

Use of Force in International Law and collective Security

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Abstract

Use of force is a politically sensitive and legitimately undetermined point. It is in this manner not astounding that it constitutes a profoundly disputable issue. Amid the Cold War, different basic civil arguments about the legitimate military mediation (Korea, Vietnam, Nicaragua, Palestine, Afghanistan) were predominant. These discussions did not vanish in the 1990s (Yugoslavia) nor in the 2010s (Afghanistan, Iraq, Israel/Lebanon, Russia/Georgia, Libya, Syria, Ukraine, among others). A general appraisal of the various books and articles devoted to this issue uncovers a profound uncertainty. From one viewpoint, nobody truly challenges that the utilization of force is entirely prohibited in contemporary worldwide law. This disallowance is perceived as a central control of the law of countries, and even a lead of peremptory norm (*jus cogens*). To be sure, it appears to be hard to consider any sort of legitimate request without in any event confirming that its subjects can't attack each other. The disallowance of the use of force is likewise sensibly connected to the idea of external sovereignty, pointing both at securing the character and the identity of each state and at protecting people "from the scourge of war" as per the preamble of the UN Charter. As it is the matter of external sovereignty, there are two exceptions to the use of force; Collective Security and Self-defence. This paper focuses on the Collective Security in detail which is a security plan where nations gather together, co-operating for a joint activity as per risk to their economic and territorial sovereignty. The paper also highlights its historical development with time and case studies elaborating the same.

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Introduction

Use of force cannot be used by states under any circumstance. Mankind has already seen the scourge of war and the devastation it brings with itself. Every part of the United Nations is required to settle disputes by tranquil means. Any use of force is to be considered as a threat to international peace.² Wider allocation of economic wealth in developing arms and rediscovering nuclear energy allows us to glance at the glum future that awaits us. It would be sceptical to believe that war is eminent. In the past, states have used devious instruments, diplomatic tactics and force to fulfil their needs. Territorial Sovereignty was violated on theological beliefs, on falsely propagated ideals by leaders³.

Mankind has been foolish enough to disregard the value of resources and more importantly, the value of human lives. The ordeal was to be faced by the soldiers⁴, their families and the people. With the crippling effects of war and insanity, rationality regained prominence. The United Nations Charter was thereafter adopted by most states. It was to spare succeeding ages from the scourge of war, which twice has conveyed untold distress to humankind. The Charter was attracted to guarantee peace and security in the basic enthusiasm of humankind.⁵ Collective Security broadly is a security course of action where a social event of countries guarantees co-agent joint action as indicated by hazard to their monetary or regional sway. This threat may be overcome through approvals or use of military. The possibility of Collective Security is seen as the start of various peace statements in the face current overall relations.

Historical Development

Before 1945, the expression "use of force" was synonymous with the expression "war". It was a period when characteristic legal masterminds trusted that the activity of power for avenging prior barbarities and rebuffing prior wrong was to be suggested as "just war".⁶ Such ideas had philosophical starting points⁷ where such wars were battled keeping in mind the end goal to secure holiness and guarantee the insurance of religious convictions of people.

² General Assembly Declarations on Principles of International Law Concerning Friendly Relations and Co-operations Among States in Accordance with the Charter of the United Nations, G.A. Res. 2625 (XXV) (October 24, 1970).

³ Charles Kruszewski, International Affairs: *Germany's Lebensraum*, 34(5) APSR, 964(1940).

⁴ Wilfred Owen, *The Poems of Wilfred Owen, Anthem, For Doomed Youth* 1999. (The war poet who had suffered an injury as a soldier 1917 and depicted the true horrors of war through his poetry.)

⁵ U.N. Charter Text; art.1, para 4; U.N. Charter art.2, para 3; U.N. Charter art.2 para 4.

⁶ Dunning, William Archibald, *A History Of Political Theories: From Luther To Montesquieu* (2006).

⁷ Rebecca M.M. Wallace & Olga Martin-Ortega, *International Law* 290 (2009).

The feebleness of such religious retribution started to appear and thus was gradually supplanted by the freshly discovered thought of the state. A solid conviction existed that the energy of the sovereign state held no limits. The consequence of such an outrageous conviction was the First World War. After the terrible disappointment of the League of Nations, the Second World War guaranteed peace and there was a critical requirement for a conceivable arrangement. The United Nations Charter was what could be viewed as a practical alternative where autonomous states would progress toward becoming individuals in order to guarantee that such utilization of power as observed before did not occur later on. It is difficult to have a debate free world. It was then chosen that all part states would shun debilitating or utilizing power against some other state⁸ and utilize tranquil intends to settle the question, in this manner ensuring worldwide peace and security.⁹ The state routine with regards to utilization of power has experienced huge change from "simply" utilization of power to the forbidding of war.¹⁰

Prohibition Of Use Of Force

Article 2(4) of the United Nations Charter has a character of jus cogens which covers a wide ambit along these lines precluding risk and use of force.¹¹ To the extent the article is concerned, the lawful administration conceived by the UN Charter is concerned, the preclusion is one gone for prohibiting military and "gunboat tact" in the relation between States.¹² The article, be that as it may, licenses the utilization of power for some uncommon circumstances. The state demonstrates self-preservation as given under Article 51 of the UN Charter, where a capable United Nations Organ takes measures or when the collective measure is attempted by states under the direction of the United Nations. Article 2(4) of the UN Charter contains in itself another provision where 'threat of use of force' has also been prohibited. Apart from a few juristic works¹³, there have been fewer deliberations in the said area. The reason is that much state practice has not taken place where states have acted out upon another state on a mere threat of force. Large-scale armament has often led to the belief that states are preparing to engage in the use of force. Can such situations be construed as threat of use of force? In practice, it is very difficult to distinguish between offensive and

⁸*Supra* note 4 at art. 2.

⁹*Supra* note 4 at art. 2.

¹⁰Oscar Schachter, *The Right of States to use Armed Force*, 82 MICH. L. REV. 1620 (1984).

¹¹Wallace & Ortega, *Supra* note 6 at 291.

¹²Wallace & Ortega, *Supra* note 6 at 294.

¹³See, works by Sadurska, Schachter, Asrat.

defensive preparations¹⁴. States for the most part have been very strategic in summoning Article 2(4) of the Charter. Such risk of power has regularly acted in advantage by accelerating peace.

Use Of Force In International Law

The expression "force" as a rule might be given a wide translation in order to incorporate political, monetary¹⁵, mental intimidation.¹⁶ Be that as it may, the Article 2(4) of the UN Charter has been translated in an exceptionally restricted way to just cover the utilization of "military".¹⁷ By and by, states on occasion participate in exercises which might be considered as unlawful or disregarding the customary international law. Discharging huge amounts of water downstream or occupying a stream along these lines unfavourably influencing the riparian privileges of another state, cross-wilderness removal of populaces¹⁸ are sure cases where states utilize physical power to undermine the privileges of another state. As we locate no definitive global bargain in such manner, we are left to decipher the customary worldwide law and take help from the feeling of famous legal scholars who are of the view that such physical non-military occasions of power require not be secured under to extent of Article 2(4) of the United Nations Charter.¹⁹ In this manner keeping in mind the end goal to influence an attacker to state at risk for cases of utilization of physical or indirect force²⁰, then the demonstration or exclusion with respect to the state must be translated to make it would seem that it was an example of colourable utilization of military-drive in this manner requiring the utilization of the self-protection system as revered in Article 2(4) of the UN Charter

Collective Security

Dinstein summed up the distinction with characteristic pithiness:

“Collective security postulates the institutionalization of the lawful use of force in the international community. Collective security shares with collective self-defence the fundamental premise that recourse to force against aggression can (and perhaps must) be

¹⁴The Charter Of The United Nations: A Commentary, 124 38 (Bruno Simma Et Al. Eds. 2nd Ed. 2010).

¹⁵Ibid.

¹⁶Friendly Relations Declaration, G.A. Res. 26525 (XXV) (24th October, 1970); Simma, supra note 13 at 118.

¹⁷Verdross, A. & Simma, B *Universelles Volkerrecht* 476 (3rd Ed. 1984); Kelsen, *Principles Of International Law* (2nd ed. 1996).

¹⁸Simma, supra note 13, at 118.

¹⁹U.N.C.I.O., Documents 335; Simma, supra note 13 at 119; David Harris, *Cases And Materials On International Law*, 746 (7th ed. 2010).

²⁰Simma, supra note 13 at 118.

made by those who are not the immediate victims. But self-defence, either individual or collective, is exercised at the discretion of a single State or a group of States. Collective security operates on the strength of an authoritative decision made by a central organ of the international community.”²¹

Collective security has been referred to as “a system, regional or global, in which each state in the system accepts that the security of one is the concern of all, and agrees to join in a collective response to threats to, and breaches of, the peace”. In recent years it has come to have a wider meaning. In the 2005 UNGA Report ‘In Larger Freedom’²², the United Nations Secretary-General embraced a comprehensive concept of collective security as suggested by the *High-level Panel on Threats, Challenges and Change* which was convened by him in 2004. In accordance with this concept, any event or process that leads to large-scale death or lessening of life chances undermines States as the basic unit of the international system and poses a threat to international security. So defined, there are six inter-connected clusters of threats with which the world must be concerned. The first include economic and social threats, including poverty, infectious disease, and environmental degradation. The remaining five clusters concern traditional threats to State security, namely inter-State conflict, internal conflict, *weapons of mass destruction, terrorism*, and transnational organized crime.²³

The expression ‘collective security’ is not a term of art in international law. It belongs more to the discipline of international relations, where a ‘collective security system’ may be distinguished from military alliances, which are usually aimed at defence against third States on the one hand, and ‘world government’ which implies a much greater degree of integration on the other.

While the expression ‘collective security’ does not occur in the *United Nations Charter*, it is often used to refer to the system for the maintenance of international peace and security under the UN Charter and the corresponding provisions of regional organizations. Some question whether the UN Charter provides for a true collective security system, but United Nations organs regularly use the term, at least in an aspirational way.²⁴

²¹Dinstein, *War, Aggression and Self-Defence*, 303, para 806. There are two minor changes from the first (1988) edition cited by Bowett’s article: omission of ‘and direct’ from the phrase ‘not the immediate and direct victims’, and use of the term ‘a central organ’ instead of simply ‘an organ’.

²²2005 UNGA Report ‘In Larger Freedom’ at paras 77–78.

²³UN High-Level Panel on Threats, Challenges and Change 25.

²⁴UNGA Res 60/1 ‘2005 World Summit Outcome’ [16 September 2005]; Statement by the President of the Security Council [19 November 2008].

The system of collective security under the UN Charter is reflected principally in the provisions concerning the maintenance of international peace and security, especially those relating to the UN Security Council (*United Nations, Security Council*). These include Art. 2 (4) UN Charter, which contains a general prohibition on the threat or use of force (*Use of Force, Prohibition; Use of Force, Prohibition of Threat*), except in the case of *self-defence*, recognized by Art. 51 UN Charter, or the use of force by or authorized by the UN Security Council under Chapter VII UN Charter.

If it determines, in accordance with Art. 39 UN Charter, the existence of a threat to the peace (*Peace, Threat to*), breach of the peace (*Peace, Breach of*), or act of *aggression*, the UN Security Council may make recommendations, or decide what measures shall be taken by members of the UN to maintain or restore international peace and security. Such measures may be non-forcible, such as *economic sanctions* under Art. 41 UN Charter, or may involve the use of force as provided in Art. 42 UN Charter. In this manner, the UN Charter attempts to realize the first purpose of the UN set forth in Art. 1 (1) UN Charter, namely to maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace. Although despite of all this, Collective Security exists mostly as a goal and not as a general practice.

Collective Security: The Case of Security Council and EUSanctions AgainstIran.

On 23 January 2012, the European Council adopted a set of additional restrictive measures²⁵ against Iran following intense negotiations between the EU Member States and their international partners, mainly the United States.²⁶ The Council banned imports of Iranian crude oil and petroleum products. The prohibition concerns import, purchase and transport of such products as well as related finance and insurance. These restrictions are in addition to the sanctions imposed by the UN Security Council in 2006.

²⁵“Restrictive measures” is the official term used by the EU institutions to designate “sanctions”.

²⁶See e.g. “EU discussing plan to start Iran oil ban on July 1”, Reuters, 17 January 2012; „EU states agree in principle to sanction Iran central bank”, Reuters, 18 January 2012.

UN Security Council has adopted six resolutions on the Iranian nuclear program, including four resolutions containing sanctions against Iran. These resolutions were a reaction to the Iran nuclear program and proliferation risk involved. International Atomic Energy Agency (IAEA), after several years of investigations, was unable to provide credible assurance about the absence of undeclared nuclear material and activities in Iran. While its continuous verification to non-diversion of declared nuclear material at the nuclear facilities declared by Iran under its Safeguards Agreement, it expressed concerns regarding possible military dimensions to Iran's nuclear program.²⁷

Resolution 1696 (2006) was the first resolution adopted against the Iranian Nuclear crises under Article 40 of Chapter VII of the UN Charter, It provided for the mandatory suspension by Iran 's all enrichment-related and reprocessing activities, including research and development, to be verified by the IAEA.

But Iran did not comply with the requirements set out in this resolution even after half a year. Later the Security Council adopted Resolution 1737 (2006) on 23 December 2006 acting under Article 41 of Chapter VII of the UN Charter. The resolution imposed an embargo , i.e. the ban on export to and import from Iran of certain items and technologies relating to nuclear weapons and other technologies which can be used in both conventional and nuclear military applications (dual-use technologies), but also to missiles and related technologies insofar as they might be used to develop nuclear weapons delivery systems. The resolution also imposed financial sanctions including freezing of funds and other financial assets. The assets of the person who were engaged directly with providing support for Iran's proliferation-sensitive nuclear activities or the development of nuclear activities or nuclear weapon delivery system or of persons or entities acting on their behalf or at their direction, or entities owned or controlled by them, including through illicit means,²⁸ were also frozen by UN Sanctions Committee and the Security Council. This resolution has subsequently been extended, amended and modified by subsequent resolutions 1747 (2006) and 1803 (2008).

A fourth sanction resolution was adopted on 9 June 2010.²⁹ The resolution was aimed at strengthening and widening existing measures and to prevent Iran from developing a nuclear weapon capability and influence Iranian government to comply with the requirements of

²⁷See D H Joyner, *Iran's Nuclear Program and the Legal Mandate of the IAEA*, JURIST-Forum, 9 November 2011, available at <http://jurist.org/forum/2011/11/dan-joyner-iaea-report.php>.

²⁸SC Res. 1737 (2006)

²⁹SC Res. 1929 (2010), 9 June 2010.

Security Council and to regain the confidence of the international community that the purpose of nuclear activities is particularly civilian in nature.

If adopted in accordance with the UN Charter a sanction decided by the security council becomes binding on all UN member states.³⁰ The Sanctions taken by the EU were taken by the Council of the European Union in the framework of the Common Foreign and Security Policy (CFSP), as well as through Council regulations adopted on the basis of Articles 60 and 301 EC Treaty.³¹

Though the legality of these sanctions have been questioned by many scholars. It seems that the Security Council can be involved in these cases in such a way as to achieve a peaceful settlement of the dispute (in the sense of Chapter VI of the Charter). Though this move to impose on Iran mandatory suspension of its main nuclear activities has been seen by some as difficult to reconcile with the wording of Article 40 of the UN Charter (pursuant to which suspension was purportedly made mandatory) but has been done as a measure of collective security.³²

United States Invasion of Iraq: Hegemonic Control of Middle East Under The Garb of Collective Security.

Europe witnessed huge casualties and devastation during World war I and World war II. The destruction brought into focus the need for collective security, as a major mechanism in international relations made up of state actors. It heightened the interest among states on this project was not only the fear of the proliferation of weapons of mass destruction but, the emergence of volatile leaders, whose nationalistic zeal may well lead to an inescapable global cataclysm as evident in Adolf Hitler's Germany in the period between 1938 till 1943.³³

³⁰UN Charter, Art. 25. On the (controversial) issue of interpretation of Article 25, see e.g. A Tzanakopoulos, *Disobeying the Security Council* (Oxford: Oxford University Press, 2011) 58.

³¹See PMariani, *The Implementation of UN Security Council Resolutions Imposing Economic Sanctions in the EU/EC Legal System: Interpillar Issues and Judicial Review*, Bocconi Legal Studies Research Paper No. 1354568 (2009); G Zagel, *Economic Sanctions of the European Community: A Commentary on Art. 301 TEC*, available at SSRN: <http://ssrn.com/abstract=862024>.

³² *Journal of Conflict and Security Law*, Volume 17, Issue 3, 1 December 2012, Pages 301–336, <https://doi.org/10.1093/jcsl/krs020>.

³³United Nations Reform and the New Collective Security, Peter G. Danchin, *University of Maryland Francis King Carey School of Law* Horst Fischer.

At the international level, collective security has become synonymous with the maintenance of global peace and security. It is aimed at securing the territorial integrity and to settle the inter-state dispute of the member nations. The United States deployment of troops in Iraq is justified on the principle stated above. When in 1991, the world saw the Iraqi aggression against Kuwait, countries largely sponsored and led by United States deployed troops into the Middle East to secure territorial integrity. This is what is known as the first Gulf War.

It would not be wrong to state that, today the mechanism of international security is under the control of the United States. It was evident from the act that the United States sent its troops into the Gulf even before tabling the Kuwait case for deliberation by the Security Council and the declaration of war was done by the President of the United States instead of the Secretary-General of the United Nations. The Security Council's Resolution 660, 661, 664 and 665 of 1991 were just to legalise the American act and give it an international backing.³⁴

Moreover, after 9/11 attack the United States declared a war against terrorism and invaded Iraq, to overthrow Saddam Hussein's government, which ultimately led to his execution, and the control of the Iraqi oil economy by the United States. United States to gain control of the Persian Gulf and to secure her interest justified the destruction of the Iraqi war machine through collective security in the disguise of securing Kuwait's territorial integrity³⁵ and international peace.

The common interest of states in security issues that have far-reaching global consequences is a predicate of collective security. The collective interests lay on the principle of territorial integrity and the settlement of inter-state dispute governed by an international body in which all the members are duly represented. But belittling these principles of United Nations, United States used this mechanism of collective security as a means to achieve its own interest and secure a hegemony crises. So long that the American quasi-monopolistic effect on this security mechanism in the international system remains constant, the concept of collective security and the way in which it is evoked will reflect the value, preferences, and standards set by the United States as a hegemon in our Uni-polar world.³⁶

³⁴Agi, S.P.I "The Iraqi Problem and the future as World Peace. Lessons from Germany" IJSSPP, Vol. 4, No. 1, 2001.

³⁵Holsti, K. J. (1995) International Politics: A Framework for Analysis. Englewood cliffs, New Jersey. Prentice Hall Inc.

³⁶ Supra n. 32.

Conclusion

Collective security is referred as an institutionalized mechanism for the maintenance of international peace and security has reduced tensions among states in the international community. It is aimed at preventing conflicts from becoming a major threat. Further, Article I of the UN Charter states how effective collective measures can be invoked for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace

But the problem with the UN collective security system is that the states are reluctant in subordinating their own sovereign interest to collective action. The nations have generally viewed a conflict in terms of their own national interest and then have decided to support or oppose UN action.³⁷ Collective Security, therefore, exists mostly as a goal, not as a general practice.

Another problem which led to the failure of the United Nations Collective Security system is the overdependence of the Security Council on the member-governments for assistance, especially the United States, Britain, Germany, Japan, etc. This overdependence has made these nations to act unilaterally in conflict situations without the approval of the Security Council of the United Nations. In some situations, they flout the orders of the Security Council not to act unilaterally. The Iraq crisis and the role of the coalition forces, which was melded by the United States and Britain is a clear example.

But these nations instead of catering to the global peace and security through stability in Iraq and the Middle East has instead dominated the region and amassed their vast economic, diplomatic and military resources³⁸ for their own interest. They have hegemonized Iraq to an unprecedented condominium regime serving their economic interest under Iraq Reconstruction Programme.

Since collective security system has always remained an idealistic concept which has never been defined by treaty and, therefore, can be hijacked by the powerful nations in the lopsided United Nations Security Council, the UN Collective Security system³⁹ need to internalise an confidence-building measure so that it can establish the required solidarity and Cooperation

³⁷ Supra n. 37.

³⁸ Supra n. 37.

³⁹ Ibid.

from its member that is an important requisite for achieving International peace and security. Its reform can include equal representation from all geographical region in the security council which has been a demand of the Asian Countries for a long time.