



Criteria for distinguishing between international and non-international disputes and the role of the Security Council in their settlement

Ziad Al Wahshat^a  | Talal Aleissa^b  | Muhammad Al-Freihat^c 

^aFaculty of Law, Ajloun National University, Jordan.

^bScientific Research and Postgraduate, Ajloun National University, Jordan.

^cAjloun National University, Jordan.

Abstract The research examined the criteria for distinguishing between international and internal disputes by defining their concepts, characteristics, and nature. The researchers specifically addressed the role of the United Nations Security Council in resolving such conflicts, noting that the Council serves as the principal international body tasked with maintaining international peace and security, as stipulated in the Charter of the United Nations. Moreover, the Charter delineates the procedural steps that the Council must follow to resolve any conflict that could affect international peace and security, regardless of whether international or internal. However, the research yielded several significant findings, the most notable being the difficulty differentiating between both of them. The criteria for differentiation may sometimes exhibit political nuances, resulting in uncertainty and varied applications across different conflicts. Furthermore, the researchers advanced several recommendations, the most critical being the necessity for legislative texts in the form of a convention or protocol that would establish a clear framework for assessing international disputes about a country's internal affairs.

Keywords: international and internal disputes, security council, criteria

1. Introduction

Modern history has witnessed the existence of many countries seeking colonization and fighting to control the maximum number of lands and people and to expand the borders of their countries. Owing to the development of societies and their transformation into countries with clear borders and the formation of armies to protect these borders, differences have emerged between these countries that have led to international disputes and wars that have continued for many years (Zidan, 2008).

In addition, not all the states that were formed were politically and socially stable, but some of them were plagued by many internal tribal, national, ethnic, and religious conflicts, which led to internal conflicts that claimed the lives of many people. Moreover, this research aimed to clarify the image of international disputes that occurred between states and internal disputes that occurred between individuals of the same people and to define the criteria for distinguishing between them in a brief manner (Abu, 2006). However, the research problem was represented in defining the scope of both international and internal disputes and the criteria used to differentiate between them to develop appropriate solutions for each type of dispute and to determine the effects that may result from their occurrence.

The importance of the research was embodied in what is happening today of international and internal disputes that overlap with each other, making it difficult to determine the form and type of these disputes and the ways to settle and resolve them. The goal of preparing for this research is to determine the foundations and pillars of each type of dispute and to distinguish some from others. Accordingly, the research questions focus on determining the criteria for distinguishing between international and internal conflict and the function of the UN Security Council in reducing these disputes after their nature and classification are determined. Therefore, research questions focus on defining the criteria for distinguishing between international and internal disputes and the role of the Security Council in reducing such disputes after its nature and classification are determined.

The descriptive approach will be adopted in defining what is meant by international and internal conflicts and the criteria for their distinction, the nature of the research and the analytical approach and is intended to analyze elements of the alien that distinguish international disputes from internal disputes. Methodology

This research employs a descriptive-analytical methodology to explore the criteria for differentiating between international and internal disputes. This approach is particularly effective in systematically examining complex concepts and provides a structured framework for understanding the nuances involved in conflict classification.



2. Basis and criteria for differentiating between international and internal disputes

Much effort is needed to differentiate between international and internal disputes, as it reveals a clear difficulty in this area; the criteria for differentiation must depend in one way or another on political criteria that are characterized by instability, and their application varies from one dispute to another, unlike legal criteria that are characterized by stability and generality in their application (Zidan, 2003). However, we can identify several criteria for differentiating between them according to what jurists have gone to in international law: Therefore, we can identify several criteria for making a distinction between them according to international law scholars:

The first criterion: The dispute is international according to this criterion if it takes place between two or more states. This means that the term international conflict refers to those hostile operations that take place between two states as two persons from the international community who possess international legal capacity. Therefore, the presence of more than one state within the framework of the conflict is what gives it an international character. Internal conflicts are those conflicts in which there is only one state or one person from the persons of international law (Amer, 1982).

The second criterion is a criterion related to the applicable law. Some jurists tend to differentiate between international and internal disputes by saying that the dispute is considered international when the policies of international law are applied to the dispute and internal when the rules of internal law are applied to it (Fouad, 1985).

The traditional theory of armed conflict laws is based on the distinction between international-internal disputes and focuses on international disputes, leaving internal disputes to the internal jurisdiction of states and applying internal laws to them, except in those cases where the dispute is between rebels and government forces, in which the rebels are recognized as combatants, wherein certain principles of international law are implemented. Traditional doctrine in the law of war—the law of armed conflict—is based on the distinction between international and internal conflicts. It has devoted attention to international disputes, placing internal disputes within States' domestic jurisdiction and applying domestic laws to them, except in cases where the conflict is between rebels and government forces, in which revolutionaries are recognized as combatants. Some rules of international law apply.

Nevertheless, the truth that traditional theory completely neglects internal disputes despite its implications for scandals, massacres and horrors led to criticism of this theory by scholars and attempts to develop its rules and provide maximum safeguards for protecting those impacted by this type of warfare. Notably, a significant portion of the globe's conflicts in the aftermath of the Second World Conflict were internal conflicts international society", which led the international community to show interest in applying certain rules of international law to them, particularly those of a humanitarian nature. Regarding the protection of war victims, the preliminary stages of these attempts were the elaboration of the draft Geneva Conventions for the Protection of War Victims of 1949, which were aimed at applying the rules contained in the Conventions in all situations of conflict, whether international or noninternational.

Moreover, article No. 2 of the four conventions adopted by the Seventeenth International Conference of the International Red Cross (ICRC) has achieved this purpose and stipulates that "The provisions to be implemented in peacetime shall apply this Convention in all cases to declare war or in the case of any other armed engagement that may arise between two or more contracting parties even if no party has recognized the state of war" (Fouda, 2000).

However, this trend was strongly opposed by most delegations that participated in the Geneva Diplomatic Conference; they called for this article to be applied to international disputes without internal disputes, and some of them called for compromise to be introduced, with limited application of the principles of the conventions.

As a result, the application of article II was limited to international disputes, and article III, which involved minimum protection for victims of internal conflicts (Amer, 1982), was drafted in the territory of a high-contracting party. Each party to the conflict shall, at a minimum, apply the following provisions (Fouda, 2000). First, persons who do not actively participate in conflicts, such as military personnel who have surrendered their arms or who have been kept out of fighting by sickness, injuries, or any other reason, will always receive compassionate treatment, regardless of race, color, religion, sex, birth or any adverse influence on such treatment. For this purpose, the following acts should be banned in relation to the aforementioned individuals and should remain such at all times and places:

1. Acts of assault on life or individual people, specifically fighting of all varieties, mutilation, cruel treatment, torture, and the like.
2. Hostage-taking
3. Violations of human dignity, specifically degrading treatment and humiliation.
4. Rendering decisions and enforcing penalties without a trial, as determined by a court that is regularly constituted and provides all legal protections.

Second, gathering and caring for the sick and wounded: A neutral aid organization, including the International Committee of the Red Cross, may provide services for the disputing parties, and the parties to the conflict must also be informed of the implementation of entire or part of the remaining provisions of this Convention through special treaties. However, the proliferation of internal disputes after the Second World War proved the inadequacy of the text of Common Article 3 and its failure to achieve protection for victims of that type of dispute. Therefore, the second protocol attached to the

Geneva Conventions was approved at the third and final session of the Geneva Diplomatic Conference (Amer, 1982). Therefore, the recent trend in international jurisprudence is to apply international humanitarian legal rules to internal disputes to a limited extent; thus, the wider the scope of internal disputes is, the wider the scope of application of such laws (Fouda, 2000).

The third criterion is related to the initial effects that result from each of them; the proponents of this trend believe that international disputes could pose a direct danger to global peace and security from the moment they arise and affect other countries, whether in the form of the displacement of refugees or their impact on economic relations between the two disputing countries and other countries, and that international organizations issue a solution to the dispute quickly to stop the conflict and limit its inhuman effects. For internal disputes, their effects are less than those resulting from international disputes, although some internal disputes have exceeded those resulting from international disputes, especially after the end of the Cold War in 1990, whether in the form of the displacement of refugees, the number of dead and wounded, or the destruction of economic and social facilities within the country in dispute (Zidan, 2008).

Importantly, the United Nations was affected by events and developments, especially after the end of the Cold War in 1990, and its role in settling internal disputes increased due to the increase in these types of disputes and their acquisition of international character. This role lies in the United Nations' operations in maintaining, in addition to preserving, peace after parties to the internal conflict reach a relevant agreement.

Moreover, this led to the issuance of many serious resolutions by the United Nations Security Council requiring humanitarian intervention in these conflicts. Hence, many examples confirm this role, most notably, the role of the United Nations in maintaining peace in the Kosovo region, forming civil administrations under UN supervision in this region to achieve greater independence and self-rule, supervising the reconstruction process in Kosovo, coordinating with international humanitarian organizations in organizing humanitarian aid to Kosovo, and protecting and promoting human rights.

In addition to UN Security Council Resolution No. 688 issued on April 5, 1991, the Council made clear its determination that the blatant violations in Iraq threatened international security. In addition, the Security Council demanded that Iraq stop its repressive operations and allow humanitarian aid to reach the Kurdish and Shiite populations. For the first time, an international body requested that a government allow that the body reach the population of that country for humanitarian reasons, as doing so is a matter that affects international security. Furthermore, the principle of legality is based on the issue of the protection of defendants' rights while ensuring the application of the required criminal justice; the principle of legitimacy is one of the most closely enshrined rights in international human rights law, as enshrined in the Universal Declaration of Human Rights (Aleissa et al., 2023).

3. Role of the Security Council in the cessation of international internal conflicts

Under the United Nations Charter, the Security Council bears the primary responsibility for maintaining international peace and security and therefore enjoys broad powers (Al-Obaidi, 1987). It is the reign supreme and the arbiter in any international dispute and directs it in the direction it wants without any interference or influence from the General Assembly. It is the one who initially examines the dispute to decide whether continuing this situation would threaten international stability and safety.

In light of this, he calls on the parties to the conflict to settle the conflict through negotiation, investigation, mediation, conciliation, arbitration, and judicial settlement. Therefore, the researchers decide that these methods have failed or have not reached a result and that certain parties must submit the entire dispute to the Security Council (Al-Bataineh, 2003).

The reason for giving the Security Council this primary responsibility is to obtain the desire to achieve effectiveness and speed in resolving disputes and problems that may threaten international peace and security. This is because, compared with the General Assembly, the Security Council is a limited-membership body, which makes it more suitable and in a better position to carry out this responsibility and reach decisive decisions regarding it (Abu Al-Wafa, 2006). Article (34) of the Charter has authorized the Security Council to examine any dispute or situation that leads to any international friction or may give rise to a dispute to decide whether the continuation of this dispute or situation is likely to endanger international peace and security. The authority of the Security Council under this article is broad, as it has the right to examine any dispute or situation (Al-Rawi, 1987). The disputes that the Security Council addresses according to this article are disputes of a special type that are likely to endanger international peace and security, and this is what we find in Article (33), which states "any dispute the continuation of which is likely to endanger the maintenance of international peace and security" (Al-Rawi, 1987).

Moreover, the United Nations Charter has not set controls to determine disputes whose continuation would lead to a threat to international peace and security and other disputes. Accordingly, the matter is subject to the Council's own assessment. If one or both parties to the dispute claim that the continuation of the dispute would lead to a threat to international peace and security, this claim has no value unless the Council decides to do so (Al-Fatlawi, 1985). We agree with this view that the Security Council itself should be left to verify this matter and decide whether the dispute would endanger international peace and security, since Article (34) itself gave it the authority to resolve any dispute or situation that might lead to a threat to international peace and security.

In addition to disputes, the Security Council is responsible for considering international positions. Since international positions differ from international disputes, the Charter does not include texts that can be used to differentiate between what

is considered a dispute and what is considered a position (Abu, 2006). Hence, the importance of the distinction is that if a member of the Security Council is a party to a dispute submitted to it in application to the provisions of Chapter (6) or in accordance with paragraph (3) of Article (52) of Chapter VIII on regional arrangements, it must abstain from voting. However, if the member is a party to the position, its matter is submitted to the Council and may lead to an international violation or a breach of the peace, but it does not rise to the level of a dispute, in which case the member has the right to exercise its right to vote. However, the distinction between a dispute and a position is a very delicate and important issue from both political and legal perspectives. Since the Charter does not include any text or standard in this regard and the Security Council has not yet reached the point of establishing such an objective standard, Hans Kelsen believes that the judgment in this area is for the Security Council itself; that is, the matter is left to the Security Council to decide whether the matter before it is a position or a dispute. This classification is an objective issue to which the provisions of special voting and objective issues apply (Al-Rawi, 1987).

After that, we can say that the conflict is an advanced or dangerous stage of the situation; the situation represents a general condition that includes political problems and is related to the interests of several countries or the international community as a whole, more than its connection to certain parties themselves, while the conflict is a stage in which opinions differ, and the interests of the disputing countries differ regarding it. In the *Mavrombacterium* case, the Permanent Court of International Justice considered that the conflict is a disagreement over a legal or factual point, so it is a contradiction or conflict between legal opinions or between the interests of two legal persons (Almashhadani, 1999). Accordingly, the Security Council is responsible for considering disputes that endanger international peace and security and is also responsible for considering positions, and it is up to the Council itself to decide when the matter is considered a conflict and when it is considered a position. Articles 34--35--37 of Chapter Six of the Charter have been organized in the party through which the Security Council can lay its hand on the conflict in addition to Article 11 of Chapter Four and Article 99 of Chapter 15 (Abdul Hamid, 2015), as follows:

A. The initiative of the Security Council itself, as stipulated in Article (34) of the Charter, is that "the Security Council may examine any dispute or situation which leads to international friction or may give rise to a dispute in order to determine whether the continuance of the dispute or situation is likely to endanger international peace and security" (Al-Dqaq, 1997).

In many cases, it is difficult for members or parties to the dispute to present the dispute, either because the issue relates to the interests of states or because the parties to the dispute have not reached an agreement among themselves to refer the issue to the Security Council on the one hand or because the state insists on its sovereignty and immunity on the other hand. Here, it is not logical for the Charter to leave the continuation of the dispute or situation that endangers international peace and security, so the Security Council has the right to address the dispute or situation on its own, even if no one requests it (Afif, www.wordpress.com).

3.1. The intervention of the Security Council is requested, and this is accomplished through the following parties

The states parties to the conflict themselves: According to Article (37), if the states between which the conflict arose disappear despite resorting to the means specified in Article (33), they must submit the conflict to the Security Council (Al-Dqaq, 1997).

Accordingly, we can say that the state parties to the conflict have the right to submit the conflict to the Security Council, whether they are members of the United Nations or not, and this is one of the provisions of the Charter, as Article (35) gave the member states, even if they were not a party to the conflict, the right to alert the Security Council, so it is more appropriate for them to alert it if they are a party to it.

Member States of the United Nations: Article), paragraph one, states that "any Member of the United Nations may bring to the attention of the Security Council or the General Assembly a dispute or a situation which may endanger international peace and security" (Al-Anani, 1993).

Notably, a member state of the United Nations bringing attention to the Security Council, a particular dispute is merely a license granted by the Charter to Member States, which have the right to use it or not to use it according to the circumstances, as the text came with the word "each" and not the word "must." However, in the case where the Member State is a party to the dispute and fails to resolve the dispute peacefully, Article (37) obliges it to present the matter to the Security Council, and here, the matter is mandatory (Al-Anani, 1993).

Nonmember states of the United Nations: According to the second paragraph of Article (35), "Any state which is not a member of the United Nations may bring to the attention of the Security Council or of the General Assembly any dispute or situation to which it is a party if it accepts in advance, with respect to that dispute, the obligations of pacific settlement provided for in the present Charter" (Afif, www.wordpress.com), and in this case, two conditions are needed:

First, the nonmember state must be a party to the dispute of which the Security Council is brought to attention.

Second, it must accept in advance, with respect to that dispute, the obligations of pacific settlement provided for in the Charter (Almashhadani, 1999).

4. Results

Differentiating between international and internal disputes is challenging because the criteria for distinction often depend on unstable political factors, leading to varying applications from one dispute to another, in contrast to legal criteria, which tend to exhibit greater stability and generality. Moreover, the surge in internal disputes following World War II highlighted the inadequacy of Common Article (3), revealing its failure to provide adequate protection for such conflicts. In this context, the UN Security Council, as mandated by the Charter of the United Nations, holds the primary responsibility for maintaining international peace and security; it acts as the arbiter in international disputes, directing the situation as it sees fit without interference or influence from the General Assembly or other bodies.

5. Conclusion

Disputes, whether international or internal, have become a problem that imposes itself forcefully on the international scene in a way that may result in a breach of international peace and security, in addition to the serious effects, especially in light of the increase in internal disputes after 1990 in a way that may in some cases exceed the effects resulting from international disputes. Hence, the role of preventive diplomacy must be highlighted in resolving these disputes before they escalate into problems between countries and the use of military forces by countries to resolve these disputes. Moreover, the international community must also realize that the outbreak of a third world war means the destruction of the entire globe; modern military technology, especially in the field of nuclear programs, chemical weapons, and biological weapons called weapons of mass destruction, may destroy the entire globe if used by countries that possess these weapons and that world wars broke out as a result of a dispute between two countries at first and then became world wars with the participation of all major countries and their effects extending to almost all countries.

In addition, the international community must be wary of this, and all countries must seek to solve their problems and disputes through diplomatic and peaceful means. Organizations must play a major role in this field, especially the United Nations, as the United Nations must develop operations to maintain international peace and security, especially the so-called rogue states, which are Iran, North Korea, and Iraq, before their fall. Furthermore, one of the main goals of the United Nations is to achieve settlements of international disputes or situations that may breach peace by peaceful means in accordance with the principles of justice and international law. This means that member states have an unconditional obligation to settle their disputes peacefully, according to Article (33) of Chapter (6) of the Charter of the United Nations, which follows the peaceful settlement of international disputes. However, if states fail to resolve their disputes by the methods mentioned in Article (33), the matter is referred to the Security Council. If the Council finds that the disputes have become a threat to security, then it can decide to take measures that may be nonmilitary or military.

However, before the Council makes its recommendations or takes measures, it has the right to call on the disputants and their demands to settle the existing dispute to prevent the situation from worsening. The Council can also, before reaching a final solution to a problem, recommend some temporary measures pending the solution of the problem. If a state does not heed the Security Council's decision to respect temporary measures, it can take what it deems appropriate.

However, the coercive measures taken by the Council are of two types: nonmilitary measures, which are measures that do not require the use of armed forces. These measures are mentioned, for example, but are not limited to, Article (41) of the Charter and military measures, which the Security Council resorts to when nonmilitary measures do not meet the purpose and when the use of force is by all means of air, sea and land warfare, and these measures can take the form of a siege.

6. Recommendations

There is a pressing need to develop legislative texts within an agreement or protocol that clearly specifies the foundations for distinguishing international disputes from internal disputes. Additionally, raising awareness among local populations about the existence of international protection for those exposed to various harms during internal conflicts is crucial; this underscores the need for the Security Council's intervention to halt such protection by amending the Charter of the United Nations to give the Security Council broader powers to resolve internal conflicts to maintain international peace and security.

Disputes and prevent the resulting blood from being shed. By addressing both legislative frameworks and community awareness, the international community can better facilitate effective responses to conflicts and safeguard vulnerable populations.

Ethical considerations

The research was carried out ethically by the author.

Conflict of interest

The authors declare that they have no conflicts of interest.

Funding

This research did not receive any financial support.

References

- Abdul Hamid M. S. *Principles of Public International Law*. 5th ed. International Community; 2015.
- Abu Al-Wafa A. *International Organization and International Relations*. Dar Al-Nahda Al-Arabiya; 2006.
- Afif Z. H. Resolving international disputes within the framework of the Security Council and the General Assembly. Retrieved from <http://www.wordpress.com>.
- Al-anani I. M. *Resorting to International Arbitration*. Dar Al-Fikr Al-Arabi; 1993.
- Al-Bataineh F. *The United Nations: An Organization That Remains and a System That Leaves*. 1st ed. Arab Foundation for Studies and Publishing; 2003.
- Al-Daqqaq M. S. *Lessons in International Law*. Dar Al-Matbouat Al-Maliya; 1997.
- Aleissa et al. *Pakistan Journal of Criminology*. 2023;15(4):683–694.
- Al-Fatlawi S. H. *International Disputes*. Dar Al-Qadisiyah Press; 1985.
- Almashhadani S. A.-D. *The Discretionary Power of the Security Council and Its Use in the Case of Iraq*. General Cultural Affairs House; 1999.
- Al-Obaidi S. M. *International Disputes and Means of Resolving Them Peacefully*. Higher Education Press; 1987.
- Al-Rawi J. I. *International Disputes*. Dar Al-Salam Press; 1987.
- Amer S. E.-D. *Armed Popular Resistance*. Arab Thought House; 1982.
- Fouad M. A. *Internationalization of the Lebanese Conflict*. Maaref Establishment; 2000.
- Fouda E. E.-D. *Israeli Occupation and Palestinian Resistance in Light of Public International Law*. Beirut; 1965.
- Ibrahim I. M. *Settlement of International Disputes by Political and Judicial Means*. Master's thesis, Libyan Academy, Misurata; 2018.
- Red Cross Journal. *IRRC*. No. 876, March 2016.
- Timelines, Borders and Conflicts. Historical development of the legal division between international and non-international armed conflicts. n.d.
- Zayed B. I. *Distinguishing Between International and Non-International Armed Conflicts*. Doctoral dissertation, Mohamed Khader Maskara University, Faculty of Law, Morocco; 2021.
- Zidan M. A. R. *United Nations Intervention in Non-International Armed Conflicts*. New University Publishing House; 2008.