate time”.²⁷ The GA also decided to form a Committee²⁸ consisting of all members of the UN for the purpose of deciding time, place, organization, and procedure of the Conference.²⁹ The SC conceded the decision of the GA and adopted the resolution³⁰ on 16th December, 1955 and “expresses its concurrence” to the GA resolution. The failure to hold the Charter review conference is a breach of promise made by the framers of the Charter and against the wishes of original signatories of the Charter.

The first amendment proposal was presented by Philippines in the very first session of the GA. The proposal aimed at amending Article 108, and to change voting procedure of the SC mentioned in article 27(3).³¹ The proposal was withdrawn in favor of the Cuban proposal presented in the same session. The Cuban proposal recommended convening the review conference under Article 109.³² During the second session of the GA, Argentina attacked veto and unsuccessfully demanded the scrapping of the veto.

²⁷ Article 1 of the A/RES/992(X).

²⁸ The committee was formed in 1957 and remained (in) active till September 1967. The Committee failed to set a date, and time for the conference. Later, before becoming inactive it recommended that at any member state might request it to meet. Scholars termed it “a Classical case of a UN burial”. (See: Shahriar Mahmoud Sharei, “United Nations Security Council Reform: Can Article 109 of the UN Charter come to Rescue?” (Paper Presented to: the Council Members and the Board of Directors of: Democratic World Federalists, World Alliance to Transform the UN, and the World Federalist Movement, April 2, 2010), 11.

²⁹ Article 2 of the A/RES/992(X).

³⁰ S/3504.

³¹ Scott, Shirley. “The Failure of the UN to Hold a Charter Review Conference in the 1950s: The Future in the Past?” ANZLH E-Journal (2005), http://www.anzlhsejournal.auckland.ac.nz/pdfs_2005/Scott.pdf. (Accessed: 3 June, 2010), 72.

³² The Cuban proposal could muster limited support of some Latin American countries and was defeated in first committee. Ibid.

In early years the US was advocating voluntary agreement to restrict the use of veto,³³ but was not in favor of drastic reforms³⁴ due to fear of split in the UN. The earlier attempts to review and amend the Charter failed not only due to the opposition of the permanent members like France, UK, and USSR³⁵, but also due to little support of other members. As countries like Canada, Chile, Denmark, Mexico, Pakistan, India, Egypt, Syria, and New Zealand were also against the idea of calling the Review Conference.³⁶

Consequently, the Charter is still in its original shape and only on two occasions minor amendments were made in the Charter. On December 17, 1963 the GA by adopting the resolution³⁷ made minor amendments in three articles of the Charter.³⁸ The SC was expanded by amending the Article 23. The membership of the SC was increased from eleven to fifteen, as number of the non Permanent members was increased from seven to ten. Article 27 was amended and requisite number of affirmative votes to decide procedural matter was increased from

³³ On 19 May 1948, the US Senate Committee on Foreign Relations submitted to the Senate a Vandenberg Resolution urging the US to seek voluntary agreement that veto should not be used in certain matters, for example; in the matters of peaceful settlement of disputes and in the admission of new states to the UN. On 11 June 1948 the US Senate passed the resolution.

³⁴ Though, it is interesting to note that as early as on October, 1947 the US Senate expenditure committee launched a study over the issue of overlap, duplication of efforts, weak coordination, proliferating mandates, and excessively generous compensation of the UN staff. (See for detail: Jean E. Krasno, *The United Nations: Confronting the Challenges of a Global Society* (Colorado: Lynne Rienner), 359.

³⁵ Scott, Shirley. "The Failure of the UN to Hold a Charter Review Conference in the 1950s: The Future in the Past?" ANZLH E-Journal (2005), http://www.anzhsejournal.auckland.ac.nz/pdfs_2005/Scott.pdf. (Accessed: 3 June, 2010).

³⁶ At early stage, the support for the reform process was very bleak as even the then UN SG, Mr. Hammarskjöld was against calling the review conference. (See: Scott, Shirley. "The Failure of the UN to Hold a Charter Review Conference in the 1950s: The Future in the Past?" ANZLH E-Journal (2005), http://www.anzhsejournal.auckland.ac.nz/pdfs_2005/Scott.pdf. (Accessed: 3 June, 2010).

³⁷ A/ 1991 (XVIII).

³⁸ The amendments came into force on 31 August 1965.

seven to nine. The membership of the Economic and Social Council was increased from eighteen to twenty seven, by amending Article 61.

Article 61 was again amended by a GA resolution³⁹ adopted on 20th December 1971.⁴⁰ The membership of Economic and Social Council was increased from twenty seven to fifty four. On 20th December 1965, the GA through a resolution⁴¹ amended Article 109 (1), and the requisite of approval of seven members of the SC to hold a Charter review conference was increased to nine members in Para 1.⁴²

The reforms remained one of the most engaging issues of the UN agenda itself. The issue of UN Reforms in also listed in the agenda of Millennium Development goals of the UN.⁴³

³⁹ A/RES/2847 (XXVI)

⁴⁰ The amendment came into force on September 24, 1973 when ratification was completed.

⁴¹ A/RES/2101 (XX)

⁴² Except the aforementioned changes, the charter was never amended. Though, the efforts were made to make progress on this issue, for example, in 1974, at its twenty-ninth session, the GA established an Ad Hoc committee of 42 members. The purpose of the committee was to review the reform proposals from different governments, and give proposal to enhance the ability of the UN and for its effective working that might not require amendments to the Charter. In 1975, one year after its establishment, the committee reported presence of diverse opinion on the issue of reform, and failed to make any proposals for reforms. The GA decided to reconvene the committee as a special committee on the Charter of the UN and on the Strengthening of the Role of the Organization. The members of the committee were increased to 47 from 42. The mandate of committee is comprehensive⁴³ and is renewed every year and makes recommendations in each session of the GA.

⁴³ A/54/2000

Complexity of the Issues

Many legal issues related with the reforms need careful study. The primary issue is possibility of reforms itself, whether it is possible to review and reform the Charter in accordance with the Article 108 and 109? Is it possible to reform the UN without making amendments in the Charter?

Another fundamental issue is of rule of law in connection with the veto power. Is Veto power against the rule of law? Secondly, is veto hampering the implementation of International law? The issue of Veto, its historical background, and the political realities attach with Veto need further study.

The preamble of the Charter recognized the equality of states but there are special privileges for P5. So, is veto against the principle of equality of sovereign states? According to some Scholars, Veto is vital as it safeguards the interest of the superpowers. In absence of the Veto the UN will collapse like its predecessor LoN. To these scholars, this was the only reason for the failure of the LoN. These facts should be examined along with the consequences of undermining the interest of the rest of the humanity.

Similarly, the question of State Sovereignty is an important issue in connection with the UN reforms. Is the concept of sovereignty static? Does sovereignty provides a legal cover for the states violating principles of International law? The changing concept of sovereignty should be examined in light of new organizations and institutions.

The issue of democracy in the UN and its decision making process is also an important issue. The question of inclusion of totalitarian regimes in the UN and its effects on the democratic decision making process is also a critical issue.

The issue of legality of anticipatory self defense is very critical in view of modern weapons of mass destruction and security arrangements of the UN. Provision of the Charter regarding the capability of the UN to respond swiftly to the situation of war, and other violations of International law in bilateral or internal matters should be discussed.

The critical study of legitimacy of one state and one vote is necessary. The fact that all states have equal voting powers regardless of the fact that one state represents billion and other a mere hundred thousand people. Is it in accordance with the spirit of democracy that minority decides the fate of majority?

The issue of consent based jurisdiction of the ICJ and state non compliance is of great importance especially in view of emergence of the ECJ and the ICC. The reforming of the ICJ, extension of its compulsory Jurisdiction, and mechanism to implement its decisions are important topics for further discussion.

Literature Review

There is no dearth of the scholarly work related to the UN. Scholarships extensively wrote about all aspect of the UN, its structure, working, shortcomings, failures, ineffectiveness, successes, reforms, and even on its abolishment.

The book “the Politics of Global Governance: International organizations in an independent World” edited by Paul F. Diehl⁴⁴ consist of many articles related to the practical and academic aspect of the International organization. The writers discussed the need of formal international organization, and performance and shortcomings of these organizations. The book also discussed the adaptability of organizations to the changing global realities, their relation with super powers and the influence of these powers on their working. Ruben P. Mendez’s “Financing the UN and the International Public sector problem and reform,” gives a detail analysis of the financial system of the UN, the sources of budget, division of budget, allocation of share, its shortcoming, and different proposals to reform the current financial system. The last part of the book dealt with the issues of reforms of the UN and ideas related to world governance.

Courtney B Smith’s book “Politics and Process at the United Nations: The Global Dance”⁴⁵ gave the detailed insight on the working and decision making process of the UN. The author analyzed the group/ bloc politics, diplomatic process, and different decision making bodies of the UN. He gave detail

⁴⁴ Paul F. Diehl, ed., *The Politics of Global Governance: International Organizations in An Independent World* (New Delhi: Viva books Pvt. ltd, 2005).

⁴⁵ Courtney B. Smith, *Politics and Process at the United Nations: the Global Dance* (New Delhi: Viva books Pvt. ltd, 2007).

description of the decision making process at the UN, and illustrated how states delegates, NGO's, Multinational cooperation interact with the UN and influence its process. After detail discussion of decision making process, the writer analyzed the outcome of decisions, their effectiveness, and state compliance. He discussed relevance of decision making process of the UN and concluded that it is much more than just an adaptation of resolutions. The process empowers smaller states to have their say in International decision making process, which was impossible before the advent of the UN. He draws an analogy between the dance troupes with the UN, and it's working with the dance movements.

The book "The United Nations: a concise political guide" co authored by Sydney D. Bailey and Sam Daws⁴⁶ is relatively a brief book. The earlier chapters explain purposes and structure of the UN. The authors than explain system of groups and blocs in the UN, and their working. The power and means of the UN to deal with issues of Peacekeeping, Aggression, Disarmament, and Human Rights are discussed. The future of the UN is examined in view of criticism received and the authors optimistically concluded that the UN is here to stay but work should be done to strengthen the organization.

The book edited by Jean E. Krasno titled "the United Nations: confronting the Challenges of a global society"⁴⁷ is divided into three parts. The first part written by Jean E. Krasno and Joe Sills discusses history of the LoN, its downfall during WWII and the creation of the UN from ashes of the War. The second part "engaging human needs on global scale" discusses issues which are of prime

⁴⁶ Sydney D. Bailey and Sam Daws, *The United Nations: A Concise Political Guide* (Suffolk: Ipswich Book Co Ltd., 1995).

⁴⁷ Jean E. Krasno, ed., *The United Nations: Confronting The Challenges of a Global Society* (Boulder: Lynne Rienner Publishers, 2004).

importance on the UN agenda, for example Disarmament, Peacekeeping, Human Rights, and Development. Third part of the book discusses the issues related to the finance of the UN and last chapter discusses the important issue of reforming the UN. The main focus of the chapter is on past efforts undertaken by the UN working committees and the reforms suggested by various reports and by various UN Resolutions. However, the author did not discuss the effects of various reforms proposals and difference of opinion on each proposal.

The Shirley Scott's article titled "The Failure of the UN to Hold a Charter Review Conference in the 1950s: The Future in the Past?",⁴⁸ carries the discussion of amendments in the Charter in views of Article 108 and 109. The Article gave the historical context of inclusion of Article 109 in the Charter. Scott also narrates the chronology of the meetings, and conference leading to the signing of the UN Charter. The early debate on issue of reform is discussed along with the circumstances that lead to cancellation of the Review Conference. The Scott's Article also contains rich details of reform efforts after the unsuccessful attempt to hold the Charter Review Conference.

"The Illusion of UN Security Council Reform" by Thomas G. Weiss⁴⁹ is a detail account of the SC problem, in relation to powers and instincts of its permanent members, especially the USA. The writer analyzed history of reform efforts, and reason of these unsuccessful efforts. He argued that SC reforms are historically

⁴⁸ Scott, Shirley. "The Failure of the UN to Hold a Charter Review Conference in the 1950s: The Future in the Past?" ANZLH E-Journal (2005), http://www.anzhsejournal.auckland.ac.nz/pdfs_2005/Scott.pdf. (Accessed: 3 June, 2010).

⁴⁹Thomas G. Weiss. "The Illusion of UN Security Council Reform," *The Center for Strategic and International Studies and the Massachusetts Institute of Technology The Washington Quarterly* 26 (2003): 4 pp. (147-161).

focused on the lack of representation of growing membership in the SC. The growing membership always challenged the decision making process revolving around five permanent members. He considered the veto and disagreement on the choice of new members as an obstacle in process of reforms. He also examined the US relationship with the SC, and emphasized the need of the US support for saving the SC from becoming defunct. He concluded that US support is linked with the SC's support for its actions, as the US will never allow any move curtailing its powers.

Brian Urquhart's in his article "The United Nations System and the Future"⁵⁰ discussed the need of International cooperation to tackle future problems. The author discussed suggestions for changing the UN machinery. The writer optimistically recorded the positive change in the working mechanism of the SC, and mentioned that for the first time it is possible to make use of Military Staff Committee. He denounced the typical political and diplomatic reaction on the International issues and urged to follow the EU format to mobilize intellect and technology to work with international organization. He concluded his work by stating the need of fresh discussion on more difficult issues, with informed enthusiasm.

"The Reform of the UN and Cosmopolitan Democracy: A Critical Review"⁵¹ by Daniele Archibugi is a critical analysis of different proposals to reform the UN. Three proposals for reforming the UN regarding the formation of directly elected assembly, reforming ICJ, and modifying the SC are analyzed in this Article. The

⁵⁰ Brian Urquhart, "The United Nations System and the Future," *International Affairs* (Royal Institute of International Affairs 1944-), 65 (Spring, 1989): 2 (225-231).

⁵¹ Daniele Archibugi, "The Reform of the UN and Cosmopolitan Democracy: A Critical Review," *Journal of Peace Research*, 30(Aug., 1993): 3., (301-315).

theory of legal pacifism and the need of an International Executive, Judicial and Legislative authority is discussed in detail. The writer pointed out that the ambitious ideas of World Parliament, the modalities of election, electorate qualification, but not its powers. He elaborated the states position in international law, relationship of state with citizens and constitution, the double standards of states while following local and International laws. He favored the proposal of creating a directly elected assembly as a subsidiary consultative body of the GA. He favored reforming the ICJ by adopting Kelsen's theory of compulsory jurisdiction and power of sanction behind the decision of the ICJ. He also evaluates the proposals to reform the SC from abolishing the veto, to expanding the SC.

"China's Position on U.N. Charter Review" by Suzanne Ogden⁵² is a detailed account of the China's position and efforts with regard to the reforms in the UN, in early years of its membership. The writer stated that China's position on the issue of reforms, its support to the Charter, and resentment on certain actions of the UN. The article contain detailed discussion on the objection of the US and Russia on the certain reform proposals and China's rebuttal on such objections. The writer stated that how China supported the Charter review in context of the changing global realities. The writer gave China's view on the nature of the UN and its principles as political and not legal. Similarly, China's historical dissent of "bourgeois international law" its value and use was also discussed. The writer concluded that Chinese government believed in restricted use of the Veto, and is

⁵² Suzanne Ogden, "China's Position on U.N. Charter Review," *Pacific Affairs* 52, (Summer, 1979): 2. (210-240).

apprehensive about the global government capable of pass binding resolution for states.

Outline of thesis

To discuss the issues in simple manner, this thesis is structured into three basic chapters, followed by a conclusion and recommendation section.

First Chapter discusses the structure of the UN, its flaws, and the hindrance it creates in smooth functioning of the organization. It discusses the failure of the UN to achieve its purposes due to structural flaws. Further, it explains how the UN failed to cater major international issues in recent times due to its flaws. Lastly, it analyzes the current capability of the UN to deal with future issues.

Second chapter discusses the prospect of abolishing the UN and replacing it with a new and more efficient organization. It compares the process of modalities of replacing the UN, and the process of reforming the UN. It deals with the issue that how difficult it is to reform the UN due to threat of double use of veto power. Importantly, it deals with issue of the effects of abandoning the UN.

Third Chapter caters two different approaches to structurally reform the UN. Firstly, it discusses the mechanism to innovatively interpret the UN charter to bring structural reforms. This approach can bring the changes in the structure without indulging into the hazard of amending the Charter. Secondly, it discusses the options to amend the Charter to bring structural changes to make the UN more effective.

Conclusion adequately accommodates all the important findings of the thesis.

Notably, three tables are annexed with this part, which illustrate the structure of the UN after adopting different reforms packages.

Chapter One

Failures of the United Nation Organization

The United Nation Organization (UN) is the world largest organization, with universal membership. The Organization was formed sixty five years ago with high hopes and objectives, to succeed the LoN. Both the LoN and the UN were formed with fundamental purpose of preventing war and maintaining peace.

After the World War I, leaders like then American President Woodrow Wilson advocated the creation of organization to ensure peaceful settlement of issues, and declared it necessary for the survival of civilizations⁵³. In April 1919, during the Paris Peace conference the Covenant of LoN was adopted, with underlying principles of collective security⁵⁴, peaceful settlement of disputes by arbitration⁵⁵, and sanctions for the aggressing states⁵⁶. The League started to show signs of weakness and remained unsuccessful to limit states like Japan, Italy, and Russia from waging war.⁵⁷ Effectiveness of the LoN was affected as most of the states

⁵³ In 1916, the member of British government Robert Cecil in his memorandum argued that peace ensuring international organization is necessary for the survival of civilization.

⁵⁴ Article 11 of the Covenant of League of Nations. 1919.

⁵⁵ Ibid., Article 12.

⁵⁶ Ibid., Article 16.

⁵⁷ The League first showed significant signs of weakness during January 1923, when France occupied the Ruhr and after six months when Italy bombed Greek island of Corfu. The League decided not take action against France and Italy, after their threat to withdraw from the organization. Later, in 1931 Japanese Army occupied the Chinese province of Manchuria and Chinese government appealed the League under Article 11 of the covenant⁵⁷. League refused to recognize Manchuria (renamed as Manchukuo) as an independent state. After the adaptation of report Japan resigned from the League and attacked another Chinese province. The League failed to impose economic sanction against Japan, as USA, which was biggest trading partner of Japan, was not a member of the League and Britain wanted to continue trade with Japan. (See: Describe Japan's invasion of Manchuria (1931-3) and what the League of Nations did about it. www.johndclare.net/EL5.htm (Accessed: April 14, 2010)).

Similarly, in 1935, the League imposed sanctions on Italy when it attacked Ethiopia. Britain and France opposed the sanction, and sanctions remained ineffective as Italy continued the invasion and occupied the Ethiopian capital in 1936. In 1939, the league expelled Russia after

involved in WW II were not its member. The LoN not even once met during the WWII, and was later replaced by the UN.

Primary function of the UN was also to maintain international peace and security⁵⁸. The British Prime minister, Winston Churchill said that the UN is erected for the prime purpose of maintaining peace, but he cautioned that persistence is needed to turn the dream of peace into reality.⁵⁹ The words of Churchill clarified that mere establishment of the UN is not enough to ensure peace. He further said that “temple of peace” should be built upon solid rock and not on shifting rocks. ⁶⁰ Establishment of the UN was not in itself insurance of peace, but a mean to achieve an end, i.e. peace.

Criticism on the UN is not a new phenomenon, but today the UN is attracting more criticism than ever. Scholars are rigorously evaluating different objectives enshrined in the UN Charter and progress made by the UN to achieve it. There is no fixed criterion to judge performance of the UN, as different scholars evaluate the performance of the UN on various grounds. The question is how can we then measure the success and failures of the UN? There are couple of important factors, which serve as bases to evaluate performance of the UN. Firstly, did the UN achieve its purposes and objectives, as mentioned in the Charter? Secondly, did the UN satisfy the aspiration of its member states and public in general? The UN has a mandate to perform multiple and diverse functions, ranging from

its invasion of Finland. (See for further details: Spartacus Educational, <http://www.spartacus.schoolnet.co.uk/FWWLeague.htm>. (Accessed at April 14, 2010)).

⁵⁸ Article 1 of the UN Charter of 1945.

⁵⁹ Winston Churchill, “*Sinews of Peace* (the Iron Curtain Speech)” (Speech at Westminster College in Fulton, Missouri, March 5, 1946). <http://www.historyguide.org/europe/churchill.html> (Accessed: April 14, 2010).

⁶⁰ Ibid.

maintenance of peace, to providing humanitarian aid. Article 1 of the UN Charter list down the following purposes of the UN, for example:

- To maintain international peace and to take measures to prevent and remove threats to peace.⁶¹
- To develop friendly relations among nations based on respect for the principle of equal right and right of self determination of peoples.⁶²
- To achieve international co-operation in solving international problems of economic, social, cultural or humanitarian character.⁶³
- Promote respect for human rights and fundamental freedoms for all.⁶⁴
- To be centre for harmonizing the actions in the attainment of these common ends.⁶⁵

The aspirations of member states and people originate from the purposes undertaken by the Charter itself, for example, peace⁶⁶ and eradication of poverty⁶⁷. The UN tried to work in diverse fields, but it received severe criticism as it failed in achieving most of its objectives. The failures are result of flaws in the Charter, structural issues, corruption, and lack of political will. In this chapter, we will try to identify the major failures and problems of the UN, and major failures of the UN are:

⁶¹ Article 1(1) of the UN Charter, 1945.

⁶² Ibid., Article 1(2) .

⁶³ Ibid. , Article 1(3).

⁶⁴ Ibid.

⁶⁵ Ibid. , Article I (4).

⁶⁶ Ibid. , 1(1).

⁶⁷ Purposes mentioned in Article 55 of the UN Charter, 1945.

- Failure to maintain international peace;
- Failure to stop states from using the force;
- Failure to create equality among states;
- Failure to establish an International Security Force;
- Dependence on developed states;
- Emergence as a biased organization;
- Failure to safeguard human rights in some regions of the world;
- Incompetent to meet the future challenges.

1.1 Failure to Maintain International Peace

One of the fundamental purposes of the UN was to maintain international peace and security,⁶⁸ and it was created to "save succeeding generations from the scourge of war".⁶⁹ Similarly, the Charter urges all member states to settle their disputes by peaceful means and not to jeopardize world peace⁷⁰. The Charter was drafted with intention of safeguarding the valuable civilian life and property, and with the principle that members will refrain from any sort of violence.

Today, the humanity is experiencing wars, rebellions, genocides, and armed struggles in different parts of the world, and the UN is too outdated and handicapped to undertake these situations. In recent times, the UN failed to settle the important issues, like Kashmir issue, Palestine issue, Iraq's Weapon of Mass Destruction issue, Kosovo issue by waging peaceful means.

⁶⁸ Article 1 of the UN Charter, 1945.

⁶⁹ Preamble of the UN Charter, 1945.

⁷⁰ Article 2(3) of the UN Charter, 1945.

India, Pakistan, the two nuclear armed neighbors and rivals, failed to settle their disputes peacefully and went to war four⁷¹ times. Unresolved Kashmir issue and resulted extremism is still posing threat to the peace of the region, and the UN failed to resolve this most dangerous issue between two nuclear armed states. The question is, whether it is a failure of the UN or the two nuclear armed states? The purpose of the UN will soar if matters threatening to international peace will be left on the mutual consent of states with different vested interest.⁷² The UN failed to take decisive action on Kashmir issue under Chapter VII of the Charter.⁷³

Similarly, Palestine conflict is also lingering for more than sixty years and the issue is main cause of unrest in the Middle East. The UN failed miserably not only in resolving the Palestine issue, but also in preventing Israel from committing grave human right violations, such as the indiscriminate use of banned white phosphorous gas against civilian population in Gaza⁷⁴, indiscriminate killing of civilian population⁷⁵, and targeting the UN compound with shells containing phosphorus gas.⁷⁶

Broadly there are two types of the UN resolutions; the non binding resolutions passed under Chapter VI, mostly passed by the GA. Resolutions under Chapter

⁷¹India and Pakistan fought four full fledged wars including; war of 1948, 1965, 1971 and 1999.

⁷² See *infra* for further discussion.

⁷³ All resolutions on Kashmir issue are passed under Chapter VI, which are non binding in nature, for example; S/RES/38 (1948), S/RES/209 (1965).

⁷⁴ Human Rights Watch Report: Rain of Fire: Israel's Unlawful Use of White Phosphorus in Gaza," (25 March, 2009) (Retrieved from: <http://www.hrw.org/en/node/81726/section/2>.) (Accessed: 10 August, 2009).

⁷⁵Amnesty International in 2004 has accused Israel of committing war crimes in the occupied West Bank and Gaza Strip and reportedly killing 700 people including 150 children, and reckless use of force. (See: http://news.bbc.co.uk/2/hi/middle_east/4580139.stm)

⁷⁶On January 15, 2009, *The Times Online*, in its report "UN headquarters in Gaza hit by Israeli 'white phosphorus' shells", reported that Israeli artillery fire containing the incendiary agent white phosphorus struck the main UN Compound on January 15, 2009. (See for full report: http://www.timesonline.co.uk/tol/news/world/middle_east/article5521925.ece.) (Accessed: August 20, 2009).

VII are binding, but their approval need consensus vote of five permanent members of the SC. The UN passed many non binding resolutions⁷⁷condemning the atrocities of Israel. The UN failed to restrain Israel, as no binding resolution under Chapter VII is passed against Israel due to threat or actual use of veto⁷⁸. More recently, the UN failed to stop USA and Russia from attacking Iraq (2003) and Georgia (2008) respectively. In recent times, the world also suffered genocide of Muslims in Bosnia, Serbia, and Iraq. Slaughter of Christians was also carried out in Sudan and Indonesia. Lastly, the UN also failed to prevent the genocide in Rwanda.

The Rwanda genocide of 1994, which claimed approximately 800,000 lives⁷⁹, is an accurate example of the UN failure to prevent immense human catastrophe. The Hutu population of Rwanda performed the "ethnic cleansing"⁸⁰ of Rwanda's Tutsi and moderates Hutu population, and all this happened in the presence of small number of the UN peace keeping mission⁸¹ within short span of hundred days. The later investigation blamed the SC failure to identify situation as genocide and reduction in number of the UN Assistance Mission for Rwanda

⁷⁷ There are many SC resolutions condemning Israel e.g. S/RES/111(1955), S/RES/289 (1970).

⁷⁸ USA vetoed 41 SC Resolutions condemning Israel of its atrocities. (See: A/58/47).

⁷⁹ Jim Wurst, "UN Failed to Halt 1994 Genocide in Rwanda," *IPS*, (December 1999) <http://www.hartford-hwp.com/archives/36/444.html> (Accessed: 10 August, 2009)

⁸⁰ Ethnic cleansing is defined as "the attempted extirpation of an ethnic minority by the forces of the majority within a state". (See: A Dictionary of law, Ed. by Elizabeth A. Martin, Oxford University Press, 182). Extirpation can be by means of deportation, forced emigration, or genocide. <http://dictionary.reference.com/browse/ethnic+cleansing>. (Accessed: 20th April, 2010).

⁸¹ The term peacekeeping is not mentioned in the UN Charter and has no one definition. The UN defines peacekeeping as "the deployment of international military and civilian personnel to a conflict area with the consent of the parties to the conflict in order to: stop or contain hostilities or supervise the carrying out of a peace agreement."

<http://www.unac.org/peacekeeping/en/un-peacekeeping/fact-sheets/canada-and-un-peacekeeping/>. (Accessed: 10 July, 2010).

(UNAMIR) to 656 from 270.⁸² The unclear mandate of UNAMIR was the biggest reason for the failure in Rwanda, as the mandate and the UN Charter were silent about the use of force to save civilians. The indecisive and bureaucratic nature of the UN contributed to the loss of thousands of lives, which otherwise could have been saved.

The mandate of peace keeping mission is limited, and not effective to safeguard civilians in active hostilities. Though it is interesting to note that in the mandate of United Nations Organization Mission in the Democratic Republic of the Congo (MONUC),⁸³ the SC under its power in Chapter VII of the Charter decided that Mission “may take the necessary action, in the areas of deployment of its infantry battalions and as it deems it within its capabilities” to protect “civilians under imminent threat of physical violence”. Similarly, Article 4 of the SC Resolution 1565 (2004)⁸⁴ of 1 October 2004, and the SC resolution 1856/2008, of 22 December 2008, also mentions that the protection of civilians is included in the mandate of the mission to Congo “Ensure the protection of civilians, including humanitarian personnel, under imminent threat of physical violence, in particular violence emanating from any of the parties engaged in the conflict”.

In 2000, on the event of millennium summit, a UN-commissioned report led by a UN Under-Sectary General Lakhdar Brahimi was formed to review the UN peacekeeping missions. The report pointed out the weaknesses of the UN peacekeeping missions and suggested that the UN peacekeepers should be

⁸² Ibid.

⁸³ S/RES/1291/2000.

⁸⁴ A/55/305-S/RES/1565/2004.

capable of defending themselves and mandate. The commission advocated the "robust rules of engagement" to fight against those who break the peace agreement or use violence to weaken it.⁸⁵ The report also said that the SC should give peacekeepers clear mandate to extend protection to the civilians in an armed conflict in support of the basic UN principles.⁸⁶ The report concluded that equal treatment to all parties by the UN, even when one party violates the peace agreement results into "ineffectiveness and in the worst may amount to complicity with evil,"

The UN failed in peaceful settlement of various conflicts, hence failed to be the centre for balancing actions of state to achieve common ends⁸⁷. The brief overview of recent history proves that the UN miserably failed in achieving its prime purpose of maintaining global peace and harmony.

1.1.1 Extremism

On the one hand, the UN failed to come up with timely resolutions on important issues and on the other hand, it failed to implement its resolution on important issues as it did not have any mechanism or force to implement its will. The unresolved issues are major cause of extremism and terrorism, and are feeding fodder to the extremist ideology.

Unresolved Kashmir issue is a prime example of exploitation of the cause of struggle of independence. The SC passed twenty three resolutions⁸⁸ regarding

⁸⁵ Para 49 of Report of the Panel on UNs Peace Operations also known as Brahimi Report A/55/305-S/RES/1565/2004.

⁸⁶ Ibid. Para 62

⁸⁷ Article 1(4) of the UN Charter, 1945.

⁸⁸ Wajahat Ahmad, "Kashmir and the United Nations," *Countercurrents.org*, (27 August, 2008) <http://www.countercurrents.org/ahmad270808.htm> (Accessed: 10 June, 2009).

Kashmir conflict, but the issue is still alive and is posing serious threats to the peace of the region. The SC passed an important resolution⁸⁹ on Kashmir in April 1948 stating for the first time that the Kashmir problem would be decided in accordance with the will and wishes of people of Kashmir, expressed through a fair plebiscite conducted in the UN supervision.

“Nothing with satisfaction that both India and Pakistan desire that the question of the accession of Jammu and Kashmir to India or Pakistan should be decided through the democratic method of a free and impartial plebiscite, Considering that the continuation of the dispute is likely to endanger international peace and security (.).”

This resolution was important in many aspects; firstly it recognizes the right of people of Kashmir to decide about their own future. Secondly, the resolution recognizes that the continuation of Kashmir issue will endanger International peace and security. Thirdly, Pakistan too was satisfied with the decision of holding the plebiscite. Lastly, India itself pledged to fulfill the demand of holding a plebiscite. The former Indian Prime Minister, Jawaharlal Nehru, in speech on August 15, 1952 recognized Kashmir as an international problem and said that people of Kashmir are free to choose their own destiny he further said: "We want no forced marriages, no forced unions like this so we accept this basic preposition that this question is going to be decided finally by the good will and pledge of the people of Kashmir..."⁹⁰ The UN failed to implement its own resolution quickly and

⁸⁹ S/RES/47 (1948).

⁹⁰ Muhammad Farooq Rehmani, "Freedom Struggle of Kashmir", Feb 2, 2005, <http://www.kashmiris.org/articles/articles-english/freedomStruggleOfKashmir-Feb2,2005.htm> (Accessed: August 20, 2009).

swiftly especially within the first decade of passing the resolution, as at that time all parties were showing their willingness. The noncompliance is due to the fact that the resolution was nonbinding passed under Chapter VI.

In contrast today, though Pakistan still occasionally demand the UN monitored plebiscite, yet India claims Kashmir either it's internal matter or a bilateral issue with Pakistan in accordance with the Simla Pact of 1972 and the UN resolution 1172, according to which Kashmir is recognized by both states as a bilateral issue.⁹¹ The important question here is that if the UN can intervene into internal matter of a state if causing threat to international peace,⁹² then is it not authorized to intervene if the bilateral matter becomes a nuclear flash point? India tried to undermine the issue by calling it an internal matter⁹³, but then the presence of the UN is unnecessary; if the member states are permitted to do whatever they felt like on the pretext of internal matter.⁹⁴ The UN failed to

⁹¹ Kashmir is not a bilateral issue, as propagated by India. Firstly, on the basic level it involves three parties India, Pakistan, and people of Kashmir. Secondly, it is the international matter India itself took the issue to SC in 1948. Thirdly, though India and Pakistan agreed in Article II of the Simla Pact, 1972 to peacefully solve their bilateral issues,

"That the two countries are resolved to settle their differences by peaceful means through bilateral negotiations or by any other peaceful means mutually agreed upon between them. ...and both shall prevent the organization, assistance or encouragement of any acts detrimental to the maintenance of peaceful and harmonious relations."

This does not imply that both states agreed to give up the UN option. In fact, in Article I of the Simla Pact both countries agreed to keep the UN and its rule relevant *"That the principles and purposes of the Charter of the United Nations shall govern the relations between the two countries."* Even if the Simla Pact create any obligation, even then both states are bound to follow the UN obligation, as according to the UN Charter Article 103 if the obligation of member state come in conflict with other bilateral obligation of state than UN obligation shall prevail. Fourthly, Simla Agreement creates no obligation on the people of Kashmir and they are free to reject it. (See for Scholarly discussion: Dr. Ejaz Hussain, *Kashmir Dispute: An International Perspective* (Islamabad Quaid-e-Azam University, 1998).

⁹² Article 34 and 39 of the UN Charter, 1945.

⁹³ The Indian officials on many occasions declared Kashmir as internal matter for example, the external Affairs Ministry spokesman, Vishnu Prakash, declared Kashmir as internal matter while commenting on the remarks by the British Foreign Secretary, David Miliband, on issue of extremism in region linked with Kashmir issue. IBN Live: Thu, Jan 15, 2009, <http://ibnlive.in.com/news/miliband-seeks-kashmir-solution-india-miffed/82842-3.html>

⁹⁴ David Gelernter, "Replacing the United Nations," *The weekly standard* 008:26 (2003).

implement the most important resolution to hold plebiscite in Kashmir, and as a result the frustrated people of the Kashmir initiated armed struggle against the Indian forces, in late eighties. Indian military tried to crush the armed struggle and since then conflict is going on in Kashmir.

Today, the jihadist groups working in Kashmir, such as the banned Lashker-e-Tayba is allegedly the most powerful extremist and terrorist group. It is allegedly carrying its terrorist activities around the Indian sub-continent.⁹⁵ The British Foreign Secretary, David Miliband, held similar views and linked Kashmir issue with growing terrorism in the region; he argued that "resolution of the dispute over Kashmir would help deny extremists in the region one of their main calls to arms..."⁹⁶ It is a matter of simple logic that the solution of Kashmir issue will hamper the terrorist cause, but the UN failed to understand the gravity of Kashmir issue and instead is ignoring the issue. The suppressed people and their sympathizers are willing to go to any extent for vindicating their rights.

The same thesis was recognized by the GA in series of resolutions titled, Measures to prevent international Terrorism⁹⁷, in which, the GA linked the emergence of terrorism with the suppression of right of self-determination, and emphasized the need for special attention to recognize the issue of "right of self-determination" as it may cause terrorism. The UN, in the above mentioned resolution, urged all states individually and collectively, and the UN Organs to work for the eradication of causes of terrorism, and

⁹⁵ After 26/11 Mumbai attacks, Indian authorities alleged that Lashker-e-Tayba planned and carried out these attacks.

⁹⁶David Miliband, "War on terror' was wrong," *The Guardian*, Thursday, 15 January, 2009.

⁹⁷ A/RES/42/159

"To pay special attention to all situations, including colonialism, racism and situations involving mass and flagrant violations of human rights and fundamental freedoms and those involving alien domination and occupation, that may give rise to international terrorism and may endanger international peace and security"⁹⁸

Similarly, in the GA resolution titled "Measures to eliminate international terrorism"⁹⁹, the GA recognized foreign occupation as cause of terrorism and urged all states individually or collectively to eliminate the underlying causes of terrorism, and urged states

to contribute to the progressive elimination of the causes underlying international terrorism and to pay special attention to all situations, including colonialism, racism and situations involving mass and flagrant violations of human rights and fundamental freedoms and those involving alien domination and foreign occupation, that may give rise to international terrorism and may endanger international peace and security¹⁰⁰.

Even after realizing the "domination and occupation" as reason of terrorism, the UN failed to do much in eliminating foreign occupation especially in case of Kashmir and Palestine. Is it not a deviation from its own objective and belief? Similarly, the UN passed many resolutions¹⁰¹ regarding the Palestine-Israel conflict and categorically accused Israel of atrocities, but failed to take any concrete step. Similarly, Russia, China, France, and America used their permanent status to hide their atrocities in Georgia and Bosnia, Taiwan, Rwanda,

⁹⁸ Ibid, Para 8.

⁹⁹ A/RES/46/51

¹⁰⁰ Ibid, Para 6.

¹⁰¹ UN Doc. S/106 (March 29, 1955) & A/111 (January 19, 1956)

and Iraq, respectively¹⁰². Failure of the UN to take bold steps in all these important issues encouraged and drives people towards extremism.

1.2 Use of Force

According to the UN Charter, threat or actual use of force is prohibited against the territorial integrity or political independence of other state. The use of force is prohibited if inconsistent with the purposes of the UN.¹⁰³ In the UN Charter; there are two exceptions to the general rule¹⁰⁴ of prohibition to use force:

- The use of force is permissible in collective or individual self-defense against an armed attack;¹⁰⁵
- And when the SC has directed or authorized use of force to maintain or restore international peace and security.¹⁰⁶

Article 51 of the Charter recognizes the inherent right of self-defense. Though, it is the duty of the SC to defend its member, but this Article also recognizes the inherent right of states to defend, if attacked by another state. The states can defend themselves either collectively, or individually. The defending state will report its defending actions to the SC: Quite clearly, this provision was inserted to avoid any wrong doings on the part of defending state. Article 51 of the UN Charter authorized the use of force by a state when "an armed attack occurs". The question here is, whether Article 51 only authorized the right of self defense

¹⁰²Mats Berdal, "The UN Security Council Ineffective but indispensable," *Survival* 45:2, (2003), 7-30.

¹⁰³ Article 2(4) of the UN Charter, 1945.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid., Article 51.

¹⁰⁶ Ibid., Chapter VII (Articles 39-51).

against an actual armed attack, or it also authorized the right of anticipatory self defense.

Several writers¹⁰⁷ discussed this issue in their writings, but the issue is still unsettled. The words "if an armed attack" literally refer to the situation when an actual armed attack occurs, and exclude the right of anticipatory self defense. The state's right of self defense will accrue only when it is attacked by another state, and will continue "until" any action is taken by the SC. The state's right of self defense is a temporary right to mitigate the damages of an armed attack by an enemy state.

Conversely, many interpret Article 51 to permit anticipatory self-defense in response to an imminent attack, as it is an inherent right. They mentioned the presence of some condition for the use of right of anticipatory self-defense. The conditions for exercising right of anticipatory self defense were explained in Letter from Secretary of State, Daniel Webster to Lord Ashburton, August 6, 1842 at the event of Caroline incident.¹⁰⁸ He justified the act as of self defense and said that the right of Self-defense is justified only when the necessity for action is "instant, overwhelming, and leaving no choice of means, and no moment for deliberation."¹⁰⁹

The UN should clarify the issue either by seeking an advisory opinion of ICJ on Article 51, or interpret the article and express its decision through a resolution.

¹⁰⁷ Michael Akehurst, *Modern Introduction to International Law*. (New York: Routledge, 1998), 311.

¹⁰⁸ During the 1837 rebellion in Canada, a steamer Caroline reinforced and supplied the rebels in Canada from the ports of the USA, and there was no time to halt its activities. The British force from Canada crossed to USA and seized the steamer Caroline and set her on fire. During the attack two of USA citizens also got killed. Consequently, the USA authorities arrested one subject of UK involved in attacked and charged him of arson and murder. (See Akehurst's, 314).

¹⁰⁹ Devika Hovell, "Chinks in the Armour: International Law, Terrorism and the Use of Force," *University of New South Wales Law Journal (UNSW)* 27(2) (2004), 398.

Interestingly, the UN member states are violating the article with regard to both the interpretations. Later in the Chapter, we will discuss the case where the permissive interpretation of Article 51 was implemented without considering the conditions of Caroline Case.¹¹⁰

1.2. 1 Security Council's Authorization of the Use of Force

The second exception to the general rule is the use of force authorized by the SC. It is the duty of the UN to maintain international peace and security,¹¹¹ and the SC can authorize the use of force under chapter VII to fulfill its duty and mission.

Article 42 states that in case of action taken under Article 41,¹¹² and if proved to be inadequate, then the SC is authorized to use armed force against a state, to maintain and restore international peace and security. The SC has vast powers under this Article, for example, the SC can use air, land, and sea forces for any operation.

It is provident to note that the SC will take military action when other actions or sanctions under Article 41 are imposed and proved ineffective, only then military action will be taken. In other words, use of force will be last resort, and not the first and foremost step. Similarly, the SC will authorize use of force either to maintain "international peace", which means the threat should be clear and forthcoming, or to restore peace, which means there is some prior destabilizing act.

¹¹⁰ See Section 1.2.2 below.

¹¹¹ Article 1(1) of the UN Charter, 1945.

¹¹² It includes non armed measures also known as, such as economic sanctions.

1.2. 2 Iraq War 2003

In view of above discussion, it maybe safely concluded that neither of the two exceptional circumstances existed in case of the recent Iraq crisis, as it was neither the case of self defense, nor was it authorized by the SC, hence the US attack on Iraq was unlawful.¹¹³ As discussed above, right of Self defense or anticipatory self defense arise only when there is actual attack, or when there is imminent threat of attack, but Iraq had not attacked any state, nor is there any evidence that an attack by Iraq on any state was imminent¹¹⁴. Keeping in view the condition mentioned in letter of the Daniel Webster, we can conclude that American and its ally's attack was not justified even under the pretext of anticipatory self defense, but the UN remained ineffective on the violation of its own Charter and international law. The UN was not able to take action against the US, even after its unauthorized attack on Iraq. On the one hand, the Charter clearly states that threat or actual use of force is not permitted except in two conditions, but states are using force against other states in violation of the Charter. On the other hand, the SC often failed to act swiftly and effectively to contain International crises. The Iraq crisis shows that the UN failed to work for common interest of international peace and security¹¹⁵.

Similarly, Israel's use aerial force on 5th April 1951, in violation of the SC Resolution 54, "the General Armistice Agreement, and the UN Charter" but the UN failed to take any concrete steps against Israel. Russia's recent attack, on

¹¹³M. Mushtaq Ahmed, *Jihad, Mahzamat, Aur Baghawat: Islami Shariat Aur Bayn al Aqwami Qanoon ki Roshni Mein* (Gujranwala: Sharaiah Acadmey, 2009), 183.

¹¹⁴ John Burroughs et al., "The United Nations Charter and the use of force against Iraq," <http://lcnep.org/global/Iraqstatemt.3.pdf> (accessed on October 4, 2009)

¹¹⁵Mats Berdal, "The UN Security Council Ineffective but indispensable," *Survival* 45, no.2, (2003): 7-30.

August 2008 against its neighbor, Georgia, is another example of illegal use of force. In certain other cases, when a state used illegal force against another state, the UN remained ineffective, as it lacks any implementing tool of its own, i.e., military or security force of its own.

1.2. 3 Just War

The principles relating to the use of force in the Charter reintroduces the concept of “just war”.¹¹⁶ The legal dictionary defines “just war” as; a term referring to “any war between states that meets generally accepted international criteria of justification.”¹¹⁷ According to this concept, states should peacefully settle their disputes and should not use force except in certain circumstances.¹¹⁸

Similarly, the use of force is prohibited under the Charter, but states are permitted to use force in collective and individual self defense¹¹⁹ against aggressor¹²⁰. In other words, a just war is one waged consistent with the Charter. The Kosovo crisis is a significant example of the Just war, as NATO initiated military action not authorized by the UN, but consistent with objectives of the UN Charter¹²¹ and in accordance with UN resolution¹²².

¹¹⁶ Hans Kochler, “The United Nations and International Democracy: The Quest for UN Reform,” *International Progress Organization*, XXII, Vienna (1997).

¹¹⁷ <http://legal-dictionary.thefreedictionary.com/Just+War> (Accessed: April 20, 2010).

¹¹⁸ The state can use force to enforce its rights based on international law.

¹¹⁹ Article 51 of the UN Charter of 1945.

¹²⁰ A/RES/29/3314: Article 1 of the GA resolution defined the term aggressor as “the use of armed force by a state against the sovereignty, territorial integrity, or political independence of another state, regardless of the reasons for the use of force.”

¹²¹ NATO intervenes to maintain international peace and security, and to stop humanitarian catastrophe.

¹²² S/Res/1199/1998. (The UN resolution called the situation in Kosovo threat to peace and security in region and for the withdrawal of Serbian security forces from Kosovo.)

Likewise, the permanent members have power to authorize the use of force on the pretext of maintaining international peace and security.¹²³ Hence, the Charter gave permanent members power to wage modern day "just war". The privilege of veto serves as legal immunity, as concurring votes of all permanent members are necessary alongside four others, for any decision of SC¹²⁴ against any state.

1.3 Failure to achieve Equality

The Charter describes all states as equals; ¹²⁵ it is one of the fundamentals of the Charter. This framework gives small states equality with big states¹²⁶, and dilutes the differences of area and power, both military and economic. The veto arrangement in the SC defies this very basic fundamental principle of the Charter and adds contradiction in the Charter itself. It makes the SC both undemocratic and ineffective.¹²⁷ The veto-wielding five permanent members selfishly prevent many issues from reaching the SC's agenda and they often prevent important initiatives¹²⁸.

The decisions taken by the SC are not democratic, because the SC does not represent the World community,¹²⁹ as it is not even fairly geographically represented, despite the presence of ten elected nonpermanent members. The five permanent members represent only three centers of the globe, for example, the veto power is enjoyed by three European states; France, Russia, and UK, one

¹²³ Article 42 of the UN Charter, 1945.

¹²⁴ Ibid. , Article 27.

¹²⁵ Ibid. , Article 2(1).

¹²⁶ Preamble of UN Charter

¹²⁷ "Security Council Reform," *Global policy forum*, <http://www.globalpolicy.org/security/reform/index.htm>, (Accessed: June 2, 2009).

¹²⁸ See infra for further decision.

¹²⁹ Democracy and the United Nation: http://www.unis.unvienna.org/pdf/Democracy_UN_2008.pdf (Accessed: June 2, 2009)

by an Asian state China, and one by North American state USA. This arrangement, left behind many regions unrepresented, for example, the Far East, the Middle East, the Scandinavian region, Africa, and South Asia. Similarly, currently the non-permanent members include; Austria, Bosnia and Herzegovina, Brazil, Gabon, Japan, Lebanon, Mexico, Nigeria, Turkey, and Uganda¹³⁰, this arrangement fails to represent all regions fairly, for example, the South Asia has no representation, though it is worth mentioning that this region is inhabited by more than one hundred and fifty billion people (almost 1/6 of total world population) and two nuclear armed states, and similarly, the oil rich and Muslim dominated, Middle East is also not fairly represented.

The Veto is against the norm of equality of states and rule of law.¹³¹ It yields great inequality as vote of one Permanent member can override the will of the rest of the world, for example, in 1987 the USA solely opposed and vetoed the resolution on "Opposition to the build up of weapons in space", with ratio 14-1.¹³² The UN veto provision is a serious violation of right of equality of sovereign, and it undermines the status of other states, especially when one state overrules the decision and will of the rest of the world.

Similarly, veto is excessively being used by Permanent members, for example, between 1945 and 2010, the USA used its veto 78 times, the UK 32 times, France

¹³⁰ Austria, Japan, Mexico, Turkey, and Uganda were elected as non-permanent members of the SC for two-year terms starting on 1 January 2009 to 31st December 2010. Similarly, Bosnia and Herzegovina, Brazil, Gabon, Lebanon and Nigeria were elected as non-permanent members of the SC for two-year terms starting on 1 January 2010 to 31st December 2011. Official SC website: <http://www.un.org/sc/members.asp> (Accessed: April 15, 2010).

¹³¹ Preamble of the UN Charter, 1945.

¹³² KryssTal, "Use of the Veto on United Nations Resolutions by the USA," http://www.kryssstal.com/democracy_whyusa03.html (Accessed: August 10, 2009).

17 times, Russia 126 times, and China vetoed 7 resolutions.¹³³ The veto is being unconsciously, or rather criminally used to safeguard vested interest of permanent members and their friends, for example, in 1981 alone, the USA vetoed eighteen resolutions¹³⁴ concerning its friend and ally Israel.

Veto is tyrannical power, bestowed upon the victors of the WW II, and the rest of world continues to live on the mercy and pleasure of the permanent members. The use of veto can violate the internationally recognized principles as the UN failed to pass a resolution condemning the killing of innocent civilians , by Israeli forces in Gaza, due to veto of USA.¹³⁵

Likewise, the threat of veto restrains the UN to streamline most important issues, for example, militarization of space, construction of WMD. If the UN, is not capable or rather allowed to cater these important global issues than the purpose, importance, credibility, and effectiveness of the UN is in serious trouble.

1.4 International Security Force

Chapter VII of the Charter deals with the powers of the SC to take action against threat or actual breach of peace, and acts of aggression. It is the duty of the SC to maintain international peace and security and for that purpose it is empowered; to lay out provisional measures¹³⁶, make recommendations¹³⁷, impose economic sanctions and other restrictions¹³⁸, and may use force¹³⁹.

¹³³<http://www.un.org/depts/dhl/resguide/scact.htm> (Accessed: 24th June, 2010),

¹³⁴ USA exercised veto 41 times to save Israel (See: A/58/47)

¹³⁵ S/2001/1199.

¹³⁶ Article 40 of the UN Charter.

¹³⁷ Ibid., Article 39.

¹³⁸ Ibid., Article 41.

¹³⁹ Article 42 of the UN Charter.

Article 43 of the UN Charter provides that all members will provide the SC with armed forces, or any other assistance needed for taking prompt action against any state, in order to achieve the purposes of the UN Charter. According to this provision, the SC can enter into one or multiple agreement with states for providing it assistance.

There is no progress in the creation of the International police force, as provided in the Charter. The strained relationship of Russia and USA, earlier due to tussle to control Germany and later during cold war is the *raison d'être* of failure to create the international police force¹⁴⁰. The retreat in implementation of this provision reduced the UN into an ineffective organization and its Charter into mere suggestions, or good words. The UN did not have necessary tool to implement its own agenda and collective will of world.

The UN fails to take swift action against violators of international peace and security, due to the non-availability of armed force at its disposal. Similarly, it also reduces the deterrence effect of the UN. The UN if decides to take military action against any states under Chapter VII of the Charter than it has to rely either on "coalition of willing"¹⁴¹, or on NATO¹⁴², but unfortunately this arrangement is available only for weaker states, for example, countries like Israel

¹⁴⁰ Ahmed, *Jihad, Mahzamat, Aur Baghawat*, 174.

¹⁴¹ The term coalition of the willing refers to the alliance of voluntary states created as a result of the GA resolution "Uniting for Peace". The coalition was first created during Korean War of 1950, when the SC led action was blocked by the Russian veto. The GA was able to pass the resolution as the veto is not applicable on the GA resolution. As a result the USA with its allies formed a "coalition of the willing" to fight against North Korea. The mechanism was again used to form during 1952 Suez Canal Crisis, though it never carried out any action. (See for detail : Christian Tomuschat, "Uniting for Peace General Assembly Resolution 377(v) New York 3 Nov, 1950," *Audiovisual Library of International law*, <http://untreaty.un.org/cod/avl/ha/ufp/ufp.html>). (Accessed: December 15, 2009).

¹⁴² UN resolution 1244 of 1999 authorized NATO to use force to save Kosovo from violence of Yugoslavia.

and Iraq violates the UN Charter, its resolution, and International Humanitarian law, but unlike Iraq, Israel is never punished. The whole arrangement reflects that might is right and unharmed, and even friends of mightier states are safe and go unpunished.

In my humble opinion the biggest flaw in the current UN structure is lack of deterrence force of the organization, and its helplessness in taking self initiated, swift, quick, and appropriate action against the violators of the Charter. Due to non-availability of International security force the UN has to rely on powerful states, for example USA, and defense alliances, for example NATO, but they will act only when their self interests will be served and not otherwise. Likewise, the UN can itself take swift and appropriate action, unlike the inappropriate and indiscriminate use of force by the individual entities. Similarly, the lack of the UN based security arrangement; serve as an excuse to the states like USA and Russia to act on their own, either on pretext of anticipatory self defense, or humanitarian intervention.

The UN is not a super-state; instead it is the guardian of international peace and security, and this function is assigned to it by the states. It has universal mandate to maintain international peace. Eccentrically, the charter itself hampered the UN's role in security matters by putting the consent of five permanent states above the rest¹⁴³ and states handicapped the UN by not establishing any enforcing force. It's naive to assume that the UN will perform its duties without any force on its disposal. The consent of states is needed to form an international security force under chapter VII (Article 43). The force should be

¹⁴³ Article 27(3) of the UN charter, 1945.

powerful and independent enough to take cognizance against any violator of international peace, no matter how powerful.¹⁴⁴

1.5 United Nation's prejudice?

One of the biggest reasons for the inefficiency of the UN is its failure to represent and safeguard the interests of its member states,¹⁴⁵ without any discrimination. The member states are also no more interested in representation, as they believe that the UN is not capable enough to deliver.¹⁴⁶ The UN is considered as the protector of interest of powerful countries only, for example, the European neo-conservatives¹⁴⁷ called the UN an ideological cover for anti-American pacifism.¹⁴⁸

The track record of the UN shows that it is more effective in taking decision in favor of non-Muslim countries, for example, the right of self determination of people of East Timor was recognized, but people of Kashmir are still fighting for

¹⁴⁴ Some may call it "utopian", but then the very survival and concrete reforms in the UN structure are also utopian thoughts. Having said that, I want to clarify that here we are discussing flaws in the structure of the UN and suggesting the areas where collective will of states is needed to reform the UN for collective improving its effectiveness.

¹⁴⁵ Simona Milio, & Francesco Grillo, "The mother of all questions: how to reform global governance?," *Open Democracy*, n.d.

http://www.opendemocracy.net/globalization-UN/article_1197.jsp (Accessed: June 6, 2009).

¹⁴⁶ Ibid.

¹⁴⁷ A neoconservative or *neocon* means newly turned conservative, who was formally a liberal. They are pro war and believe in anti liberal philosophies. It is widely considered as American ideological phenomena but it is shared across the world with regional variations. In Europe neo conservatives are known as "eurocons" and they too have passion for military might and interventionist foreign policies, but unlike their American counterparts they emphasis on the role of certain international alliances, like NATO as an instrument of global power, regime change, nation-building, and democratization. (See: Tom Griffin, "Who Are the "Eurocons"?", December 04, 2009. http://www.rightweb.irc-online.org/articles/display/who_are_the_eurocons). Neocons regard the UNs as dangerous and its check on Western powers as illegitimate. They demand the abolishment of the UN. (See: Jim Lobe, "What Is a Neo-Conservative Anyway?," <http://ipsnews.net/news.asp?idnews=19618>) (Accessed: December 4th, 2009).

¹⁴⁸ Maurizio Crippa, ed. "Changing the UN in Order to Save It," *Traces* <http://www.traces-cl.com/gen04/changing.html> (Accessed: June 2, 2009).

their fundamental rights.¹⁴⁹ Though not similar in facts, the UN honored the sacrifices of Catholic Christians in East Timor, but not that of Kashmiri Muslims.¹⁵⁰ Is the right of self defense available for Christians only? The UN has to answer these pinching questions and explain this discriminatory treatment met out to the people of Kashmir. Muslims all around the world feel ignored and side lined, and they feel the UN treat Muslims inhumanly.

History shows that the UN is more effective and efficient in taking against Muslim states, in comparison to non-Muslims states, in case of any violation of its Charter. The UN prejudice was evident from the fact that in case of Iraq's attack on Kuwait, the SC passed binding resolution¹⁵¹ under Chapter VII, authorizing the military operation against Iraq, but the UN failed to pass any resolution of military operation against US after its illegal attack on Iraq in 2003.

Again, the UN passed resolutions against Iraq, ordering disarmament and threatening the consequences in clear terms "you will face consequences..."¹⁵², but no such resolution threatening of consequences was passed against USA or Russia, after their recent military adventures in Iraq (2003) and Georgia (2008), respectively. Why? Is it a discrimination between permanent and non-permanent members, or between Islamic and non-Islamic members, or between developed and developing? Perhaps, it is the opposite sides of same coin, because no Islamic or Muslim majority country is permanent member of the SC.

¹⁴⁹ "United Nation Foundation Leaders Criticize, Praise UN's Performance, UN Millennium Conference," (September 07, 2000) http://www.unwire.org/unwire/20000907/10633_story.asp (Accessed: 6 September, 2009).

¹⁵⁰ Syed Atiq ul Hassan, "East Timor But Not Kashmir," Monday, 20 May 2002, *Extracted*, http://www.tribune-intl.com/syed_articles_con2.htm#East (Accessed: August, 2009)

¹⁵¹ S/RES/678 (1990).

¹⁵² S/RES/1441 (2002).

The UN is representative of all its members without any discrimination, but the UN structure is designed to safeguard and protect only the privileged ones. The UN policy of discrimination and prejudice is causing problem of credibility for itself, and it is cause of increasing resentment in third world, and especially in Muslim countries.

1.6 Dependence on Rich States

The UN heavily depends on rich and powerful states, for fulfilling its budgetary requirements. The budget of the UN is divided into three parts; regular, peacekeeping, and voluntary contributions for humanitarian and development programs. The twenty states are paying eighty five percent of total budgets of the UN and hence demand the control of the organization.¹⁵³ The US provided the UN with 22% of its annual budget¹⁵⁴. With big contribution in budget and veto powers, it is but natural for P5 to dominate decision making process of the UN.

The leaders of third world often criticize the UN for its dependence, and tilt towards rich and powerful. The Cuban President, Fidel Castro, expressed similar views at the UN millennium conference in 2000, he said that the three dozen developed and wealthy nations monopolize the economic, political and technological power worldwide, and they have joined us in this gathering to offer more of the same recipes that have only served to make us poorer, more exploited and more dependent.¹⁵⁵

¹⁵³ A/64/11 the assessment for year 2007-2009: Report of the Committee on Contributions (2009).

¹⁵⁴ Ibid.

¹⁵⁵ Fidel Castro addressed the UN Millennium Conference and Criticized UN's Performance, on September 07, 2000 in New York, USA.

http://www.unwire.org/unwire/20000907/10633_story.asp (Accessed: 20 July, 2009)

1.6.1 Grievances of powerful states

On one hand, third world countries are charging the UN of being trumpet of rich western states and on the other hand, the UN also failed to inspire and impress the big powers. Countries like US consider the existence of UN against its interest. On several occasions, many Americans, urged the US Senate to cut off the UN funds¹⁵⁶, and also to withdraw from its membership¹⁵⁷. The US, clearly and on numerous occasion, demanded more say in affairs of the UN as the US pays the 22% of the UN budget, 2001 the US contributed \$3.5 billion in UN budget¹⁵⁸. The US, Germany, and Japan contribute 43 percent of the total UN budget, are perplexed and angry over the participation of third world countries in decision making process with no, or little contribution in budget.

The UN is facing tremendous challenges, and divide between its members is increasing. The ill-conceived structure and the dodgy practices of the UN staff are causing more problems and grievances among member states.

1.7 Bureaucracy

Bureaucracy is back bone and driving force of every government, or organization. Its importance and significance lies in the fact that it's failure cause the collapse of the whole system¹⁵⁹. The UN bureaucracy is also known as the UN

¹⁵⁶Libertarian Party, press release: December 3, 2004, see: <http://www.stormfront.org/forum/showthread.php?p=1462626> (Accessed: August 3, 2009).

¹⁵⁷ Stefan Halper, "A Miasma of Corruption: The United Nations at 50," *Cato Policy Analysis*, No. 253, April 30, 1996, <http://www.cato.org/pubs/pas/pa-253.html> (Accessed: August 3, 2009)

¹⁵⁸ Nile Gardiner, and James Phillips, "Investigate the United Nations Oil-for-Food Fraud," *Heritage foundation*, 1748 (April 21, 2004).

¹⁵⁹ Eric Webb, "UN Bureaucracy and its failures," *The Cheers*, n.d. http://www.thecheers.org/Opinion/article_574_UN_Bureaucracy_and_its_failures.html (Accessed: 1st august 2009).

administration, or the UN Secretariat. The UN bureaucracy, which employed some fifty two thousand people¹⁶⁰, is seen as an evil and receives criticism on many accounts, for example, corruption, its failure to perform efficiently to avoid major crises, over sizing, extravagance spending, and the economic repercussion of such large and inefficient bureaucracy.

The inefficiency of the UN bureaucracy came into highlight during crises in Rwanda and Sudan. Thousand of people died in case of crises in Rwanda and similarly, thousand lives are still on risk in Sudan. In Sudan, the UN was unable to take any concrete step not only to save genocide, but also failed to provide the adequate humanitarian aid to people of these areas¹⁶¹. The UN bureaucracy failed to understand the crises situation in these areas and made the UN a mere juggler of words.

The UN system is complex; it includes multiple agencies, committees, ad hoc committees, sub-committees, working groups, consultants, and includes large numbers of under-secretary generals and assistant secretaries' generals. Similarly, the system of the UN relies heavily on meetings and reports, which increase the unnecessary paper work and expenditure.

The extravagances spending of the UN are criminal, the Ocala Star Banner,¹⁶² in its report stated that "the single page of UN wisdom", translated into six languages, "cost five hundred and fifty eight dollars" and according to Kofi

¹⁶⁰Encyclopedia of Nations, staff of the United Nations system, n.d. <http://www.nationsencyclopedia.com/United-Nations/Staff-of-the-United-Nations-System.html> (Accessed: 20 June, 2009).

¹⁶¹Eric Webb, "UN Bureaucracy and its failures," *The Cheers*, n.d. http://www.thecheers.org/Opinion/article_574_UN_Bureaucracy_and_its_failures.html (Accessed: 1st august 2009).

¹⁶² Jack Anderson, "UN Bureaucracy spends, spends, spends," *Ocala-Star Banner*, October7, 1986.

Annan, the UN's Office of the High Commissioner for HRs alone produced more than 44,000 pages of documents in 2004, alone.¹⁶³ Such, unchecked and unnecessary, spending by the UN bureaucratic staff, go unchecked and without any accountability, but it is cause of frustration among the contributors of the UN budget, especially, the US¹⁶⁴.

There are also charges of widespread corruption against the UN bureaucracy; reportedly¹⁶⁵ more than \$8 million has gone missing from operations in Angola, \$3.5 million from the UN center in Somalia, \$20 million from the UN's Cambodia relief effort, and \$10 million from a UNICEF operation in Nairobi, Kenya. The widespread corruption should be an eye opener for the member states; their money is being wasted by inefficient bureaucracy in an unproductive way.

The UN bureaucracy is highly paid, and the pension benefits are also very high. The personnel cost of the UN bureaucracy is an estimated 70 percent of the UN operating budget.¹⁶⁶

¹⁶³Krystal MacIntyre, "Annan call for UN bureaucracy overhaul may impact rights reporting," *Jurist*, March 31, 2006.

<http://jurist.law.pitt.edu/paperchase/2006/03/annan-call-for-un-bureaucracy-overhaul.php> (Accessed: August 3, 2009)

¹⁶⁴ USA, Senator Rod Grams, US Congressional delegate to the UN General Assembly, has called the UN an "excessively bureaucratic and dysfunctional organization, in desperate need of an overhaul." In 1990's the USA stopped its dues due to inefficiency of UN and later on resumes payments on the condition of reforms in UN. (See for further detail on the topic: Shravanti Reddy "Digital Freedom Network," *Global policy*, October 29, 2002.

¹⁶⁵Stewart Stogel, "U.N.'s 'Disgrace' Worsens: Investigation Shows Bureaucracy Disintegrating," *NewsMax.com*, March 31, 2004.

<http://archive.newsmax.com/archives/articles/2004/3/31/144759.shtml> (Accessed: 4th August, 2009).

¹⁶⁶ Stefan Halper, "A Miasma of Corruption: The United Nations at 50" *Cato Policy Analysis*, No. 253, April 30, 1996, <http://www.cato.org/pubs/pas/pa-253.html> (Accessed: August 3, 2009).

1.7.1 Oil-for-food Crises

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In recent years the biggest scam that emerged in the UN was the Iraq oil-for-food program, established by a resolution of the SC in 1995¹⁶⁷. The report of the UN appointed Independent Inquiry Committee headed by Paul Volcker unearthed¹⁶⁸ massive corruption in this humanitarian aid program, which severely tarnished the image and credibility of the UN. The program was formed to provide relief to the Iraqi civilians during the sanction period. Almost one thousand people were employed by the UN to administer this program,¹⁶⁹ but the program was carried out in secrecy and ambiguity. The Iraqi dictator, Saddam Hussain, illegally drew an estimated \$1.8 billion from this program¹⁷⁰, with the help of UN officials. The UN officials are charged of receiving kickback¹⁷¹ from Iraqi dictator Saddam's Regime, in return of their favors for illicit oil deals.¹⁷² The program was also a source of lucrative contracts for Russian and French companies¹⁷³. The oil for food crisis intensifies the demand to overhaul bureaucracy at the UN and to setup a mechanism for its accountability.

¹⁶⁷S/Res/ 986 (1995).

¹⁶⁸ Report on the Manipulation of the Oil-for-Food Programme (27 October 2005)

<http://www.iic-offp.org/story27oct05.htm> (Accessed: 7 October, 2009).

¹⁶⁹ Nile Gardiner, and James Phillips, "Investigate the United Nations Oil-for-Food Fraud," *Heritage foundation*, 1748, April 21, 2004, 3.

¹⁷⁰ Report on the Manipulation of the Oil-for-Food Programme (27 October 2005), 1.

<http://www.iic-offp.org/story27oct05.htm> (Accessed: 7 October, 2009).

¹⁷¹ Independent Inquiry Committee into the UN's Oil-for-food Programme: Third Interim Report (8 August 2005), 52.

¹⁷² Nile Gardiner and Steven Groves, "Oil-for-Food Revisited: The UN Should not pay Benon Sevan's Legal Fees," *The Heritage Foundation* February 24, 2009.

¹⁷³ Nile Gardiner, and James Phillips, "Investigate the United Nations Oil-for-Food Fraud," *Heritage foundation*, : 1748 (April 21, 2004), 4.

1.8 International Court of Justice

The International Court of Justice (ICJ) is “principle judicial organ of the UN”, established under Article 92 of the UN Charter. ICJ was established with view of creating an effective institution for adjudication, but today it is not an attractive platform for dispute settlements, as every year less than half dozen cases are referred to the ICJ.¹⁷⁴ During the period of 2004 to 2009 total 14 cases were submitted to ICJ.¹⁷⁵

The ICJ received criticism due to inherent flaws in its statute, which affects its effectiveness. We shall now analyze the statute and its flaws.

1.8.1 Restricted Jurisdiction

According to the ICJ statute¹⁷⁶ only states can bring their cases before ICJ. Hence, individuals and international organizations are barred from contesting their cases before the ICJ. The restriction of jurisdiction limited only to states, narrowed the scope of working of the ICJ. The restrictions also alienate the ICJ from world legal system. The ECJ for example, has vast jurisdiction and can settle legal dispute between; two members, the EU and its member, and individual citizen and the EU¹⁷⁷. Similarly, even Judges in the EU member states can turn to the ECJ to rule on pending cases involving the interpretation of Community law¹⁷⁸. The vast jurisdiction of ECJ, made it more relevant to its members, and

¹⁷⁴ Bingbin Lu, “Reform of the International court of Justice- A Jurisdictional Perspective,” *Perspectives*, 5:2, (June 30, 2004) , 2.

¹⁷⁵ 3 cases were submitted in 2009, 6 in 2008, none in 2007, 3 in 2006, 1 each in 2005 and 2004. (See: <http://www.icj-cij.org/docket/index.php?p1=3&p2=2>).

¹⁷⁶ Article 34 (1) of the Statute of International Court of Justice, 1945.

¹⁷⁷ The official EU website: <http://curia.europa.eu>. (Accessed: 15 May, 2010)

¹⁷⁸ Ibid.

enhanced its effectiveness. On the other hand, ICJ failed to play proactive role and remained ineffective, mostly due to lack of jurisdiction.

Though, ICJ can give advisory opinion, but only regarding legal question¹⁷⁹. Originally only the SC, and the GA can request for advisory opinion on their own, and other UN organs have to first seek permission from GA. These restrictions curtail the role of ICJ in International issues and problems.

1.8.2 Necessity of consent of parties

According to the Charter, all member states of the UN are also parties to the ICJ statute¹⁸⁰, but the consent of parties in a particular matter is necessary for exercise of jurisdiction by the ICJ.¹⁸¹ Any state, on any matter or dispute can refuse to accept the jurisdiction of the ICJ. This arrangement limits the scope of the ICJ and is major cause of its ineffectiveness. This arrangement gave peculiar privilege to the defendant to be sued when they approved to be. This is against the fundamental system of litigation practices around the world for centuries. No state will approve the process of litigation if it violated the major international obligation, and without approval no litigation is possible in ICJ.

Similarly, according to the ICJ statute, countries can accept the compulsory jurisdiction of the court,¹⁸² either unconditionally, or on condition of reciprocity.¹⁸³ Many states accepted the compulsory jurisdiction of ICJ and

¹⁷⁹ Article 65 of the Statute of International Court of Justice, 1945.

¹⁸⁰ Ibid. , Article 93 (1).

¹⁸¹ Ibid. , Article 36 (1).

¹⁸² Ibid. , Article 36 (2).

¹⁸³ Ibid. , Article 36 (3).

prima-facie it seem interesting and effective, but it has its own set of flaws¹⁸⁴, for example, usually it is for limited period, and importantly it is revocable by simple notice. On 26 August 1946 USA accepted the compulsory jurisdiction of ICJ, but revoked it during the case of Nicaragua vs. USA¹⁸⁵. During the case USA first argued that ICJ lacked jurisdiction to hear this case, and after court refused its argument¹⁸⁶ US refused to participate and later withdrew its compulsory jurisdiction. Practically the consent of parties is the driving force behind the working of ICJ, and their stubbornness resulted in its incompetence.

1.8.3 Advisory Opinion

As mentioned above, ICJ can also deliver advisory opinion, but again it is a limited power. The ICJ can deliver Advisory opinion either; when GA or SC request advice on legal issue, or when any authorized organ, or agency of the UN request its opinion on the legal issue, arising within scope of their activities.¹⁸⁷ The limitation of ICJ was evident when question in this regard was raised in the case of the World Health Organization (WHO)¹⁸⁸. The WHO requested for advisory opinion on the legality of use of nuclear weapons in an armed conflict. The ICJ

¹⁸⁴For detail analysis of the topic see: Bingbin Lu, "Reform of the International court of Justice- A Jurisdictional Perspective," *Perspectives*, 5:2 (June 30, 2004) , 6.

¹⁸⁵Military and Paramilitary Activities in and against Nicaragua, (Nicaragua V. United States of America) Jurisdiction and Admissibility, ICJ Reports 1984, 392.

¹⁸⁶Court held that it has jurisdiction on the basis of Article 36 and also under the 1956 Treaty of Friendship, Commerce and Navigation between the United States and Nicaragua. Also, Article 36(6) of the ICJ statute states that in case of dispute on jurisdiction, court itself will decide the matter.

¹⁸⁷Article 96 of the UN Charter, 1945.

¹⁸⁸ICJ reports 1996, 266.

declined the request stating that the question does not arise within scope of the WHO activities, as mentioned in Article 2 of the WHO constitution¹⁸⁹.

1.8.3. 1 Lack of Enforcing Tool

Enforcement of court decision is the essence of litigation. The whole exercise of litigation is futile if the decision is not implemented. The tool is needed to implement the will of court, but the ICJ lacks any enforcing tool. According to the Charter it is binding on the states to obey the court's decision¹⁹⁰, and in case of noncompliance by a party, the other party has a right to take issue to the SC, and SC may take the appropriate steps to implement the decision¹⁹¹. This mechanism lack credibility, as SC is a last resort, which itself is a defective organ.

The SC will be able to implement the decision in few cases, but what if it is any case against any Permanent member? The appropriate example of this situation is when the USA vetoed the resolution¹⁹² calling for full and immediate compliance with the judgment of Nicaragua vs. USA case. The lack of implementing tool is a major reason for ineffectiveness of the ICJ¹⁹³ and needs special attention in reform program. Though, in most cases countries comply with ICJ's decision, but the problem of compliance arises in many cases¹⁹⁴. The

¹⁸⁹ Article 2 of the WHO Constitution defines many functions of the organization, e.g. the eradication of epidemic, to promote and conduct research in the field of health, to promote maternal and child health, to work for improving standards of teaching and training in the health, medical and related professions.

¹⁹⁰ Article 94(1) of the UN Charter, 1945.

¹⁹¹ Ibid., Article 94(2).

¹⁹² UN Doc: S/18428.

¹⁹³ Bingbin Lu, "Reform of the International court of Justice- A Jurisdictional Perspective," *Perspectives*, 5:2 (June 30, 2004), 8.

¹⁹⁴ See Cases: ICJ Reports 1984. 392. and ICJ Reports 194 , 4.

countries will comply only if they will, which make mockery of the judicial system.

The issue of enforcement was raised in Corfu Channel Case,¹⁹⁵ the settlement agreement between Albania and UK after 47 years raise special concerns for enforcement mechanism and the question is whether this case should be considered as an execution.¹⁹⁶ On October 1946, one of the British destroyers, the Saumarez was damaged after hitting a mine in Albanian waters. The other destroyer Volage was sent to assist the Saumarez, but it was also hit by another mine. As a result, 45 British officers and sailors died and 42 were injured. In 1949 ICJ ordered Albania to pay 843,947 pounds to UK as compensation for destroying its two warships and death of its citizens.¹⁹⁷ In 1998, 50 years after the ICJ order, Albania paid only two million Dollars to UK out of twenty six million dollars amount excluding interest. The payment was made in exchange of the release of 1.5 ton of gold. The gold was stolen from Albania by Nazis during World War II and was recovered by the Allied powers.¹⁹⁸

Many other states, in contravention of Article 94(1) of the Charter, completely defy the decisions of ICJ and adopted the policy of non-compliance, and no action was taken against them by the SC according to A 94 (2).¹⁹⁹

¹⁹⁵ Corfu Channel case: ICJ Reports 194, 4.

¹⁹⁶ David Schultz, review of *Compliance with Decisions of the International Court of Justice*, by Constanze Schulte, <http://www.bsos.umd.edu/gvpt/lpbr/subpages/reviews/schulte405.htm>. (Accessed: 6th Nov, 2009).

¹⁹⁷ ICJ Reports 1949, 244 The Corfu channel case 1949, the assessment of the amount of compensation due on the people republic of Albania to the UK Judgment.

¹⁹⁸ Laurence W Maher, "Half Light Between War and Peace: Herbert Vere Evatt, The Rule of International Law, and The Corfu Channel Case," *Australian Journal of Legal History*, (2005): 3.

¹⁹⁹ For example, France defied ICJ's decision in Nuclear Tests Case, New Zealand v. France (ICJ Reports 1974, 457). Similarly, Ireland rejected the decision of the ICJ in Fisheries

1.9 Human Rights

The UN Charter gave special importance to the cause of human rights, and urged for international collaboration for "promoting and encouraging respect for human rights and fundamental freedoms for all."²⁰⁰ The UN in 1948 formed the United Nation Human Rights Commission (UNHRC), under Economic and Social Council (ECOSOC). The UNHRC was dubbed as ineffective and received criticism for being unable to take effective steps as it was dominated by HR abusers, for example, Sudan. After lengthy discussions, the GA passed a resolution²⁰¹ and replaced the UNHRC with the new Human Rights Council (Council) on March 15, 2006.

The Council is facing same problems and criticism, as it's predecessor. The UNHRC was criticized for electing states with dark human rights record, for example, Sudan was elected a member of commission in 2001 and was reelected in 2004. The UNHRC also faced the problem of bloc voting, resulting into inefficient working. The Council is facing the similar problem; members are elected by the GA for term of three years, on the basis of regional blocs²⁰², rather on their human rights record. As a result of election on bases of regions chronic human rights abusers are elected as members of the Council, for example, China,

Jurisdiction Case, United Kingdom of Great Britain and Northern Ireland V. Iceland Jurisdiction of the Court. (ICJ Reports 1973, 3).

²⁰⁰ Article 1(3) of UN Charter

²⁰¹ A/RES/60/251

²⁰² The election of 47 members of the council is held according to the paragraph 7 of the GA resolution 60/25 by secret ballot based on geographical distribution. Thirteen members each from Group of Asian States and group of African states, six from Group of Eastern European States, eight from group of Latin American & Caribbean States, seven from Group of Western European and other States. Members will be elected for three years by majority votes of the members of the GA and members will be ineligible for re-election after two consecutive terms.

Cuba, India, Pakistan, Saudi Arabia, and Russian Federation.²⁰³ The election of these countries as the member is tarnishing the image credibility of the Council as was the case with the UNHRC. Republican Congressman, Cliff Stearns²⁰⁴, and Congresswoman Ileana Ros-Lehtinen²⁰⁵ have already called that USA funding for the Council should be withdrawn, due to its flawed membership criteria. It is considered that membership on the basis of geographical quotas is gateway for the violators of the human rights to the Council.

The Council due to its formation failed to work in balance. The Council is also criticized for its bias attitude against Israel²⁰⁶, as in short span; the council passed nineteen separate resolutions and held five special sessions to condemn Israel. On the other hand, the council deals leniently with other prominent human rights violators like Burma, China, Cuba, North Korea, Libya, Saudi Arabia, Sudan, and

²⁰³China, Cuba, Pakistan, Russian Federation, and Saudi Arabia, are current members of the Council and their term will end on 2012, except Pakistan whose term will end on 2011. (See: <http://www.un.org/ga/64/elections/hrc/index.shtml>).

²⁰⁴Joseph Klein, "Denying Reform at the UN Human Rights Council," *FrontPageMagazine.com*, Wednesday, June 03, 2009.

²⁰⁵ Bridget Johnson, "Libya election ignites concerns about U.S. on Human Rights Council," *The Hill* May 15, 2010.

²⁰⁶ Brett Schaefer, "The U.N. Human Rights Council Does Not Merit U.S. Membership," *The Heritage Foundation* March 12, 2007.

Zimbabwe.²⁰⁷ How can it ignore Sudan's genocide in Darfur,²⁰⁸ or the brutal crimes of Robert Mugabe in Zimbabwe?²⁰⁹

Creation of the Council was considered as a step towards overall reform program at the UN, but instead it should be considered as rerun of the old show. The Council should be balance, and should have some basic criteria for its membership. The violators of human rights at their own territory will hardly be considered as promoters of human rights at global level. The UN must implement Universal Declaration of Human Rights in true spirit, and should work for the elimination of slavery, human trafficking, forced famine, torture, censorship, and political coercion.

1.8 Capacity to meet the Future Challenges

The world collectively is facing the challenges of environmental degradation, space militarization, and weapon of mass destruction, but the faulty structure of the UN is causing hurdles and delay in taking effective steps. On the one hand, the world is facing these grave challenges, which are threatening the very

²⁰⁷ See for details on worst Human right abusers as the member of the Council and their performance and record: "2010 UNHRC Scorecard with Recommendations for US Leadership", Presented at UNHRC Geneva, March 9, 2010. <http://www.unwatch.org/>.

²⁰⁸ In 2003, two armed rebel groups; the Sudan Liberation Army and the Justice and Equality Movement took arms against the Sudanese government. They alleged that government failed to provide them security from nomads and that the government is ignoring the area. As a result, the government supported Arab militant group Janjaweed attacked and destroyed 400 villages and millions of civilians were forced to flee their homes. More than 2.5 million African farmers and other residents of Darfur were systematically displaced and 400,000 were murdered by Janjaweed. At last on March 4, 2009 Sudanese President Omar Al-Bashir was charged by ICC for ordering mass killing, plunder, & rape of Civilians in Darfur. Later warrants of various other alleged culprits were issued but the government has not surrendered any suspect to the ICC. (See: <http://www.unitedhumanrights.org/genocide/genocide-in-sudan.htm>).

²⁰⁹ Robert Mugabe's regime brought land reforms with the sole purpose of snatching the lands from white farmers. The regime used force to torture the white farmers. (See: Rod Nordland, "A Brutal Toll," *Newsweek* June 30, 2008.

existence of human race itself. On the other hand, the UN is too busy cleaning the mess of the big powers, and reduced the UN to the status of an inefficient humanitarian aid agency.

The need of effective global body is needed for solving global issues, which are common threat to all states. The UN tried to cater these important issues, but failed to deal efficiently.

In 1962, the UN formed specialized agency the United Nation Environment Programme (UNEP) to deal with environmental issues. After forty eight years of its creation the need is felt to make the UNEP more effective as its governing system comes under criticism and it is urged that it should be revitalize²¹⁰. The UN also failed to gather support from powerful countries like, USA regarding environmental issues.

Likewise, the problem of nuclear proliferation²¹¹ needs special UN attention as it is most threatening issue of our times. The UN endeavors in cases of Iran and North Korea, remained unsuccessful. The UN has to come up with effective mechanism to cope with emerging situations. The issues of disarmament and nuclear proliferation are important for the survival and safety of man kind, and the UN should deal with these issues on war footings.

²¹⁰Chadwick F. Alger, ed., *The Future of the United Nations System: Potential for the Twenty-first Century*(Tokyo: United Nations University Press, 1998) ,345.

²¹¹ The term "Nuclear Proliferation" is referred to spread of the Nuclear Technology to the Nations not recognized as Nuclear Weapon states or to individual or group of terrorist. The Non proliferation Treaty is in place, but concerns are exhibited on its effectiveness. The IAEA deal with the issues of nuclear proliferation, but its effectiveness is questionable. (See: "Nuclear Proliferation and Terrorism: can terrorist and "rogue" states can acquire Nuclear weapons," *CQ Researcher*14: 13 (2004).

http://www.iaea.org/NewsCenter/Focus/cqr_proliferation.pdf. (Accessed: 12 June, 2010)

Similarly, issue of space militarization needs special UN attention. Today, militarization of space is reality, and not fiction.²¹² Many states, on the pretext of their national interest, are ready to conduct military operation from space²¹³ and posing threat to international peace. The USA, for example, foresees two space-based weapons; a space-based laser, and a space-based kinetic kill vehicle, for testing and orbit within a decade as part of its missile defense project.²¹⁴

For USA and its ally Israel space is the next battle ground,²¹⁵ and the UN treaties are ineffective in prevailing circumstances as they were concluded keeping in view threats of cold war. Indeed, it is High time to bring new regime of outer space law to save space from militarization. A Comprehensive treaty is needed, to save the world from threat and actual destruction. In the new space treaty all forms of militarization and weaponization of space should be ban. The

²¹² The process of space militarization begins when first communication satellite was launched. Today space is highly militarized as around the globe armed forces are relying on satellites for their military activities like surveillance, warning systems, and navigation.

(See for difference between space militarization & space weaponization:

http://laromkarnvapen.slmk.org/ENG/Dokument/International_law/Space%20ADVANCED.pdf).

²¹³ The Report of the Executive Summary Commission to assess US national security space management and organization headed by former US secretary of Defense, Donald Rumsfeld presented its report on January 11, 2001. The report serves as blueprints for the USA space program. The commission in its report concluded that USA should "develop and deploy means to deter and defend against hostile acts directed at U.S. space assets and against the uses of space hostile to U.S. interests it is important for the security of the USA and its allies." (p.7). The commission also stressed on the need to develop a space based system that can either independently or with the help of land, air and sea forces defend or deter the hostilities against interests of the USA. (p.33).

²¹⁴ Dean Jonathan, *the Current Legal Regime Governing the Use of Outer Space, Outer Space and Global Security*. (Geneva, Palais des Nations, 2002) 26-27.

²¹⁵ The USA is planning to fight wars in space and they are mincing no words to describe their intentions. In 1996 the then Commander in Chief of US Space Command, General Joseph Ashy said "We're going to fight from space and we're going to fight into space". (See: Karl Grossman, "The dangerous business of making the heavens a war zone," *CovertAction Quarterly*, April / June 2001.) &

Pearl Harbour in Outer space, (Tuesday, 11 May 2004) <http://web.uttm.my/centepis> - (Accessed: 24 May, 20100.

world community should not be led by couple of states towards complete destruction of mankind. The existing laws should be amended to face the challenges, or a new law regime should be formed altogether. It is time to use the platform of the UN and form a comprehensive law mechanism to demilitarize the outer space and ensure peaceful use of space.

Chapter Two

Abandoning the United Nations Organization

Many people support the idea of abolishing the UN as it is considered to be an ineffective organization, for example, many European neo-conservatives think that UN should be abolished as it is unable to take critical political decisions.²¹⁶ Many Americans too consider that it is right time to move on to the post UN era.²¹⁷ Interestingly, like sole super power USA, the third world countries also consider the UN as ineffective.

The voices were raised as early as 1950's to abolish the UN, as in 1959 the leader of the Christian Nationalist Crusade (CNC) movement, Gerald L.K. Smith in his article "this is Christian Nationalism"²¹⁸ stated his opposition to a World Government and a Super-State, i.e. the UN. The CNC formed a subsidiary committee to abolish the UN, as they deemed it threat to the independence of the UN.

Later, many leaders, opinion makers, groups, and Scholars called for abolishment of the UN. The writers like Lieutenant Colonel Gordon Cucullu, demand the abolishment of the UN as they not only consider it a failed and corrupt institution, but also an institution dominated by totalitarian and

²¹⁶ Maurizio Crippa, ed. "Changing the UN in Order to Save It," *Traces*, <http://www.traces-cl.com/geno4/changing.html> (Accessed June 2, 2009)

²¹⁷David Gelernter, "Replacing the United Nations," *The weekly standard* 008 (2003): 26. <http://www.weeklystandard.com/Content/Public/Articles/000/000/002/330cmbbi.asp>. (Accessed: 30 August , 2009)

²¹⁸ Gerald L.K. Smith, "this is Christian Nationalism," *The Cross & the Flag*, February, 1959. (Retrieved from <http://www.stormfront.org/posterity/ci/smith10.html>, on 6th June, 2010).

dictatorial regimes.²¹⁹ People like the former president of the GA, Miguel d' Escoto²²⁰ considered the UN as a failed institution. He argued the UN failed to prevent war and to eradicate poverty, and judged on these grounds the UN is a failure. He considered the veto power as a major reason of the UN failure. He said that time has already passed to reform the UN, and it is time to reinvent it.

Today, the issue of the UN reforms and its existence is no more only an issue of academic interest; instead it is debated on every possible avenue as writers, journalist, activist, and bloggers, frequently state their views on this issue. The author of custom maid book and lawyer by profession, Peter de Krassel in his writing "Custom Maid Politics-Abolish the UN" said that the UN should be abolished as it is high maintenance, useless, outdated, and standing on very weak foundation.²²¹ He argued that the UN should be abolished and replace with the world organization in conform to realities of 21st century.²²²

Though, many people still consider reforms as a right path as provided in Article 108 of the UN Charter, and consider abolishment of the UN as a revolution, but as discussed above there is no dearth of people arguing that the UN should be abolished. This chapter is an attempt to discuss and analyze the strength of arguments in support of the abolishment of the UN and ideas for establishing a new organization.

²¹⁹ Lt. Co. Gordon Cucullu, "The UN: Corruption Junction," *FrontPageMagazine.com*, Tuesday, June 29, 2004.

²²⁰ D' Escoto, "the UN has failed." (Interview and speeches of world leaders on the UN failures and reforms) [http:// www.youtube.com/watch?v=C5H2iEMJtfw](http://www.youtube.com/watch?v=C5H2iEMJtfw) (Accessed 10 December, 2009).

²²¹ Custom Maid: Cleaning Up Politics, "Abolish the UN," July 16, 2006 <http://peterdekrassel.blogspot.com/2006/07/abolish-un.html> (Accessed: 15 march, 2010).

²²² Ibid.

2.1 Is the Idea of Reform Practicable?

The first and pivotal question is that is it possible to amend the Charter? The answer is that Article 108 itself made reforms practically impossible. The Article states that:

“Amendments to the present Charter shall come into force for all Members of the United Nations when they have been adopted by a vote of two thirds of the members of the General Assembly and ratified in accordance with their respective constitutional processes by two thirds of the Members of the United Nations, including all the permanent members of the Security Council.”

The reforms are now mostly related to the powers of permanent members, and they will veto any reform move affecting their powers. The reforms are restricted to the will of five members and the rest have little choice. There are also other hurdles in way of reforms, for example, rich countries of the EU and America are not interested in the UN reforms²²³ for strengthening the UN role in taking the lead in current economic and financial crisis,²²⁴ and lack of consensus on reforms is also a hurdle. The permanent five are not even recognizing the contradiction in current arrangement of the UN, i.e., status of permanent members and rule of equality of sovereigns²²⁵.

²²³ Though American administration and scholars on different occasions, advocate the UN reforms, but only to restrict its functioning, area of work, to reduce its budget, and its stuff. For example, See: Jesse Helms, “Saving the U.N.: A Challenge to the Next Secretary-General,” *Foreign Affairs*, 75: 5 (Sep. - Oct., 1996), 2-7.

²²⁴ Brettonwood Project, “Economic crisis: rich countries block reform at UN summit,” (e6 June, 2009). [http:// www.brettonwoodsproject.org/art-564772](http://www.brettonwoodsproject.org/art-564772). (Accessed: 3 September, 2010),.

²²⁵ Suzanne Ogden, “China's Position on U.N. Charter Review,” *Pacific Affairs*, 52, No. 2, (summer, 1979): 222.

2.2 Replacing with a New Organization

Many people,²²⁶ on several occasions due to various reasons have called for replacing the UN with new organization²²⁷. There are several suggestions for structure of new organization, for example, the suggestion that the new organization should be founded with no charter²²⁸. In this section all the features of new organization will be critically analyzed.

2.2. 1 Caucus of Democracies

The Caucus of democracies is an idea for creating an organization of democratic countries only. This idea is based on the view that only democracy can ensure the efficiency of the organization²²⁹, which is not the case with the UN. The UN gave membership to the doctoral regimes; they are not genuine representative of their people, which denies the right of representation to the people of such countries.

The concerns of the West were reflected by the former American presidential Candidate, Senator John McCain, offered the solution of this problem by initially presenting the idea of replacing the UN with an organization of democratic countries only²³⁰, known as "league of democracies" or "Caucus of Democracies". Legislation was also introduced in the American House of Representatives by

²²⁶ See infra: for different opinions regarding the abolishment of the UN.

²²⁷ David Gelernter, "Replacing the United Nations," *The weekly standard* 008:26, (2003).

²²⁸ Ibid.

²²⁹ Simona Milio, & Francesco Grillo, "The mother of all questions: how to reform global governance?," *Open Democracy* (30 April, 2003).

http://www.opendemocracy.net/globalization-UN/article_1197.jsp (Accessed June 6, 2009).

²³⁰ Democracy Now, "Century in Iraq, Replacing UN with "League of Democracies," Rogue State Rollback? A Look at John McCain's Foreign Policy Vision," (26 March, 2008). http://www.democracynow.org/2008/3/26/a_century_in_iraq_replacing_un (Accessed 10 January, 2010).

Representative Joe Scarborough for replacing the UN with new "League of Democracies".²³¹ Senator McCain, viewed that league of democracies will be compact and will bypass the large UN.²³²

As mentioned in earlier chapter that the UN is an organization with universal membership and its members include both democratic and non democratic countries. The democratic states of west, their leaders and writers consider that the UN is dominated by the dictatorial regimes and governments who have little or no respect for the human rights, rule of law, freedom, and equality. Hence, the non democratic members failed to acknowledge the importance of these principles, and are considered hurdle in the collective welfare of the humanity. The dictatorial regimes are involved in human rights violation in their own states, and they will never work against their own interest by advancing the cause of human rights and peace at global forum. Only the true accountable democratic organization can advance the cause of peace and human rights. Hence, it is widely believed in the West that the UN become ineffective in tackling global issues due to the attitude of non democratic members of the UN, for example, Russia, China, Middle Eastern monarchies, and Latin American countries.

This idea was further refined and enhanced by the American ambassador to NATO, Ivo H. Daalder. He believes that NATO can be transformed into "League

²³¹Jesse Helms, "Saving the U.N.: A Challenge to the Next Secretary-General," *Foreign Affairs*, 75: 5 (Sep. - Oct., 1996): 2-7.

²³² Democracy Now, "Century in Iraq, Replacing UN with "League of Democracies," Rogue State Rollback? A Look at John McCain's Foreign Policy Vision," (26 March, 2008). http://www.democracynow.org/2008/3/26/a_century_in_iraq_replacing_un (Accessed 10 January, 2010).

of democracies"²³³ by including some other states, for example, Australia, Botswana, Brazil, Colombia, Costa Rica, India, Israel, Japan, New Zealand, Singapore, South Africa and South Korea.²³⁴ The idea of expanding membership of NATO to like minded democratic nation will help replace the large UN, and will make decision making easier. NATO has potential to be the next world organization as three permanent members of UNSC, US, UK, and France are its member. NATO is also conducting operation around the world in different locations, for example, Afghanistan, Iraq, Darfur, Macedonia, Kosovo, Bosnia, etc.

The NATO is basically a defense alliance and seen as potential substitute of UN, but will it be ever able to replace UN? Russia considers NATO and its expansion plan of Ambassador Daalder against its security and principles of the Charter.²³⁵ The absence of two nuclear neighbors China and Pakistan from proposed NATO led alliance of democratic states is also suspicious. An organization, no matter how democratic will not be able to succeed by shutting its door to the almost half of the world including three nuclear powers. This will undo, perhaps the only feat achieved by the UN, i.e. universal membership. The idea of Ambassador Daalder will further polarize the world and is not worth executing.

²³³Rick Rozoff, "West Plots To Supplant United Nations With Global NATO," http://english.pravda.ru/world/americas/13-03-2009/107232-nato_un- (Accessed June 10, 2009).

²³⁴ Ivo H. Daalder & James M. Goldgeier, "For global security, expand the alliance," *International Herald Tribune*, (October, 2006).

²³⁵ See: for detailed reading of Russian authority's apprehension and reaction on expansion of NATO led alliance and their activities: Rick Rozoff, "West Plots To Supplant United Nations With Global NATO," <http://www.globalresearch.ca/index.php?context=va&aid=13759>.

However, the original idea floated by American Senator, John McCain, is worth discussing. If we discuss the hypothetical situation of establishing a new world organization, than new organization should only include true democracies. In other words, the condition of democracy can be imposed on the membership of the new world organization. Though, this idea also seems unripe, as it raised another important question that what is the definition of a democratic country? Perhaps, the world first has to come up with new consensus definition of democracy²³⁶, and decide the fate of semi democracies, pseudo democracies, and constitutional monarchies.

Apparently the creation of league of democracies seems easy, but a detail study shows the stark problems, for example, if a country with republican form of government is considered as democracy than this definition will declare China is democracy and constitutional monarchy is form of republican form of government which makes Saudi Arabia a democracy. What will be the fate of countries like Pakistan, as it's often juggles between phases of democracy and dictatorship?

To conclude it humbly, this exercise is futile because it will more or less include the same members, and on other hand, what is the benefit of creating a world organization with countries following western democratic pattern only and excluding almost all states of Middle East and Latin America? Will it still be called a world organization?

²³⁶ It is interesting to note that the World failed to define terrorism till now, though it is one of the most pressing issues of modern times.

Today, the EU is considered as the most democratic institution²³⁷ and the UN as the least democratic. The author of *International Organizations and Democracy*,²³⁸ Professor Thomas D. Zweifel compared democracy in eleven organizations including, EU, UN, AU, ASEAN, etc. In evaluation, he considered dimension of Appointment, Participation, transparency, reason giving, overrule, monitoring, and independence. The result of his comparative study marked EU as the most democratic institution and the UN as least democratic institution.

The EU, though is a regional organization, is comparatively democratic in nature, not by restricting the membership to favorable nations, but by direct involvement of its citizens and by protecting rights and liberties of citizens. The people of EU directly elect the European Parliament²³⁹ which is part of Co-decision legislative process with the Council and recently enacted Lisbon treaty increases its legislative powers.²⁴⁰ The Parliament will be able to legislate on more areas including the budget and agriculture.²⁴¹ The Lisbon treaty brought more democracy in the EU by introducing the Citizens Initiative.²⁴² The new initiative empowers one million people to bring forward new policy proposals. This initiative gives people of the EU direct say in the lawmaking process. National Parliaments can also give their input in the EU legislations as all proposed laws have to be sent to them.²⁴³ The national parliaments can object to the law and if objected by majority the proposed law will be withdrawn or amended. On one

²³⁷ See for comparison between different global and regional organizations on the basis of their democratic structure: Thomas D. Zweifel, *International Organizations and Democracy*, (New Delhi: Viva Books Pvt. Ltd., 2007), 176-77.

²³⁸ Ibid.

²³⁹ Article 1(12) of the Treaty of Lisbon amending 8a (2) of the Treaty on European Union.

²⁴⁰ Ibid., Article 1(17) amending Article 9 C of the Treaty on European Union.

²⁴¹ Ibid., Article 1(15) amending article 9A of the Treaty on European Union.

²⁴² Ibid., Article 1(12) amending article 8 B (4) of the Treaty on European Union.

²⁴³ Ibid., Article 1(12) amending article 8 C of the Treaty on European Union.

hand, the EU is ever evolving organization and striving for making the Union more democratic and functional. On other hand, the UN is suffering from stagnation as it not even once underwent major structural changes.

2.2.1.1 Membership Criteria

In the previous section we discussed “democracy” as the membership criteria and later we discussed the inherent weakness of the idea. Now, we will examine some other ideas with regard to granting membership for proposed new world organization.

Signatory of important International conventions

Over the years, many countries showed reluctance to sign important international treaties and convention regarding important issues. The idea is to grant membership of new organization to only those countries which have signed the major international conventions and treaties,²⁴⁴ for example, CTBT, CEDAW, convention on the rights of child, and resolution on nuclear disarmament, the Moon treaty, etc. On one hand, the execution of this idea will tempt the countries to accept the international agreements, and on other hand, it will block the membership of reluctant and dissenter regimes. The idea perhaps is tempting, but it fails to be a perfect recipe for creating an effective global organization for solving global problems like, AIDS, terrorism, etc. This rule will exclude countries like USA, China, India, and Pakistan, etc. from the membership.

The ideas for creating a new organization are various, and idealistic, but are not practicable. The ideas are beneficial for only certain set of states and not for

²⁴⁴ John D. Girgis. "Replacing the UN: Who is the Sheriff?," Wed12 March, 203 <http://www.mail-archives.com/brin-l@mumedia.com.html> (Accessed: 10 June, 2010).

states in general, for example, the members should only include countries that should spend certain percentage of their GDP's on defense²⁴⁵. The idea will simply exclude half of the poor states with more pressing needs than perhaps creating nukes. The restrictive membership criteria will only further divide the world, and will never assist in countering international problems. The better solution is to create the effective structure and to restrict the member states from drifting.

2.2.2 Directly elected representatives

According to reformist the new organization should be represented by the democratically elected representatives of member states and form a world Parliament²⁴⁶, unlike the GA or the SC. The diplomats representing states do not completely portray the will of people, but rather defend the official policy of governing regime, including the dictators. The idea behind the directly elected representatives is that they will express the will of people, and will ensure the involvement of people in the world decisions²⁴⁷, as is the case with directly elected European Parliament.

As discussed earlier, the idea of elected representative is already exercised in the European Parliament, which is represented by elected representatives of the European Union (EU). The EU parliament ensures that its citizen remain connected to democratic process. The establishment of a new world legislature,

²⁴⁵ David Gelernter, "Replacing the United Nations," *The weekly standard* 008: 26, (2003).

²⁴⁶ Bailey. Sydeney D. & Sam Daws, *the United Nations A Concise Political Guide* (Suffolk: Ipswich Book Co. Ltd., 1995), 105.

²⁴⁷ Thomas D. Zweifel, *International Organizations and Democracy*, (New Delhi: Viva Books Pvt. Ltd., 2007), 181.

can possibly remove the entrenched privilege conferred on the 'P5' and adopts democracy at the international level.

2.2. 3 Independent Income

Unlike the UN, the new organization should be financially independent²⁴⁸. The financially independent organization will be able to take impartial decisions, without the fear of any negative consequences or backlash from any major contributor. The incumbent UN is handicapped, or rather hijacked by major contributors of its budget, and they often twist its rules for their own benefits according to the rule that, "that those who have the gold make the rules"²⁴⁹. The major contributors of the UN hamper the flow of money, when they don't like what the UN is doing and thus manipulating the UN, for example the USA threat not to pay arrears of 1.5 billion unless the UN carried out reforms²⁵⁰.

The new organization should be free from the shackles of rich and mighty. The new organization should be considered as the international government and hence, it will be authorized to levy tax, or other charges on the states, or people to collect revenue.

The author, Paul Hawken in his book, *The Ecology of Commerce*, presented an interesting idea of independent income for the UN. He recommended the UN to impose an international tariff on arms manufacturers worldwide²⁵¹. In his view the

²⁴⁸ See above for details on how the UN depends on eight major states for its budget: 1.6. Dependence on Rich states.

²⁴⁹ Gary Younge, "The Golden Rulemakers", *The Guardian*, November 11, 2002.

²⁵⁰ Ruben P. Mendez, *Financing the United Nations and international public sector: problems and reforms*, in *The Politics of Global Governance*, ed. Paul F. Diehl, (New Delhi: Viva Books Pvt. Ltd., 2005), 145.

²⁵¹ Ruben P. Mendez also suggested the idea of collecting revenue by imposing tax on military expenditures, and on arms transfers, *Ibid.*, 154.

tax on missiles, planes, tanks, and guns would provide the UN with its entire budget.²⁵² The imposition of tax on the international arm trade and military expenditure will not only raise commendable amount of revenue for new international organization, but will also help in controlling the trade of weapons and arms leading to less destructive world.

Similarly, the former senior career official at the UNDP and New York University Professor, Ruben P. Mendez discussed options for new public financing system in the Chapter 6, "financing the United Nations and international public sector: problems and reforms", of the book "The Politics of Global Governance".²⁵³ He discussed certain tax suggestions for independent income for the UN and other International organization, for example, tax on foreign exchange transactions, on International trade²⁵⁴. The writer discussed another set of idea for raising revenue for international organization, i.e., Charges on the use of global commons, for example, moon and other celestial bodies, flights over high seas, parking fee for geostationary satellites.

2.2.4 Issue Base Voting System

The one state, one vote is generally prevailing system in the most organization.

One state one vote is not fair as that important decision are made by the dispassionate and disinterested states. The states are using their right to vote without full comprehension of the issue. Voting powers based on one state one

²⁵²Bamboo web, http://www.bambooweb.com/articles/U/n/United_Nations.html Criticism of the UN (accessed June 6, 2009).

²⁵³ Ruben P. Mendez, *Financing the United Nations and International Public Sector: Problems and Reforms*, in Paul F. Diehl ed., *The Politics of Global Governance* (New Delhi: Viva Books Pvt. Ltd., 2005), 145.

²⁵⁴ The 0.1% tax on international trade can yield approximately 42 billion dollars.

vote, GDP, population, tax payment, or according to the contribution in the organizational budget are disparate and impracticable voting powers²⁵⁵ The purpose is not empower the state with powerful weapon of voting, which they recklessly use to decide the fate of other states, but to find the fair, practical, and swift solution of the problem.

The right of vote empowers the state to contribute in the decisions effecting its sovereignty, defense, and development. The misguided assumption is that each international issue will impact all states; there are issues which do not affect all states, for example, what effect the Kashmir issue has on the state like Guinea. Issues like AIDS, Environment have universal implication and, hence, should be decided by the majority. The fair mechanism should be formed to ensure the right use of vote, and to avoid the problems in current voting system of the UN.

2.2.5 The International Court

The ICJ, a judicial organ of the UN is ineffective due to its limited jurisdiction. The reforms in ICJ statute is a tough task, as according to Article 69 of the ICJ Statute two third majority of member states is required along with consensus vote of five Permanente members of SC. It is difficult to build consensus to amend the statute, in given situation it is not politically viable now, or in near

²⁵⁵ The GDP of the USA is equal to the GDP of combined Europe, and GDP of the Germany is equal to all Muslim countries, the resulted voting powers will be autocratic and unreasonable. Similarly, the voting power based on the population ratio are unfair, the decision of the regions like south Asia, house of three out of eight most populated states, will dominate the decision making process. The small countries with less population like Finland will suffer in this mechanism. (See: Section 3.3. below for further discussion)

future²⁵⁶. The limitation of ICJ jurisdiction led to the creation of other adjudicating forums, for example, ICC, and WTO Courts, and war tribunals were also separately established.

The new International court with wide jurisdiction on the member states of proposed new world organization is necessary to replace the incumbent ICJ. The new court should be relevant and empower to decide the cases without the restriction of the need of the submission of states for starting adjudication.

2.3 Effects of Abandonment of the United Nations Organization

The UN has no power of its own to make any decision or take any action. Like any other organization, the decisions in the UN are taken by its member. And it's the willingness and wisdom of the members, which make an organization good or bad²⁵⁷. The Brazilian diplomat, Sergio Vieira de Mello, wrote "When member states make a mess of their own rules or disrupt their own, collective political architecture, it is wrong to blame the UN or its Secretary-General."²⁵⁸ So the responsibility of the world problems should be divided between the UN and member states. The collective will of states can make the UN an effective organization as former US secretary of state and former US permanent

²⁵⁶Andrew L. Strauss, CLI Recommendation No. 16: Give the International Court of Justice Compulsory Advisory Jurisdiction on Matters Concerning Climate Change and the Needs and Interests of Future Generations, 2.

[www.vermontlaw.edu/.../CLI%20Policy%20Paper/Rec_16%20-%20\(ICJ_Advisory_Jurisdiction\).pdf](http://www.vermontlaw.edu/.../CLI%20Policy%20Paper/Rec_16%20-%20(ICJ_Advisory_Jurisdiction).pdf). (Accessed: 16 June, 2010). (Hereinafter as: Andrew L. Strauss, CLI Recommendation No).

²⁵⁷Ernesto Zedillo, "A World Without the UN?," *Forbes* (2005), <http://www.globalpolicy.org/reform/topics/general/2005/0328zedillo.htm>. (Accessed on 10 September, 2009).

²⁵⁸ Ernesto Zedillo, "A World Without the UN?," *Forbes* (2005), <http://www.globalpolicy.org/reform/topics/general/2005/0328zedillo.htm>.

representative to the UN, Madeleine K. Albright, wrote that the UN authority flows from its members; it is servant, not master.²⁵⁹ The UN is nothing, but a group of states; the will and consent of its members will lead it either to success or failure.

The major powers consider the UN as an obstacle in achieving their international objectives and purposes. For example, the American politicians and administration initially called the UN bureaucratic, top-heavy and white elephant, but now they are using even stronger words like; backboneless, irrelevant, talking shop, farce, francophone and appeaser.²⁶⁰

Attitude of super power and other member state is leading the UN towards ineffectiveness. The unsupportive and bullish attitude of member states will even make any new organization ineffective. Abolishment of the UN is impracticable and irrational decision. Abolishment of the UN will add in the suffering of already suffering people, as they are able to live and eat because they are protected by the UN personnel.²⁶¹

Most of the UN problems lie in its structure, which can be improved by reforms (we will discuss reforms in next chapter). If we closely examine the argument for creating new organization, we can easily conclude that it holds little ground.

- Firstly, it is argued that reforms are not possible due to the vested interest of powerful states, especially the permanent members of the SC. It is

²⁵⁹Madeleine K. Albright, "Think Again: United Nations" *Foreign Policy* 22 (September/October, 2003).

²⁶⁰Sreeram Chaulia, "'A world without the UN?,' Nah," *Asian Times*, http://www.atimes.com/atimes/Middle_East/ED17Ak06.html (Accessed september22, 2009).

²⁶¹Maurizio Crippa, ed. "Changing the UN in Order to Save It," *Traces* <http://www.traces-cl.com/gen04/changing.html> (Accessed: June 2, 2009).

unlikely that they will initiate or support any concrete reforms, as reforms will adversely affect their powers.

- Secondly, it is said that reforms are difficult due to the difficult procedure mentioned in Charter and right to use veto in the process. According to Article 108 the positive vote of all P5 is a requisite for amending the Charter and consensus among P5 is difficult, if not impossible.
- Thirdly, it is argued that universal membership, including undemocratic countries is hurdle in taking effective global decisions. Today, the UN is dominated by the newly independent small, poor, dictatorial regimes of the Latin America, Arab world, and Africa. These countries are in majority and their agenda is not in conformity with that of Western democratic powers. The presence of these conditions makes process of reforms impossible.

The above mentioned arguments are naïve, and easily refutable. The first argument termed reform impossible as P5 are reluctant to give up their powers. Hence, it is argued that the UN should be replaced by a new organization. The important question is that if P5 and other states are not willing to reform an existing entity than how will they agree to create a new organization, or perhaps another organization to safeguard their vested interests. Similarly, the autocratic regimes as member of the UN are not an issue; the problem lies with undemocratic structure of the UN, i.e., Veto power of permanent members. We will achieve no success without catering core issues. Lastly, the restriction in membership is a proposal with ulterior motives, i.e. to minimize or lessen the majority of the newly independent, poor third world countries.

The idea of creating new organization is not an attempt to rectify the shortcomings of the UN, but to propagate vested interests of nations, for example, the contributing editor to *The Weekly Standard*, David Gelernter's proposal²⁶² for creating new organization is one such example. He proposes that new Charter less organization should again be based on the power politics, but this time around three centers groups, i.e. Russia, UK, and USA. The membership would be limited to democracies or aspiring democracies, agreeing to spend agreed percentage of GDP on their militaries. It is strange that he agreed to include Russia on power circle, but excluded China and France from the circle to keep anti-Americanism at bay. It should not be called a world organization, capable of replacing or countering the UN, but rather an alliance of like minded states for propagating vested interests, and adding states like Russia for some credibility. An organization based not on principles but on vested interest and convenience will never be able to achieve harmony and global peace.

As discussed earlier, the flaws of the UN are obvious and if not rectified they will keep on hindering the international cooperation on vital issues. The states sovereignty should be reduced to empower the UN with vital powers to act over above the states²⁶³. The UN should be reformed to become balance and beneficial to all organization. The reform proposal should be balanced by giving similar rights to all states and should safeguard rights of all countries without any distinction. The UN should be prime authority with regard to certain global

²⁶² David Gelernter, "Replacing the United Nations," *The weekly standard* 008:26, (2003).

²⁶³ John H. Jackson "Sovereignty-Modern: A New Approach to an Outdated Concept," *The American Journal of International Law* (AJIL) 97: 782 (2003).

issues and should be in position to take swift, firm, and rational decisions. A new reformed UN is a way forward for global cooperation to tackle important global threats and it should not be abandoned. The powerful UN will definitely hinder the conventional concept of sovereignty, but than the concept of sovereignty is ever evolving²⁶⁴. The time is up for the concept of absolute and exclusive sovereignty of nation state,²⁶⁵ and issues like environment, human rights, peacekeeping, and terrorism need a revision of the old concept of sovereignty.²⁶⁶

2.3.1 Relevance of the United Nations Organization

The UN is still a vital tool and the best platform available to deal with global issues like AIDS, fighting terrorism, and the nuclear proliferation. The, ineffective UN, still manage to feed 102 million poor people in 78 countries, in year 2008 alone.²⁶⁷ The UN and its approval is still vital for legitimatization of any action, perhaps, for this reason the USA and UK went to seek the SC authorization for their occupation of Iraq. The pre-war presentation by President, George W. Bush and Secretary of State Colin Powell before the UN audience proves the important of the UN²⁶⁸

²⁶⁴Ibid.

²⁶⁵ Former UN SG Boutros Boutros-Ghali in his report "An Agenda for Peace Preventive diplomacy, peacemaking and peace-keeping" said that "Respect for its fundamental sovereignty and integrity are crucial to any common international progress. The time of absolute and exclusive sovereignty, however, has passed; its theory was never matched by reality". A/47/277 - S/24111.

²⁶⁶ John H. Jackson "Sovereignty-Modern: A New Approach to an Outdated Concept," *The American Journal of International Law* (AJIL) 97: 782 (2003), 787.

²⁶⁷ The World Food Programme's 2009 Annual Report, 4.

²⁶⁸ Madeleine K. Albright, "Think Again: United Nations" *Foreign Policy*, (September/October, 2003): 17.

A functioning, and effective UN is important for everyone, but it is most important for the developing world.²⁶⁹ If the UN works effectively on the agenda of the development, security, and human rights; the developing countries will be enormously benefited, for example, the disarmament policy will benefit the developing states to divert their funds towards other development rather building nukes. The institution of the UN, especially its structure, should reflect the realities of present times and not of last century.²⁷⁰ The revitalization and effectiveness of its organs should be ensured.

The realities of prevailing multi-polar world should be kept in mind before undertaking the adventure of replacing the UN, if it's a hard task to bring the states together on the issue of reforming the UN than its impossible to create a new world organization replacing the current UN with universal membership. The UN is suffering, and will die its natural death if not reformed, perhaps, that's when the world will need the blue prints for the new organization in order "to save the world from the scourges of nuclear war".

²⁶⁹ UN SG, *Kofi Annan's* remarks at a panel on reform in Jakarta, 21 April 2005. (Retrieved from the UN information Service website: <http://www.unis.unvienna.org/unis/pressrels/2005/sgsm9833.html>) (Accessed October 12, 2009).

²⁷⁰ Ibid.

Chapter Three

Reforms in the United Nations Organization

Over the years, many efforts were made to highlight and initiate the process of reforms in the UN. Many resolutions were adopted by the GA and many unfruitful summits were held. Similarly, many SGs took deep interest in the issues of reforms, but the compact and celebrated demand for structural reforms in the UN was made by the former SG Kofi Annan. During his very first speech²⁷¹, he pledged to make the UN more efficient, effective, and approachable to the wishes and needs of the member states. Later, in March 2005 he initiated the program for reforms in the UN, and he also presented the report "In Larger Freedom: Towards Development, Security and Human Rights for All" regarding the UN reforms.

3.1 Changing structure of the Security Council

The SC is not alien to the concept of reforms; in 1963 the GA passed a resolution²⁷² proposing the expansion of eleven member council into fifteen member council. In the wake of decolonization the membership grew from original 51 to 113 in 1963.²⁷³ In the wake of growing membership need was felt to expand the membership of the SC to make it geographically representative and

²⁷¹Kofi Annan's acceptance speech: 17th December, 1996. (retrieved from Chronology, Reference Reports and Materials Reform at the United Nations <http://www.un.org/reform/chronology.shtml>) (Accessed at 20 May, 2010).

²⁷²A/RES/1991 A (XVIII).

²⁷³Growth in the UN membership, 1945-present: <http://www.un.org/en/members/growth.shtml>. (Accessed at 21 March, 2010).

more effective.²⁷⁴ The reforms of 1963²⁷⁵ were an attempt to make the council more representative.²⁷⁶ The number of nonpermanent members was increased to ten from original six. Similarly, the requisite majority was increased from eleven to fifteen, but the issue of veto remained impervious.²⁷⁷

The diverse solutions are suggested for reforming the SC; from enlargement to abolishment, different solutions are put forward from diverse interest groups. Now we will try to analyze some popular solutions:

3.1. 1 Enlargement of the SC

The most famous suggestions came from inside the UN, the UN SG Kofi Annan, in his report "*In Larger Freedom: Towards Development, Security, and Human Rights for All*"²⁷⁸, released on March 21, 2005, proposed two solutions to reform SC.

The first solution he suggests would include the restructuring of the SC by increasing the number of permanent members from five to eleven: Two each from Asia and Africa, and one each from America and Europe, and increasing number of nonpermanent members from ten to thirteen: four each from America and Africa, three from Asia, and two from Europe. This proposal suggests the increase in number of permanent members, but does not approve the creation of new veto power. According to this arrangement the total number of SC members will increase to twenty four, six members from each region. There will be eleven

²⁷⁴ A/RES/ 1991 A & B (XVIII)/

²⁷⁵ The amendments made in A/RES/ 1991 A & B (XVIII) came into force on 31 August 1965 when last document of ratification was deposited.

²⁷⁶ The new geographical division provides that five members will be elected from Asia and Africa, one from Eastern Europe, two from Latin America and the Caribbean, and two from Western Europe. (A/RES/ 1991 A (XVIII).

²⁷⁷ A/RES/ 1991 A (XVIII).

²⁷⁸ A/59/2005

permanent members; five with and six without veto power, and thirteen nonpermanent members.

The second proposal suggests only the increaser in nonpermanent member and no increase in number of permanent members. The proposals suggest two categories of nonpermanent members; one group selected for four years (renewable), and second group selected for two years (non renewable). The first group will include two members each from Africa, Asia and Pacific, America, and Europe, and second group is suggested to be consisting of four from Africa, three from Asia and Pacific, one from Europe, and three from America. This solution also proposes the SC consisting of twenty four members, i.e., five existing permanent members, eight members elected for renewable fours years, and eleven members elected for two non renewable years. The SC membership will be equally represented by six members from each region.

The first solution is favored by the "G4 or group of four"; this group includes Brazil, Germany, India, and Japan, because this solution will accommodate all of them in elite setup at the SC. The second solution is favored by the "united for consensus" group; this group includes Argentina, Italy, Mexico, and Pakistan.

3.1. 1 United for Consensus

The United for Consensus group, (UCG) opposes increase in Permanent members, and terms the expansion as against sovereignty and equality of states. Permanent Representative of Pakistan in the UN, Hussain Haroon²⁷⁹, termed enlargement contrary to the objective of reforms, i.e., to make council more

²⁷⁹Ambassador Abdullah Hussain Haroon, Permanent Representative of Pakistan in the UN, comment on "The question of equitable representation on and increase in the membership of the SC and related matters," during the informal plenary meeting of the GA New York: March 4, 2009.

democratic and accountable.²⁸⁰ The group argues that adding a group of new states will not make the SC more democratic or accountable as even new enlarged SC will remain unanswerable to the GA for their actions. However, the UCG supports increase in numbers of non permanent seats. They propose two set of non permanent seats;

- Increase in number of existing non permanent seats, elected for the term of two years.
- Creating new set of non permanent seats, elected for the term of more than couple of years.

The group also demands one seat each for small²⁸¹ and medium²⁸² sized states regardless of geographical regions.

3.1. 1. 2 Group of Four

In 2004, Brazil, Germany, India, and Japan, formed a Group of Four, "G4", to enhance their campaign for the bid of permanent membership of UNSC. The G4 demands the expansion of the SC from 15 to 25, by adding six permanent with veto power and four non permanent members. Members of G4 are aspirants of veto power and permanent status.

The G4 argues that the SC should be expanded to better reflect contemporary world realities.²⁸³ The SC should be enlarged in view of enormous increase in

²⁸⁰ Ambassador Abdullah Hussain Haroon, Permanent Representative of Pakistan in the UN, comment on "The question of equitable representation on and increase in the membership of the SC and related matters," during the informal plenary meeting of the GA New York: 4th March, 2009.

²⁸¹ Small size states are described as state having population less than one million.

²⁸² Medium size states are described as states having population between one to ten million.

number of membership of UN. The current setup of the SC reflects realities of 1945, as at that time only 51 states were member of the UN. However, the UN membership swells from original 51 to 191, so the SC should be enlarged to give equal representation to all regions²⁸⁴.

3.1. 2 Is enlargement a viable solution?

Enlargement of the SC is neither novel, nor an effective solution. The SC was expanded in 1965 from eleven to fifteen members, and the process brings no credibility to the institution. The enlargement solution is old wine in new bottle. Unlike the election of nonpermanent members²⁸⁵, there is no criterion to elect permanent members of SC; than how will we elect new permanent members?

The proposed increase in the number of the SC members from 15 to 24 will equally represent each region, i.e. six states from each region. Is it just representation? Is geographical representation only just criteria? What about representation based on the ethnicity, and religion? Among the present permanent members there is not a single Muslim state. Geographically too the SC is not justly represented, as no African or South American state is permanent member. Densely populated regions like South Asia and Far East Asia are unrepresented in the SC. How can an organization effectively work by ignoring one sixth of the world Muslim population? No criteria is formed while proposing

²⁸³ "G4 for veto rights to 11 UN members," *Business Standard*, Nov 13, 2009.

²⁸⁴ Thomas G. Weiss, "The Illusion of UN Security Council Reform," *The Washington Quarterly* 26:4 (2003): 148.

²⁸⁵ Article 23 (1) of the UN Charter defines criteria for electing non permanent members of the SC.

names of new aspirant states, the pseudo aspirants of permanent status want to be part of elite club without any criteria, or any other solution.²⁸⁶

The inclusion of Brazil, India, Germany, and Japan in the SC will not balance the power setup, nor will it reflect power status quo. Their elevation as permanent member will not ensure world peace, for example, India itself is threat to international peace and security; how can it ensure world peace as a member of the SC? India has territorial disputes with its three neighbors; with China over Aksai Chin and part of Kashmir, with Pakistan over Kashmir, with Nepal over area of Kalapani.²⁸⁷ India also has water disputes with its three neighbors; with Bangladesh over Farraka Barrage, with Nepal over Mahakali River, and with Pakistan over construction of Baglihar Dam, Wuller Barrage, and Kishanganga Dam in violation of Indus Treaty, 1960.²⁸⁸ India fought full war with China in 1962 and fought four wars with Pakistan.²⁸⁹

Similarly, an enlarged SC of twenty four members would hardly improve its effectiveness. As the SC is, considered as guardian of global security, and is responsible to take quick and swift action and group of twenty four would be too large to conduct serious and ²⁹⁰ timely negotiations.

²⁸⁶ Ambassador Abdullah Hussain Haroon, Permanent Representative of Pakistan in the UN, comment on "The question of equitable representation on and increase in the membership of the SC and related matters," during the informal plenary meeting of the GA New York: 4th March, 2009.

²⁸⁷ International Boundary Consultants, India's Boundary Disputes with China, Nepal, and Pakistan: International Boundary Consultants a sample piece from *International Boundary Monitor* (15 May 1998) <http://www.boundaries.com/India.htm>. (Accessed: 10 June, 2010).

²⁸⁸ Mahmood Hussain, "Pakistan-India water dispute," Pakistan observer, <http://pakobserver.net/detailnews.asp?id=18167>. (Accessed: 1 July, 2010).

²⁸⁹ India and Pakistan fought four wars in 1948, 1965, 1971, and 1999.

²⁹⁰ Thomas G. Weiss, "The Illusion of UN Security Council Reform," *The Washington Quarterly* 26:4 (2003): 148.

Similarly, the issue of equitable representation of different region will also not be catered and solved by the proposed expansion. For example, by adding two more countries from Asia, i.e. India, and Japan, will keep Middle East unrepresented.

The SC was often blocked on important issues by threat or actual use of veto²⁹¹ and enlargement will enhance the incidents of blockage. Enlargement is not a solution, SC is considered as non democratic organ of UN, and dubbed as Elite group. It is undemocratic, and one of the most criticized organs of UN. There is no logic to enlarge this elitist group.

3.1. 3 Abolishment of the SC

According to some critics, the SC should be abolished or transform into some other institution, because it against the very principle of equality of sovereign states, inscribed in Preamble of the UN Charter.

The present structure of SC is outdated and dictatorial. Thomas G. Weiss, in his article made the same argument that "Was it not time to restructure the Security Council's composition and revise its anachronistic procedures so that matters of right would take precedence over matters of might."²⁹² Once it is established that SC is a tyrannical and autocratic organ than the issue of its enlargement should not be raised, as it will further complicate the issue.

²⁹¹ For Example: The SC was blocked by the use veto by the UK and France on Suez Canal issue, See *infra*: 3.4.2. 1.1.

²⁹² Thomas G. Weiss, "The Illusion of UN Security Council Reform," *The Washington Quarterly* 26:4 (2003): 150.

3.1. 4 Abolishment of Veto Power

It is being argued that veto power protects the interests of the big states, and the protection of their interests is necessary for the success of the UN. Similar view were expressed by the author Kishore Mahbubani in his work "Permanent and elected council members"²⁹³ said that it is due to the privilege of veto in return of which the P5 committed themselves to the Principles of the UN. The argument is based on the assumption that the LoN, the predecessor of the UN, failed as it was unable to protect the interests of the big powers. So, in order to save the UN from the fate of its Predecessor, five victors of WWII, USA, UK, France, Russia, and China²⁹⁴ were given the status of permanent members and special privilege, i.e. Veto. Roosevelt's Secretary of State, Cordell Hull said "The veto provision was an absolute condition for US participation in the UNs. The superpowers would not be subject to any collective coercion. The veto ensured that the General Assembly could not act against any of the permanent five."²⁹⁵ The veto power was based on the rule of "unanimity of decision" among the P5, to ensure the protection of their rights, and the statement of Secretary of State clearly hinted at the result of any arrangements otherwise.

The first argument that the UN will fail if veto will not be there to protect the interests of the P5 is not correct. The organization will only fail if it will not be able to achieve its goals, and failed to benefit all without discrimination. The UN

²⁹³Kishore Mahbubani, *Permanent and elected council members in the UN Security Council: from the Cold War to the 21st century* ed. David M(Colorado: Lynne Rienner Pub. Inc, 2007), 253.

²⁹⁴ In 1971, the People's Republic of China replaced the Republic of China (Taiwan).

²⁹⁵ Vijay Mehta "How can we make the Security Council more representative and work towards abolishing the veto?" A discussion paper for the panel on UN reforms (World Peace forum) (Vancouver, Canada 25 June 2006, 9am to 1.00 pm.)

is no LoN, it is bigger²⁹⁶ and better organization, and it outlived the LoN²⁹⁷. The UN survived the power struggle of the Cold War and the present decade of trouble and chaos. If for the sake of discussion this argument is acknowledged, even than it fails, because the power structure is changed since the establishment of the UN. The world is no longer the same, for example, France lost its status of big five, and India, Japan, Germany are new power players. A country like Pakistan, though not a great power, but with fourth largest army and nuclear weapon is as powerful as any other state. The veto, no longer represents the existing power circle.

The veto is undemocratic and it is against the principle of equality of states and hence should be abolished. The abolishment of veto is necessary, without any regard for other reforms. The abolishment can improve the effectiveness of UN in matters relating to peaceful settlement of disputes. ²⁹⁸

3.1. 5 Reforms

The SC, the guardian of world peace and security, can be reformed in two ways;

²⁹⁶ There were 42 founding members of the LoN. During the period 1920-45, many states continued to joined left the LoN, and some got expelled.. The membership reached its maxim number i.e., 58, between the period on 28 Sep. 1934 and 23 Feb. 1935Albania, Austria, Bulgaria, Costa Rica, Finland, and Luxembourg were admitted in 1920, Estonia, Latvia, and Lithuania were admitted in 1921, Hungary was admitted in1922, Ethiopia and Ireland were admitted in 1923, Dominican Republic was admitted in 1924, Costa Rica was admitted in 1925, Germany was admitted and Brazil withdrew in 1926, Mexico was admitted in 1931, Iraq and Turkey were admitted in 1932, Germany and Japan withdrew in 1933, Afghanistan, Ecuador, USSR were admitted were admitted to the League in 1934, and Paraguay withdraws from the League in 1935. Guatemala, Honduras, and Nicaragua withdrew in 1936. Egypt was admitted and El Salvador and Italy withdrew in 1937. In 1938 Chile and Venezuela withdrew. Hungary, Peru, Spain withdrew, and USSR was expelled in 1939.Rumania and Haiti withdrew in 1940 and 1942 respectively. In comparison the membership of the UN is universal, and currently 192 states are its members.

²⁹⁷ The LoN was formed in 1919 and after 26 years it was formally replaced by the UN in 1945. In comparison the UN will complete 65 of its existence in September, 2010.

²⁹⁸ Sydney D. Bailey and Sam Daws, *The United Nation: A Concise Political Guide* (Lanham: Barnes & Nobles books, 1995), 109

- Instead of countries, regions should be the member of the SC. The regions should be represented by regional groups, for example, European Union, South Asian Association for Regional Cooperation (SAARC), Organization of Islamic Countries (OIC), Latin America and Caribbean (GURLAC), Arab League, African Union (AU). The interest of a particular region will be better protected by regional organization than by a particular country.
- The second proposal is to adopt the EU model, which also involve the reforms in the GA. If the GA will be restructured to be the world parliament, represented by directly elected representatives, than the SC can act as "European Council" or the "Council of European Union".²⁹⁹ The members of the SC will represent the states. Similar to the structure of the EU, the legislative powers can be co-shared by both institutions, or the ambit of their power can be clearly divided in the Charter. The Parliament will protect the rights of the citizens, and the SC will further the interest of the states. It is important to involve the governments in the decision making process, as only governments have authority to implement any decisions of the world governing body.

²⁹⁹ The EU parliament is directly elected by the people of the EU to represent their interests. The Council consists of ministers from the governments of all the EU member states. Meetings are attended by the minister who is responsible for the agenda to be discussed, for example, the minister responsible of affairs of environment in his country will attend the meeting discussing the environmental issues. The Parliament and the Council of the EU are jointly responsible for passing the EU budget, and other laws presented by the European Commission. Parliament also has the power to elect European Ombudsman and dismiss the European Commission. Similarly, the overall policy agenda of the EU is laid down by the European Council. The European Council is comprised of the head of states and the president of the European Commission. The overall interest of the whole Europe is upheld by the European Commission. It is the executive organ of the EU and consists of 27 people, one from each member country. The members are nominated by their governments and must be approved by the EU parliament. The commission manage the daily affairs of the EU with the help of Civil servants, and prepares the draft of laws to be passed by the Parliament and the Council. (See: http://europa.eu/abc/panorama/howorganised/index_en.htm).

3.1. 5.1 No Revolution, but Changing Realities

The UN is significant for all, as everyone needs a tool to send views beyond the bilateral or regional arena. The global organization like UN is the best medium to inform and peruse the world about new ideas. According to the Charter the powers of P5 are vast, but so is the collective power of the rest of states. P5 need the UN more than others, for example, USA needs UN to propagate its ideals and agendas pf “democracy” and “HRs”. Though, currently USA is biggest critic of UN, but we should keep in mind that it is still biggest contributor in its regular and peacekeeping budget. Permanente member like USA realizes that even with all their might they cannot fight alone; to eliminate global threats of terrorism, nuclear proliferation, and environmental disasters³⁰⁰. Once Russia too was the biggest threat to the credibility of the UN, but ultimately failed to dismantle the UN.

The rule of International relation, best describe in the words of the American Boxing Promoter, Don King, though originally used in some other context, “you get what you negotiate and not what you deserve”. Certainly, reforming the UN is not an easy task, as sixty five years ago it was not easy to create it, but it is not impossible.

3.2 Stimulating the General Assembly

The GA failed to perform its functions and always remained under the shadow of the SC, because the GA rarely realized the importance of its role. The proactive

³⁰⁰Gerald C. Anderson, “Why the United Nations is Important to Us,” (paper presented at the Spring Symposium Humanity, Peace and Security of The Institute for Corean-American Studies (ICAS) Lectures, Washington D.C, USA, , May 19, 2005).

and revitalized GA can efficiently undermine many structural problems of the UN, and can help in making the UN more effective. The GA is only organ with global representation and its resolutions are also significant, because they not only reflect the world opinion on an issue, but also define principles and prove to be a source for recommending initiatives³⁰¹. The GA deals with variety of issues, including health, education, development, environment, and disarmament. Revitalization of GA is an important issue; the GA itself realized the importance and passed resolutions on revitalizing and strengthening the role of the GA³⁰².

3.2.1 Maintaining peace and security

The GA should be vitalized to fulfill its duty of maintaining international peace and security. Though it is the primary duty of the SC to maintain International peace, but this does not exclude the GA's responsibility to do the same. In this regard, the ICJ gave an important advisory opinion in the Case "Certain Expenses of the United Nations".³⁰³ During the case, it was argued that the SC has exclusive powers and the GA got limited powers in the matters of Security. The GA with its limited powers cannot impose obligation to pay for expenses arouse as result of its decision. The ICJ declared that under Article 24 of the UN charter the responsibility of the SC in the matter was *primary*, and *not exclusive*. The powers

³⁰¹ Rebecca Bloom & Lauren Vriens, "The Role of the UN General Assembly," *Council on Foreign Relations: Background* September/October, 2008 Issue.
http://www.cfr.org/publication/13490/role_of_the_un_general_assembly.html (Accessed: Nov 22, 2009).

³⁰² A/RES/61/292 (2007), A/RES/56/509 (2002), and A/RES/57/300 (2002), etc.

³⁰³ A group of states refused to make financial contribution for the UN peacekeeping Mission in the UN Emergency Force in the Middle East and UN operation in the Congo, declaring them against to the Charter. The GA requested advisory opinion of the ICJ on the question whether these expenses are included in the "expenses of the organization" in accordance with the Article 17 (2). The court declared that "expenses of the organization" mentioned in Article 17 (2) are not explicitly defined, but expenditures necessary to fulfill the purpose of the organization will qualify as the "expenses of the organization". ICJ Reports 1962. 151, 167.

of the SC are exclusive only in matters of enforcement. The court declared that according to the Charter *"the GA was also to be concerned with international peace and security"*.

Surely, the GA is not authorized to take coercive measure, but all matters are not dealt with coercion. Unquestionably, the GA can play an important role in issues of peace and security. The vigilant GA can innovatively use its powers for fulfilling the purpose of the UN. The legality of the powers of the GA can always be ratified or rectified by the ICJ. Perhaps, the only thing needed is the vigilance.

3.2.1.1 Uniting for Peace Resolution

The series of "Uniting for Peace" Resolutions (UPR) is one of the celebrated examples of the GA led initiatives. The first UPR³⁰⁴ was initiated in the GA by the USA to counter the USSR's veto during the Korean War. It was a counter strategy of the USSR's strategy to save North Korea from the SC led initiative by the use of veto. The North Korea invaded Republic of Korea on 25 June, 1950, and on 3 November 1950, the GA passed the UPR.³⁰⁵ The resolution states that in absence of the SC led initiative for maintaining peace; it is duty of the GA to take initiative for collective security. The differences of P5 can block the SC, to perform its primary function of maintaining international peace and security. The GA can step in where the SC fails to work, and can urge members to take steps for

³⁰⁴ A/RES/5/377 (1950).

³⁰⁵ A/RES/5/377 (1950).

collective action.³⁰⁶ As a result of the resolution a "Coalition of Willing" was formed to defend Republic of Korea.

The UPR initiative was again initiated at the time of Suez Canal crises. After the Suez Canal nationalization by Egypt, Britain, France, and Israel invaded Egypt and began advancing on the Suez Canal. The then USA President, Dwight D. Eisenhower, demanded the end of invasion. The SC was blocked by the use of veto power by Britain and France. The emergency session of the GA passed UPR and which helped in securing the ceasefire, and withdrawal of French and British forces.

So far, ten emergency special sessions are called under the "UPR".³⁰⁷ The frequent invocation of UPR initiative will enhance credibility and effectiveness of the GA, and will help in maintaining international peace and security. The UPR is a tool in hands of non-permanent members against the extreme minority of permanent members. The UPR provides the power to counter the veto within the realms of current structure.

³⁰⁶ A/RES/377(V) A (1) states that "[I]f the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression, the General Assembly shall consider the matter immediately with a view to making appropriate recommendations to Members for collective measures, including in the case of a breach of the peace or act of aggression the use of armed force when necessary, to maintain or restore international peace and security. If not in session at the time, the General Assembly may meet in emergency special session within twenty-four hours of the request therefore. Such emergency special session shall be called if requested by the Security Council on the vote of any seven members, or by a majority of the Members of the United Nations."

³⁰⁷ Special Session are called on question of Suez Canal, Hungary, Congo, Namibia, Afghanistan, Palestine, Occupied Arab territories, illegal actions of Israel in Occupied Jerusalem and other occupied Palestinian territories. (See: <http://www.un.org/ga/sessions/emergency.shtml>). (Accessed: 10 May, 2010).

3.2.1.2 Control on Budget

Article 17³⁰⁸ of the Charter is related to the powers of the GA to pass the budget of the UN. The GA has power to assess and approve budget of the UN and its specialized agencies. Article 17 is the most effective tool to the GA to play more efficient role in the management of the world peace and security. The GA, under Article 17 can effectively participate in peace process by controlling and cautiously granting budget for peacekeeping. Similarly, GA can resourcefully use its power to allocate the expenses among the Members³⁰⁹, for peace process³¹⁰

The ICJ, in *Certain Expenses Case*³¹¹ rejected the limitation on the budgetary power of the GA with regard to the maintenance of international peace and security. It was argued before ICJ that under Article 11(2)³¹² of the Charter powers of the GA was restricted as it was necessary for the GA to refer question related to peace and security to the SC on which "action" is necessary. The ICJ declared that action referred to in that provision was coercive or enforcement action under the provisions of Chapter VII of the Charter. The court held that if the interpretation of the word "action" in Article 11 (2) was that the GA could only make

³⁰⁸ Article 17 of the UN Charter, 1945

"1. The General Assembly shall consider and approve the budget of the Organization.

2. The expenses of the Organization shall be borne by the Members as apportioned by the General Assembly.

3. The General Assembly shall consider and approve any financial and budgetary arrangements with specialized agencies referred to in Article 57 and shall examine the administrative budgets of such specialized agencies with a view to making recommendations to the agencies concerned."

³⁰⁹ Article 17(2) of the UN Charter, 1945.

³¹⁰ The US Senate has power to allocate budget for all endeavors of the Government including the war, and the Senate by allocating the budget or by refusing to allocate effectively either endorse or curtail the military adventures of the US government. The GA can also play its effective role by asserting the right of passing the budget.

³¹¹ ICJ Reports 1962, 151.

³¹² Article 11 (2) of the UN Charter: "Any questions relating to the maintenance of international peace and securitys on which action is necessary shall be referred to the Security Council by the General Assembly either before or after discussion."

recommendations only of a general character affecting peace and security in the abstract, and not in relation to specific cases, the paragraph would not have provided that the GA might make recommendations on questions brought before it by States or by the SC.

The fifth Committee of the GA is one the most important committee as it deals with budget and administrative issues.³¹³ The fifth Committee consists of a Chairperson,³¹⁴ three Vice Chairpersons, and a Rapporteur. The Secretariat of the 5th Committee consists of a Secretary and a deputy Secretary.³¹⁵ The fifth committee counters the powers of SC, as the Fifth Committee has powers to consider urgent matters relating to the financing of a peacekeeping mission authorized by the SC.³¹⁶

3.2.2 Request for Advisory Opinion

The GA can play pivotal role in defusing a dispute between two states by requesting ICJ for advisory opinion on the particular issue. Though till date the GA invoked this right only fifteen times, but the notable example is Western

³¹³ Official UN website: <http://www.un.org/ga/fifth/about.shtml>. (Accessed: 21 June, 2010).

³¹⁴ The Chairman of the Fifth Committee is elected by the GA on the basis of geographical distribution. A/58/CRP.5.

<http://ods-dds-ny.un.org/doc/UNDOC/GEN/No4/266/07/PDF/No426607.pdf?OpenElement>. (Accessed: 21 June, 2010).

³¹⁵ The current chairperson is H.E. Mr. Peter Maurer of Switzerland. The vice-chairpersons are Mr. Danilo Rosales Díaz of Nicaragua, Mr. Babou Sène of Senegal, and Ms. Sirithon Wairatpanij of Thailand. The Rapporteur is Ms. Yuliana Zhivkova Georgieva of Bulgaria. The secretariat of the fifth committee consists of Secretary Mr. Movses Abelian and Deputy Secretary Mr. Wiryanto Sumitro. http://www.un.org/ga/search/view_doc.asp?symbol=A/C.5/64/INF/1 (Accessed: 21 June, 2010).

³¹⁶ Official UN website: <http://www.un.org/ga/fifth/about.shtml>. (Accessed: 21 June, 2010).

Official ICJ website: <http://www.icj-cij.org/docket/index.php?p1=3&p2=4&p3=1>. (Accessed: 21 June, 2010).

Sahara Advisory Opinion.³¹⁷ The GA requested ICJ's opinion on two questions concerning Western Sahara; *Was the Western Sahara at the time of colonization by Spain a territory belonging to no one (terra nullius)?* And *"What Were the Legal lies of This Territory with the Kingdom of Morocco and the Mauritanian Entity?"* The ICJ also noted that under Article 65 (1)³¹⁸ of the Statute, it may give an advisory opinion on any legal question at the request of any authorized body. The court further noted that under article 96 (1) of the Charter GA is duly authorized to request advisory opinion, on questions of legal character and can also raise problems of international law. Therefore, the Court is competent to give advisory opinion.

Similarly, the ICJ in Palestinian wall cases³¹⁹ declared that it can give advisory opinion on the request of the GA regarding on an issue concerning international peace while the matter may remained on the SC's agenda.³²⁰ The ICJ declared that such request is not in contravention of the Article 12 (1),³²¹ as seeking an advisory opinion is not in itself recommendation in accordance with Article 12 (1). The court also decided that it is not for the Court to decide the usefulness of the

³¹⁷ ICJ Reports 1975, 12. 32.

³¹⁸ The ICJ while determining the nature of question recorded that It is true that, "(T)he Court will have to determine certain facts, before being able to assess their legal significance. However, a mixed question of law and fact is none the less a legal question within the meaning of Article 96, paragraph 1, of the Charter and Article 65, paragraph 1, of the Statute." (ICJ Reports 1975 ,19). The court while stating the authority the GA to ask a question about rights and obligation and ICJ's authority to respond recorded that " (T)here is nothing in the Charter or Statute to limit either the competence of the General Assembly to request an advisory opinion, or the competence of the Court to give one, to legal questions relating to existing rights or obligations." (ICJ Reports 1975 ,19).

³¹⁹ Legal Consequences of the Construction of a wall in the Occupied Palestinian Territory, ICJ Reports 2003, 428.

³²⁰ ICJ Repots 2003, 428. 148.

³²¹ Article 12(1) " 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".

Advisory opinion for performing its function, and the usefulness will be decided by the Organ seeking advisory opinion.

Similarly, the GA in its resolution ES-10/14 requested the opinion of the ICJ regarding the legal consequences arising from the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory. The Israel alleged that GA exceeded its power, as the question is not in accordance with A12 (1)³²², as the SC is engaged with the issue. The court held that request for advisory opinion is not a "recommendation" by the GA. The court held that A 24 of the Charter imposed "primary responsibility" on the SC with regard to international peace and security and initially it was interpreted that the GA cannot make recommendation, but this interpretation evolved subsequently. The Court takes note of an increasing trend for the GA and the SC to deal in parallel with the same matter concerning the maintenance of international peace, as an accepted practice consistent with Article 12(1). As result the ICJ held that seeking an advisory opinion from the Court, did not contravene the provisions of Article 12, paragraph 1, of the Charter. This decision opens new doors for the GA to actively participate in maintenance of international peace and security.

The frequent exercise of this right by the GA can help it to play more proactive role in issues of International Peace and Security. The revitalize GA and the ICJ together can make the UN more effective in fulfilling its purposes.

³²² Article 12 (1) states that "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."

3.2.3 Creation of Subsidiary Organ

The GA, by using its power can create many subordinate organs to facilitate the working of the UN. The GA, according to Article 22 of the UN can “*establish such subsidiary organs as it deems necessary for the performance of its functions.*” This power can help to make the GA more effective organ and can solve many problems without adopting the lengthy process of the Charter amendments.³²³ The GA should create the Subsidiary organs to assist the states to get advisory opinion from the ICJ, and world parliament as a subsidiary organ of the GA etc.³²⁴

3.2.4 Implementation of the GA Resolution

The GA will remain ineffective, until the implementation on its resolutions is ensured. The implementation of the GA resolutions by states is necessary, because the whole lengthy exercise of passing a resolution will remain futile. The fundamental problem is that unlike the SC, the GA resolutions are not binding, and the political will is needed for the implementation of resolutions. In 2008 the GA passed a resolution titled “A strengthened and revitalized General Assembly” stressed the “need to demonstrate political will to ensure the effective implementation of the resolutions adopted by the General Assembly.”³²⁵

3.3 Change in Voting System

As discussed earlier, the voting system in the UN generally and of the SC specifically is criticized for being unfair and undemocratic. In this part we will

³²³ There many Subsidiary organ created by the GA in accordance with A 22, e.g. International Law Commission, United Nation Atomic Energy Commission.

³²⁴ See: *infra* 3.6.3. Advisory Opinion and Conclusion.

³²⁵ A/Res/59/313.

discuss the shortcomings of one state, one vote system and reforms proposals, including the weighted voting system, regional voting system, and decision of directly elected representative.

3.3.1 Weighted voting

The idea of “weighted voting”³²⁶ gives states votes based on their population, contribution to the UB budget,³²⁷ as oppose to current system of one state, one vote. It is considered that this system will remove the current disparities between states, as today a small state like Barbados is equal to China and USA in decision making process in the GA.

The proposed system is against the traditional concept of Sovereignty that gave birth to the fundamental principle of state equality. As we discussed earlier, there is need to adapt to changing concept of Sovereignty, but is the weighted voting system based on population and contribution to the budget provides the solution? To Scholars like Professor John H. Jackson it is an accurate alternative, as to him the concept of “one state one vote” is antidemocratic and product of old

³²⁶ There are multiple ideas of “weighted voting” developed independently, for example, another mechanism of weighted voting is developed and discussed by Joseph Schwartzberg, in document “Universal Regional Representation as a Basis for Security Council Reform”. He proposes a universally representative SC with twelve ‘regional’ seats; four for individual nations (USA, China, India and Japan) and eight for multi-national groupings. The formula is population+ contribution + constant 8.33% (to signify the equality of all regions). The weights of the voting power of each seat would range from 16.2% for Europe to 14.3% for the USA, 11.1% for China, 8.9% for India, 8.03% for Japan, 7.77% for Latin America, 7.5% for South East Asia, 6.6% for Africa, 6.0% for West Asia, 5.0 % for the Arab League, 4.38% for Russia and 4.27% for the “Westminster League” consisting of Canada, Australia and New Zealand. As with the Binding Triad, the weighting is based on population, UN contributions, and the fact of being a UN member state. (See for further study: <http://www.cwps.org/acuns.html>) (Accessed December 08, 2009).).

³²⁷ Lucy Law Webster, “On the Value of Weighted Decisions in UN Voting and Representation,” *Minerva* 35:31. (2007), <http://www.cwps.org/Lucy-Min31b.pdf> (Accessed Nov 20, 2009).

concept of sovereignty.³²⁸ He argued that on the basis of old concept of sovereignty; it is unfair and undemocratic to allocate one vote to the state of a billion people and also to the state of mere fifty thousand people. The proposed system not only needs recognition of modern concept of sovereignty, but it will also create disparity between more populated states and rich states and less populated and poor states. The system will relinquish the individual right of voting of many states and will give right of multiple votes to the other states. This system will give multiple votes to states like USA due to its 25% contribution to the UN budget and to China due to its 1.5 billion population. On other hand, Caribbean states will lose their individual vote and may get a single collective vote.

3.3.1. 1 Elected representative/ world parliament

The idea of creating world parliament is already discussed in Chapter 2, but here the discussion of voting process of world parliament is relevant. On the risk of being repetitive, it is important to mention here that the voting in the world parliament will be dominated by more populated countries like China, and India. The parliament will be represented by elected representative by approximately 600 members, each representing 10 million people; this arrangement will give China 140, India 120 seats.³²⁹ This amendment will render many small states unrepresented.

³²⁸ John H. Jackson "Sovereignty-Modern: A New Approach to an Outdated Concept" *The American Journal of International Law* (AJIL) 97:782 (2003), 795.

³²⁹ Paul Kennedy, *The Parliament of Man: The Past, Present and Future of the United Nations* (New York: Random House, 2006), 215.

3.3.2. Regional voting

The current voting system in UN is “one state one vote”, based on the principle of Sovereign Equality. After the discussion of the last section, we conclude that “one state, one vote”, with its shortcomings, is still better than other proposed systems of voting. The system is logical, if we see it in the context of ordinary citizens in a state; no matter whether an individual is rich or powerful, he only have right to cast one vote. If he/she demands more votes based on his status, we will plainly reject this privilege. Though, states are different from individuals, but “one state, one vote” is best possible solution, especially when the GA is not represented by elected representatives.

The problem is that how a small Caribbean state, located thousands of miles away from the problematic regions, can understands the gravity of the issue. The new small states cast impracticable votes either on the basis of bloc system,³³⁰ or due to some favors. These disinterested states are ready to sell their votes or swap for favors,³³¹ to any powerful interested state. In my opinion, the best possible system is “issue based regional voting system”. The issues should be voted by the sates of that particular region³³²; for example, Kashmir is located in South Asia and only South Asian states should participate in voting on Kashmir issue, as they are directly affected by the unrest in their region. Though, the regions are already defined, but we can still specifically redefine the regions. Similarly, when

³³⁰ Carlton Clymer Rodee *et al.*, *Introduction to Political Science* (New York: McGraw-Hill, 1957), 541.

³³¹ John H. Jackson “Sovereignty-Modern: A New Approach to an Outdated Concept” *The American Journal of International Law* (AJIL) 97:782 (2003), 7 97.

³³² Jesse Helms, “Saving the U.N.: A Challenge to the Next Secretary-General,” *Foreign Affairs*, 75: 5 (September-October, 1996).

issue is between states of two different regions, than voting should involve states of both regions. The global issues can still be voted by all states.

3.4. International security Force / enforcing agency

The traditional collective defense mechanism based on the voluntary help of members is outdated³³³, for example the UN³³⁴ and the NATO³³⁵. In the collective defense mechanism, the reliance is on the support of nations who are bound to help and are assume to consider attack on one state as an attack on all, but members states more than often failed to act. The states are often reluctant to act due to their vested interests, which turn the treaty of collective defense into mere piece of paper.

The UN has no military force of its own, and its coercive and enforcing capacity depends upon its member's contribution. UN-approved military operations mainly depend upon the participation of the USA, as USA military spending is equal to the combined military budget of rest of the world.³³⁶ USA is sole super power and is increasingly violating the universally agreed principles of the UN charter³³⁷, but it is impossible for the UN to take any action against USA. The UN needs a tool of its own to control everyone including the USA. Without

³³³ Bob Bergen, "UN, NATO failures requires new ways of defence thinking," *Canadian Defense and Foreign Affairs Institute: Monthly Column* (October 18, 2006).

<http://www.cdfai.org/monthlycolumn.htm> (Accessed: September 2009, 2010).

³³⁴ Article 37 of the UN Charter, 1945.

³³⁵ Article 5 of the North Atlantic Treaty, 1949.

³³⁶ Thomas G. Weiss, "The Illusion of UN Security Council Reform," *The Washington Quarterly* 26:4 (2003), 147-161.

³³⁷ Violation of Article 2(4) of the UN Charter, i.e., prohibition on use of force against other member states.

proper and efficient force on its disposal, the UN will remain an ineffective. The present UN is legislative and judicial body without any tool to implement its will or decision. The powerful states will contribute in the GA led Coalition of willing, or in any other UN led initiatives only if beneficial to their vested interests.

The *Winston Churchill's Iron Curtain Speech* gives blue prints for the establishment of international armed force on March 5, 1946.³³⁸ He gave practical proposal for enforcement mechanism, and said that courts will remain ineffective without the presence of "sheriffs and constables". The solution is the recruitment of an independent international force under the control of international organization. The force should be capable to act independently, without any influence of states. The UN with the help of the independent and fully operational armed force will be able to take swift action against violators of international law.

The establishment of permanent and professional UN armed force is necessary for enforcement and deterrence purposes. The force will assist the UN in enforcing the ICJ's judgments, in the SC led armed action, and in Peacekeeping Missions. Similarly, it will act as a deterrence force for habitual violator of international law and other aggressive states. The effective UN force can counter

³³⁸ Churchill said "The United Nations Organization must immediately begin to be equipped with an international armed force. In such a matter we can only go step by step, but we must begin now. I propose that each of the Powers and States should be invited to dedicate a certain number of air squadrons to the service of the world organization. These squadrons would be trained and prepared in their own countries, but would move around in rotation from one country to another. They would wear the uniforms of their own countries but with different badges. They would not be required to act against their own nation, but in other respects they would be directed by the world organization. This might be started on a modest scale and it would grow as confidence grew. I wished to see this done after the First WW, and I devoutly trust that it may be done forthwith." <http://www.historyguide.org/europe/churchill.html>. (Accessed: April 14, 2010).

the potential threat to peace³³⁹. The UN resolutions will be more effective when combined with coercion of the UN military. The powerful UN armed force will act as a counter tool to other militaries of the world. The UN resolutions and ICJ judgments will remain mere pieces of power until there will be a legitimate force to enforce it.

3.5 International Court of Justice

3.5.1 Compulsory jurisdiction

The consent based jurisdiction of ICJ is based on the traditional concept of principles of sovereignty of states and sovereign equality³⁴⁰. The concept of sovereignty should no more be a hurdle in reforming the UN. As according to the reputed international Law scholar Henry Schermers,³⁴¹ the concept of sovereignty is continuously changing and sovereignty of state does not qualify them to disobey restriction imposed by international law.³⁴²

It is interesting to note here that practically we already departed from the principle of consent based jurisdiction. The SC established tribunals to try individuals from the former Yugoslavia and Rwanda without the consent of the relevant states. Similarly, the principle was quashed by the creation of the

³³⁹ Carlton Clymer Rodee *et al.*, *Introduction to Political Science* (New York: McGraw-Hill, 1957), 540.

³⁴⁰ Bingbin Lu, "Reform of the International court of Justice- A Jurisdictional Perspective," *Perspectives*, 5:2, (June 30, 2004).

³⁴¹ Henry G. Schermers was Professor of Law of International Organizations at the Leiden University of Netherlands, and Member of the Nobel peace prize winning Institut de Droit International. He wrote two notable books; *International Institutional Law* and *Judicial Remedies in the European Union*.

³⁴² John H. Jackson "Sovereignty-Modern: A New Approach to an Outdated Concept," *The American Journal of International Law* (AJIL) 97: 782 (2003), 787.

International Criminal Court (ICC). The SC can refer cases to ICC³⁴³ of individuals from countries that have not joined that Court but who commit offenses within the territory of states that have.³⁴⁴

It is surprising that world is ready to accept the compulsory jurisdiction of other judicial institutions by compromising their sovereignty, but not of the ICJ. This assertion is myth; the world is now well acquainted with the mechanism of compulsory jurisdiction and it is perhaps the right time to accept the compulsory jurisdiction of ICJ. Only states like USA are against the compulsory Jurisdiction, as they not only have history with ICJ on compulsory Jurisdiction³⁴⁵, but also they refused to sign the Rome statute of ICC. The states like USA fear that compulsory jurisdiction of International judicial institution can hamper their aggressive actions, and may cause persecution of its citizens involved in violation of International law.³⁴⁶ States have to realize that Sovereign Equality and Independence may have great emotional value, but they alone cannot help in constructing the enduring society.³⁴⁷ There is need of authoritative global legal authority to resolve the conflicts³⁴⁸, and that is not possible without giving compulsory jurisdiction to the ICJ. The ineffective ICJ led to creation many other

³⁴³ Article 13, of the ICC statute.

³⁴⁴ According to some Jurist the power to prosecute non-party nationals is a based on principle of territorially jurisdictional: the states delegate their power to ICC to try foreigners who commit offenses within their territory.

³⁴⁵ See: *Military and Paramilitary Activities in and against Nicaragua*, (Nicaragua V. United States of America) Jurisdiction and Admissibility, ICJ Reports 1984, 392.

³⁴⁶ The biggest US fear was ICC's jurisdiction over the acts of Aggression, which might cause trouble for the US and its allies. The USA also refused the compulsory jurisdiction of the ICJ and now is upset with ICC. (See for further details: Rob Grace, "U.S. Vs. ICC?," *Foreign Policy in Focus* (June 4, 2010).).

³⁴⁷ Cornelius F. Murphy Jr., *The Search For World Order: A Study of Thought and Action* (Dordrecht: Martinus Nijhoff Publishers, 1985), 158.

³⁴⁸ *Ibid.*, 184.

judicial platforms, and time is not far when it might become completely redundant.

3.5.2 Enhancing Jurisdiction

The ICJ is limited in its effect as its jurisdiction only recognizes states as its subjects, and organization and individuals are barred from bringing their cases to ICJ. ICJ's jurisdiction should be extended to individuals and organization to make it more effective, worthy, and relevant to the global citizens.

In comparison to the ICJ, the European Court of Justice (ECJ) is more effective in its impact, because it directly caters individuals. The ECJ exercise its jurisdiction on EU member states, individuals and organizations. The ECJ has the power to settle legal disputes between EU member states, EU institutions, businesses and individuals. The ECJ ensures the implementation of law by EU member states and institutions. The ECJ, on the request of any individual, can issue annulment orders to cancel a particular law directly and adversely affecting him as an individual.³⁴⁹ The direct involvement and access of individual made the ECJ more effective than the ICJ. The ICC and ECJ have jurisdiction over individuals and organizations, than why ICJ is lagging behind.

3.5.3 Advisory Opinion

As discussed earlier, the ICJ is empowered to give nonbinding advisory opinion only on the request of the SC, the GA,³⁵⁰ or other authorized organs and agencies within scope of their activities.³⁵¹ The states are not authorized to put question

³⁴⁹Official website of ECJ: http://europa.eu/institutions/inst/justice/index_en.htm. (accessed 10th Nov, 2009)

³⁵⁰ Article 65 of the Statute of ICJ, 1945.

³⁵¹ Article 96 of the UN Charter, 1945.

before the ICJ for advisory opinion. This restriction limits the scope and effectiveness of ICJ.

The GA, by innovative use of its power, can establish a mechanism for states to request advisory opinions, i.e., the creation of new additional judicial organ.³⁵² The GA, under Article 22 of the UN Charter, is empowered to establish such subsidiary organs as it deems necessary to perform its functions. With the help of this power the GA can establish a "Judicial Organ" and empower it to request advisory opinions from the Court upon the application of states. This mechanism will empower the ICJ to render advisory opinions on conflicts between states without the requirement of state consent.

The SC, as a guardian of International peace and security should be empower to defer the case, if in its opinion the case will further or hamper the international peace and security. The same mechanism was adopted in the ICC statute to balance the relationship between SC and ICC.³⁵³

It's easier to create a new judicial organ as oppose to reforms. The reforms are handicapped by the fear of veto and national ratification, but there is no such requirement for creating a new organ, and it can be created by two-third majority of the GA. Similarly, third world countries will favor this structural enhancement as it will allow them to brought cases against powerful countries.

This mechanism is the first step towards expanding jurisdiction of ICJ, and this exercise will end into the expansion of compulsory jurisdiction of ICJ in

³⁵² Andrew L. Strauss, CLI Recommendation No 16, 2.

³⁵³Article 16, of the Rome Statute of the ICC states that "No investigation or prosecution may be commenced or proceeded with under the Statute for a period of 12 months after the Security Council in a resolution adopted under Chapter VII of the Charter of the United Nations, has requested the Court to that effect; that request may be renewed by the Council under the same conditions."

contentious cases, as was the case with WTO regime of binding dispute settlement³⁵⁴. Initially, the panels used to give advisory opinion and over the years the advisory opinion mechanism was turned into compulsory binding jurisdiction.³⁵⁵ The important lesson of WTO dispute resolving history is that a system of advisory opinion will eventually lead toward a compulsory jurisdiction of dispute resolution, as the advisory process will familiarize the states with the Court process and its effectiveness. Under the present ICJ structure, there is no difference between advisory opinion and binding decision, as far as their implementation is concern. As mentioned earlier, the ICJ has no tool of its own to implements its binding decision. The compliance depends upon the will of effected state. The ICJ decision put moral pressure on states and intimate the state to compliance. The advisory decisions of the ICJ will carry same moral power with them.

³⁵⁴ Andrew L. Strauss, CLI Recommendation No 16, 2.

³⁵⁵ Initially, the panels of three or five neutral member's were established under authority of Article XXII (related to consultation), XXIII (related to Nullification and impairment), of General Agreement on Tariffs and Trade, (GATT) treaty. According to these Articles if a contracting party considered that a benefit accruing to it under the GATT was being nullified or impaired by another party, it could complain in writing to that other party (XXII (2)). If this did not lead to a satisfactory resolution of the situation, than the complaining party was authorized to refer matters to the Contracting Parties, who were then to investigate and make recommendations (XXIII (2)). Over time these panels became more legalistic in their approach and their processes became more formalized by subsequent agreements and understandings. The parties originally allowed that the panel reports would only be advisory unless all of the parties to the GATT (including the losing party) agreed by adopting them to make them binding. Later, the parties took the step of instituting compulsory and binding dispute resolution, in the 1994 Marrakesh Agreement. (See: Andrew L. Strauss, CLI Recommendation No. 16: Give the International Court of Justice Compulsory Advisory Jurisdiction on Matters Concerning Climate Change and the Needs and Interests of Future Generations).

3.6 Restructuring Secretariat

The UN Secretariat is criticized for profligate expenditure, extra and inefficient staff recruitment, and bureaucratic mannerism.³⁵⁶ The problem of Secretariat is not completely that of Structural nature, it also involves issues lack of political will, reckless attitudes, and unjustified criticism, for example, the most criticized issue is number of staff members of the UN Secretariat, i.e. 51 thousand, which is not an enormous figure as it is almost equal to the number of people working for the city of Stockholm³⁵⁷, but still the UN should downsize its staff to the minimum level as the UN, unlike Stockholm, does not earn revenue for its endurance. Nevertheless, structural reforms can be introduced to make the Secretariat more transparent and accountable.

The expenditure of Secretariat can be made accountable by introduction of an independent subsidiary organ of auditor. The auditing will make the expenditures of the Secretariat more transparent and accountable. The new audit organ can be formed on the principles of the fifth institution of (EU), the Court of Auditors, to replace the existing independent Audit Advisory Committee and UN board of Auditors. The court of Auditors is a professional external investigatory audit agency formed, primarily, to externally check that EU budget is implemented appropriately, and spent legally with sound management.³⁵⁸ The

³⁵⁶ See: Neil Gradiner and Baker Spring, "Reform the United Nation," *The Heritage Foundation* (October 7, 2005).

³⁵⁷ Madeleine K. Albright, "Think Again: United Nations," *Foreign Policy*, 24 (2003).

³⁵⁸ Susana Muñoz - Raquel Valls, "Power of audit of the European Court of Auditors," *European Navigator*, <http://www.ena.lu/> (Accessed Dec 20, 2009).

similar new independent audit organ of the UN can ensure the rightful use of global tax payers' money by all organs of the UN.

Likewise, a mechanism, or a working committee of the GA should be formed for ensuring the free, fair, and required appointments of the Secretariat staff. The status of the Secretariat can be reduced to a subsidiary organ of the GA, to check inefficiency and bias of the Bureaucracy. The Bureaucracy can work efficiently under the watchful eye of the globally represented GA, or its working committee, or under the new proposed World Parliament. As the Secretariat is independent organ, and states often complain about the bias of the Bureaucracy as they have not direct control over their activities. Subordination to the globally represented organ will give all states an opportunity to ensure the neutrality of the staff through the working committee or any other mechanism, and it will also curtail the requirement of inducting staff from smaller countries to ensure neutrality, instead of able and deserving candidates.

3.7 Principles of Islamic Law

The 192 member³⁵⁹ UN include many³⁶⁰ Muslim states and some non Muslim states with sizeable Muslim population. It is therefore not out of context to discuss the relevant principles of Islamic Law with regard to the UN reforms.

Islam has its own principle of Islamic International law, also known as *Siyar*. The principles of Islamic International law are derived from the text of Qur'an, Sunnah, practice of early Caliphs, Ijma, *Qiyas*, the Arbitral Awards, Treaties, and

³⁵⁹Official UN website: <http://www.un.org/en/members/growth.shtml>

³⁶⁰ 57 states are member of the Organization of Islamic Countries and all which are also member of the UN.

Customs. The Islamic International Law is well developed and it is increasingly recognized by International community and jurists.³⁶¹ Justice Weeramantry also recognized the principles of Islamic law in his judgment in the Case of Legality of the Threat or Use of Nuclear Weapons.³⁶² He states that International Humanitarian law has lineages to many civilizations including Islamic Civilization. ³⁶³ He then quoted rules from the Islamic law of War, he recorded that:

In the Islamic tradition, the laws of war forbade the use of poisoned arrows or the application of poison on weapons such as swords or spears. Unnecessarily cruel ways of killing and mutilation were expressly forbidden. Non-combatants, women and children, monks and places of worship were expressly protected. Crops and livestock were not to be destroyed by anyone holding authority over territory.³⁶⁴

He then went on to praise the Islamic Law by saying that:

So well developed was Islamic law in regard to conduct during hostilities that it ordained not merely that prisoners were to be well treated, but that if they made a last will during captivity, the will was to be transmitted to the enemy through some appropriate Channel.³⁶⁵

³⁶¹ After 9/11 the world interest in the Muslim world increased many folds and this interest compelled the world to take a keen interest in the law governing Muslim behaviour with the rest of the world. (See for detailed study: Naz K. Modirzadeh, "Taking Islamic Law Seriously: INGOs and the Battle for Muslim Hearts and Minds," *Harvard Human Rights Journal* 19 (2006).

³⁶² ICJ Reports 1996, 226.

³⁶³ ICJ Reports 1996, 226. , 443.

³⁶⁴ Ibid., 481.

³⁶⁵ Ibid., 481.

Islamic principles related to Sovereignty, Contract among Muslims and Non-Muslims, Collective Defense, and alliance with Non-Muslims is some of the issues, which need some discussion with regard to the UN.

3.7.1 Sovereignty

Islamic concept of sovereignty is different from the concept of sovereignty in prevalent International law. According to Islamic principles Sovereignty rest with Allah Almighty. Allah's Sovereignty is absolute as Muslims are not permitted to commit any action prohibited by Allah Almighty, and everyone is responsible to Him for their actions. It is stated in the Qur'an that:

He is Allah, than whom there is no other God, the Sovereign Lord the Holy One, Peace, the Keeper of Faith, the Guardian, the Majestic, the Compeller, the Superb. Glorified be Allah from all that they ascribe as partner (unto Him).³⁶⁶

In the Modern International Law states are Sovereign, and thus principle of State equality is recognized by the UN Charter. According to the UN Charter all states are equal³⁶⁷, and this principle is the basis of the UN. Muslim jurist also recognize the principle of state equality, as far as the rights and duties are concern³⁶⁸. The practical differences between the stated, with regard to their military might, economic condition, and influence are duly recognized by the Muslim Jurists.³⁶⁹

³⁶⁶ Qur'an 59: 23.

³⁶⁷ Article 2 (1) of the UN Charter, 1945.

³⁶⁸ M. Hamidullah, *Muslim Conduct of State* (Lahore: Sh. M. Ashraf, 1945).133.

³⁶⁹ Ibid.

In Islamic Law State, Parliament is not absolute Sovereign, because there they cannot make laws out of their will completely. The Will of Muslim Legislature is restricted by the commands of Allah Almighty. Though, State is free to make laws, which are not contravention of the Shariah. Likewise, according to Islamic law leaders and states are not absolute sovereign and can be brought before court of law.³⁷⁰ The concept is different from the modern concept of sovereignty, but it is similar in effect. As we discussed earlier, the modern jurists also recognize that absolute sovereignty does not exist, and are calling for the acceptance of modern sovereignty.

3.7.2 Treaty with Non Muslims

Muslims can enter into peace treaty with Non-Muslims. It is mentioned in Qur'an that: "And if they incline to peace, incline thou also to it, and trust in Allah. Lo! He, is the Hearer, the Knower."³⁷¹ This verse of the Qur'an is encouraging Muslims towards peace, only if Non-Muslims are also inclined towards peace. The Muslims are not under obligation to perpetually fight each and every Non-Muslim States. Muslims are under obligation to fight those who fight against them, and who cause difficulties for their religion. It is stated in the Qur'an that:

Except those who seek refuge with a people between whom and you there is a covenant, or (those who) come unto you because their hearts forbid them to make war on you or make war on their own folk. Had Allah willed He could have given them power over you so that assuredly they would

³⁷⁰ The Jurisdiction of the ICC over individual is more in conformity with Islamic principles. (Article 25 of the Rome Statute). Islamic history is filled with the history of courts summoning the Rulers into the Court for example, Hazrat Umar (RA) was called in court on a mere complaint.

³⁷¹ Qur'an 8: 61.

have fought you. So, if they hold aloof from you and wage not war against you and offer you peace, Allah alloweth you no way against them.³⁷²

The Muslims in their treaties with non Muslims can make stipulations about their conduct. The stipulations of treaty should not be against the Shariah, otherwise treaty will be held void. The exception to the above rule is the presence of an extreme necessity, or when it is necessary for the survival of Muslims. This exception is led by the Islamic legal maxim "Stress renders the forbidden permissible"³⁷³. Such exceptional treaties will remain effective until the stress or necessity exist, and will stand void when the necessity will be removed.

Muslims are bound to respect the stipulations of treaty until the treaty expires, either by expiry of time, or due to open revocation by either parties, or when it's impossible to perform the contract due to unavoidable circumstances. "O ye who believe! Fulfil your undertakings."³⁷⁴ In another place in Qur'an it is mentioned that:

Excepting those of the idolaters with whom ye (Muslims) have a treaty, and who have since abated nothing of your right nor have supported anyone against you. (As for these), fulfil their treaty to them till their term. Lo! Allah loveth those who keep their duty (unto Him).³⁷⁵

The UN is created as a long-lasting institution. In a way it's a permanent contract between the states, or a perpetual agreement of peace. The Muslim Jurists denounced the perpetual peace treaty with non Muslims, and cited that treaty

³⁷² Qur'an 4: 90.

³⁷³ *Muslim Conduct of State*, 31.

³⁷⁴ Qur'an 5: 1.

³⁷⁵ Quran 9: 4.

should be for limited time, i.e. ten years based on the stipulation in *Treaty of Hudaibiyah*.³⁷⁶ This principle of treaty for limited time is the most important and relevant principle in the context of the reforms of the UN. Today, the reform issue is most pressing and difficult issue, the Charter is outdated, yet it is difficult to reform it. The limited period treaty helps states to rethink their membership in view of changing global realities and their own conditions, power, and status. The states should be allowed to rethink their membership status after every ten years, and the UN charter should also be amended to bring the structural changes to keep the UN relevant and updated. Had the time frame of ten years for reconsideration of status was stipulated in the UN charter, the present deadlock on reforms would have been avoided. The threat of states reconsidering their membership status will boost the working of reforms to make the UN acceptable and useful to all.

3.7.3 Alliance with Non-Muslims

The UN charter calls for collective self defense, if any member state is attacked by another. So, is it permissible to join International alliance against a Muslim State? Is it permissible for Muslim state to enter into such a contract?

Keeping in view the teachings of Qur'an a Muslim State can join Non-Muslim state against a state that transgressed and violated the peace treaty.

Allah Almighty ordered His creatures to support justice and righteousness against the evil and unjust. In other words Muslim state can fight against Muslim state, who violated the peace treaty. As it is stated in the Qur'an that:

³⁷⁶ *Muslim Conduct of State*, 259-60.

O ye who believe! Be ye staunch in justice, witnesses for Allah, even though it be against yourselves or (your) parents or (your) kindred, whether (the case be of) a rich man or a poor man, for Allah is nearer unto both (them ye are). So follow not passion lest ye lapse (from truth) and if ye lapse or fall away, then lo! Allah is ever Informed of what ye do.³⁷⁷

Islam urged its followers to support justice and fight against a tyrant even if it's a Muslim state. Today, all Muslim states are member of the UN and are bound not use force against other members. If any Muslim state violates the Charter, other Muslims states are justified in their action against it in alliance with Non-Muslim states.

The first treaty of Islam was the Misaq-e-Madina (also know as constitution of *Madina*). The Prophet Muhammad (PBUH) entered into covenant with Jews of *Madina*. This treaty is great example of alliance with non Muslims. The treaty states that a believer will not help nor give shelter to a wrong doer³⁷⁸, and similarly Jews with Muslims will share expenses pf war³⁷⁹.

The Muslims under the leadership of Prophet Muhammad (PBUH) signed the *treaty of Hdaybiya*. The treaty stipulated conditions apparently accepting the supremacy of Quraysh of Makkah, but the prophet Accepted the stipulation even removed the "Apostle of Allah" from his name³⁸⁰. Though, it can be argued that that was peculiar situation, and prophet (PBUH) accepted this with the prior

³⁷⁷ Quran 4: 135.

³⁷⁸ Article 22 of the Misaq-e-Madina as quoted in M. Hammidullah , *The Life and Work of the Prophet of Islam (Islamabad: Islamic Research Institute: 1998)* 1:157.

³⁷⁹ Ibid. Article 24 of the Misaq-e-Madina.

³⁸⁰ Dr. Afzal Iqbal, *Diplomacy in Early Islam* (India: International Islamic Publishers, 2002), 53.

knowledge of success, but still Muslim can enter into a treaty accepting the supremacy of Non Muslims. According to the father of Islamic International Law, *Shaybani*, there is no harm in such a contract if it is beneficial for the Muslims.³⁸¹ The Muslims can enter into such contract to save their existence, when they are too weak to fight with might of the non Muslim enemy.

Imam Sarakhsi also stated that Muslims can enter into peace treaty with Non-Muslims without any Jizya, if the Imam thinks that Non-Muslims are too strong and Muslims will not be able to stand against them. ³⁸²

³⁸¹ Muhammd b. Al-Hasan Al-Shaybani, *Kitab Al-Siyar Al-Saghir*, trans. Mahmood Ahmad Ghazi. (Islamabad: Islamic Research Institute, 1998), 61.

³⁸² Majid Khadduri, *The Islamic Law of Nations: Shaybani's Siyar* (Baltimore: The John Hopkins Press, 1966), 155.

Conclusions and Recommendations

Conclusions

Though, there is no dearth of different proposal for reforms, but most of the material only point out the problems and not the solutions. Similarly, many writers and working groups suggest many solutions, but most of them committed blunder by individually catering the problem without considering its overall effect.

To determine problem and flaws, it's important to individually discuss every issue, but for concrete practical steps whole setup should be kept in mind. The reforms can only be successful if implemented in phases, instead of revolutionary grand plan. For the gradual implementation of complete reforms package, a flow chart of steps should be formalized.

Vital Preliminary Reforms

There are three independent steps, regardless of other reform program.

The first step for implementing any successful reform plan is to formulate the plan for independent income. In Chapter II, we discussed different options for creating source of independent income for the new proposed international organization, which could be followed by the UN. Independent income will give the UN position and power to take decisions without being influenced by any major contributor of the UN budget. Secondly, it will counter the argument that

major contributors should have major say in decisions³⁸³. The UN can raise its revenues, for example, the IMF holds 3,217 metric tons (103.4 million ounces) of gold³⁸⁴ and the UN can put it in the trust fund and use the proceeds for development and peacekeeping.³⁸⁵

After this major reform, the second step should be the establishment of the enforcing tool, i.e. the UN armed force, recruited directly by the UN. It will give the UN an edge over powerful states in decision making process.

Thirdly, the jurisdiction of ICJ should be enhanced to include individuals and organization in its jurisdiction. Similarly, the sub organ of the GA to facilitate states to get an advisory opinion from the ICJ should be created.

Lastly, the new independent Audit organ should be created to control and ensure the rightful application of approved UN budget.

The other structural reforms should be well planned and well evaluated, as one reform proposal directly affects the other.

World Parliament

For the democratization of the UN, the GA can be turned into assembly of directly elected people, i.e. World Parliament, or world parliament can be created as a new subsidiary organ the GA.³⁸⁶ The decision should be clear and well thought, because it will help in reforming the SC.

³⁸³Paul F. Diehl, ed., *The Politics of Global Governance: International Organizations in An Independent World* (New Delhi: Viva books Pvt. ltd, 2005), 498.

³⁸⁴Judy Shelton, "The IMF's Gold Gambit," *The wall street journal*, April 28, 2009.

³⁸⁵Ruben P. Mendez, "financing the United Nations and international public sector: problems and reforms", in *The Politics of Global Governance*, ed. Paul F. Diehl, (New Delhi: Viva Books Pvt. Ltd. ,2005), 158.

³⁸⁶Article 47 of the UN Charter, 1945.

In case of establishment of the World parliament, the SC should work as the body representing states, for example, the EU council of ministers. If a new sub organ will be created than the SC should remain the council primarily responsible for maintaining international peace and security, but it should be represented by the regions instead of states, for example, EU, AU, and SAARC with no veto power.

Reform Packages

As mentioned above, reforms of each organ should not be dealt individually, but also seen with regard to bigger picture. It is important to measure the effect of a particular reform suggestion on the structure of the organization, and it's viability with regard to the working of other organs. A reform proposal may seem appealing if seen as isolated case, but may seem totally flawed when connected with other reforms. The pairing of different reform proposals is necessary to complete the picture. After detailed discussions of each proposal, we are now pairing different proposals with each other to form a complete package. We accumulate reforms in three packages; the first two dealing with structural reforms possible only through the Charter amendment, and the third package include reform proposals possible to be implemented without amending the Charter.

Package one

This model is inspired from the EU; this includes creating World Parliament as a new organ for making the UN more democratic and relevant to the citizens of the world. While the GA will remain unchanged, the SC will be restructures to be a

Council still responsible for maintaining international peace, but with regional representation. The GA will be responsible for the administrative decision, while the World parliament will deal with all the remaining issues. The GA will replace secretariat and assume the responsibility of Secretary General, for example, to bring to the attention of the SC any matter which may threaten the maintenance of world peace³⁸⁷, and bureaucracy will also be controlled by the GA. The SC will remain guardian of International peace, as it will be difficult for the World parliament of more than 600 people to take swift decision in case of threat to international peace.

Package two

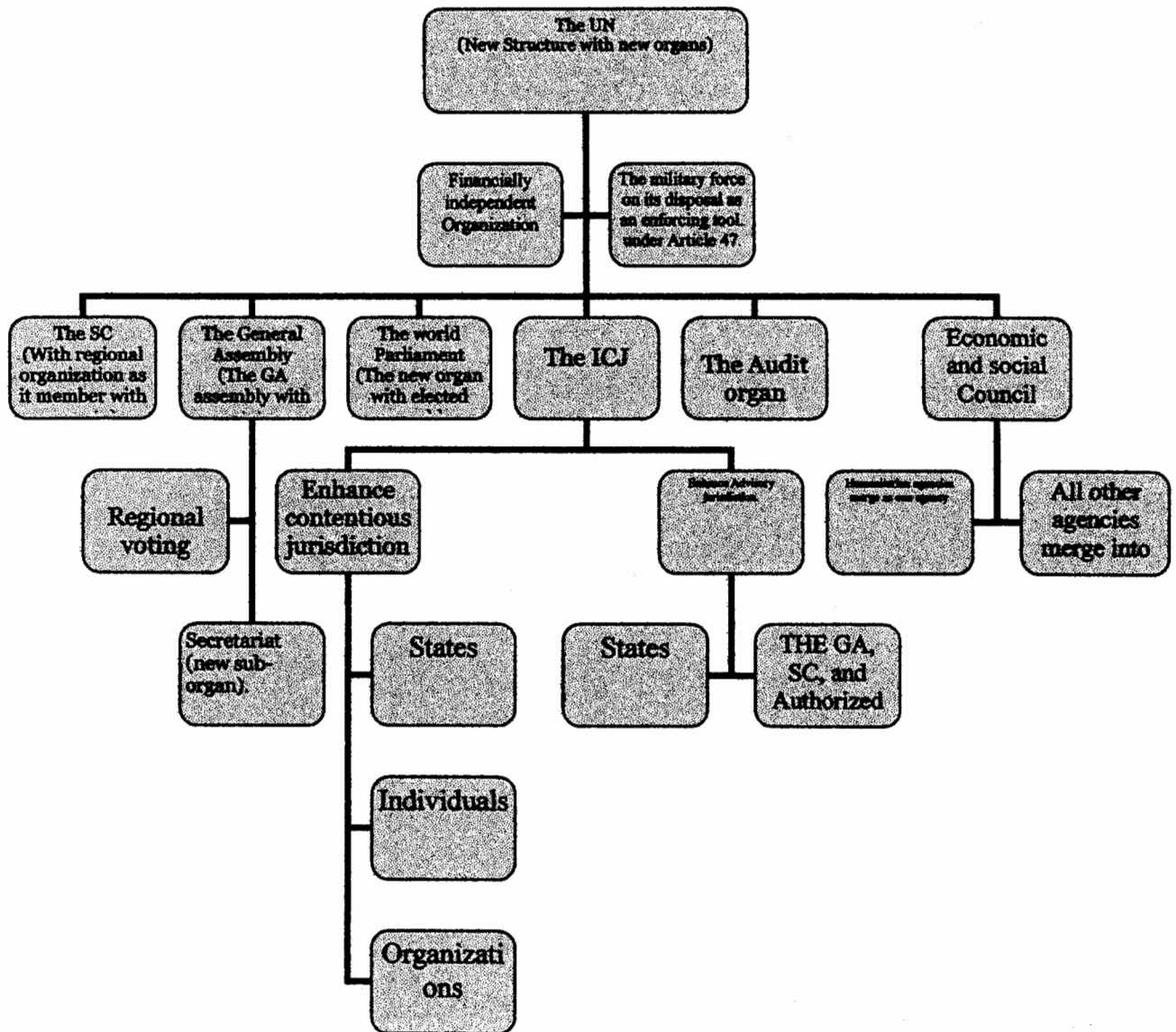
It will include only two main organs; the directly elected GA and the SC of elected states. The elected GA will be too large to take swift action and the SC will be elected for five years without any privilege of veto for any state by the GA. The SC will be responsible for the maintenance of international peace and security. The criteria for electing members of the SC should be formulated to ensure the election of right representatives, and to avoid the criticism received on the members of Human Rights Council. The Secretariat will be the new subordinate organ of the GA.

Package three

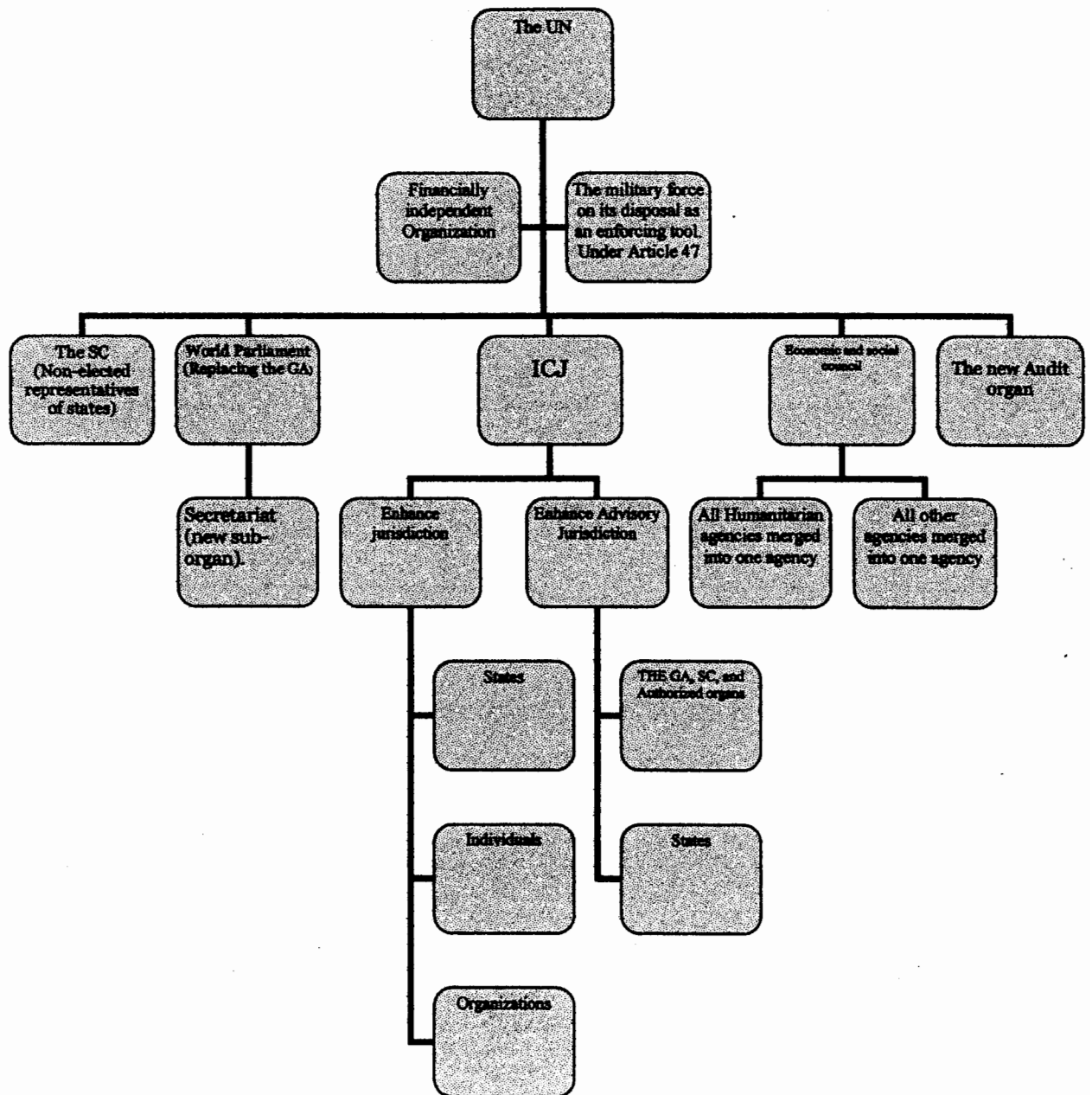
The major structural adjustments and renovation of the UN is possible without lengthy process of reforms. Creative interpretation of the Articles and use of

³⁸⁷ Article 99 of the UN Charter, 1945.

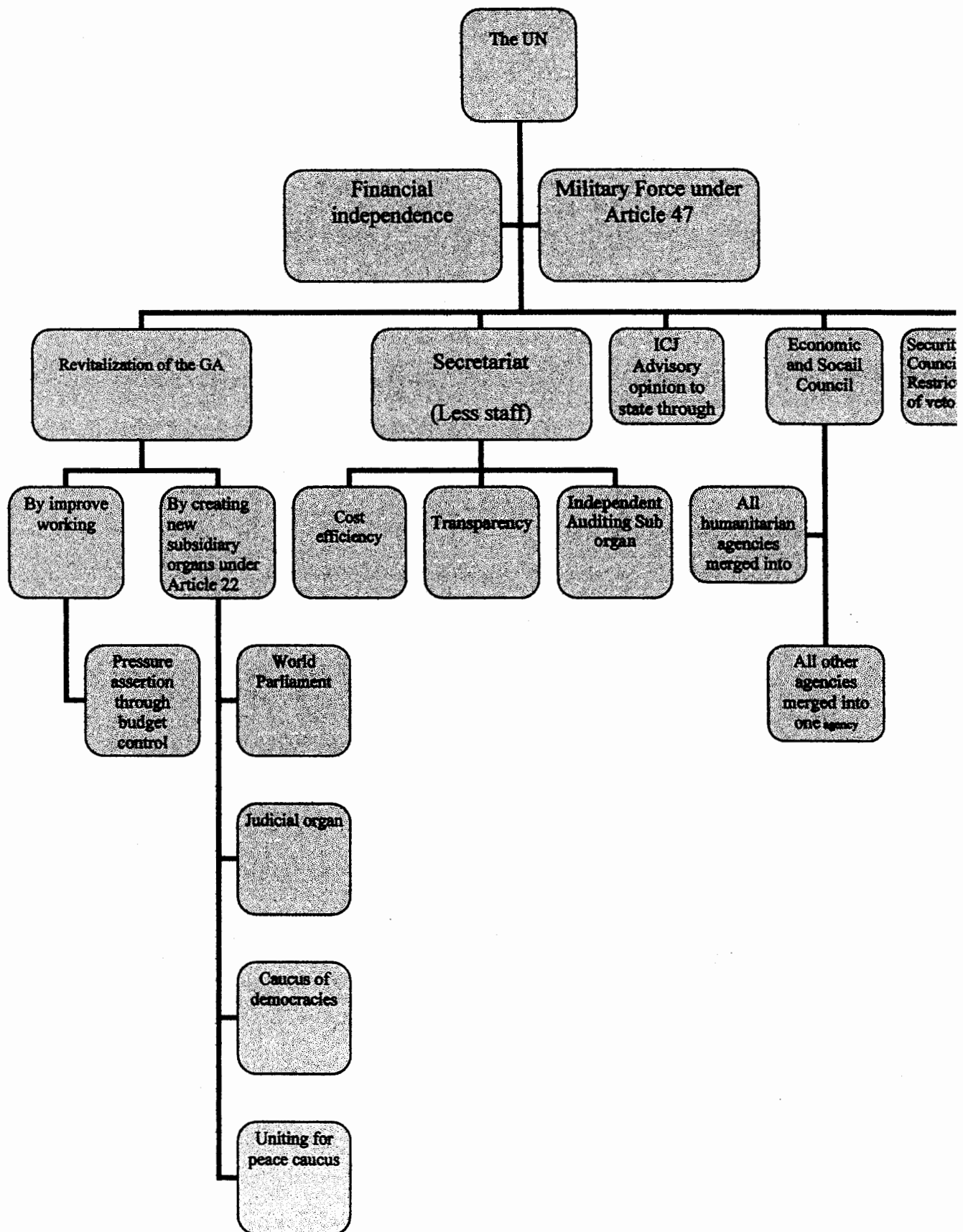
powers, for example, the GA can create many sub organs under the Article 22. This chapter includes many proposals for creating subsidiary organs for better working of the UN, for example, judicial organ, world parliament, the Uniting for Peace organ, and establishment of the UN military force, by using its power without any threat of veto.



- The trusteeship Council should be abolished.



The trusteeship Council should be abolished.



Recommendations

The demand for initiating a process of reform in the UN is a neither abrupt, nor new. It is an old demand, rather an old promise to be fulfilled. The UN, was created for not repeating the failure of its predecessor and mistakes of 1930's. It is an organization formed primarily to undo the mistakes of the past, and predominately reflects the realities of post WWII era. The world has gone faster, and the membership even wilder. The UN is no more a club of allied Victors of WWII, as it has universal membership. The UN cannot survive and work effectively in the modern times, with the setup and mechanism best suited to the last Millennium. Reforms are important to revive the credibility, and effectiveness of the UN. It is important to start reforming the UN, because, with all its flaws, it is still the podium that crystallizes changes taking place around the world.³⁸⁸

Reforms are not just necessary, but decisive. Reforms are not novelty, as in every organizational and state constitution amendments are made to apt it for new sensibilities. The process of amendment is clearly mentioned in Article 108 and 109 of the Charter. The GA Resolution 1990 was passed to cater the demands of wave of new membership. If had happened then, it is possible now.

The demand of reforms should be made with clarity and precision. The ambiguity in demands makes the reform process more cumbersome. The speech of Libya's Head of State, Colonel Qaddafi during the annual session of GA³⁸⁹ is a

³⁸⁸ Suzanne Ogden, "China's Position on U.N. Charter Review," *Pacific Affairs*, 52: 2 (Summer, 1979), 210-240.

³⁸⁹ Libya's Leader Col. Muammar Qaddafi's gave 1 hour 15 min speech at the GA on Wednesday, 23rd September, 2009 in New York, USA.

clear example of ambiguity in our minds with regard to the process of reforms. Qadafi during first part of his unusually long speech termed the SC as "Terror Council" and demanded the abolishment of the veto power, terming it against the Charter. Later, during the same speech he as a head of the AU demanded permanent seat for the Africa in the SC.³⁹⁰ So, was he campaigning for the abolishment of the veto and SC, or was he campaigning for the enlargement of the SC?

The UN is important and global organization, and needs thorough study before any reform proposal is implemented. The broader picture should be analyzed, and all solutions should be suggested in view of the whole setup. The problem of considering different solutions individually will lead us to nowhere; we have to be clear and cannot ride in two ships, for example, if we consider the SC as undemocratic, than we cannot demand its privileges for ourselves. Only the clarity of vision will lead the world into a new era of effective UN. Similarly, if we suggest to a directly elect parliament to democratize the UN, than membership criteria of the UN should be changed as many current member states are ruled by dictators. What democracy will it bring to appoint the representative elected through dictator controlled election? Or create a Subsidiary organ as Election tribunal to ensure free and fair election.

Retrieved from: <http://www.youtube.com/watch?v=VvOo5LK22sg>. (Accessed at 21 June, 2010).

³⁹⁰ See Muammar Gaddafi Speech to United Nations Sept 23, 2009 pt.3: <http://www.youtube.com/watch?v=QijICLYDKlg> (Accessed 10 March, 2010).

Another problem with the reform issue is lack of honest analysis of problem, and states making "selfish and undemocratic" demands.³⁹¹ The states should rise above their vested interest and should think reform as a mean to achieve an end of "Common good", without achieving this any durable agreement is impossible.³⁹² Similarly, only good reforms, which are measurable, practical, beneficial, and agreeable,³⁹³ should be suggested. Collective benefit will induce states to endorse the process of the reforms.

The process of reform is not an easy task; the example of the EU's endeavor to reform should be kept in mind. The rejection of the EU constitution and efforts to ratify the Lisbon treaty are testaments of the need of persistence and hard work needed to accomplish the task of reform. The process can be initiated by convening the review conference according to Article 109 (3)³⁹⁴ or the GA resolution 992 (X) and the SC resolution 110 (S/3504),³⁹⁵ as these resolutions are still valid as were never quashed by subsequent resolution and were not time bound.³⁹⁶

³⁹¹ Remarks by Ambassador Abdullah Hussain Haroon, Permanent Representative of Pakistan, in the informal plenary meeting of GA on the question of equitable representation on and increase in the membership of the SC AND RELATED matters, New York: 4th March, 2009.

³⁹² Cornelius F. Murphy, *The Search For World Order: A Study of Thought and Action* (Dordrecht: Martinus Nijhoff Publishers), 184.

³⁹³ Paul Kennedy, *The Parliament of men: The Past, Present, and Future of the United Nations* (New York: Random house, 2006), 244.

³⁹⁴ The review conference in accordance with Article 109 (3) is workable as it was never vetoed by the P5.

³⁹⁵ The advisory opinion can be sought from ICJ about validity of these resolutions.

³⁹⁶ Shahriar Mahmoud Sharei, "United Nations Security Council Reform: Can Article 109 of the UN Charter come to Rescue?" (Paper Presented to: the Council Members and the Board of Directors of: Democratic World Federalists, World Alliance to Transform the UN, and the World Federalist Movement, April 2, 2010), 16.

Though I differ with the notion that the UN is our last best hope,³⁹⁷ but yet I fully agree that the UN is needed. The world cannot afford to loose the UN, where great powers fought their power games more furiously with their dangerous toys.³⁹⁸ With the help of words of President Truman, I may conclude that the UN Charter "will be expanded and improved as time goes on. No one claims that it is now a final or a prefect instrument"³⁹⁹ and no one will be able to resist forever as the UN reforms are inevitable.

It is alive with the spirit of the age to come.⁴⁰⁰

³⁹⁷The US President, John F. Kennedy during his Inaugural Address to the UN said "To that world assembly of sovereign states, the United Nations, our last best hope in an age where the instruments of war have far outpaced the instruments of peace, we renew our pledge of support—to prevent it from becoming merely a forum for invective—to strengthen its shield of the new and the weak—and to enlarge the area in which its writ may run." At Washington, D.C. January 20, 1961.

(Retrieved from JKF presidential library and museum: <http://www.jfklibrary.org/Historical+Resources/Archives/Reference+Desk/Speeches/JFK/003POF03Inaugural01201961.htm>) (Accessed: 10 June, 2009).

³⁹⁸Rick Rozoff, "Von Sponeck's Warning: Subverting the United Nations from Within," *GlobalResearch. Ca*, (27 May, 2009).

<http://www.globalresearch.ca/index.php?context=va&aid=13759>. (Accessed 10 July, 2010).

³⁹⁹ President Truman's address in San Francisco at the Closing Session of the UN Conference on June 26, 1945.

(Retrieved from <http://www.trumanlibrary.org/publicpapers/index.php?pid=73&st=&st1>) (Accessed: 5 May, 2010).

⁴⁰⁰ Adlai E. Stevenson, "Past, Present, Future of the UN," *The New York Times Magazine*, Jan, 4, 1962, p. 68.

BIBLIOGRAPHY

Articles

Archibugi, Daniele. "The Reform of the UN and Cosmopolitan Democracy: A Critical Review," *Journal of Peace Research*, 30 (August, 1993): 3 (301-315).

Berdal, Mats. "The UN Security Council Ineffective but indispensable," *Survival* 45:2, (2003).

Franck, Thomas M. "When, If Ever, May States Deploy Military Force without Prior Security Council Authorization?," *Journal of Law & Policy* 5 (2001):51.

Gardiner, Nile. and James Phillips, "Investigate the United Nations Oil-for-Food Fraud." *Heritage foundation*, no.1748,(2004).

Halper, Stefan. "A Miasma of Corruption: The United Nations at 50," *Cato Policy Analysis*, No. 253, (1996), <http://www.cato.org/pubs/pas/pa-253.html> (Accessed on 3 August, 2009).

Helms, Jesse. "Saving the U.N.: A Challenge to the Next Secretary-General." *Foreign Affairs* 75 (Sep. - Oct., 1996) 5.

Hovell, Devika. "Chinks in the Armour: International Law, Terrorism and the Use of Force." *University of New South Wales Law Journal* 398(2004): 27(2).

Jackson, John H. "Sovereignty-Modern: A New Approach to an Outdated Concept," *The American Journal of International Law (AJIL)* 97: 782 (2003).

- Kochler, Hans. "The United Nations and International Democracy: The Quest for UN Reform." *International Progress Organization XXII Vienna* (1997).
- Lu, Bingbin. "Reform of the International court of Justice- A Jurisdictional Perspective." *Perspectives* 5 (2004): 2.
- Maher, Laurence W. "Half Light Between War and Peace: Herbert Vere Evatt, The Rule of International Law, and The Corfu Channel Case," *Australian Journal of Legal History*, (2005): 3.
- Milio, Simona. and Francesco Grillo, "The mother of all questions: how to reform global governance?," *Open Democracy*, http://www.opendemocracy.net/globalization-UN/article_1197.jsp (accessed June 6, 2009).
- Ogden, Suzanne. "China's Position on U.N. Charter Review." *Pacific Affairs, University of British Columbia* 52 (Summer, 1979) : 2.
- Scott, Shirley, "The Failure of the UN to Hold a Charter Review Conference in the 1950s: The Future in the Past?." *Australia and New Zealand Law and History E-Journal* (2005) http://www.anzlhsejournal.auckland.ac.nz/pdfs_2005/Scott.pdf. (Accessed on 15 June, 2010)
- Urquhart, Brian. "The United Nations System and the Future." *Royal Institute of International Affairs* 65, no. 2 (1989), <http://www.jstor.org/stable/2622069> (Accessed: 17 November, 2009).
- Webster, Lucy Law. "On the Value of Weighted Decisions in UN Voting and Representation," *Minerva* 35:31. (2007), <http://www.cwps.org/Lucy-Min31b.pdf> (Accessed Nov 20, 2009).

Books

Ahmad, Muhammad Mushtaq. *Jihad, Mahzamat, Aur Baghawat: Islami Shariat Aur Banul Aqwami Qanoon ki Roshni Mein*. Gujranwala: Al-Shariah Acadmey, 2008.

Akehurst, Michael, *Modern Introduction to International Law*. New York: Routledge, 1998.

Bailey, Sydney D, and Sam Daws. *The United Nations: A Concise Political Guide*. Suffolk: Ipswich Book Co Ltd., 1995.

Chadwick F. Alger. Ed. *The Future of the United Nations System: Potential for the Twenty-first Century*. Tokyo: United Nations University Press, 1998.

Diehl, Paul F. Ed. *The Politics of Global Governance: International Organizations in an Independent World*. New Delhi: Viva Books Pvt. Ltd., 2007.

Hamidullah, Muhammad. *Muslim Conduct of State*. Lahore: Sh. Muhammad Ashraf, 1945.

_____. *The Life and Work of the Prophet of Islam*. Islamabad: Islamic Research Institute, 1998.

Jonathan, Dean. *The Current Legal Regime Governing the Use of Outer Space: Outer Space and Global Security*. Geneva, Palais des Nations, 2002.

Kennedy, Paul. *The Parliament of Man: The Past, Present, and Future of the United Nations*. New York: Random House, 2006.

Khadduri, Majid. *The Islamic Law of Nations: Shaybani's Siyar*. Baltimorte: The John Hopkins Press, 1966.

- Krasno, Jean E. *The United Nations: confronting the challenges of a global society*. Colorado: Lynne Rienner,
- Murphy Jr, Cornelius F. *The Search for World Order: A study of Thought and Action*. Dordrecht: Martinus Nijhoff Publishers, 1985.
- Rodee, Carlton Clymer, Totten James Anderson, and Carl Quimby Chistol. *Introduction to Political Science*. New York: McGraw-Hill, 1957.
- Al-Shaybani, Muhammad b. al Hasan. *Kitab al-Siyar al-Saghir*, tran. Mahmood Ahmad Ghazi. Islamabad: Islamic Research Institute, 1998.
- Smith, Courtney B. *Politics and Process at the United Nations: The Global Dance*. New Delhi: Viva Books Pvt. Ltd., 2007.
- Zweifel, Thomas D. *International Organizations and Democracy*. New Delhi: Viva Books Pvt. Ltd., 2007.

Newspaper Articles

- Albright, Madeleine K. "Think Again: United Nations" *Foreign Policy* 22 (September/October, 2003).
- Anderson, Jack. "UN Bureaucracy spends, spends, spends," *Ocala-Star Banner*, October 7, 1986.
- Daalder, Ivo H. & James M. Goldgeier, "For global security, expand the Alliance." *International Herald Tribune* (October, 2006).
- Gelernter, David. "Replacing the United Nations," *The weekly standard* k, 008:26 (2003).

Miliband, David. "War on terror' was wrong," *The Guardian*, Thursday, 15 January, 2009.

Shelton, Judy. "The IMF's Gold Gambit," *The Wall Street Journal*. April 28, 2009.

Younge, Gary. "The Golden Rulemakers," *The Guardian*, November 11, 2002.

The General Assembly Resolutions

A/47/277 - S/24111

A/RES/2101 (XX)

A/RES/2847 (XXVI)

A/RES/29/3314

A/RES/42/159

A/RES/46/51

A/RES/60/251

A/RES/992(X).

A/RES/1991 (XVIII)

The Security Council Resolutions

S/Res/38 (1948).

S/RES/47 (1948)

S/RES/106 (1955)

S/RES/111 (1956)

S/Res/209 (1965).

S/Res/289 (1970).

S/RES/678 (1990).

S/Res/ 986 (1995).

S/RES/1199 (1998).

S/RES/1244 (1999).

S/Res/1291 (2000).

S/RES/1441 (2002).

S/RES/1565 (2004).

International Treaties

Charter of the United Nations Organization, 1945.

Constitution of the World Health Organization.

Covenant of the League of Nations, 1919.

Simla Pact, 1972.

Statute of the International Court of Justice, 1945.

The North Atlantic Treaty, 1949.

The Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, 2007.

Reports

Human Rights Watch Report, "Rain of Fire: Israel's Unlawful Use of White Phosphorus in Gaza," of 25 March, 2009.

Independent Inquiry Committee into the United Nations Oil-for-Food Programme Report on the Manipulation of the Oil-for-Food Programme (27 October 2005).

Independent Inquiry Committee into the United Nations Oil-for-Food Programme Third Interim Report (8 August, 2005).

Millennium Development A/54/2000

Report of the Committee on Contributions 2009: the assessment for year 2007-2009. A/64/11.

Report of the Open-ended Working Group on the Question of Equitable Representation on and Increase in the Membership of the Security Council and Other Matters related to the Security Council. GA Official Records 58 session Supplement No. 47 (A/58/47)

The Report of the Executive Summary Commission to assess US national security space management and organization headed by former US secretary of Defense, Donald Rumsfeld presented its report on January 11, 2001.

The Report of the Executive Summary Commission to assess US national security space management and organization headed by former US secretary of Defense, Donald Rumsfeld of January 11, 2001.

The World Food Programme's 2009 Annual Report

Speeches

D' Escoto's Interview and speech on the UN failures and reforms.

**Fidel Castro's Speech at the UN Millennium Conference, on September 07, 2000
in New York, USA.**

[http:// www.youtube.com/watch?v=C5H2iEMJtfw](http://www.youtube.com/watch?v=C5H2iEMJtfw).

<http://www.historyguide.org/europe/churchill.html>.

http://www.unwire.org/unwire/20000907/10633_story.asp.

Muammar Gaddafi Speech to the United Nations on Sept 23, 2009:

<http://www.youtube.com/watch?v=QijICLYDKlg>.

**The US President, John F. Kennedy's Inaugural Address to the UN at
Washington, D.C. January 20, 1961.**

<http://www.jfklibrary.org/Historical+Resources/Archives/Reference+Desk/Speeches/JFK/003POFo3Inaugural01201961.htm> (Accessed: 10 June, 2009).

**Winston Churchill's "*Sinews of Peace*" or "*the Iron Curtain Speech*" at
Westminster College in Fulton, Missouri, on March 5, 1946.**

Official Websites

The Official Website of IAEA: <http://www.iaea.org>.

The Official Website of the International Court of Justice: <http://www.icj-cij.org/>.

The Official Website of the UN Peacekeeping:
<http://www.unac.org/peacekeeping/en/un-peacekeeping/factsheets/canada-and-un-peacekeeping/>.

The Official Website of the United Nation Information Center:
<http://www.unis.unvienna.org/>.

The Official Website of the United Nation: <http://www.un.org/>.

The Official Website of the European Union, EUROPA: <http://europa.eu/>.

The UN Treaty Collection: <http://untreaty.un.org/>.

Websites

<http://avalon.law.yale.edu/wwi/yalta.asp>.

<http://news.bbc.co.uk>.

<http://www.kashmiris.org>.

<http://www.oac.cdlib.org/data/13030/jz/tf2f59n5jz/files/tf2f59n5jz.pdf>

<http://www.spartacus.schoolnet.co.uk/FWWleague.htm>.

<http://www.timesonline.co.uk>.

www.globalpolicy.org/.

