KB LAW SCHOLARS JOURNAL
ISSN 3027-2440 (Online)
Published by KB SCHOLARS JOURNAL IRELAND
No. 2 The Laurels Dun An Oir Kanturk Co. Cork Republic of Ireland
Greenbelt Rd Lanham Md. 20706, Maryland, US







GoogleAnalytics GoogleScholars Open Research Europe

CONTEMPORARY USE OF FORCE IN THE SETTLEMENT OF DISPUTES IN INTERNATIONAL LAW

*Martin Okonta
[PhD B.L,] Lecturer, Faculty of Law-Delta State University (Oleh-Campus) Abraka Delta State Nigeria
Email: <martin-okonta@delsu.edu.ng> <https://orcid.org/0009-0009-2308-6867>

10.5281/zenodo.18489782

Abstract
Traditionally, use of force in international law contains implicated notions. Use of force as a matter of fact, is generally prohibited. There are avalanche of international instruments that prohibit use of force, inclusive of the provisions on combined articles 2 (4) and (7) to the UN Charter. However, these instruments brooks of exceptions including self- defence, collective self-defence, self-determination, uniting for peace, and etcetera. Notwithstanding the above, use of force seems to have been subjected to novel disruption in international law, if regard is had to the recent US invasion of Venezuela, actively spear-headed by President Trump. Against this backdrop, the author argued that use of force can escalate tensions and lead to further violence, undermine diplomatic efforts, violates international law, create humanitarian crises, and destabilize regions. The paper therefore maintained that the global community is tended to strive better in the absence of non-use of force in the settlement of disputes in international law.

Keywords: use of force, unilateral invasion, international law, settlement of disputes, global peace

©Terms & Conditions of access and use can be found at https://www.kbsjournals.com/index.php/kblsp

1. Introduction

It is recalled with nostalgia, the quantum of carnage and destruction of human lives and properties including the holocaust that occasioned the Second World War, where Nazi Germany attempted to hold the world at the jugular. In fact, the world had

witnessed two major conflicts with dire consequences hence world leaders and indeed the entire world would not be in a hurry to forget the dark days of the WW I and II.[1] Consequent on the above, there is need to checkmate any crisis, capable of escalating disruption of international peace and order.[2]

However, something a million times more frightening, more devastating, more catastrophic and more genocidal than the atomic bomb happened. Besides, as at the time the United States tested the efficacy of this weapon on Japanese soil in 1945, US seemed to be the sole possessor of atomic power, but now there are scores of countries having the nuclear power also called the "nuclear club." Analysts are of the view that since the use of the atomic bomb to end the second world war, global peace and security is no longer at ease. Consequent on the foregoing, nations began work, albeit surreptitiously, to equip their war arsenals with weapons of mass destruction to avoid being caught napping like the Japanese in 1945.

By diverse imagination, there is need to examine the general nature of armed conflict in international law and this will redound in explicating the relationship between armed conflict and state impunity.[3] It is also desirable to espouse the general principles of international law concerning armed conflict or use of force, (especially the US invasion of Venezuela) and perhaps the known categories of conflicts and its impact on states, groups and / or collectivities. It is to be noted that the use of force in international law refers to the governing rules and regulations when states can use military force against other states or entities. In this respect, a consideration of the actor-parties to the conflict and their respective statuses in international law will be illuminated. The United Nations Charter sets out the primary framework for these rules. As a matter of fact, there is prohibition on use of force.[4] It should also be noted that the prohibition on use of force accommodates the following exceptions and controversies, and they include the following:

---

[1] Between 1914 and 1918 as well as 1935 and 1945

[2] The development of the revolutionary war weapon, the atomic bomb, the type that United States used on Japan's Hiroshima and Nagasaki which brought the six year old war to an end took the world by surprise.

[3] See for instance, the US invasion of Venezuela and concomitant military abduction of the President Maduro, right from his state Venezuela to US for trial. Consider further, the airstrikes launched by US to Sokoto and Borno states of Nigeria, allegedly targeting Terrorists with an aim to neutralise at the operation base. In the same vein, consider the repeated threats of acquisition of Greenland, which as a matter of fact has been an integral governed region by Denmark.

[4] See generally, AK Anya, International Justice: Emerging Trends at Checking Degradation of Rights and Humanitarian Intervention, Nnamdi Azikiwe University Awka, Journal of Public & Pte Law vol. 6 (2014) P. 94

a. Self-defence and or collective self-defence.

b. Humanitarian Intervention. Some states have argued that force can be used for humanitarian purposes without Security Council authorization, but this has remained a contentious issue.

c. Protection of Nationals. States have claimed the right to use force to protect their nationals abroad, but this is not widely accepted.

d. Pre-emptive Force. The legality of pre-emptive force is debated, with some arguing it is permissible in cases of imminent attack, while others have argued that it is only justified in response to an actual attack.

It should be noted the peculiar role of the UN Security Council in the regime of use of force. The Security Council determines threat to international peace and security.[5] It can authorize collective action, including the use of force. The Council's decisions are subject to veto power by its five permanent members.

The paradox in the regime of use of force remains the provisions dwelling on exceptions. What are the exceptions to use of force in international law? Exceptions to the use of force in international law include:

a. Self-Defence.[6] States have the inherent right to self-defence in response to an armed attack.
b. UN Security Council Authorization.[7] The Security Council can authorize the use of force to maintain or restore international peace and security.
c. Consent. A state can consent to the use of force on its territory by another state.
d. Humanitarian Intervention. Some argued that force can be used to prevent humanitarian catastrophes, but this is a contentious issue.
e. Protection of Nationals Abroad (limited recognition). Some states claim the right to use force to protect their nationals abroad, but this is not widely accepted.

The regime of the law on armed conflict or use of force cannot be properly appreciated without the contributions of Oussama Damaj in analysing the differences to the growing concepts of *'jus ad bellum'* and *'jus in bello.'*[8]

---

[5] See Chapter VII of the UN Charter-Prohibition on Use of Force; States are prohibited from using force against the territorial integrity or political independence of another state, or in any manner inconsistent with the purposes of the United Nations.[5] However, States have the right to self-defense in response to an armed attack, as recognized in Article 51 of the UN Charter. This right is subject to the requirements of necessity and proportionality. Furthermore, the UN Security Council can authorize collective action to maintain or enforce international peace and security, including the use of force, under Chapter VII of the UN Charter.
[6]. Article 51 of the UN Charter
[7]. Chapter VII of the UN Charter

The international community is not new to the vicissitudes of armed conflict, either in the past or present, neither would armed conflict be a phenomenon associated with the past, taking into consideration the military might of some world powers and states,[9] and the continuing tendency to pursue sovereign exercise of powers as well as exhibition of military pride at the behest of nationalism.

Consequent on the above, the paper strived to evaluate challenges to the use of force in the settlement of disputes in international law. In achieving this objective, the paper considered four (4) segments inclusive of the introduction, nature and scope, subsisting framework, challenges and conclusion.

2. Nature and scope of use of force in International Law

There is need to explore the general principles of international law concerning armed conflict or use of force. There are many and varied known categories of conflicts and its impact on states, groups and / or collectivities. In understanding this respect, a consideration of the actor parties to a conflict and their respective statuses in international law is crucial. The regime of the law of armed conflict or 'use of force' must replicate and accommodate the contributions of Oussama Damaj in analysing the differences to the growing concepts of *'jus ad bellum'* and *'jus in bello.'*

The term 'conflict' has been defined as a violent and armed confrontation and struggle between groups, between the State and one or more groups and between two or more States. In such a confrontation and struggle some of those involved are injured and others killed.**[10]** In the light of this definition, there is need to distinguish civil war from conflict, since a civil war is specie of armed conflict. But the problem lies in the fact that a civil war is incapable of exact precision and / or definition.

Be it as it may, a deep and insightful reflection on civil war presupposes a 'sustained military combat, primarily internal, resulting in at least 1000 battle deaths per year

---

[8] A. K. Anya, International Justice: Emerging Trends at Checking Degradation of Rights and Humanitarian Intervention, Nnamdi Azikiwe University Awka Journal of Public & Pte Law vol. 6 (2014) P. 94, later uploaded to researchgate.com/anyakingsleyanya

[9] There are presently 192 states in the world. Almost all, excepting Switzerland are member-State parties to the United Nations. Eight of the states have acquired nuclear war heads, capable of destroying mankind five times within an hour. Recently, the pursuit for the acquisition of Nuclear power plants by Iran and North Korea has put the International Atomic Energy Authority and the Western world at logger heads.

[10] A Bujra, African Conflicts: A Discussion of their Causes and their Political and Social Environment, in Alfred G. Nhema, The Quest for Peace in Africa: Transformation, Democracy and Public Policy (Netherlands: International Books, 2004) 12

pitting central government forces against an insurgent force capable of effective resistance, determined by the insurgent force ability to inflict upon the government forces at least 5 per-cent of the fatalities that the insurgents sustains.[11] There is always need for prior determination of whether there is exchange of hostilities capable of leading to assertion of presence of armed conflict.[12] In the process of executing wars and asserting the presence of armed conflicts with other states, groups or organizations, untold hardship and atrocities could be inflicted on all and sundry. Premised on the foregoing, it is obvious that the concept of conflict is seemingly 'vague.'

The jurisprudence of non-international armed conflict is still evolving. It should not be forgotten in a hurry that this regime of the law is dynamic and not static. Be it as it may, terrorist warfare constitutes a typical example under this category.[13] It is defined as a non-international armed conflict in which the non-State party employs means and methods that are completely in violation of the laws of war and consist of acts of terror. A commentator once observed:

> In this respect, a comparison between PKK/KADEK and Al Qa'ida may prove useful. Both have been terrorist organizations. In my opinion, both succeeded in escalating the strategic situation to a level of non-international armed conflict. The two groups totally violated laws of war and committed acts of terror.[14]

Furthermore, it should be of great concern the rapid and radical development of terrorist groups in the world as well as the percentage spread of terrorist groups. For instance, in 1985, Jenkins observed that Ten per-cent (10%) of the world's countries

---

[11] The Correlates of war project. In fact, Ibrahim Elbadawi and Nicholas Sambani, Why are there so many Civil Wars in Africa? Understanding and Preventing Violent Conflict (2000) 9 Journal of African Economics 244, 247 proffered a definition of civil wars. They conceive of a civil war as an armed conflict that has-

(1) Caused more than 1000 deaths (2) Challenged the sovereign of an internationally recognized state (3) Occurred within the recognized boundaries of that state (4) Involved the state as one of the principal combatants (5) Included rebels with the ability to mount an organized opposition and, (6) Involved parties concerned with the prospect of living together in the same political unit after the end of the war.

[12]Anya, supra, Note 2 at 50. The author argued that "the practice of international law recognizes various and varied forms of use of force…it seems that not all forms of armed intervention results in war. For example, the type of hostility and/or intervention by the United Kingdom in the Falkland Islands could not be ordinarily qualified as war *stricto senso*." It should be that in the opinion of the parties to the dispute, the exchange of hostilities was not enough to lead to assertion of armed conflict.

[13] Prof A K Anya, Prince Jeremiah Oharisi & Esther C. Anya, Herdsmen Terrorist Activities in Nigeria and Concomitant Infractions on Human Rights, Jnl. of Current & Advanced Medical Research Nov. 2023

[14] Sadi Cayci, Countering Terrorism and International Law: The Turkish Experience. Contributions Presented at the 'Meeting of Independent experts on Terrorism and International Law: Challenges and Responses.' Organized by the International Institute of Humanitarian Law, Sanremo, 30 May – 1 June 2002, P. 137, 142

accounted for Sixty per-cent (60%) of the world's terrorist attacks.[15] In the same vein, authors Li and Schaub examined international terrorist incidents within 112 countries from 1975 to 1997.[16] They discovered that the Middle East hold the highest proportion of international terrorist incidents. Europe ranked second, Africa, Asia and the Americas experienced considerably fewer international terrorist attacks approximately 69%, 65% and 33%, respectively, in comparison with the Middle East. More than eighty *per-cent* (80%) of arrested terrorists in Europe and the US are members of the Muslim Diaspora, mostly second and third-generation migrants.

As a matter of fact, conflict or unilateral use of force in international law is generally prohibited. The use of force in international law connotes the rules and regulations governing situations when states can use military force against other states or entities. Historically, the prohibition has been anchored on certain international instruments inclusive of the Briand Kellogg Pact; the Provisions of the UN Charter, more specifically Articles 1 & 2; and thereafter, the Declarations on principles of international law concerning friendly relations and cooperation among states, specifically the UN General Assembly Resolution No. 26 & 25 (SSE of 1970). The common thread among these provisions remains the fact that states should refrain from threat or the use of force either to resolve conflict or against the sovereignty and independence of other states. Emphatically, article 2 UN charter specifically enjoins states among other things, to use peaceful means to resolve disputes. For example, it provides that:

> The Organisation and its Members in pursuit of the purposes stated in Article 1, shall act in accordance with the following principles:
>
> 1. The Organisation is based on the principle of the sovereign equality of all its Members.
> 2. ….
> 3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.
> 4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of

[15]. S. Andrew, *An Anatomy of Terror: A History of Terrorism*, (UK: MacMillan, 2003) 12
[16]. O. Li and D. Schaub., 'Economic Globalization and Transformational Terrorist Incidents: A Pooled Time series Analysis,' Journal of Conflict Resolution, 48 (2), 230-258, (2004)

any state, or in any other manner inconsistent with the Purposes of the United Nations.

Article 1 of the Charter of the United Nations contemplates as the paramount task of the United Nations, the maintenance of "International Peace and Security." [17] This unique objective is not to be pursued by the global body through means absolutely inconsistent with pacific approach, which conforms to the principles of justice[18] and international law,[19] and devoid of breach of international peace. Impliedly, international states are to refrain from conducts and/or approach antithetical to principles of fairness and established law.

The Charter further provides under article 2 that member states are to adopt pacific measure(s) in their bid to settle international misunderstanding and or disputes.[20] Settlement under legal parlance presupposes absence of inhibition in compromising anticipate rights, interests or privileges in the course of any transaction. "Settle" connotes amongst others, the act of compromising a matter.[21] In other words, parties to settlement of dispute are to negotiate bearing in mind that reconciliation is of essence, contrary to accrued rights, interests as well as privileges. Therefore, the provisions of article 33[22] anticipates inter alia that parties to an international dispute should first of all pursue solution to such international differences through pacific methods which includes negotiations, enquiry, mediation, conciliation, arbitration, judicial settlements, recourse to regional agencies or arrangements, and other pacific means voluntarily agreed upon. The effect of Article 33 notwithstanding its lure to pacifisms[23] is subjected to the overriding supervisory role specified in Article 36 (2),

[17] See generally, Charter of the United Nations [hereinafter the Charter]
[18] See **Roger Bird**, *Osborn's Concise Law Dictionary* 7th ed., "The upholding of rights, and the punishment of wrongs, by the law." P.193. See also **Lloyds**, The Idea of Law, Reprinted 1983, "Justice must be in accordance with Law" P. 213.
[19] These are the systems of rules, which are obligatory upon states: scilicet international customary laws, international conventions, and principles of law as developed by Jurists, either in courts and/or books.
[20] The Charter, supra, note 405, Article 2
[21] Bird, supra, note 406, at 302;See also Black's Law Dictionary, which defines settle as 'an agreement ending a dispute or law suit,' 7th ed. P.1377
[22] The United Nations Charter Article 33 (1) provides "the parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, Conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their choice."
[23] Black's Law Dictionary, supra, note 409 at 1133, defining it as "The advocacy of peaceful methods rather than war as a means of solving disputes."

which enjoins the Security Council to 'notice'[24] international disputes by affected states.

In fact, Article 36 (2) provides:

> If the Security Council deems that the continuation of the disputes is in fact likely to endanger the maintenance of international peace and security, it shall decide whether to take action under Article 36 or to recommend such terms of settlement as it may consider appropriate.

The practice and jurisprudence of international law defines 'notice' as measures adopted beyond mere information by the Security Council. That is to say, the totality of actions taken by the Security Council in ensuring the resolution of disputes referred to it.

However, it should be noted that states have the right to self-defence in response to an armed attack as provided in Article 51 of the UN Charter. The right to self-defence is subject to qualification of necessity and proportionality. Furthermore, the UN Security Council can authorise collective action to maintain or enforce international peace and security, inclusive of use of force, as provided for under Chapter VII.[25] Significantly, the growing regime of international law unequivocally permits national peoples to determine their own status and destiny in international relations. This is predicated on the intrinsic factor of law of human rights, globally recognized as sacrosanct. The law of human rights is a subset of international law that deals with the obligations of States with respect to the observance and guarantee of fundamental rights of individuals. In its classical conception, States, not individuals, are the subjects of this law, although individuals are the beneficiaries, and under its terms individuals should have remedies for violation of these legal obligations.[26]

The right to self-determination is classified in international politics as product of third generation agitation for new species of human right capable of accommodating their peculiar circumstance.[27] The evolution of self-determination and the concomitant legal frameworks prompting this specie of right as an organizing philosophical

---

[24] Ibid, at 1087, 'Legal notification required by law or agreement, or imported by operation as a result of some fact (such as the recording of an instrument)…'

[25] See generally, Chapter VII of the UN Charter.

[26] Dinah Pokempner, (General Counsel, Human-Rights Watch) "Terrorism and Human Rights: The Legal Framework." Paper presented at Seminar on International Humanitarian Law and Terrorism, Italy 24-26 September 2002, P. 19.

[27] Self-determination as a new horizon and or vista to human right emerged as recently as 1970. It is a balancing trend of agitation for developing states in reaction to the oppressive yolk of colonialism, imperialism, capitalism and etcetera, in the changing world of international politicking and manoeuvrings.

posturing is traced to the Universal Declaration of Human Rights,[28] which contains ample provisions aimed at impacting on social and economic rights of individuals all over the world. These provisions on social and economic rights were generally and subsequently amplified in the International Covenant on Economic, Social and Cultural Rights.[29] In fact, Articles 1 states[30]in general that: 'that peoples shall have the right to self-determination, enabling peoples to "freely determine their political status and freely pursue their economic, social and cultural development."[31]

Furthermore, it should be noted that the provisions of the Genocide Convention[32] recognize self-determination as a right appertaining to freedom and independence agitators, ordinarily subjected to and or labouring under the yolk of colonial domination.[33] It should however be recognized that actions undertaken in the pursuit of self-determination by such 'group' groups or even a 'people' or 'collectivity' exculpates such people from the full wrath and indictment of the Charter provisions and clauses: 'threat', 'use of force' or 'threat of aggression' as enshrined and prohibited under the provision of Article 2(4) to the charter.[34]

International human rights law is embodied in the standard forms of international law consisting of treaties, other international agreements, customary law including *jus cogens* or peremptory norms, and soft law such as General Assembly resolutions, declarations, and etcetera. It is often implemented through domestic legislation, including constitutional law.

There are more to this recognition, though time constraint will not permit a considerable examination of this regime of the law. As a matter of fact, states were in the past justified in use of force against another state. States usually relied on the exercise of absolute sovereignty, which operates not to preclude or prohibit states from invading other state. Sovereign power is the somewhat absolute power of a state. In relation to international law, sovereignty refers to independence of action.

---

[28] 1948

[29] Adopted and opened for signature ratification and accession by General Assembly Resolution 2200 A (XX1) of 16 December 1966 and entered into force on 3 January 1976.

[30] International Covenant on Economic, Social and Cultural Rights (ICESCR)

[31] See also the African Charter on Human and People's Rights (ACHPR), particularly Articles 20, 21 on self-determination.

[32] See Draft Convention 1948.

[33] Article 7

[34] Charter to the United Nations [hereinafter the Charter]

Independence in this respect means that the state is not dependent on any other state for in any aspect of international character.[35]

However, it has become a norm for contemporary international law to generally prohibit use of force and does provide a framework within which states may resort to use of force. This approval of use of force extends to individual states self-defence,[36] collective use of force,[37] agitation by rebel groupings on claims that the yoke of the regime is oppressive as well as habitual exclusion from political offices. Furthermore, that the regime or central government sustains itself by use of force and therefore, the rebel group is ordinarily bound to response in like sum manner.[38] Generally speaking, the United Nations Charter has become the primary framework prohibiting use of force in international law. Space constraints will not permit us to ascertain what actually led to this development.

3. Legal framework on use of force in international law

A consideration of the numerous international instruments aimed at achieving global peace and security will help in understanding the nature of use of force as well as state impunity and the responses of the international community. The avalanche of instruments considered germane in a thorough understanding of this chapter includes: the League of Nations Covenant, Briand-Kellogg Pact, the General Treaty for the Renunciation of War and the Charter provisions of the United Nations.

a. International legal frameworks prohibiting unilateral use of force by states in international law

The global distaste for use of force in international law did not materialize overnight, rather there were principles evolved as fulcrums to permanently act as a restraint against recalcitrant states, thereby dissuading such states from resort to unilateral use of force or even indulging in armed conflict.[39]

Such general principles of international law operating in fact and scope to prohibit resort to use of force, includes the principle of sovereignty of states, with implicated

[35] Aleksandar Pakavkovic & Peter Radan, In Pursuit of Sovereignty and Self-Determination: Peoples, States and Secession in the International Order, Macquarie Law Journal (2003) Vol. 3
[36] Article 51 UN Charter
[37] Articles 51 & 52
[38] See for instance, the crisis between Ethiopia and Somalia, Sudan and South Sudan, Israel and Palestine, and etcetera.
[39] The Briand Kellogg Pact

notions of respect for absolute rights of states, in matters appertaining to territorial jurisdiction.

Ideally, use of force cannot approximate to war. However, both share certain fundamental ideals, which in summation is akin to the word "reprehension." Generally, the need or reprehensive ideal of protecting civilian population against the effect of hostilities committed during any armed conflict and the need to ban or limit the use of certain weapons have jointly continued to form the basis of reprehension for use of force in the international arena.[40]

The impact of pacific principles, aimed at curbing or at most regulating use of force in international law were amply reflected in a vast majority of international legal instruments seeking to reinforce the general reprehension for use of force in international law. The instruments sought to achieve this role are the Briand-Kellogg Pact, General Treaty for the Renunciation of War 1928, United Nations Charter, the Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States and Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty, 1965.

Consequent on the above, the study proceeds to examine some or all of these international instruments aimed at prohibiting use of force in international law.

b. The League of Nations Covenant

The foremost international instrument worth considering is the League of Nations Covenant.[41] The Covenant came into being after the First World War. It imposed some limitations by the virtue of the fact that it qualified resort to war. The creation of a league of states, dedicated to the maintenance of peace, had long been advocated in philosophical and juristic writings and in the aims of private organizations.[42] Informed sources are agreed that the formation of the league was motivated by a proposal introduced at the Peace Conference of Paris in 1919. The league was principally a decisive and combined effort of President Wilson's third draft and the British proposals emanating from the Phillimore Committee.

---

[40] The United Nations Report on Israeli operation in Gaza confirmed the fact that Israeli soldiers used phosphorous substance against residents of Gaza during the epoch making siege in December 2008.
[41] See articles 15, 16. See U.K.T.S. 4 (1919), Cmnd. 153.
[42] D W Bowett., *The Law of International Institutions*, 4th ed. (London: Steven & Sons) 1982 P, 17

The need to promote international cooperation and to achieve international peace and security, informed the establishment of the league, which was principally rested on the system of collective security, predicated on the notions of disarmament,[43] pacific settlement of disputes and the outlawry of war,[44] a collective guarantee of the independence of each member,[45] and sanctions.[46] The league provided a lee way for pacific settlement of disputes likely to lead to a rupture of the international peace. Furthermore, parties to a dispute could choose to go to arbitration, judicial settlement or to the Council of the League.[47] The provision of the Covenant made it compulsory for members to accept the award or a unanimous report of the Council and it was obligated on all members not to go to war with any State so accepting as well as a 'moratorium' forbidding recourse to war within three months of the award or the Council's decision.[48]

The members under the league were bound to respect and preserve the 'territorial integrity and existing political independence' of all members against external aggression. Under this circumstance, prosecution of war was never considered illegal, save and except, without compliance with the requisite condition contained in the league.[49] Such conditions included resort to pacific settlement of the dispute. An act of war levied against any State automatically approximates to act of war against all other members. From the provisions of the Covenant, it seems unimaginable the subsequent failure of the league. This was partly due to the apathy and reluctance of the member States to discharge their obligations under the covenant. Another plausible reason is the issue of political cleavages and military pacts subsisting there and then.

c. The Briand Kellogg Pact on Non-Aggression

The Paris Pact, ordinarily referred to as the Aristide Briand and Kellogg Pact 1928, emerged ten years after the First World War. The pact ended up becoming a paper tiger incapable of curtailing the animosity that precipitated the Second World War. The pact actually contained laudable provisions aimed at rendering inclination to use

[43] Article 8
[44] Articles 11-15
[45] Article 10
[46] Articles 16, 17
[47] Bowett, supra, at P. 17
[48] Ibid.
[49] Ibid.

of force odious. The primary challenge against the pact was the issue of enforceability and / or workability.

d. The General Treaty for the Renunciation of War[50]

This was established as an international instrument with comprehensive prohibition of war and instrument of national policy. The provisions of the treaty remains extant even till date. The General Treaty for the Renunciation of War is an off shot of the Briand-Kellogg Pact. It provides in her preamble that:

> 'The Signatory State…
>
> Persuaded that the time has come when a frank renunciation of war as an instrument of national policy should be made to the end that the peaceful ad friendly relations now existing between their peoples might be perpetuated;
>
> Convinced that all changes in their relations with one another should be sought only by pacific and orderly process, and that any signatory power, which shall hereafter seek to promote its national interests by resort to war should be denied the benefits furnished by this Treaty…
>
> Have decided to conclude a treaty…'

The Treaty further provides: 'The High Contracting Parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies, and renounce it as instrument of national policy in their relations with one another.'[51] In fact, Article 11 states that: 'The High Contracting Parties agree that the settlement or solution of all dispute or conflicts of whatever nature or of whatever origin they may be may arise among them, shall never be sought except by pacific means.'

I have cause remain in doubt as to the proper scope of operation of the provisions of the treaty, whether or not it appertains to war strictly speaking or mere armed conflict. To this end, I recall the position of Bowett, with respect to the treaty to mean, limited to war only, and nothing more. Brownlie was much more reflective on this situation, in that he accommodated in his interpretation 'any substantial use of force', as being reprehensible under the provisions of the treaty.[52] In fact, the International Law Association seems to be in agreement with Brownlie, when it resolved that any

[50] See generally, 1928 U.K.T.S. 29 (1929), Cmnd 3410; 94 L.N.T.S. 57
[51] Article 1 to the Treaty
[52] International Law and the Use of Force (UK: Oxford University Press) 1986 Pp. 34, 87

signatory state, which threatens to resort to armed force for the solution of an international dispute or conflict, is guilty of a violation of the pact.[53]

It should be noted that the renunciation of war treaty suffered a major setback due to its incapability to contain the Second World War. However, it was this treaty of 1928 that made comprehensive prohibition of war as an instrument of national policy.

e. The Charter of the United Nations

A consideration of some of the provisions of the charter will redound in elucidating the degree of distaste for armed conflict.

For instance, the words of Article 1 read:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches to the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;

2. To develop friendly relations among nations based on respect for the principles of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;

3. To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedom for all without distinction as to race, sex, language, or religion

4. To be a centre for harmonizing the actions in the attainment of these common ends

Furthermore, article 2 equally states that the organization and its members, in pursuit of the purposes of stated in article 1, shall act in accordance with the following principles:

1. The organization is based on the principle of the sovereign equality of all its members.

2. All members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with the present charter.

To this end, article 2 paragraph 4 operates as the subsisting proviso that has superceded the provisions of the Treaty renouncing war as a means to an end.[54] A

[53] See generally, the 38th Conference held in Budapest, report of. (1934) P. 67

cumulative consideration of the provisions of the instant instrument, tends to preponderate in our minds that states as a matter of fact, should at all times resist and refrain from threat or the use of force either in the resolution of conflicts or against the sovereignty and independence of other states. The framers of the UN Charter seem to capture this standpoint vividly in the provision of article 2, which provides that:

(3) All members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice are not endangered.
Furthermore, paragraph (4) equally states that, all members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations.

The foregoing article 2(4) of the charter is observed to be couched in pacific undertone, and it could conveniently be categorized as *jus cogens*, on account of the fact that it does not demand of further derogation.[55] For instance, in the case of Nicaragua v USA,[56] America exercised military attack in and against Nicaragua. The US invoked the provision of the *Vandenberg Clause*, the declaration as to jurisdiction of the International Court of Justice and excluded the jurisdiction of the ICJ on grounds of 'disputes arising under a multilateral treaty', that is to say the Organization of American States. On this account, Nicaragua relied on article 2(4) of the charter to invoke the jurisdiction of the ICJ. The ICJ could not decide on this case directly on the basis of the UN Charter, because of the operating effect of the *Vandenberg Clause* of the Organization of American States. The ICJ stated that the basic principles of the Charter are binding upon all states as an international customary rule.
Significantly, it follows that the principle of non-use of force remains largely undefined, especially in the practice of states, prior to the emergence of the charter of the UN.

For instance, a reflection on past circumstances surrounding the use of force, reveals specifically and without doubt, about situations where force was applied in a way and manner contrary to the purposes and intent of the charter, and was all the same, accommodated by the vast majority of the international community. This significantly, seemed to operate to embrace a taciturn regime of such resort to use of

[54] See specifically, the General Treaty for the Renunciation of War 1928
[55] A *jus cogens* is an international law rule that possess force of law and it is incapable of accommodating derogation either in form or substance.
[56] (1986) ICJ 14

force as an international law norm and practice. It could be conveniently recalled that in the case of Nicaragua v USA,[57] the ICJ defined the scope of the principle of non-use of force by resorting to interpreting the provisions of the UN charter, but however relied heavily on both the United Nations General Assembly Resolutions 2625-dealing on Friendly Resolutions Declaration and Resolution 3314 on Acts of Aggression within the UN as evidence of *opinion juris*.

f. United Nations General Assembly Resolutions

The General Assembly instrument most commonly associated with maintenance of global peace and security is the charter of the United Nations. However, there are avalanche of other resolutions and declarations focusing on maintenance of international peace and security. The nature of these resolutions and declarations are reflective of the situations at hand. Significantly, by ensuring that individual rights; social rights; political rights; legal rights; duties of states as well as duties of individuals are observed, the Universal Declaration of Human Rights, 1948 goes a long way in promoting global peace and security. These declarations and resolutions are not without challenges. A noticeable setback for them is their non-binding nature in international law. It is against this backdrop that a consideration of the nature of the resolutions and declarations will be made.

g. The Legal Status and Significance of the United Nations General Assembly Resolutions

Oftentimes, decisions of a collectivist body command the effect of a norm, mostly in regulating their affairs. However, this perspective seems twisted in the regime of international law. For instance, the question may be asked what is the status of the numerous United Nations General Assembly Resolutions sitting as a body? This particular question has attracted diverse responses from scholars, historians, lawyers, congressmen, human rights activists, and even the judiciary.

Some have argued that these resolutions lack the force of law. Pease, explains that General Assembly resolutions are not binding.[58] Against this backdrop, she contends that their resolutions are recommendations that articulate general legal principles and approximate the sentiments of the international community.[59]

---

[57] Supra, at note 56
[58] Kelly-Kate S. Pease, *'International Organisations: Perspectives on Governance in the Twenty-First Century,'* (2000) p. 22
[59] Ibid.

Another commentator urges that compliance with the General Assembly's recommendations "is left to rest on a coincidence of national interests in particular United Nations policies and programmes," and "where resolutions have depended on compliance by member states, the record is very chequered."[60]

Empirical record reveals that no country has developed a strong tradition of customary obedience to General Assembly recommendations, and at times, states lack a self-interested basis for observing such recommendations choose to ignore them altogether.[61] As a matter of fact, states tend to comply with the recommendations of the UN only when it suits their political and international relations' interest.

For instance, the General Assembly Resolution 194 is often-times most commonly associated with a Palestinian right of return. It was adopted in 1948.[62] The resolution enjoins:

> The General Assembly...resolves that the refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities....

The interpretation of the resolution by both Arabs and Israeli governments leave much to be desired. This is apparently hinged on the fact that it is a legal document, and parties affected have strived to give it the widest and narrowest meaning, even when the resolution spells otherwise.

Ordinarily, there are two types of resolutions of the United Nations General Assembly:

I. There are resolutions emanating from routine deliberations enjoining concerned parties to act or refrain from acting in a given direction.

II. There are resolutions forming an integral part of a concluded multilateral treaty, convention, and etcetera. Under this instance, are such resolutions like the United Nations Convention on the Elimination of All Forms of Discrimination against Women;[63] International Covenant on Civil and

---

[60] Lawrence Ziring, et. al, *'The United Nations: International Organisation and World Politics* 105, 106 (3rd. Ed. 2000) quoted in Tanya Kramer, 'The Controversy of a Palestinian "Right of Return" to Israel,' AJI&CL Vol. 18. No.3 (2001) p. 1003

[61] Ibid.

[62] Specifically in December 1948

[63] Adopted and opened for signature, verification and accession by General Assembly resolution 34/180 of 18 December 1979. It entered into force on 3 September 1981 in accordance with article 27 (1).

Political Rights;[64] International Covenant on Economic, Social and Cultural Rights;[65] and etcetera?

The significance of the categorisation of United Nations General Assembly Resolutions or Declarations lies in the fact that State parties have voluntarily adopted the positional provisions of the resolutions or declarations as been part and parcel of their deliberations on the given issue, and henceforth to be regarded as their commitment towards one another.

5. Challenges on use of force in international law

It has been disheartening for decades observe that the Security Council sacrificed its responsibilities on the altar of East-West 'dichotomy hostility,' thus shifting the burden of maintaining global peace and security to the UN general assembly and the Secretary General. More worrisome is the fact that the UN general assembly resolutions are not legally binding on member states, except some budgetary matters and such resolutions that will either strengthen or lead to the formation of new customary rules of states. The paper is not completely surprised because Iraq's Saddam Hussein repeatedly defied the resolutions of even the Security Council until resolutions 678 authorizing its members to use all necessary means (including force) to enforce provisions resolutions calling on Iraq to vacate Kuwait, notwithstanding the resolutions of the General Assembly which are like toothless bulldog that can only bark but cannot bite.

Furthermore, the recent invasion of Venezuela by US forces to oust the President Maduro for trial in US glaring affects the effectiveness of the UN.

Nevertheless, the UN though capable of placing some moral obligations on member states, is presently lacking in a cohesive and binding nurture of its supra-entity identity. Even though the General Assembly of the UN provide such unique forum for all independent and sovereign states of the globe to freely discuss global issues on the principles of equality, but seems to be presently inactive to check the singular menace of the US. A positive reform of the UN system is predicated in the years to come.

---

[64] Adopted and opened for signature, ratification and accession by General Assembly resolution 220 A (XXI) of 16 December 1966. It entered into force on 23 March 1976 in accordance with article 27.

[65] Adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of 16 December 1966. It entered into force on 3 January 1976 in accordance with article 49.

What are the challenges to use of force in international law? The use of force in international law faces several challenges, including:

a. Interpretation of Self-Defence. The determining of what constitutes an 'armed attack' and the scope of self-defence can be contentious and controversial.

b. UN Security Council Veto Power. The veto power of permanent members can hinder the Council's ability to authorize collective action.

c. Humanitarian Intervention. The legitimacy and legality of using force for humanitarian purposes without Security Council authorization remains a subject of controversy and are debated.

d. Proportionality and Necessity. Ensuring that the use of force is proportionate to the threat and necessary to achieve the desired outcome can be challenging.

e. State Sovereignty. The need to balance the principle of state sovereignty with the protection of human rights and prevent humanitarian crises can be difficult.

f. Attribution of Responsibility. Determining responsibility for armed attacks or violations of international law can be complex.

g. The impact of response of the international community. Coordinating a unified response from the international community to threats or breaches of peace can be challenging.

h. Legal and Political Considerations. Navigating the intersection of legal obligations and political interests can complicate the use of force.

However, the primary focus of the paper is the subsisting challenges to use of force as an issue in settlement of international disputes. The use of force is a significant issue in the settlement of international disputes because it can:

a. Escalate Conflicts. The use of force can escalate tensions and lead to further violence, making it more challenging to resolve disputes peacefully.

b. Undermine Diplomatic Efforts. The threat or use of force can undermine diplomatic efforts and negotiations, making it harder to reach a peaceful resolution.

c. Violate International Law. The use of force can violate international law, including the UN Charter, and probably lead to accountability issues.

d. Create Humanitarian Crises. Force can lead to humanitarian crises, displacement of people, and significant human suffering.

e. Destabilize Regions. The use of force can destabilize regions, creating long-term security challenges and making it harder to achieve lasting peace.

In contrast, peaceful dispute settlement methods, such as diplomacy, mediation, and arbitration, can provide more sustainable and effective solutions.

5.1 The Way forward

There is need to suggest the way forward. To move forward in the context of international disputes and the use of force requires the following:

A. Prioritize Diplomacy

By prioritizing diplomacy, strengthening international institutions, promoting conflict prevention, fostering international cooperation, and investing in peacebuilding, we can work towards a more peaceful and stable world.

i. Negotiations. Encourage dialogue and negotiations between parties to resolve disputes peacefully.

ii. Mediation. Utilize mediation and facilitation to help parties find mutually acceptable solutions.

B. Strengthen International Institutions

i. UN and Other Organizations. Enhance the role and effectiveness of international institutions, such as the United Nations, in promoting peace and security.

ii. International Law. Strengthen and uphold international law, including the UN Charter, to provide a framework for resolving disputes peacefully.

C. Promote Conflict Prevention

i. Early Warning Systems. Establish early warning systems to detect potential conflicts and address them before they escalate.

ii. Conflict Prevention Strategies. Develop and implement strategies to prevent conflicts, such as economic development, social justice, and human rights promotion.

D. Foster International Cooperation

i. Multilateralism. Encourage multilateral cooperation and dialogue to address global challenges and promote peace.

ii. Regional Organizations. Strengthen regional organizations and their role in promoting peace and security.

E. Invest in Peace-building

i. Post-Conflict Reconstruction. Support post-conflict reconstruction efforts to help countries rebuild and stabilize after conflicts.

ii. Peace building Initiatives. Invest in peace-building initiatives, such as education, economic development, and social cohesion programs.

6. Conclusion

The paper demonstrated the fact that the challenges to use of force in the settlement of disputes in international law is negative in nature considering the potentials for escalation of disputes. As a matter of fact, the global community is tended to strive better in the absence of non-use of force in the settlement of disputes in international law.

It was equally found that the world witnessed two major conflicts with dire consequences, therefore, regularly reminding world leaders and indeed the entire world to always remember the dark days of the WW I and II[66] as well as the carnage and destruction of human lives and properties including the holocaust associated with the Second World War, where Nazi Germany perpetrated unimagined atrocities on the European and other adjacent international space. Flowing from the experience, members of the international community have demonstrated their willingness to check and combat every likely tendency to generate international crisis capable of leading to third World war considering the development of very deadly weapons of mass destructions, which even rogue states claim as their inalienable rights to own and possess.

The paper further demonstrated that the development of the radical and revolutionary war weapons, the atomic bomb particularly the type that United States deployed on Japan's Hiroshima and Nagasaki which brought the six year old war to an end took the world by surprise. Beyond the demonstrated threat of devastating military weapons of atomic bombs, lies the million times more frightening, more devastating, more catastrophic and more genocidal than the atomic bombs, the hydrogen bombs. The manufacture, ownership, and possession of later invention hydrogen bomb have been proliferated by states now. Consequent on the foregoing, nations have secretly acquired these bombs through surreptitious means to equip their war arsenals with

[66] Between 1914 and 1918 as well as 1935 and 1945

weapons of mass destruction in order to avoid being caught napping like the Japanese in 1945.

The paper also found that armed conflict or more particularly, use of use in international law approximated to a big challenge in maintaining global peace and security, and portends a catalyst to state impunity. The paper thereafter, explored the general principles of international law concerning armed conflict or use of force, and perhaps the known categories of conflicts and its impact on states, groups and / or collectivities. It was found that the use of force in international law connotes to the rules and regulations governing the permissible periods entitling states to resort to use of military force against other states or entities. The paper considered the role of actor parties to a conflict and their respective statuses in international law. It was found that the United Nations Charter is the primary framework for these rules, prohibiting on use of force in the settlement of international disputes.

The paper found that states are prohibited from using force against the territorial integrity or political independence of another state, or in any manner inconsistent with the purposes of the United Nations,[67] save and except, the exercise of right to self-defence in response to an armed attack recognized in Article 51 of the UN Charter. This right is subject to the requirements of necessity and proportionality. Furthermore, the UN Security Council can authorize collective action to maintain or enforce international peace and security, including the use of force, under Chapter VII of the UN Charter.



[67] Article 2(4) of the UN Charter