

## The legal regime and pragmatism of international conflict and the use of force in international law

\*<sup>1</sup> Leonard C Opara, <sup>2</sup> Hillary O Nwaechufe, <sup>3</sup> Ogundare Olatunde Esq

<sup>1</sup> Esq., LLB (Lagos), BL, LLM (Ife), ACTI, Doctoral Candidate. Head & Notary Public, Department of International Law and Jurisprudence, Faculty of Law, Nigeria Police Academy, Wudil, Kano State, Nigeria.

<sup>2</sup> Esq., LLB (IMOSU), BL, LLM (LASU), Adjutant Lecturer, School of Law, National Open University of Nigeria (NOUN) Lagos, Nigeria.

<sup>3</sup> LLB(Jos), BL, LLM(Jos), Lecturer, Dept of Public Law, Nigeria Police Academy, Wudil-Kano State, Nigeria.

### Abstract

International peace is the basic norms of any state to control the affairs and maintain internal control over its governance on the sovereignty of the state. Regional institutions play a vital role in the maintenance of international peace and conflict resolution in their regions. However, this paper intends to look at the legal regimes addressing the basic issue of controlling and regulating violence between states and increasingly within states. It shall also consider the use of force and the principles governing the use of force, armed conflicts and the actors involved in collective security in order to bring about peace within its regions by international institutions. The paper recommends that regional and sub-regional organizations such as AU, ECOWAS has contributed human capital and peace keeping operations in order to resolve conflicts within the region through the Peace and Security arm of the African Union Commission.

**Keywords:** International Peace, Use of force, Conflict Resolution, Collective Security, International Conflict, UN Charter, Peace and Security Council (PSC), AU Constitutive Act

### Introduction

The use of force as a strategy of containing violence in the globe and the use of weapons of mass destruction (WMD) currently where there is conflict between the states has led to the sober assessment of the state of human beings that it has intention of self-destruction. This is against the backdrop of legal norms governing the use of force between states. The UN Charter prohibits the use of force and the broader principle of non-intervention recognized by customary international law <sup>[1]</sup>. In International law, the term the use of force has always being concerned with the relationship between states not regarding the use of domestic force by state authorities on the civilian citizens. Furthermore, acts such as the latter may be ruled by treaties on human rights and on the rights of minorities. Thus the use of force in International law relates only to a very specific sector of perils to human life.

Conflicts of all sorts are common occurrences in the Africa continents. Such conflicts can be grouped as ethnic, social and religious conflicts. Most of these conflicts are recurring. They are attacks and reprisal attacks by different ethnic and religious sects. These do not promote human security and sometimes the actors of these conflicts resolve to the use of force to checkmate the conflicts in order to maintain global peace.

The African Union and its sub-regional organization ECOWAS use conflict resolution and conflict management mechanism to put conflicts in check. This entails the method and process of negotiation, arbitration and institution building which promote the peaceful ending of social conflict and war.

In order to ensure the survival of the global peace, the actors' main concern is to establish the basic conditions for the control of violence. Without controlling and containing violence in international relations, it would not be possible to establish a stable international political and legal order <sup>[2]</sup>.

In international law, the aim is to reduce the level of violence and conflicts between states and within states and against the civilian in order to achieve peace and co-existence among states.

### Prohibition by the United Nation on the Use of Force

After the Second World War and the creation of United Nations Organisation (UNO), member states wanted to prevent war by a system term collective security and to avoid old deficiencies. Article 2(4) of the UN Charter establishes a ban on threat or use of force against territorial integrity or political independence of any state, or in any other manner inconsistent with the provisions and purpose of the UN. The approach comprises not only war but also measures short of war and has been confirmed by other several international institutions treaties. Now, with all most every state becoming members of the UN the use of force has been prohibited and regarded as a general rule of international law, although still express as subject to right of self-defense <sup>[3]</sup> In the prohibition of the use of force, the UN clearly stated the tradition of the Westphalia Peace Treaty on the state domestic affairs which subjects the UN to the Non-intervention principles <sup>[4]</sup>. The legal regime of

<sup>1</sup> Article (4) of the UN Charter, 1945

<sup>2</sup> Nigel D. White: Advanced Introduction to International Conflict and Security Law (2014) Edward Elgar, Pg. 1.

<sup>3</sup> Article 39 of the UN Charter

<sup>4</sup> Article 2(7) of the UN Charter

enforcement in international law as regards war in form of operation is to ensure that states or actors obey what is described as *jus contra bellum* in international law (laws against the waging of wars) only with respect to the aim of belligerent changing of national boundaries. It is important to state that the UN charter does not give any hint of prerequisite of a certain level on armed force, thus even minor violation of national boundaries is forbidden.

### **Legal Framework of International Conflict and the Use of Force**

In examining the subject, the paper attempt an exposition of the role of Regional Institutions (AU) and sub-regional organizations (ECOWAS) and the importance of peace and non-use of force in international law to achieve collective security and settlement of disputes.

The UN Charter laid foundation to international law principles and architecture designed for the peaceful conduct of international relations. Thus the law and moral order according to which states would willingly give up some of their rights and sovereignty for the sake of world peace. Thus in Article 2 and Article 4 of the UN Charter, every member state is to honour the Charter values in good faith and to accept the obligation of settling disputes by peaceful methods or means. The main principle and goal of international law as enshrined in the UN Charter is the maintenance of global peace and order. While Article 2(3) of the UN Charter obliges member states to settle their disputes by peaceful means; Article 2(4) stipulates all members to “refrain in their 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”.

However, there are exceptions to this threat or use of force. The exceptions in the Charter were for the rights of states to individual and collective self-defense in the face of an armed attack as contained in Article 51 and military measures undertaken by the UN Security Council under Article 42, in response to a threat to the peace, breach of the peace or act of aggression.

Essentially, the external aspect of the use of force, which was under the monopoly of states, was brought within the framework of the UN Charter and it is being regulated by the UN Security Council.

**Collective Security:** Collective security is whereby all states will contribute normally through an international institution, collectively to combat aggression and threat to peace and security. It also involves collective military security or action undertaken to maintain world peace through a collective security mechanism. The UN adopted collective security mechanism in dealing with international disputes.

According to the UN Charter, chapter 6 and 7 empowers the Security Council under Articles 33 to 38 of the Charter, when Peaceful Conflict Resolution Mechanisms fail to restore peace between conflicting parties, the UN empowers the Security Council to investigate the dispute and recommend means or terms of settlement.

The Security Council has certainly adopted an expansive interpretation of “threat to peace” to include not only threat to force and threat to inter-state security but also to cover internal violence and conflicts which have the potential to spill over

into neighbouring states as well as threats from terrorists and pirates.

It is worthy of note that the Security Council has more powers and this led to arguments of where competence lies, if at all. Where the Security Council is unable to act due to collective actions or as was the case during the cold war, due to the issue of voting powers. Currently, the United Nation peace support operations, peace missions have come to be known as part of the United Nations Conflict Management Mechanism but also of the various regional institutions and sub-regional organizations such as African Union (AU) and ECOWAS (Economic Community of West Africa States) has played a vital role in collective security to attain peace in the continent.

**Settlement of International Disputes:** International Law has been in the front of maintenance of international peace <sup>[5]</sup>. Although its pre-occupation stimulated its development and informed its growth, international law has been regarded by the international community primarily as a means to ensure the establishment and preservation of world peace and security <sup>[6]</sup>. The pacific settlement of international disputes is a cardinal principle of international law and international relations. Thus, the United Nations Charter provides for the need for states to live in peace with one another as global neighbours and the prohibition of the use of force except in the common interest. Article 2 (3) of the United Nations Charter requires states to ‘settle their international disputes by peaceful means in such manner that international peace and security and justice are not endangered’ <sup>[7]</sup>.

Basically, the method of settlement of disputes as directed by the Charter is provided in Article 33 that parties to a dispute that might endanger peace should first ‘seek a resolution through negotiations, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of choice’’. By the very act of joining the world body all members ‘confer on the Security Council primary responsibility for the maintenance of international peace and security and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.

It is important to state that most disputes are settled through negotiations with or without the assistance of third parties. However, some disputes may be more problematic than regional institutions such as Africa Union has played a major role in settlement of disputes or conflicts within the region through early warning mechanism, peace building and peace enforcement, etc.

Diplomacy operates in an interdependent world where the actors and inclinations of one country affect others. The method by which one state negotiate with another determines a degree to which its foreign policy is achieved, thus the interpretation of a state of the idea of international peace and security, determine the method of the conduct of its diplomacy as an important instrument in establishing peaceful relations with other states.

Diplomacy has been defined by Oxford English Dictionary as

<sup>5</sup> Merrills, J.G (1998) *International Dispute Settlement*, 3<sup>rd</sup> Edn, Cambridge.

<sup>6</sup> Shaw, M.N (2004) *International Law*.

<sup>7</sup> U.O.Umozurike (1993) *Introduction to International Law*, 1<sup>st</sup> edn., Spectrum Law

*'the management of international relations by negotiating the method by which these relations are adjusted or managed by ambassadors and envoys, the business and art of the diplomatist, international discourse and (negotiation)'*<sup>[8]</sup>.

Ian Brownlie define it as, 'Any means by which states establish or maintain mutual relations, communicate with each other, or carry out political or legal transactions in each case through their authorized agents'<sup>[9]</sup>.

A broad definition of diplomacy was thus:

'Diplomacy is a peaceful political process between nation states that seeks to structure, shape and manage over time a system of 'international relationship secure a nation's interest utilized in the pursuit of many kinds of objectives, political, economic, national, trade, aid, human rights, arms control, scientific, cultural and academic enrichment, diplomacy is both a peace building and peacemaking activity'<sup>[10]</sup>.

**International Court of Justice (ICJ):** The International Court of Justice (ICJ) is the principal judicial organ of the United Nations<sup>[11]</sup>. The ICJ was established to replace the Permanent Court of International Justice (PCIJ) of the League of Nations in 1945 but started operational in 1946<sup>[12]</sup>. The jurisdiction of the ICJ is to settle disputes between member states and giving advisory opinions to the agencies and organs of the United Nations<sup>[13]</sup>. The aim of the ICJ as the judicial arm of the United Nations is to bring about of settlement of disputes by peaceful means and in conformity with the principles of justice and international law.

**The Role of Regional Organizations:** The regional organizations or institutions have the responsibility of maintaining peace where there is conflict within their jurisdiction and beyond. The place of regional bodies in peacekeeping in African continent cannot be regulated or supplant the United Nations. The essence of collective security within the region can serve as a protective device against major power excesses or intrusions, a critical analysis of experience so far suggests that regional security cooperation has contributed effectively in the peacekeeping or preventive diplomacy or deterrence.

For instance the role of ECOMOG in ECOWAS and present AU in bringing about peace in the conflict war zones of Liberia, Sierra Leone, Sudan and others just to mention but a few.

Furthermore, the United Nations Charter is in support of regional arrangements, Article 39 gives the Security Council power to determine when a threat to or breach of peace or act of aggression has occurred while article 53 of the same UN charter makes the UN security council in the first place, the agent for enforcement of peace and security even where there is regional institutions. The same Article 53 makes a proviso which envisages the possibility of utilizing regional arrangement or agencies for this purpose once there is conflict.

Similarly, charter VII of the UN charter which deals with regional arrangements establishes the premise that agencies relating to maintenance of peace and security may be appropriate for regional institutions actions. From the above analysis regional institutions can themselves initiate measures and procedures for conflict resolution and collaborate with the UN as a cost effective and efficient mechanism.

### **International Legal Framework for Regional Security Arrangements**

The United Nations Charter recognizes the importance of regional organizations in maintenance of international peace and security. Thus in Charter VII it made detailed provisions for the involvement of regional organization in the maintenance of international peace and security.

Article 52(1) of the United Nations Charter clearly stated that nothing in the Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security, as are appropriate for regional actions provided that such actions are consistent with the purpose and principles of United Nations.

The above provision allowing for regional arrangements has been responded to variously by the formation of organizations like AU (African Union), ECOWAS(Economic Community of West African States), SADC(Southern African Development Cooperation), EU (European Union, etc. These International Institutions in their various ways have been helping to fulfill the objectives of the United Nations especially as regards peace and security as well as conflict resolutions. It is also from the above provisions that the regional organizations derive legal recognition regionally and in the globe.

Article 53 however provides that no such regional enforcement action shall be undertaken without the authorizations of the Security Council. All measures taken by the regional arrangements in maintaining international peace and security shall at all times be duly reported to the Security Council.

A combined reading of the provisions of Charter VII indicate an unambiguous mandate to regional organizations to use all pacific means to settle disputes within their regions, but all enforcement actions by regional organizations must be with the authorization of the Security Council.

**Peace and Security Council of the AU (PSC):** As provided in Article 5, paragraph I, of the Protocol Relating to the Establishment of the Peace and Security Council of the African Union. 'the Peace and Security Council shall be comprised of 15 Members elected on the basis of equal rights, in the following manner (a) ten Members for a term of two years and (b) five Members elected for a term of three years in order to ensure continuity. Article 5 (2) provides that 'in electing the members of the Peace and Security Council, the Assembly shall apply the principle of equitable regional representation and rotation.

Africa is divided into five regions namely Northern African, Western African, Central African, East African, and Southern African region. Each region is allocated three seats on the PSC and it is the responsibility of each regional organization to determine who represents it in the PSC. The determination of the Representative is required to be informed by the criteria provided for in Article 5 (2) (a-i) of the Protocol of the AU-PSC. The major criteria include the commitment to uphold the principles of the Union; contribution to the promotion and

<sup>8</sup> <sup>80</sup>The Oxford English Dictionary, (1970) London: Oxford Press, P. 160

<sup>9</sup> Ian Brownlie, Principles of Public International Law, (1979) London, Oxford Press 3rd ed. P.34.

<sup>10</sup> Baba, E. A.; Concept and Procedure for Negotiations in International Diplomacy, unpublished seminar paper presented at the University of Jos, Nigeria, March 2004.P.2

<sup>11</sup> Article 92 of the UN Charter.

<sup>12</sup> Ibid.

<sup>13</sup> ICJ Statute, Articles 34-38, June 26, 1945.

maintenance of peace-making and peace building regional and continental levels; willingness and ability to take up responsibility regional and continental conflict resolution initiatives; contribution to the Peace Fund and/or Special Fund created for specific purposes; respect for constitutional governance in accordance with the Lome Declaration, as well as the rule of law and human rights, have sufficiently staffed and equipped Permanent Missions at the headquarters of the Union and the United Nations to be able to shoulder the responsibilities which go with the membership; and commitment to honour financial obligations to the Union. In the context of the West African region, an agreement was reached sometimes in 2003 that Nigeria should be a Permanent Representative of the West African region while the other two seats are to be occupied by any other member States of the region on rotational basis. The principles and objectives enshrined in the Constitutive Act of the African Union more rigorous in asserting the importance of peace for the Continent's development. It even provides for collective intervention on a member country in case of massive violation of human rights such as genocide, war crimes or crimes against humanity. Among the 18 organs provided for in the Constitutive Act are the African Peace and Security Council. This instrument, which replaces the Central Organ of the Mechanism for Conflict Prevention, Management and Resolution, has been more revitalized and strengthened to cope with the challenges of peace and security in the Continent. It designated to be a collective security and early-warning arrangement to facilitate timely and efficient response to conflict and crisis situations in the Continent. In its operationalisation, the Commission of the African Union, a Panel of the Wise, a Continental Early Warning System, an African Standby Force has been used to checkmate conflicts. At this juncture I would like to observe that the Protocol relating to the establishment of the Peace and Security Council has so far been signed by 43 member States of the African Union. It has been ratified by 16 States out of the 27 countries required for its entry into force. With a view to accelerating the process for the early entry into force of the Protocol and the operationalisation of the Peace and Security Council, the Chairperson of the AU Commission the former President of Mali, Alpha Oumar Konare last Friday (September 19) dispatched special envoys to several African countries that are yet to sign and/or ratify the Protocol to undertake consultations at the highest level with the authorities of these countries. In this connection, it would be recalled that its last Session, the Tanzania National Assembly (Bunge) had The principles and objectives enshrined in the Constitutive Act of the African Union are more rigorous in asserting the importance of peace for the Continent's development. It even provides for collective intervention.

Article 3 of the AU's Constitutive Act of 2000 specifically identifies the promotion of peace, security and stability as a prime objective of the AU. Peace and stability have remained elusive to large parts of Africa, compelling the AU and Africa's regional organizations to assume the responsibility of resolving conflicts in the continent. This new responsibility has been necessitated by developments within and beyond Africa. The Balkan wars in the early 1990s did not help Africa either. The US and its North Atlantic Treaty Organization (NATO) allies became deeply involved in ending the Balkan wars and hardly had the time or the inclination to attend the seemingly

unending conflicts in Africa. And, so far the AU is still in the process of establishing its African Standby Force (ASF) which is to be ready for development by 2010.

The addition to Article 4 (h) of the Constitutive Act was adopted with the sole purpose of enabling the African Union to resolve conflicts more effectively on the continent, without ever having to sit back and do nothing because of the notion of non-interference in the internal affairs of member states. It should be borne in mind that the Peace and Security Council was intended, and should be able, to revolutionize the way conflicts are addressed on the continent.

The Peace and Security Council (PSC), a new organ, is intended to provide a more robust mechanism than its predecessor, the Central Organ of the Mechanism for Conflict Prevention, Management and Resolution. The PSC was established by the Protocol adopted in Durban in July 2002, which is responsible for dealing with the scourge of conflicts that has forced millions of Africans, including women and children, into a drifting life as refugees and internally displaced persons, deprived of their means of livelihood, human dignity and hope. The PSC, which operates at the levels of ambassadors, ministers, and heads of state and government, is composed of fifteen members, five elected for two years and five others for three years. It is expected to consider the right to intervene when a situation so warrants and make appropriate recommendations to the Assembly of the union for possible intervention. In accordance with the provisions of the Constitutive Act, the Assembly will decide on intervention at two levels: on its own initiative <sup>[14]</sup> and at the request of a member state <sup>[15]</sup>. This approach will facilitate decisions on intervention, since the Assembly is not obliged to wait for the consent of the Member State concerned, as is now the case with the Central Organ of the Mechanism for Conflict Prevention, Management and Resolution of Conflicts. Article 4 (j) refers, unlike Article 4 (h), to member states and not to a member state, and therefore does not expressly restrict the right to request intervention of the union to the member state concerned. It should be noted that the PSC Protocol provides for the establishment of an African Standby Force, composed of multidisciplinary contingents with civilian and military components, to carry out peace support operations under Article 4 (H) and (J) of the Constitutive Act.

Article 4(h) Protocol on Amendment to the Constitutive Act of the African Union provides thus:

*"the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity as well as a serious threat to legitimate order to restore peace and stability to the Member State of the Union upon the recommendation of the Peace and Security Council; and sub (j) provides 'the right of member States to request intervention from the Union in order to restore peace and security'".*

The Force will operate at three possible levels: as an African Force under the AU; as a Regional Brigade at the level of a Regional mechanism for conflict prevention, management and resolution; or at the level of a lead nation intervening on behalf of the African Union. A lack of political will could make itself

<sup>14</sup>Article 4 (h) of the Constitutive Act.

<sup>15</sup>Article 4 (j) of the Constitutive Act.



felt at all three political levels of intervention. The full functioning of the AU's 15 member Peace and Security Council (PSC), an organ with functions similar to those of the UN Security Council, as well as the African Standby Force, may enhance Africa's stability to deal speedily with conflicts and insecurity. In its bid to discharge the responsibilities for which it was constituted, the African Union Peace and Security Council has been strongly involved in efforts directed at ending the conflict in Darfur. This was achieved by the creation of a new sovereign state called Southern Sudan as an independent state and old Sudan being sovereign state. The Peace and Security Council of AU through its Mechanism has resolved conflicts in Uganda, Mali, Somalia, Burundi, etc.

### **Conclusion**

Despite the challenges in the re-establishment of peace within a conflict or war torn area or state by whatever means are necessary, the operations of peace support mission and peace building have become the fundamental part of international politics and the efforts of the UN and or the regional and sub-regional international actors or bodies in this direction should be sustained.

Peace agreements, representing the focal points of efforts to bring a settlement about by peaceful means in accordance with Article 1 (1) of the UN charter, should be the basis of bringing into post conflict state applicable in international law. However, interstate peace agreements are still negotiated in the modern trend, the vast majority of peace agreements concern the establishment of peace within a conflict torn state. The practice tends to suggest that these interstate peaceful agreements are increasable being shaped by international law.

Finally, the international community has realized the importance of partnership or the concept of joint ventures between the UN and regional institutions such African Union as a vehicle for political stability and humanitarian interventions for effective conflict resolution and peacekeeping in Africa.

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