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**TÍTULO:** Sobre la cuestión del mantenimiento de la paz y la seguridad internacionales en las zonas de los conflictos armados.

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**RESUMEN.** Esta investigación presenta un análisis del lugar y el papel de las Naciones Unidas en el mantenimiento de la paz y la seguridad desde la perspectiva del derecho internacional y su actualidad está en la complicación de la situación geopolítica, los conflictos militares en diferentes partes del mundo, y las discusiones en curso entre los expertos y académicos sobre la necesidad de reformar la Carta de la ONU, sus principios y estructura. En términos de enfoques legales, funcionales, históricos, comparativos, internacionales, se resalta el papel de la ONU y su Consejo de Seguridad en el mantenimiento de la paz y la seguridad internacionales, así como del sistema de medios pacíficos para la solución de conflictos o controversias establecido en los Artículos 33-38 de la Carta.

**PALABRAS CLAVES:** Organización de Naciones Unidas, mantenimiento de la paz y la seguridad, conflicto armado, negociación, derecho internacional.

**TITLE:** On the question of maintenance of International Peace and Security in the zones of armed conflicts.

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**ABSTRACT:** This research presents an analysis of the place and role of the United Nations in the maintenance of peace and security from the perspective of international law, and its actuality is in the complication of the geopolitical situation, military conflicts in different parts of the world, and ongoing discussions among experts and academics on the need to reform the UN Charter, its principles and structure. In terms of legal, functional, historical, comparative and international approaches, the role of the UN and its Security Council in the maintenance of international peace and security, as well as the peaceful means of solving conflicts or controversies established in Articles 33-38 of the Charter is highlighted.

**KEY WORDS:** the United Nations, maintenance of peace and security, armed conflict, negotiation, international law.

**INTRODUCTION.**

The need for the study was caused by the deterioration of the situation in the world with constant unrest including the Middle East conflict, which attracts attention of the UN, other organizations and individual states, and remains one of the most acute and unresolved conflicts.

In search of solution to this long-term conflict, we examined the role of the UN and its bodies, from the moment the UN General Assembly voted to divide Palestine into Arab and Jewish states in 1947, to the present time [Richman, S.L., 1991]. Given those relations between the subjects of international law are based on strict adherence to its generally accepted norms and the legal principle of indivisibility of peace and security; we assessed participation of member-states in peacekeeping, effectiveness of major peaceful means and reviewed some of the UN related activities.

The state of Israel was proclaimed in 1948, but the Arab states rejected it as the division of Palestine. Since then, constant unrest, anger, growing hatred and violence settled in the Middle East. The Arab Spring brought hope and better days ahead; instead, the region was engulfed in clashes burdened by the so-called terrorist Islamic State (ISIS), whose devotees claim to be purists in Islam, but instead they have been denounced by most of the Arab and Muslim world for their dangerous terror behavior and cruelty [Tausch, A., 2015]. International assessment of the conflict is projected onto the security structure of its participants.

As international legal status of the parties is estimated based on their loyalty to the principle of non-use of force, so their security relates to the fact that only such states can count on support of international law that fully comply with its principles [Skakunov, E.I., 1983]. In today's world, exacerbated by situation in the Middle East, Korean Peninsula, other unstable regions, it is impossible to resolve any conflict without due compliance with the norms of the UN Charter [The UN Charter – Charter of the United Nations, 1945].

The benefit of the Charter is its position on peacekeeping, ensuring maintenance of peace and security by all member states [The UN Charter – Charter of the United Nations, 1945]. According to Article 1, member states expressed their will to have the UN as a "center for harmonization" to "prevent and eliminate threats to peace and suppress acts of aggression or breaches of peace" [The UN Charter –

Charter of the United Nations, 1945].

Thus, strengthening the role of the UN will only increase its effectiveness in addressing issues relating to peace and security. Currently, most threats to regional and global security come from the USA and its NATO allies whose militaristic policies affect all regions, including the Middle East. Moreover, due to some current inadequate paradoxes of the US foreign policy in the Middle East, there is a threat of new wars and conflicts, which entails a number of social, legal and security issues both on a regional and global scale [Monshipouri, M., 2002].

## **DEVELOPMENT.**

### **Methodological framework.**

We conducted the study based on the historical, comparative, international legal, systematic and functional approaches. To clarify the meanings of certain research terms, we systematized the conceptual apparatus. Uniformity is important as it avoids ambiguity in interpretation of some widely used concepts.

If a dispute affects the strategic or specific interests of individual states, then a long-term armed or military conflict affects the entire world community, endangering global peace and security [Carswell, A.J., 2013; Klimenko, B.M., 1982]. We view negotiation as effective means for pacific settlement of conflicts or disputes.

Before negotiations, the disputants must find common grounds, values; strengthen their views, attitudes, positions; combine efforts to achieve reconciliation [Al Anbari, A.A., 1987; Carswell, A.J., 2013; Klimenko, B.M., 1982; Pushmin, E.A., 1974; Yasokosokirsky, Y.A., 1998]. The Charter also offers other alternative methods for solution: enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, etc. [Klimenko, B.M., 1982]. As a key in solving the Middle East conflict, we propose expanding the mediation mission and strengthening "mediators" by envoys of such organizations as the Arab League and the

Organization of Islamic Cooperation (OIC) to help reach a compromise between Palestine and Israel, on one side, and Israel, Lebanon and Syria, on the other [Tausch, A., 2015].

### **Results.**

International opinion is nearly unanimous that a two-state solution, including a sovereign Palestine, is the best for the century-old Middle East conflict. Yet, there is no movement towards its peaceful outcome [Beinin, J., & Hajjar, L., 2014]. There is a right shift in Israel's position, which claims there is no place to peace with the Palestinians.

Another failure is caused by a split within a political body of Palestinian authority [Monshipouri, M. 2002]. The strategy debate, negotiations against resistance – divides ordinary Palestinians [Beinin, J., & Hajjar, L., 2014] and distracts them from the peace process [Al Anbari, A.A., 1987; Beinin, J., & Hajjar, L., 2014; Pushmin, E.A., 1974; Tausch, A., 2015; Yasokosokirsky, Y.A., 1998]. Doubts on efficacy of a two-state model and usefulness of international law for a fair solution of the conflict are caused by a lack of political will in Washington, which still retains control over the peace process [Beinin, J., & Hajjar, L., 2014]. Formally, all promises of the US government in the Middle East concern the Arab-Israeli conflict solution and limitation of weapons of mass destruction among regional states [Monshipouri, M., 2002]. We found at least 4 rationales for the endless ME war given by the US authorities, namely, fighting terrorism, containment of Iran, securing oil, and defending Israel [Monshipouri, M., 2002]. In fact, none of these arguments or all of them together make much sense or justify the terrible cost of the Middle East conflict [Al Anbari, A.A., 1987; Beinin, J., & Hajjar, L., 2014; Monshipouri, M., 2002; Richman, S.L., 1991].

The prohibiting norm of Clause 4, Article 2 of the Charter on the threat of force includes prohibition of the threat of any aggression or violence [The UN Charter – Charter of the United Nations, 1945], since they may seriously endanger peace and security. During a peaceful phase of a conflict, both parties are equally entrusted with the duty to maintain peace and security. Various

diplomatic and peaceful means are used to discuss certain issues and achieve reconciliation in certain areas.

According to Tunkin, "If states are prohibited from resorting to force in their relations with other states (...) that means that only peaceful ways of resolving disputes remain open" [Tunkin, G.I., 1970]. Pushmin notes that "states and other subjects of international law are obliged not only to peacefully resolve their disputes (...) but also resolve them on merits and on time" [Pushmin, E.A., 1974]. This imperative requirement equally applies both to long-term disputes endangering maintenance of international peace and security, and to disputes that have not yet reached such severity [Sharmazanashvili, G.V., 1967; Pushmin, E.A., 1974].

Analysis of the UN regulatory framework shows that the UN Charter serves as a reliable international platform for legal maintenance of peace and security. It devotes Chapter VI to methods and procedures for pacific settlement of disputes, Article 33 citing a list of peaceful means for dispute resolution. These provisions enhance opportunities to settle conflicts and strengthen the UN authority for maintenance of peace and security [Al Anbari, A.A., 1987; Carswell, A.J., 2013]. Another example is the adoption of numerous acts aimed at protecting the foundations of international law and supporting maintenance of peace and security. Among such documents are the Declaration on the enhancement of the effectiveness of the principle of refraining from the threat or use of force in international relations, issued by the General Assembly in 1987 [The UN Declaration on the enhancement of the effectiveness of the principle of refraining from the threat or use of force in international relations, 1987]; Declaration on principles of international law concerning friendly relations and co-operation among states, adopted by the General Assembly in 1970 [The UN Declaration on principles of international law concerning friendly relations and co-operation among states, 1970]; Declaration on fact-finding by the UN in the field of maintenance of international peace and security (1991), etc. [The UN Declaration on fact-finding by the United Nations in the field of the

maintenance of international peace and security, 1991].

### **Discussions.**

According to the Charter, the main UN body is its Security Council, which plays important role in maintenance of international peace and security by preventing or eliminating conflicts and alarm situations, continuation of which can endanger world order. Based on its competence, the Council has the right to use all necessary and appropriate measures for peacekeeping [Ciechanski, J., 1994; The UN Charter – Charter of the United Nations, 1945], aimed at maximum support and timely response to situations that may pose threats to peace and security, including use of force or threat of its use against the territorial integrity or political independence of states and other subjects of international law.

Peacekeeping means ensuring the presence of the UN forces in a conflict region, authorized by the Security Council with the consent of the host government and other parties involved. Operations may include both military and police personnel, as well as civilians. Operations can take a form of missions of military observers, peacekeeping forces or a combination of both [Yasokosokirsky, Y.A., 1998]. The UN peacekeeping practice has repeatedly included demands for a cease-fire between the parties to an armed conflict and renewed cooperation between them. The UN Armed Forces and observers were also sent to the scene of armed conflict. According to the UN proposal, the armed forces of the participants in the dispute were also withdrawn from the contact line, etc.

These actions complement strict adherence to existing acts and resolutions [Ciechanski, J., 1994]. At the same time, the geopolitical situation is only getting worse; military conflicts arise here and there; in some regions (including the Middle East), there are complex unresolved armed conflicts [Abdulrahim, M.W., 1998]. In addition, some of the UN bodies show great inefficiency, ranging from inability to make states pay their membership dues to terrible peacemaking failures or inability to prevent the genocide in Rwanda [Ciechanski, J., 1994].

The UN seems to be more successful in areas that are less significant to its framers, such as promoting human rights, than resolving disputes that may endanger peace [Abdulrahim, M.W., 1998]. Reality provokes debate among experts about the need for the UN reform [Carswell, A.J., 2013] in order to enhance its effectiveness as a multilateral organization and increase its authority on the international arena [Abdulrahim, M.W., 1998]. The main focus is on the reform of the Council. As the former Secretary-General Kofi Annan said in 2005, "No reform of the UN would be complete without reform of the Security Council" [Carswell, A.J., 2013].

Unfortunately, the Council does not reflect either military or economic power or geographical balance today [Abdulrahim, M.W., 1998; Carswell, A.J., 2013]. Much rather, its "Permanent Five" (P5) includes major states (China, Russia, France, UK, USA) having the "power to veto" any resolution passed [Abdulrahim, M.W., 1998; Carswell, A.J., 2013], which may cause unequal but politically necessary compromise between the "Big Five" and the rest of the UN membership; thus, reflecting a realistic UN hierarchy [Carswell, A.J., 2013]. Division of powers between the Council and General Assembly has never found any satisfactory balance too [Carswell, A.J., 2013]. Thus, when the recent attempts to resolve the deteriorating political and humanitarian situation in Syria were blocked, calls for the UN reform were renewed.

Initial threats to peace and security arise when member states fail to fulfill their duties in the absence of coercive measures against violators [Abdulrahim, M.W., 1998]. Failure to timely manage and resolve armed conflicts can have unpredictable legal and political consequences that endanger stability of a system of international relations in general [Carswell, A.J., 2013].

The need to eliminate hotbeds of constant tension and conflicts is viewed by peace-minded states as a decisive factor in stabilizing the entire system of law and order [Ciechanski, J., 1994]. Therefore, it is necessary to create favorable conditions and prerequisites for the real steps that will meet the needs of the world community for the benefit of international peace and security [Sharmazanashvili, G.V.,

1967; Ciechanski, J., 1994; Carswell, A.J., 2013].

The UN founders granted its Council certain autonomy in taking appropriate decisions to restore violated peace and security, especially in emergency conflict zones (Chapter VII) [Ciechanski, J., 1994]. By its legal status, the Council is acting in accordance with the UN Charter on behalf of all members [Fedorov, V.N., 1965]. To ensure peace, the Council may require or even oblige the parties to a dispute to seek a solution by any of the methods and means listed in Chapter VI (Articles 33-38) [Skakunov, E.I., 1983]. By peaceful means, we consider a system of measures enshrined in the Charter and aimed at resolving disputes between states in a peaceful and legal way [The UN Charter – Charter of the United Nations, 1945].

Any armed conflict or dispute between subjects of international law should be resolved exclusively with the use of any peaceful means (negotiation, mediation, etc.) and generally accepted norms and principles of international law [The UN Charter – Charter of the United Nations, 1945]. In the event of an armed conflict between two or more states, direct negotiations are the best way to solve it. Also, they prevent deterioration of relations and further confrontation [Al Anbari, A.A., 1987]. Direct negotiations with a mutual desire to achieve goals bring the most effective results in resolving conflicts and easing international tension. This is due to the special nature of international relations between sovereign, equal and independent states, resolving any differences via direct contacts between them or those who lead foreign policy [Bogdanov, O.V., 1958].

Today, the main issue concerns real chances to resolve conflicts in compliance with the Charter. Numerous conflicts pose threat to the entire world community, affect interests of many regions and nations that may have legal, political or economic relations with one or another disputant involved. "Armed conflict" in this sense is an incident, action or any other confrontation of a limited scale, which may be a result of attempt to resolve ethnic, religious or other contradictions by means of armed struggle [Tikhomirova, L.V., & Tikhomirov, M.Yu., 2001].

UN member states realize that use of peaceful means to resolve conflicts or settle disputes is the only way to end wars and establish lasting peace and security. Given that most of the means were used under the auspices of the UN for a settlement in the Middle East, a positive outcome has not been reached yet. The UN Charter is viewed as a last resort with an arsenal of peaceful means listed in Article 33 that can help establish and secure a long-awaited peace in the Middle East, direct contacts and cooperation serving as alternatives to war and confrontation [Al Anbari, A.A., 1987].

Negotiations for dispute resolution suggest the search for acceptable solutions, mutual concessions and beneficial compromises [Abdulrahim, M.W., 1998; Bogdanov, O.V., 1958; Klimenko, B.M., 1982]. Negotiations usually consist of four stages: preparation; submission of proposals by opponents allowing criticizing each other position; discussion on the agenda issues; and either adoption of a joint decision or a deadlock. The UN Charter, the Hague Convention of 1907 and many other international acts and treaties serve as key indicators for negotiations [Abdulrahim, M.W., 1998; Bogdanov, O.V., 1958; Klimenko, B.M., 1982].

Pushmin argues that negotiations include finding solutions on controversial issues by the parties through direct contacts between them to reach agreements on a mutually acceptable basis [Pushmin, E.A., 1974]. The advantage of negotiations over other means is their potential of direct contacts offering disputants broader opportunities to communicate, exchange claims, show goodwill and find mutually acceptable solutions to contentious issues [Pushmin, E.A., 1974]. Al Anbari, the Iraq's former UN representative, regards negotiation as the basic means necessary to settle bilateral and multilateral relations between the states, to achieve national interests or gain benefits in various areas [Al Anbari, A.A., 1987]. We support both positions, considering negotiations as the most effective peaceful means for resolving disputes and final reconciliation [Al Anbari, A.A., 1987; Pushmin, E.A., 1974; Yasokosokirsky, Y.A., 1998].

The other method of conflict resolution is mediation. To achieve positive results in the Middle East, we suggest expanding the mediation mission and joining the group of "mediators" by such organizations as the Arab League and Organization of Islamic Cooperation (OIC). The goal is to facilitate a compromise between Palestine and Israel, on the one hand, and Israel, Lebanon and Syria, on the other. The main purpose of mediation is to find a basis on which a mutually acceptable agreement can be reached. According to Article 4 of the Hague Convention, mediator reconciles opposing claims and reduces the level of hostility [Bogdanov, O.V., 1958], organizes negotiations and participates in them independently, thereby directing dispute in a spirit that suits both parties [Al Anbari, A.A., 1987].

Mediation, in this sense, correlates with the provision of "good offices", a third-party service restoring contacts between the conflicting sides. The important feature of "good offices" is a favorable atmosphere of trust. An example of mediation is the 2002 joint statement of the UN, European Union, USA and Russia on the Middle East peace settlement. Another example is the provision of the UN mediators for the Pakistani-Indian conflict over Kashmir.

Mediators do not always achieve desired results or succeed. The efficacy of peaceful means depends solely on the will and readiness of the opposing parties to use them in order to agree on some key issues of the conflict thus reducing tension in the region and worldwide.

## **CONCLUSIONS.**

According to the former UN Secretary-General Ban Ki-moon, the main goal proclaimed in the UN Charter is to unite efforts to maintain international peace and security and save future generations from the scourge of war. To resolve any conflict, it is necessary to conduct an in-depth analysis of related problems, determine main causes of the conflict, and involve all interested parties in its solution. Peaceful conflict resolution is possible when new conditions serve as a starting point for unblocking conflict and ensuring basic needs of the parties [Carswell, A.J., 2013)]. For successful

resolution of conflicts, parties find common values that could unite their efforts and strengthen life positions and views for further discussion and reconciliation.

The UN peacekeeping is a unique and dynamic functional tool developed by the framers as a favorable way to provide assistance in resolving conflicts and disputes between sovereign states and nations via various peaceful means.

The United Nations, despite its current criticism, serves as a solid foundation of international and legal order. It is the most powerful international institution for combining efforts of all its member states to achieve common goals and needs for peace and security. It is also responsible for maintenance and strengthening of peaceful relations worldwide [Al Anbari, A.A., 1987; Carswell, A.J., 2013]; for example, peace negotiations over the disputed or occupied territory can begin as acceptable prerequisites for reducing tension in the region and the start of actual transition from a state of confrontation and hostility to a permanent and lasting peace based on cooperation and secure state borders. In our opinion, this approach can help the parties identify the whole range of acute problems in order to gradually solve them in future. That will only contribute to the establishment of peace, stability and mutual security for the states and people of any regions of the world [Al Anbari, A.A., 1987; Carswell, A.J., 2013; Ciechanski, J., 1994].

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