



UN Charter and Crisis in the Middle East

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ABSTRACT

The United Nations Charter and the actual practice of states in the past years have stressed on the importance of the role of regional organizations in maintaining international peace and security. On the other hand, The United Nations and the Security Council alone cannot deal with international crises. Thus, the cooperation between the United Nations and regional organizations could solve regional and even global crises. Middle East is of strategic importance because of the historical and cultural background and having oil reserves. This area has been the center of major crisis in two the past decades. Experience has shown that the presence of trans-regional powers or building up international coalitions in the absence of regional powers will not help to resolve the crisis in the region. Considering the accepted roles of regional organizations in maintaining international peace and security in the region by the UN Charter, using the potential of regional organizations such as the *Cooperation Council* for the Arab States of the *Gulf*, the Arab League, the Organization of Islamic Cooperation seems necessary. However, due to the inefficiency of some of these organizations, the establishment of regional organizations with special competence in the area of peace and security in the Middle East could also be pursued by region countries.

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Introduction

Regional cooperation is not a new phenomenon; this type of cooperation had existed since the formation of the great civilizations of the world and before the advent of international organizations. Rivers Commissions such as The Commissions of the Danube and Rhine Rivers are examples. The emergence of the first international organization in the field of peace and security after the First World War not only did not cause any hindrance to the survival of regional organizations, but established a sort of the symbiosis between them (Article 21 of the Covenant of the League of Nations). Although the regional organizations were not mentioned in draft Charter of the United Nations, the governments of Latin America and the Arabic countries pressure in San Francisco conference caused the Chapter VIII of the Charter to be devoted to regional agreements (Beigzadeh, 2010).

The United Nations was not able to be effectively active in the field of international peace and security during the Cold War. In this period the settlement of any dispute was on each organization, particularly regional organizations. By the end of the Cold War, the cooperation between the hostile and rival poles became possible. But the collapse of the bipolar world, had entered the world into a transitional period with exceptional and opposite currents. On the one hand we are witnessing the formation of larger political unions that blurred national boundaries and on the other hand, unity of the countries was threatened by nationalism, separatism and ethnic, religious, social, cultural and lingual violent conflicts. This is the threat that the Middle East region countries and people are currently facing.

In these circumstances, as the UN Secretary General mentioned in the first and the second meeting between the UN and regional organizations, held respectively, in August 1994 and February 15, 1996, the United Nations cannot be responsible

for all situations that threaten the peace and security in the world. UN have not political, military and financial sources appropriately to carry out its the extensive responsibilities (SG / SM / 5382 & SG / SM / 5895). Therefore, the use of regional organizations and putting a part of the burden of establishing peace and security the United Nations on them is considered as an effective solution.

In this regard, the Security Council invited regional organizations on January 29, 1993, in the framework of Chapter VIII of the Charter of the United Nations to investigate the strategies and means of strengthening their duties in the field of international peace and security in the areas under their jurisdiction. In particular they were asked to study preventive diplomacy, including fact-finding, confidence, good offices and consolidation of peace and as appropriate peacekeeping (S / 28184, 29 Jan.1993)

It seems that given the complexities of the Middle East crisis and the influence of regional powers in this area, the active role of regional organizations in the framework of Chapter VIII of the Charter would be more effective than building up coalitions and the presence of trans-regional powers. Thus, the Middle East needs a strong and effective partnership of organizations like the Arab League, the *Cooperation Council* for the Arab States of the *Gulf* and the Organization of Islamic Cooperation. Even for the future we can see the formation of a specific organization in the framework of Chapter VIII of the Charter by all Arabic and non-Arabic countries in the Middle East.

In this paper we study the role of regional organizations and arrangements in maintaining peace and security in the Middle East based on Chapter VIII of the Charter.

Definition of Regional Organizations and Arrangements

To evaluate the role of regional organizations in maintaining international peace and security it is necessary to first define

some terminology such as region, Regional organizations on Chapter VIII of the Charter as well as the UN perception of the terms.

Region

Chapter VIII of the UN Charter discusses the regional arrangements without any definition of the region. Basic common sense implies a close physical proximity (Evans,1998). Some argue that the region means the geographic proximity and continuity (Kelsen,1951). But some did not consider the proximity the requisite and said that it is only necessary to limit organizational measures under regional agreements to a specified region in the agreement. Some go further and offer shared interests (Shayegan,2001), i.e. the regional organization includes the countries with shared interest in a field.

But the procedure adopted by the United Nation is that the term region is in contrast with the term world, i.e. any international organization that is not universal and it is not possible for all countries in the world to a member of it is regional. So the UN has recognized both organizations that the members belong to a continent such as the Organization of American States and African Union and the organization whose members do not belong to an integrated geographic region such as the Arab League as regional (Shayegan, 2001)

Chapter VIII regional organizations

Given that to resort to enforcement actions by regional organizations according to Chapter VIII is different from that of Chapter VII, it is necessary to clarify the terms and conditions of each based on the Charter and the procedure of the Security Council.

Charter logic leads to two different types of the traditional distinction between regional organizations with quite different tasks: regional organizations in maintaining international peace and security of the region under Chapter VIII, and Unions for collective self-defense against external threats, according to Article 51 (Schreuer,1995).

According to Article 52 the regional arrangements means agreements or regional organizations that are created by states, however, NGOs can be responsible for regional cooperation (Alagoppa,1997), but in this chapter the arrangements is regional cooperation among states. There are differences between regional agreements and regional organizations. Regional agreements unlike, regional organizations, are less organized and do not established institutions, therefore they have no international legal personality (Momtaz,1999).

Since regional organizations operate in different fields, the question is whether any regional organization is subject to regional arrangements under Chapter VIII of the Charter? Given that the tasks envisaged for these organizations in the Charter, and according to Article 52, a regional organizations should be competent in the field of international peace and security based of the Statute itself. In fact, the competency is in matters that are appropriate for regional measures. Therefore, regional organizations and arrangements that have no such authority, naturally, have no mechanism for maintaining international peace and security and thus are not subject to Chapter VIII.

In the past attempts to consider regional agreements, to which the relevant states have been committed to the peaceful settlement of disputes between their own, equal to regional agreements based on Chapter VIII of the Charter, have been failed (Momtaz,1999). For example, International Court of Justice in the case concerning Military and Paramilitary Activities in and against Nicaragua refused the claim that the "Contadora Group" for peace in Central America is as a regional arrangement in the sense of Chapter VIII of the UN Charter

(ICJ, 1984). In fact, until recently, there were only three regional organizations which so much met the regional organizations of Chapter VIII: Organization of American States, the Organization of African Unity and the Arab League.

So it seems that the organization which wants within the framework of Chapter VIII to accomplish purposes of the United Nations to maintain international peace and security must have appropriate mechanisms in this particular case. For example, a number of regional organizations in recent years have created innovative institutional facilities for early warning and prevention and resolution of conflict. Organization of African Unity (African Union) created the "mechanism of prevention as well as management and resolution of conflict" in 1993. The Organization of American States is designed a "long-term strategies for conflict prevention" through its unit to promote democracy. Organization for Security and Cooperation in Europe, through its Office of the High Commissioner on National Minorities and its Conflict Prevention Centre also has major facilities in the field (Annan, 2002). Another requirement of Article 52 is that such agreements or regional organizations and their activities shall be consistent with the purposes and principles of the United Nations.

Chapter VII regional organizations

In addition to Chapter VIII, Article 51 in Chapter VII is the legal basis for the establishment of regional organizations and treaties such as the North Atlantic Treaty Organization (NATO) and the former Warsaw Pact. Defense organizations based on Article 51 are only authorized take the necessary action to against an armed attack until the Security Council can enforce the necessary measure. A major reason why NATO has tried to introduce itself as a collective defense alliance is to escape the obligation contained in Article 1 (53), that finds the prior authorization of the Security Council considers necessary before specific action, and to escape the obligation of Article 54 on the report to the Security Council before and after any action (Sarooshi,2000).

Although the right to collective defense for Chapter VIII regional organizations is possible the reverse is not true. This means that any treaty or defense organization based on Article 51 is not taken as the regional agreement or organization based on chapter VIII, since the minimum requirement for a regional agreement is that the peaceful settlement of disputes in the region should be its purposes. First should refer to the constitution of the association or organization to verify the presence or absence of such a provision. NATO, according to Article 5 of its constituent document is a collective defense organization under Article 51 of the Charter and not a regional agreement within the meaning of Article 52. Essentially, in constitution of defense organizations regional, peaceful settlement of disputes has not been appointed and they lack the mechanism for this (Shayegan,2001).

Although some believe that the combination of the tasks delegated by the Security Council in maintaining peace and security to NATO alliance and the redefinition of tasks that have to do (in addition to its original mandate under the Charter of NATO) allow it to be placed in the context of Chapter VIII. Accordingly, Germany's constitution court announced in its decision that NATO can be classified as a collective defense organization and thus German troops can participate in NATO's activities in implementation of Security Council resolutions (Zöckler,1995). According to this view, the fact that NATO is a collective defense regional organization does not reduce NATO objective feature as a regional organization. Any attempt to establish the boundaries between collective defense

organizations and regional arrangements for administrative purposes is artificial and fictitious (Dinstein, 2001).

Procedures and functions of the United Nations

given the lack of definition of the Charter on regional organizations, the view Mr. Boutros Ghali, former Secretary-General of the United Nations regarding that types of regional organizations can participate in the maintenance of international peace and security is seemingly have been adopted in the procedures and practices by the Security Council (Wilson, 2000). He believed that the Charter does not intentionally provide definition of regional organizations in order to that types of regional organizations, including regional organizations of mutual security and defense, or for the general development of the region can participate in the maintenance of international peace and security (Ghali, 1992).

The complexity of issues related to international peace and security the maintenance and problems facing the Security Council due to the lack of facilities and resources needed to carry out certain tasks has made Council along with the former Secretary Council General opinion to adopt the broader concept of regional agreements and organizations (Momtaz, 1999). For example, in the case of Bosnia and Herzegovina crisis in 1993, NATO was used for enforcement actions as one of Chapter VIII regional arrangements according to Article 53 (1) by the UN Security Council. In the case of Liberia in 1992, the Security Council called upon all states to follow the actions taken by the Economic Community of West African States. Entrusting the implementation of coercive measures by the Security Council to regional organizations other than those which have been the subject of Chapter VIII was basically in order to Security Council gain access to the military forces that it lacks.

Given that this action is in line with the objectives of the Charter it is justifiable based on doctrine of implied powers of international organizations. Moreover, if paragraph 2 of Article 48 and paragraph 1 of Article 53 of the Charter put together, we can find a legal basis for the Security Council to resort to regional organizations other than envisaged organizations in Chapter VIII (Momtaz, 1999), because paragraph 1 of Article 53 with regard to paragraph 2 of Article 48 allows the Security Council that, if appropriate, any organization that would be ready is used in coercive measures.

This understanding of the concept of regional organizations and agreements discards the separation between the regional organizations on VIII and VII chapters. It is also makes the distinction between regional organizations responsible for maintaining the international security and peace with other organizations that are active in other areas meaningless.

However, the requirement for the entry of other regional organizations in maintaining international peace and security is the presence of an appropriate mechanism within the organization.

Hence it is evident that regional organizations out of Chapter VIII are trying to get equipped with appropriate mechanisms to resolve disputes peacefully, for example, the mechanisms of dispute resolution that by the Association of Southeast Asian Nations (ASEAN) have been established and the Permanent Committee of Mediation was established in 1990 in the framework of the Economic Community of West African States with the duty to resolve disputes of States Parties (Momtaz, 1999).

Priorities of Regional Organizations in Resolving Regional Crisis

Currently, the relationship between global organizations and regional organizations is one of the main topics of international law. Raising this issue in international law represents two different approaches "Universalism" and "regionalism". Accordingly, the philosophy of Chapter VIII of the Charter can be examined in the context of the above two approaches (Cot, 2005).

According to the UN Charter, the Security Council does not have the unique role in maintaining international peace and security. Based on Chapters VI and VIII of the Charter, the Security Council intervention in regional crises within the framework of Chapter VI is of complementary nature. Because Article 33 of the Charter for the peaceful resolution of international crises primarily relies on the peaceful settlement of dispute procedures such as negotiation, mediation, arbitration, conciliation and ultimately use of regional organizations and arrangements. Therefore Chapter VIII of the Charter stresses on the primary role of regional organizations in solving regional crises.

The first paragraph of Article 52 recognizes the institutionalization of regional treaties and explains the role of regional organizations in line with the objectives of the Charter. To create a legal framework, the Security Council is required to initially resort to regional organization in international crisis. Therefore, Articles 53 and 54 of the Charter explain the mutual relations of the Security Council and regional organizations.

The relationship between the Security Council and regional organizations interpreted in any fashion, regional organizations to resort to legitimate defense do not need the permission by the Security Council. Given the role of regional organizations in maintaining international peace and security, notably, it seems that in the event of a deadlock in the Security Council to deal with international crises, regional organizations cannot have an arbitrary military action.

In this context, Article 53 of the Charter stipulates that regional organizations are not allowed to take military action without the authorization of the Security Council. Hence, the NATO military intervention in Kosovo in 1999 had no legal basis.

Cooperation between Regional Organizations and the United Nations in Peacekeeping and Regional Security

The cooperation between the United Nations and its affiliated organs with regional organizations is one of the undeniable necessities, but it does not seem necessary to provide a single model for cooperation. A variety of political issues, tools, missions, and structural diversity in organizational decision makings do not allow to provide a single model for cooperation with United Nations (Sur, 2004). However, the "Agenda for Peace" in 1992, has tried to provide basic principles and forms of cooperation between the UN and regional organizations.

While the Charter of the United Nations did not specifically concern the way of cooperation between the Security Council and regional organizations, but in practice this procedure shows two kinds of relationships: Cooperation within the framework of Chapter VI and Cooperation within the framework of Chapter VII. According to the different resolutions of the Security Council (RES / 1631, PRST / 39) on the role of regional organizations in resolving international crises the following examples may be cited:

- To provide military forces in accordance with the standards of the United Nations and readiness of regional organizations military forces for possible involvement in an international crisis
- Enhance regional capabilities for prevention of international crisis, crisis management and stabilization after the crisis and providing technical and financial assistance to countries in crisis
- Combat with the illegal trade in light weapons
- The fight against international terrorism

In this framework and to enhance institutional cooperation between the UN and regional organizations concerning the maintenance of international peace and security, Security Council through the Secretary-General seeks to sign bilateral agreements with regional organizations.

Success Factors of Regional Organizations in Maintaining Peace and Security in the Region

Here we consider success factors of regional organizations in maintaining peace and security in the region:

- Conformance among most member states is the factor to increase the consensus. On the other hand, the diversity of member states of a regional organization is much lower than the diversity of a global organization.
- More support by region nations of the regional decisions due to the more indigenous legitimacy.
- More efficient and effective settlement of disputes. Since the region states see themselves most at risk and damages caused by regional conflicts, so try to settle disputes more efficiently and quickly with the help of increased diplomatic activities and cooperation.
- Limited number of third parties in conflict and easier access to them. For example, in the case of Syria, third parties are Iran, Turkey and Saudi Arabia.
- Weakness and ineffectiveness of global organizations in the elimination of disputes, particularly regional ones.
- Unaffected by the influence of the great powers and the tension between them, and the absence of a veto on decision making of regional organizations (Akhavan Kazemi, 2004).

Constraints Faced by Regional Organizations

Despite the special status of regional organizations in maintaining international peace and security, there are two constraints facing these organizations:

The first limitation is due to the UN Security Council. The council actually was less to cite the chapter VIII and regional organizations until the 1990s. In addition, the resolutions of the Security Council to resolve regional conflicts, rather than addressing regional organizations, addressed states. For example, in the Yugoslav crisis, the Security Council urged in the states to help solve the crisis in form of national or regional aids (RES / 787,816,836). It seems that the Security Council acted with caution in relationship with regional organizations. On the one hand it wants to cooperate in maintaining international peace and security, and on the other hand, does not want to compete with the international institutions.

The second is the limitation within the regional organizations. This means that they lack political, economic, cultural and military tools to deal with regional crises. For example, regional organizations can act better and more effective than coalition due to their organizational. But most of the regional organizations lack the military capabilities (even organizations that have long been identified as regional organizations of Chapter VIII: Such as the Arab League, the Organization of African Unity and the Organization of American States) unless the members of the organization in a particular case are willing to participate in an action. Thus a variety of operational problems that may occur on the actions taken by an

international coalition may also be the issue in the case of military operation conducted under the supervision of a regional organization, of course, NATO is an exception. The fundamental reason why regional organizations may be usable by the Security Council for military enforcement measures, is the geographical proximity to the disputes they are invited. Although the overall evaluation of framework and agendas of regional arrangements shows that these organizations in this area are significantly expanded to a wide range (Wilson, 2003).

Some believe that Chapter VIII seems to be some kind of federalism, which Security Council is located at the head (Quoc, 2009). UN Secretary General Boutros Ghali in his Agenda for Peace believes regional action as a matter of decentralization, delegation and cooperation with United Nations efforts could not only lighten the burden of the Council but also contribute to a deeper sense of participation, consensus and democratization in international affairs. (Ghali, 1992). However, this argument is flawed in the military enforcement measures. As was mentioned regional arrangements have very little ability or international legitimacy to take military actions. Consequently, the burden of responsibility is on the shoulders of a small number, e.g. NATO.

On the other hand is not appropriate for the Security Council to rely merely on NATO and its member countries on military action through the implementation of delegated powers Chapter VII. Three members of the Security Council are NATO members and delegation of Chapter VII authorities to NATO can be controversial. It is true that a regional organization such as NATO may be better for military enforcement action in the broad sense and coordination than member states coalition, but relying on NATO alone as an international police can strengthen this view that to enable the system of collective security of Charter depends exclusively on a permanent member (Sarooshi, 2000).

An important factor in the effectiveness of regional organizations in implement delegated powers is these organizations cooperating fully with the United Nations. Increased use of regional organizations in maintaining international peace and security and the lack of a clear division of tasks causes the decline of the United Nations role in the supervision and guidance of the operation, because these regional organizations may react to the crisis in accordance with their the views and rules of the organization. Lack of cooperation and coordination between the United Nations and regional organizations will cause problems, like the problems in the former Yugoslavia crisis occurred between NATO and EU in one hand and the UN on the other hand. Experience of the use of force to peace making in Bosnia in 1994 clarifies the necessity of planning and organizing, command and control, finance and personnel management more than before for the United Nations, Member States and the Secretary General (Yosefi, 1998).

Conclusion

Over the past decade we witnessed intervention by foreign powers as a "coalition" to repel aggression or fight with terrorist groups in the Middle East. Coalitions are usually temporary. Coalitions are formed to deal with crisis when a crisis breaks out and the coalition lasts until the crisis resolved. Coalition framework is consistent with the consent of the members of the coalition. Countries with shared interest in a subject set a strategy and tactics for temporary cooperation and act accordingly to achieve results. If the crisis takes longer they may change their strategy and tactics or, as the case may be, the members of the coalition reduced or increased. Thus, in such

coalitions we will not have the effective participation of all countries in the region.

But it seems that Middle East countries should try to maintain regional peace and security through regional cooperation, especially with the use of regional organizations such as the Arab League, the *Cooperation Council* for the Arab States of the *Gulf* and the Organization of Islamic Cooperation. Also, even a new organization may be established in this regard. As noted, the Charter of the United Nations and the practical procedures by states in the past stressed on the importance of the role of regional organizations in maintaining international peace and security. On the other hand, The United Nations and the Security Council Alone cannot deal with international crises. The cooperation between the United Nations and regional organizations can contribute in solving regional crises even the global ones.

Charter has stipulated clear legal principles for cooperation between the UN and regional organizations, and some of these organizations have proved their success in favor of member states like trying to mediate and prevent conflicts and to resolve disputes amicably and defend the interests of members and establishing cooperation between them in various fields.

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