

**Pacific Settlement Mechanisms and the Great Powers:  
The PCA South China Sea Decision and the Iran Nuclear Agreement**

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***UN CHARTER, CHAPTER VI: PACIFIC SETTLEMENT OF DISPUTES***

**Article 33**

- 1.** The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.
- 2.** The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means.

The recent decision of the Permanent Court of Arbitration denying China's jurisdictional claims in the South China Sea<sup>1</sup> and the successful conclusion in 2015 of the P5+1/Iran negotiations concerning Iran's nuclear program<sup>2</sup> demonstrate the limits as well as the potential for pacific settlement mechanisms in the current era. More importantly they reflect the contemporary retreat from the heyday of UN collective security measures orchestrated by the Security Council in the immediate post-cold war period and a revival of traditional statist methods of pacific settlement (Chapter VI) to address tensions. This is a return to the distillation of accepted methods that emerged in the late nineteenth century for the peaceful resolution of interstate disputes in lieu of the use of force.

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<sup>1</sup> PCA Case N° 2013-19. IN THE MATTER OF THE SOUTH CHINA SEA ARBITRATION - before - AN ARBITRAL TRIBUNAL CONSTITUTED UNDER ANNEX VII TO THE 1982 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA - between - THE REPUBLIC OF THE PHILIPPINES - and - THE PEOPLE'S REPUBLIC OF CHINA. Award of July 12, 2016.

<sup>2</sup> Joint Comprehensive Plan of Action available at the US State Department webpage: <https://www.state.gov/e/eb/tfs/spi/iran/jcpoa/>

At the turn of the new millennium, international contestation, more often than not, was addressed in the Security Council, leading to the use of enforcement measures (Chapter VII of the UN Charter) to resolve international disputes. Extraordinary optimism reigned about the merits of enforceable collective security. This experiment in a new approach to collective peace and conflict resolution, with its practical origins in the Wilsonian League of Nations, and seventy years of selective UN victories, outright failures, and revision in procedures, seemed to come into its own only as the Cold War subsided. Beginning with the first-ever joint Middle East USSR-US resolution in 1987 on imposing a ceasefire in the Iran-Iraq war,<sup>3</sup> collective security under Chapter VII of the UN Charter emerged as a central pillar in what U.S. president George H.W. Bush called a New World Order. The regular use and assumed permanence<sup>4</sup> of collective action dominated international efforts at the maintenance of peace and security until the ill-advised US invasion of Iraq in 2003.

The new harmony was lauded by the UN secretary-general at the time, Boutros Boutros-Ghali. In his seminal 1992 report *An Agenda for Peace*<sup>5</sup> he admonished the great powers that “never again must the Security Council lose the collegiality that is essential to its proper functioning”<sup>6</sup> and called for preventive diplomacy and peace-making as the best guarantees against future conflict. However, only a little more than a decade later a growing adversarial relationship emerged among several of the permanent members that undercut optimism for future cooperation, forcing the council to ignore in their formal deliberations growing regional tensions or experiment with diplomatic mechanisms that could get around the veto. Particularly between

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<sup>3</sup> S/Res/598, 20 July 1987. In subsequent statements the resolution’s authors indicated that they would take “further steps to ensure compliance” with a ceasefire if either side rejected the resolution.

<sup>4</sup> In 1997 the United States vetoed a resolution condemning Israel’s decision to allow settlement construction at Har Homa in apparent violation of the Oslo Accords. The Clinton Administration went to great lengths to explain its vote and to dampen concern that the veto was anything but an exception to the harmony among the Council’s permanent members that seemed to establish an unwritten rule against using the veto.

<sup>5</sup> Boutros-Ghali, Boutros. *An Agenda for Peace* (New York: United Nations, 1992). Also at A/47/277. 17 June 1992.

<sup>6</sup> Boutros-Ghali, *Agenda*, 45.

the United States and Russia a new competition emerged over two issues: unilateral “preemptive” American military interventions without the authorization of the United Nations, and expansionist policies by Moscow in its “Near Abroad”—states formerly part of the defunct USSR.

For its part, the United States invaded and occupied Kosovo in 1998 with the support of NATO allies but with no pre-existing authorization from the Security Council. The American decision to go to war in Iraq in 2003 with only a “coalition of the willing” fundamentally challenged the collective security arrangement and the institutions of post-World War II global order. President George W. Bush’s unilateral decision to go to war broke with precedent on a scale that raised issues of international legality and prompted global perceptions of “America Unbound.” Then, in 2011, the United States and its allies used the cover of SC resolutions concerning the protection of the civilian population—R2P—in the Libyan civil war to violate that country’s sovereignty, support the rebel cause, and carry out regime change. In the wake of these events China and Russia opposed any similar resolutions concerning Syria or other civil conflicts.

In August 2008 Russia sent forces into Georgia’s breakaway provinces of Abkhazia and South Ossetia, regions in which separatists had long sought Russian support for independence from the national government. Following Russian intervention, Moscow recognized both Abkhazia and South Ossetia as independent states and continued what it called its “peace enforcement operation” with a heavy investment of Russian troops and materiel. Despite condemnation by other major powers, regional organizations, and world leaders, given the Russian veto in the Security Council, the United Nations could do little beyond the provision of humanitarian and refugee assistance, and the offer of the institution’s good offices. Russia would

go even further in 2014, annexing Crimea from Ukraine and supporting rebel forces in the eastern half of the country.

Boutros-Ghali's call for "preventive diplomacy" and "peace-making" through Security Council action seemed in tatters as these events unfolded. The major powers retreated to a legal perspective strongly endorsed by Russia and China among the Great Powers. As such, it was a retreat from the liberal norm-based orientation that dominated world affairs at the close of the twentieth century. But, in fact, his proposals on preventive diplomacy and peace-making are proving to be quite durable in the new era of confrontation. The *Agenda for Peace* defines these terms in the following way:

*Preventive diplomacy* is action to prevent disputes from arising between parties, to prevent existing disputes from escalating into conflicts and to limit the spread of the latter when they occur.

*Peacemaking* is action to bring hostile parties to agreement, **essentially through such peaceful means as those foreseen in Chapter VI of the Charter of the United Nations.**

He noted, "If conflicts have gone unresolved, it is not because techniques for peaceful settlement were unknown or inadequate."<sup>7</sup> They were to be found in the Charter's Chapter VI.

Today's revival of pacific settlement, first developed as a collection of diplomatic and legal tools in the nineteenth century, is an important development in current efforts to avoid Great Power conflict, solve regional and bilateral disputes, acknowledge Great Power and lesser power interests, and maintain comity in the world community, even as tensions rise among the permanent members of the UN Security Council. It reflects a return to traditional forms of conflict resolution predating the United Nations itself.

International arbitration finds early roots in American dispute resolution. The Jay Treaty of 1794, ending the impressment of American sailors, set up mixed commissions to settle

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<sup>7</sup> *Agenda for Peace*, Para. 34.

disagreements that the two sides could not resolve through normal diplomacy. Following the Congress of Vienna in 1815, which committed itself to regularized negotiation among the parties, the remainder of the century witnessed not only arbitration, but a number of pacific settlement techniques emerge in the repertoire of states attempting to resolve international tensions.<sup>8</sup> Their development culminated in the Hague Conferences of 1899 and 1907, which among other important decisions, wrote into international law the acceptability of several pacific settlement substitutes for the use of force,<sup>9</sup> and established the Permanent Court of Arbitration.<sup>10</sup> They included, in addition to arbitration, good offices, mediation, and international commissions of enquiry.<sup>11</sup> By the time of the second Hague Conference, conciliation also had been written into several treaties among major powers. The last component of pacific settlement that one finds in Chapter VI of the UN Charter – judicial settlement –was added by the Covenant of the League with the establishment of the Permanent Court of International Justice.

In the language of the UN Charter, Chapter VI remedies are to be used by disputing states “first of all” before recourse to the much more serious collective security powers granted to the Security Council by Chapter VII. But at the height of Chapter VII unanimity, council members were willing to use enforcement measures with alacrity, bypassing pacific settlement. To do so, the Council was willing to give a very broad construction to what constituted a threat to international peace and security, adding to traditional interstate threats the challenges of human rights abuses, medical emergencies, terrorism, and humanitarian crises.<sup>12</sup>

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<sup>8</sup> By example, Bismarck’s offer to be a “honest broker” at the 1878 Berlin Conference in an attempt to head off further war in the Balkans through mediation, was itself a revolutionary diplomatic step. To that time, third party interference in a dispute between warring parties (in this case potentially Austria, Russia, and the Ottoman Empire) could itself be seen as an act of war.

<sup>9</sup> Convention for the Pacific Settlement of International Disputes. 29 July 1899.

<sup>10</sup> The United States, under pressure from private groups, advocated for the creation of a permanent court of arbitration as early as the 1890s. See John Watson Foster. *Arbitration and the Hague Court*. Littleton, Colorado: Fred B. Rothman and Co., 1904, reprinted 1980, 59.

<sup>11</sup> The last of these presumed that conciliation would be one of the primary functions of the commissions.

<sup>12</sup> See Boleslaw W. Boczek, *The A to Z of International Law* (Lanham, MD: Scarecrow Press, 2005), 393. Also see John Allphin Moore, Jr. and Jerry Pubantz. *The New United Nations: International Organization for the Twenty-first Century* (Upper Saddle

The growing use of pacific settlement in the face of recent council sclerosis, therefore, is of interest, both in terms of traditional ways in which states are utilizing these methods as a substitute for council action and of new twists currently being imposed on old techniques. The South China Sea arbitration and the Iran nuclear agreement are illustrative cases respectively.

### **South China Sea Arbitration case**

On July 12, 2016, the Permanent Court of Arbitration (PCA) handed down a judgment in the case of the Republic of Philippines v. People's Republic of China (PRC) rejecting the latter's claim to exercise "sovereign rights and jurisdiction"<sup>13</sup> over a large swath of the South China Sea (SCS), an area within what is known as the nine-dash line, and finding China in violation, by its aggressive actions, of provisions of the Law of the Sea Convention (UNCLOS).<sup>14</sup> While China refused to accept even the jurisdiction of the Court much less its holding, asserting it "null and void,"<sup>15</sup> the PRC acted throughout the process in ways that belied that assessment. It responded, in fact, as if it were an engaged party to the controversy.

The Philippine administration of president Benigno Aquino III filed a claim against China on January 22, 2013, under Article 287 and Annex VII of the UN Convention on the Law of the Sea (UNCLOS) to which both states are parties. It claimed the People's Republic had interfered with the Philippine's maritime rights by extending a claim of sovereignty to within fifty miles of several Philippine islands. The Aquino government accused China of detaining other nations' vessels illegally, constraining Philippine rights in its exclusive economic zone (EEZ), and claiming sovereign control over waters around coral projections after occupying

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River, N.J.: Pearson, 2006), 183-184. Also, Jerry Pubantz and John Allphin Moore, Jr., *Encyclopedia of the United Nations*, Second Edition (New York: Facts on File, 2008), 76

<sup>13</sup> As opposed to a Chinese claim of sovereignty, which the tribunal took pains to assert it was not addressing in its decision.

<sup>14</sup> See para. 1109 of the Award, and para. 1128 and 1129, and Jurisdictional Finding (3) on the dredging and construction of artificial "islands."

<sup>15</sup> "Full Text of Statement of China's Foreign Ministry on Award of South China Sea Arbitration Initiated by Philippines," Xinhua, July 12, 2016.

these uninhabitable “rocks.”<sup>16</sup> The claimant did not argue the issue of sovereignty *per se*, only, in its view, the *assertion* of sovereign rights by China over these waters in violation of UNCLOS.

The arbitration filing was, at the time, the latest in diplomatic maneuvers between China and its collective neighbors around the South China Sea. Since the 1990s SCS littoral and island states have worried about Chinese intrusion and claims of sovereignty in the region. Focused in the areas of the Spratly and Paracel island groups and the Scarborough Reef, these claims to the waters of the South China Sea and its fish stocks and seabed oil and natural gas by growingly powerful China overlap those of not only the Philippines but also Vietnam, Malaysia, and Brunei.

These states as well as actors outside the region became alarmed as China dredged artificial islands large enough to host landing strips and moved floatable drilling platforms into waters it claimed, often driving off fishermen and naval challenges from surrounding nations. The United States, Australia, and India expressed concern about China’s threat to the international status of the South China Seas, the latter two recently agreeing to greater military cooperation with the United States to meet the challenge. In harmony with its assertion of sovereignty, China unilaterally announced its control over airspace in the region, producing a response from the Obama administration that sent B-52 bombers into the zone to challenge Chinese claims. The “pivot” toward Asia in American foreign policy was, in part, a reaction to Chinese presence in the South China Sea, which included by 2016 the placement of surface-to-air missiles on at least one of the disputed islands.

The Philippine appeal to the PCA escalated the diplomatic confrontation between the two states. The arrest of Chinese fishermen in Scarborough shoal, 124 nautical miles off the shores of

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<sup>16</sup> Shicun Wu and Keyuan Zou. *Arbitration Concerning the South China Sea: Philippines versus China*. London and New York: Routledge, 2016.

Zambales province in northwestern Philippines, in April, 2012, led to a two-month standoff which triggered the Philippines filing before the Permanent Court of Arbitration in The Hague. Earlier tensions date back as far as 1995, when the Philippines discovered that China had built structures in Mischief Reef, 620 miles southeast of China. Recent photos show the reef has been upgraded into what looks like a military facility with its own airstrip.

The suit opened a new page in the diplomatic process underway over the previous decade. Earlier negotiations were conducted under the auspices of the Association of South East Asian Nations (ASEAN). Despite Beijing's regular assertions that it only wished to conduct bilateral negotiations with states in the region, and after initial Chinese objection, those talks produced a breakthrough in 2002 when ASEAN members and China committed themselves to a Declaration on the Conduct of Parties in the South China Sea.<sup>17</sup> The DOC stipulated adherence to the UN Convention on the Law of the Sea, and "reaffirm(ed) ... respect for and commitment to the freedom of navigation in and overflight above the South China Sea."

In 2004, an ASEAN-China Joint Working Group was established. The group eventually agreed to guidelines for implementing the Declaration. As recently as 2013 both sides committed to consultations on a Code of Conduct for the maritime area. But all of this occurred against a backdrop of ongoing confrontational incidents including a standoff between Chinese and Philippine vessels at Scarborough Shoal and the unilateral placement by China of deep sea drilling rigs in Vietnam's Exclusive Economic Zone.<sup>18</sup>

Throughout this tortured diplomatic history there was no referral to the Security Council, as all knew the Chinese veto awaited. The Philippine government opted for an alternative

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<sup>17</sup> Adopted by the Foreign Ministers of ASEAN and the People's Republic of China at the 8<sup>th</sup> ASEAN Summit in Phnom Penh, Cambodia on 4 November 2002. <http://www.aseansec.org/13163.htm>.

<sup>18</sup> For a discussion see Amanda Huan and Ralph Emmers, "What Explains the Success of Preventive Diplomacy in Southeast Asia?," *Global Change, Peace and Security*, Vol. 25, No. 1, 2017, 84-87.



Chapter VI remedy, a judicial determination utilizing the compulsory arbitration provisions of UNCLOS. The PRC immediately issued a *Note Verbale* to both the Court and the Philippine government rejecting the appeal to the PCA as illegitimate. Interestingly it cited the ASEAN Declaration as the controlling document requiring negotiation as the path to resolution.<sup>19</sup>

The arbitration tribunal determined it had jurisdiction under UNCLOS and could proceed without the participation of Chinese representatives. It gave China until mid-December to respond to the Philippine charges. On December 7, the Chinese government issued a Position Paper that it said was *not* to “be regarded as China’s acceptance of or participation in this arbitration.”<sup>20</sup> And yet the position paper was not a simple *demarche* but a full-blown defense on all the issues before the Court.<sup>21</sup> It had all the earmarks of counter-memorial. The Chinese filing argued that the Philippines by going to the Court illegally superseded two earlier agreements, the first a bilateral agreement to resolve outstanding issues through negotiation and the second being the DOC with ASEAN.<sup>22</sup> Taking this position, of course, put Chinese diplomacy in a bind for later negotiations, because it legitimized and reinforced the validity of a regional settlement with ASEAN, as opposed to one-on-one agreements with individual governments. The position paper laid out China’s historical claim to the South China Sea within the nine-dash line, and argued that the Court in this case was being asked to settle the question of sovereignty, which the Law of the Sea Convention prohibits.

The Court rejected the Chinese arguments on both jurisdictional and substantive grounds. Its final award was unambiguous in its finding.

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<sup>19</sup> “Full Text on Award of South China Sea Arbitration,” Xinhua, July 12, 2016.

<sup>20</sup> Shicun Wu and Keyuan Zou, *Arbitration*, 256-280.

<sup>21</sup> Qiang Ye, “Does China’s Position Paper on the South China Sea Arbitration Constitute a Preliminary Objection,” in Shicun Wu and Keyuan Zou, *Arbitration*, 92.

<sup>22</sup> *Ibid.*, 93.

“(The Court) DECLARES that, as between the Philippines and China, China’s claims to historic rights, or other sovereign rights or jurisdiction, with respect to the maritime areas of the South China Sea encompassed by the relevant part of the ‘nine-dash line’ are contrary to the Convention and without lawful effect to the extent that they exceed the geographic and substantive limits of China’s maritime entitlements under the Convention; and further DECLARES that the Convention superseded any historic rights, or other sovereign rights or jurisdiction, in excess of the limits imposed therein.”<sup>23</sup>

The Chinese government’s public reaction was visceral, even accusing the Court of being stacked with biased anti-Chinese judges. It said the decision would severely set back a resolution of the dispute. Almost simultaneous with the Court’s decision, a new government was elected in the Philippines, that of president Rodrigo Duterte, who seemed to change course, saying the SCS dispute would take a back seat to economic cooperation in discussions with Beijing.

But the PCA decision did not derail negotiations on the South China Sea dispute. China’s decision to base its position paper on the primacy of negotiations with ASEAN actually gave a new impetus to negotiations under the Declaration on the Conduct of the parties involved. Within a month of the ruling, *China Daily* reported “breakthroughs” at a meeting of Chinese senior officials and ASEAN delegates held in Inner Mongolia. These included commitments to an ASEAN-China hotline to be used during maritime emergencies and to the application of the Code for Unplanned Encounters at Sea (CUES) to the South China Sea, and a timeline to conclude the promised Code of Conduct by July, 2017.<sup>24</sup> China seemed eager to demonstrate progress by “legitimate” means, as opposed to conceding to pressure from the Court ruling. That route reached a point of irony in February, 2017, when scheduled ASEAN talks on the non-militarization of occupied features and restraint in the activities of China in the South China Sea

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<sup>23</sup> Finding (2) on the merits, p. 473 of the Award.

<sup>24</sup> Prashanth Parameswaran, “Beware the Illusion of China-ASEAN South China Sea Breakthroughs,” *The Diplomat*, August 17, 2016.

were chaired by the Philippines representative.<sup>25</sup> All parties agreed to compartmentalize the PCA ruling to bilateral talks and move forward on confidence-building measures.

There is a context for the Philippines/China case that should not be ignored. The PCA ruling in this case is part of a wave of new activity at the Court.

### Recent PCA Cases Involving Great or Emerging Powers

Case	Issue	Parties	Date	Outcome
South China Sea Dispute	Chinese Maritime Sovereignty Claim	Philippines v. People's Republic of China	January 2013 – July 2016	Award in favor of the Philippines
Indus Waters Arbitration	India's proposed diversion of the river Kishenganga into another tributary	Pakistan v. India	May 2010 - December 2013	India shall maintain adequate water flow in the Kishenganga River even after tributary diversion.
The "Enrica Lexie" Incident	India's claim of criminal jurisdiction over two Italian marines on an Italian ship off the coast of India	Italy v. India	Initiated June 2015	pending
Arctic Sunrise Arbitration	Concerns the seizure of the vessel <i>Arctic Sunrise</i> in the Russia's exclusive economic zone and the detention of the persons on board	The Netherlands v. Russian Federation	Initiated October 2013	pending
Chagos Marine Protected Area Arbitration	Concerned the establishment by the United Kingdom of a Marine Protected Area around the Chagos Archipelago	Mauritius v. United Kingdom	December 2010 - March 2015	United Kingdom breached the sovereign rights of Mauritius in establishing the protected area and must recognize Mauritius's fishing and resource rights therein.

In the last several years Russia, Great Britain, and India among other major states have either been claimants or participated in arbitration before the Court. The Court offers four of the seven pacific settlement methods (inquiry, mediation, conciliation, arbitration)<sup>26</sup> included in Chapter VI of the UN Charter. Because of interest in using the Court to resolve thorny problems, the

<sup>25</sup> Charmaine Deogracias, "ASEAN Begins Talks on Code of Conduct in South China Sea Amid Continued Tensions," *ABS/CBN News*, February 6, 2017.

<sup>26</sup> Bette E. Shifman, "The Revitalization of the Permanent Curt of Arbitration," *International Journal of Legal Information*, Vol. 23, 1995, 289.

PCA has opened new regional facilities in South Africa and Costa Rica.<sup>27</sup> Thus, the Philippines recourse to the Court was in line with the revival of Chapter VI in a time of discord among the great powers.

### **The Iran Nuclear Agreement**

If Chapter VI methods, both the PCA gambit by the Philippines and ASEAN's negotiations with China did not resolve the South China Sea Dispute, only keeping open an important regional dialogue that tempered the rise in hostilities, more promising results under the same chapter of the UN Charter were recorded in 2015 in relation to Iran's nuclear program. The setting was the nineteenth-century Beau Rivage Palace hotel on the shore of Lake Léman in Lausanne, Switzerland, where the five UN Security Council permanent members (France, United States, China, Russia, United Kingdom) plus Germany came to agreement with Iran on the outline of a deal that would severely limit Iran's nuclear program in return for a lifting of western sanctions.<sup>28</sup>

For nearly a decade the P5 had demanded through binding resolutions<sup>29</sup> that Iran suspend uranium enrichment and heavy-water-related projects that could lead to it acquiring a nuclear bomb. Beginning in 2006 the powers proposed comprehensive limitations on Iran's program, and when Iran balked, the council imposed damaging sanctions on the Iranian economy. Over the next few years, when negotiations faltered between Iran and the International Atomic Energy Agency (IAEA), the Council, tightened the sanctions.

After 2009 most of the negotiations between the P5+1 and Iran gravitated between the UN

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<sup>27</sup> Boczek, *A to Z*, 385.

<sup>28</sup> Once the framework agreement was reached in Lausanne the **P5+1** and Iranian negotiators moved to Vienna, where they carried on 17 days of marathon negotiations, away from UN venues, and most certainly away from the Security Council chamber in New York. In July, the parties formally signed a joint comprehensive agreement that was subsequently endorsed by the full Council.

<sup>29</sup> UN Security Council resolutions 1696 (2006), 1737 (2006) and 1747 (2007).

facilities in Geneva, Switzerland, and in Vienna, Austria. In spring 2015, as self-imposed deadlines approached to reach a deal or to break off negotiations, the parties, hosted by the Swiss government and with the European Union (EU) serving as the interlocutor, agreed to meet in Lausanne. In mid-March the respective foreign ministers and their aides gathered, and on April 2, they announced a framework agreement that would lead, on July 14, to a comprehensive document being signed by all negotiating parties in Vienna.

The P5 +1, also known as the **EU3 +3** (EU members Britain, France and Germany plus the United States, Russia and China), is the latest manifestation and high-water mark in the use of an old diplomatic tool, the contact group (CG); now used extensively by the United Nations and its most powerful members. With the decline of great-power unanimity in the Security Council, “Contact Groups,” “Groups of Friends,” “Core Groups,” “Partners Forums,” “Friends of the Secretary-General,” and other ad hoc collectives of interested states engaged in helping resolve regional or thematic conflicts have attracted new interest as a way to move deliberations forward on thorny issues that require lengthy and delicate attention.

The United Nations defines such informal groups as being “constituted on an ad hoc basis to deal with controversial issues behind the scenes, away from formal deliberative bodies, and (they) include those Member States that may make substantial contributions to the ultimate solution to a given problem.”<sup>30</sup> These groupings have grown both in number and importance in the de-escalation of tensions and the promotion of peaceful solutions to potential threats to global peace. While first used in the late 1970s and reflective of the preventive diplomacy encouraged by former UN secretary-general Boutros Boutros-Ghali, contact groups burgeoned in the wake of the cold war as part of the new comity in the Security Council, and then ironically became a way of circumventing the decline in collegiality in that setting among the permanent members after

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<sup>30</sup> [http://untermportal.un.org/display/Record/UNHQ/group\\_of\\_friends/c269531](http://untermportal.un.org/display/Record/UNHQ/group_of_friends/c269531)

2003. The contact group mechanism has become one of the devices to *avoid* the glare and contention that comes with official Security Council deliberations in the era of a new chilly war.<sup>31</sup> In New York, it became one of several methods for the council to make progress on some of the hardest issues in the new millennium, outside the glare of formal votes, where vetoes would have to be cast.

In addition to the United Nations, regional organizations have used contact groups to address difficult threats to peace and security. Under the Minsk Agreement (2014) to end the fighting in Ukraine, a trilateral contact group (TCP) was established, sponsored by the Organization for Security and Co-operation in Europe (OSCE). It consisted of the OSCE Chairmanship, Russia, and Ukraine. It was bolstered in its work by the formation of the Normandy Group—Russia, Ukraine, France, and Germany—created during a summit meeting at Normandy in June, 2014. The Trilateral Group met whenever there were rising tensions in eastern Ukraine and regularly called for a halt to hostilities and immediate direct talks among the signatories of the Minsk agreement.<sup>32</sup> In May, 2015, the OSCE established four working groups, reporting to the TCP, to deal with the political, economic, security, and humanitarian aspects of the accord, hoping to jumpstart a peace process.<sup>33</sup> Following a direct report from the head of the Trilateral Contact Group to the UN Security Council, the council passed Resolution 2202

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<sup>31</sup> Ironically, it was the U.S. administration of George W. Bush that encouraged the use of contact groups in order to avoid multilateral entanglements, continuing its “coalition of the willing” strategy, first implemented after the terror attacks in September, 2001. Conceived by John Bolton, the administration’s future UN ambassador, as a way to avoid “cumbersome treaty-based bureaucracies,” the State Department launched its Proliferation Security Initiative, a partnership of like-minded states that allowed the United States and its allies to interdict WMD shipments. By 2007 the US strategy had been expanded to other thematic issues, including nuclear terrorism, avian flu, and climate change. Jones, *Cooperating for Peace and Security*, 42.

<sup>32</sup> See, for example, OSCE Press Release. “Swiss Chairperson-in-Office Receives Positive Responses to OSCE Roadmap, Says Implementation in Well Underway.” May 12, 2014. Also, see OSCE Press Release. “Statement by the Trilateral Contact Group.” January 24, 2015.

<sup>33</sup> Stefan Lehne, “Reviving the OSCE: European Security and the Ukraine Crisis,” *Carnegie Europe*, September 22, 2015, 9

endorsing the efforts of the Trilateral Contact Group, particularly its establishment of working groups, and called for local Ukrainian elections within the framework established by the TCP.<sup>34</sup>

For its part the Security Council established contact groups for Guinea-Bissau (2006),<sup>35</sup> Libya (2011), and the Central African Republic (2013). Contact groups have also been used to deal with thematic issues facing the international community generally and the United Nations more specifically. These have included informal groupings of interested states on topics ranging from conflict prevention, to UN reform, sustainable development, and UN mediation capability. The largest and most complex of these thematic groupings to date is the contact group to address piracy off the coast of Somalia. It came into being in January, 2009, and included more than 80 countries plus relevant UN agencies, the European Union, the African Union, NATO, the Arab League, and the International Maritime Organization. A “regime complex”<sup>36</sup> emerged built around a network of stakeholders in the UN Convention on the Law of the Sea and primary maritime international organizations such as the International Maritime Organization (IMO).

### **United Nations Associated Contact Groups in the Era of Growing Great Power Tension**

<b>Country/Theme</b>	<b>Group</b>	<b>Members</b>	<b>Date</b>	<b>Purpose</b>
<i>Regional</i>				
Afghanistan/Pakistan	International Contact Group	More than 50 countries and relevant international organizations	2012	Support regional cooperation, security, elections, and human rights
Bosnia	Contact Group	United Kingdom, France, United States, Russian Federation, Germany, Italy	1993-2006	Conduct negotiations and organize peacemaking efforts in Bosnia and Kosovo
Burundi	Partners Forum	representatives of the Regional Initiative, donor countries, African Union,	2005	Support efforts to consolidate peace and promote development in Burundi

<sup>34</sup> United Nations Press Release (SC/11920). “Deepening Pockets of Violence in Ukraine Can Be ‘Return to Intractable Conflict or Momentary Upsurge’, Top Political Officer Tells Security Council.” June 5, 2015.

<sup>35</sup> Representatives from ECOWAS (Economic Community of West African States) and the Community of Portuguese Language Countries, plus the P5 and African Security Council members, along with delegates from the EU, Mano River Union, World Bank, IMF, and West African Economic and Monetary Union put together an International Contact Group for Guinea-Bissau (ICG-GB).

<sup>36</sup>Mark T. Nance and Michael J. Struett, “Conflict Constructions: Maritime Piracy and Cooperation under Regime Complexes,” in *Maritime Piracy and the Construction of Global Governance*, edited by Michael J. Struett, Jon D. Carlson, and Mark T. Nance (New York: Routledge, 2013), 125.

		United Nations.		
Central African Republic	International Contact Group	African Union, World Bank, African Development Bank, chaired by Republic of the Congo	2013	Provide international oversight of political transition
Georgia/Abkazia	Group of Friends of the Secretary-General	Germany, France, Russia, United Kingdom, United States	2006	Support peace process and efforts of Secretary-General's Special Representative
Guinea-Bissau	International Contact Group	ECOWAS and Community of Portuguese Language Countries, P5, African Security Council members, EU, Mano River Union, World Bank, IMF, West African Economic and monetary Union	2006	Support the Ouagadougou Joint Declaration of 2010 providing for a government of national unity
Haiti	Group of Friends	OAS members, EU, Spain, France, Canada	2010	Support development in Haiti
Iran	P5 +1	United Kingdom, France, United States, Russia, Germany, China	2009	End the threat of an Iranian nuclear weapons program
Kosovo	Group of Friends	Canada, China, Finland, France, Germany Greece, Italy, Japan, Netherlands, Russia, Turkey, the United Kingdom and the United States, EU, OSCE, OIC	1999	Consult on issues facing the UN mission in Kosovo
Lebanon	Core Group	Egypt, Saudi Arabia, European Commission, World Bank, United States, France, United Kingdom, Italy, EU, UN	2005	Work with Lebanese authorities to implement Lebanon's plans for political, economic, and institutional reforms, with the aim of promoting stability in Lebanon and the region as a whole
Libya	International Contact Group, Succeeded Contact Group created in 2011	Algeria, Angola, Chad, China, Egypt, France, Germany, Italy, Libya, Niger, Nigeria, Russia, South Africa, Spain, Sudan, Tunisia, Great Britain, United States, Zimbabwe, African Union, Community of Sahel-Saharan States, EU, League of Arab States, OIC, the UN	2014	Coordinate international efforts to help Libyans establish a durable peace
Myanmar	Group of Friends of the Secretary-General; later "Partnership Group"	Changing: includes member states and international organizations	2007	Support the Secretary-General's Good Offices in Myanmar
Rwanda, International Tribunal	Friends	Norway, Canada, Belgium, France, United Kingdom, United States, Germany, Netherlands	2006	Support the work of the International Tribunal for Rwanda
Somalia	International Contact Group	United States, Britain, Norway, Sweden, Italy, Tanzania, EU, OIC Changing: includes member states and	2006	Promote the completion of the Arta peace process



		international organizations		
Ukraine	1) Trilateral Contact Group 2) Normandy Format 3) Geneva Parties	1) Russia, Ukraine, OSCE 2) Ukraine, France, Germany, Russia 3) Russia, Ukraine, EU, United States	2014	Find a political solution to the crisis in Ukraine in harmony with the principles of the Minsk Agreement
<b><i>Thematic</i></b>				
Conflict Prevention	Ad Hoc Working Group	53 members working with the Security Council and African Union	2011	Address threats of conflict in weak states, particularly in Africa
Alliance of Civilizations	Group of Friends	Council of Europe, League of Arab States, Black Sea Economic Cooperation Organization, OIC, Inter-parliamentary Union	2010	Support the efforts of the Alliance of Civilizations to counter a perceived rise of extremism and polarization
Piracy	Contact Group	Eighty states, African Union, Arab League, EU, International Maritime Organization, NATO, and various departments and agencies of the UN	2009	Deal with the threat of piracy off the Somalian coast
UN mediation capability	Group of Friends of Mediation	41 Member States, seven regional organizations, other international organizations, co-chaired by Finland and Turkey.	2010	Promote the use of mediation in the peaceful settlement of disputes, conflict prevention and resolution, and to generate support for the development of mediation
UN Reform	Group of Friends	Algeria, Australia, Chile, Canada, Japan, Pakistan, Spain, Sweden, New Zealand, Singapore, Kenya, Colombia, Germany, Netherlands	2005	Support multilateral solutions to international problems and conflicts

The diplomatic success of the P5+1 negotiations with Iran in a time of divided great power loyalties and even confrontation—over Ukraine and Syria—on a high-value issue of international politics points to the usefulness of the contact group strategy. Working together outside of the UN Headquarter’s limelight allowed a consensus position to emerge that Iran in the end had to accept. Once an agreement was reached, the Security Council, despite P5 disagreements on other issues, could quickly affirm the agreed comprehensive plan.<sup>37</sup>

## Conclusion

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<sup>37</sup> S/Res/2231. July 20, 2015.

The “contact group” mechanism may well be a Chapter VI procedure that would lend itself well to the resolution, or at least tempering, of the South China Sea dispute. As early as 1996 there were proposals for the formation of an “Eminent Persons Group,” working in cooperation with China and ASEAN to resolve issues in the region.<sup>38</sup> Secretary-General Boutros-Ghali noted in his *Agenda for Peace* that if pacific settlement did not work in cases such as those we see within the nine-dash line, “The fault lies first in the lack of political will of parties to seek a solution to their differences through such means as are suggested in Chapter VI of the Charter.”<sup>39</sup> That may well be the case in the current confrontation where power is so asymmetrically distributed.

Longtime US diplomat and foreign policy insider Chester A. Crocker has written that we are witnessing a return to geopolitics – away from a normative order “based on agreed rules, cooperation and growing consensus” that reached its highwater mark in the first years of this century.<sup>40</sup> Chapter VII of the UN Charter is the bedrock of an international community built on norms and consensus. The Charter’s Chapter VII is where the world’s governments enunciated a collectivist approach to the international preservation of peace and security.

The current shift to Chapter VI diplomatic approaches, as illustrated by the South China Sea Dispute and international efforts to contain Iran’s nuclear capabilities, represents a return to the age-old state-based approach to international politics and dispute resolution. They are at the core of state-based positivist international law, with its roots in the seventeenth century. They are premised on international politics being a state-to-state relationship, eschewing modern concepts like collective security. This trend does not violate the UN Charter. In fact, this approach is

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<sup>38</sup> See Scott Snyder, *The South China Sea Dispute: Prospects for Preventive Diplomacy* (Washington, DC: United States Institute for Peace, Report #18, 1996).

<sup>39</sup> *Agenda for Peace*, para. 34.

<sup>40</sup> Chester A. Crocker, “The Strategic Dilemma of a World Adrift,” *Survival*, Vol. 57, No. 1, February 2015, 10-11.

enshrined in Chapter VI. But it certainly moves us another step away from the collective security that has always been the hope and at the heart of the UN mission.