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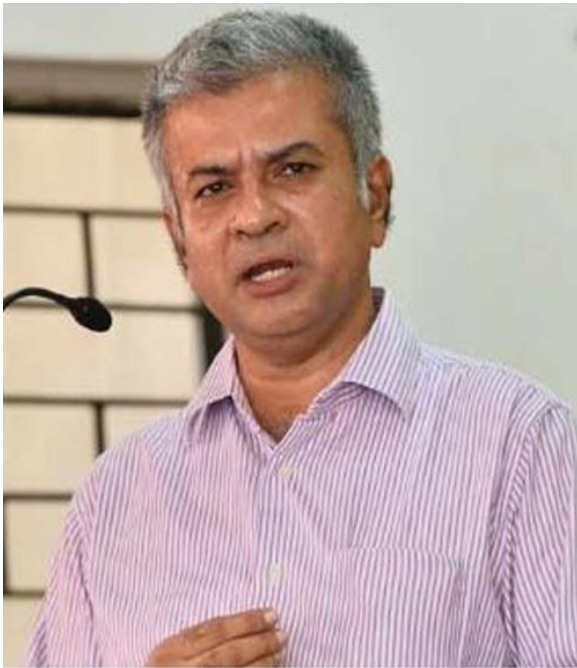
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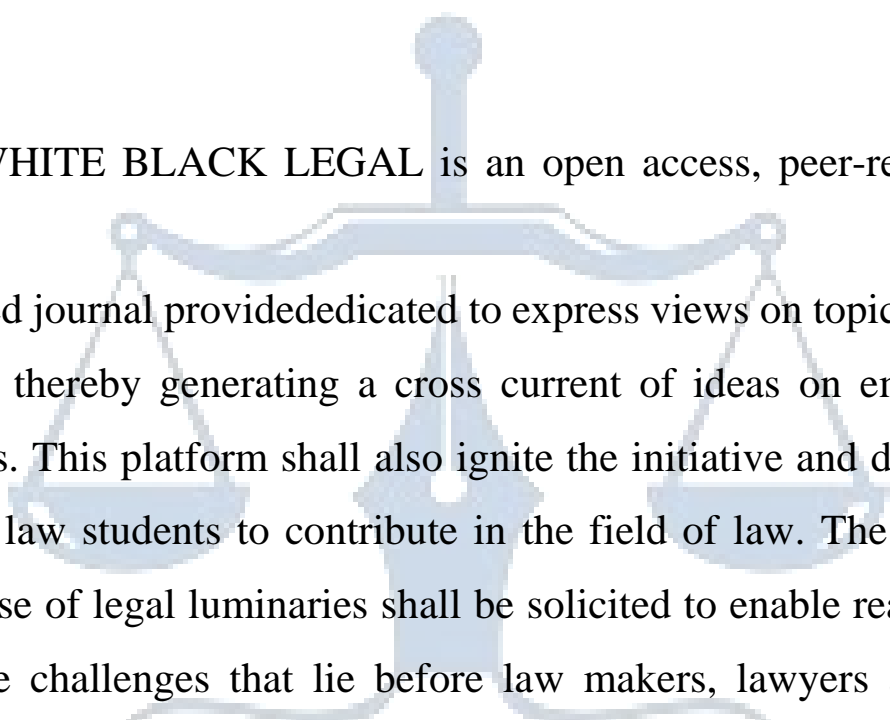


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ABOUT US



WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

CONCEPT OF COLLECTIVE SECURITY **UNDER UN CHARTER**

AUTHORED BY - VAIBHAV SINGH & SURYANSH TIWARI

RESEARCH METHODOLOGY

Research Questions

- What are the powers of Security Council to authorize Collective Security?
- How the Security Council is bound by human rights in its sanctions practice?
- What is the role of collective security in ensuring peace and security in the world?

Research Objectives

- To analyze the establishment of collective security in the Charter within the functional and judicial parameters of the UN.
- To ascertain that with the exception of economic sanctions authorized under Article 41, the system of collective security as envisioned in Chapter VII of the UN Charter is dormant.
- To determine how the concept of Collective Security has panned out so far.

Research Methodology

The author has adopted doctrinal research methodology in this project. To collect the information and data for the purpose of reaching to a conclusion, secondary sources of research such as online articles and judgements have been referred to.

INTRODUCTION

Collective Security can be understood as a security arrangement where a group of countries pledge co-operative joint action in the eyes of threat to their economic or territorial sovereignty. With shrinking global boundaries and the concept of a global village, the states have become subjects of one global body. This global body is to act as a superior force to govern relations between the individual units. It is this idea that led to the formation of international bodies such as the League of Nations and the United Nations (UN) were formed. Inter alia other concepts, Collective Security has formed the foundation of international bodies of these bodies. A

collective security system guarantees the security of each member state against any war or aggression, which may be committed, by any state against any other state. It is like an insurance system in which all the nations are bound to protect the victim of an aggression or war by neutralizing the aggression or war against the victim. Collective Security stands for a universal system in which all states of the world, without any discrimination, undertake to meet any aggression anywhere in the system, and against any aggressor. The underlying principle of collective security has been 'One for All and All for One'. Aggression or war against any one nation is a war against all the nations. Therefore, all the nations are to act collectively against every War/Aggression. As such, Collective Security constitutes a modern device of crisis management. All the members of community of nations are expected to act and save the humankind from the scourge of war and aggression and to use the collective security system for this purpose. Collective Security is different from a collective defence system, which is an alliance involving a regional defence system. A collective defence arrangement is made by a group of nations who have a common perception of threat to their security from a common enemy.

The UN Charter (Charter)¹ is a meticulously drafted short treaty of less than 9,000 words and is the foundational treaty of the United Nations organization. The Charter includes a system of collective security that is designed to meet an international crisis resulting from war or aggression or a threat of war or aggression in any part of the international system. The UN collective security system is based on the complementary nature of two fundamental structural criteria. First, "In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security ...".² Second, "All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including the right to passage, necessary for the purpose of maintaining international peace and security".³ After sixty-five years neither of these fundamental ideas has been implemented in full.

¹ Adopted 26 June 1945 and entered into force 24 October 1945. United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI.

² Ibid. See Article 24.

³ Ibid. See Article 43.

THE UNITED NATIONS COLLECTIVE SECURITY SYSTEM AND THE SECURITY COUNCIL

The Charter regards the preservation of international peace and security as its most major objective. In the Charter, the phrase International Peace and Security has been used 32 times. In its very first article, while stating the purposes of the United Nations, it makes the preservation of international peace and security as the first priority. It lays down a collective security system for this purpose. Article 2 (4) of the Charter states that All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.⁴ Thus, the Security Council has the primary responsibility for the maintenance of international peace and security. Furthermore, Article 2 (7) of the Charter adds that, this principle shall not prejudice the application of enforcement measures under Charter VII.⁵

To this end, a Collective Security system has been laid down in Chapter VII of the Charter and its title reads: Action with respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression.⁶ It contains 13 Articles, from Article 39 to 51 that together provide for a collective system for preserving international peace and security. Article 39 makes it the responsibility of the Security Council to determine the existence of any threat to the peace, breach of peace, or act of aggression and to decide about measures that are to be taken for managing crisis for restoring international peace and security. Article 40 lays down that as the first step towards preventing the aggravation of the situation involving a threat to or breach of international peace and security, the Security Council can take provisional measures like cease fire, and call upon the concerned parties to comply with these. Article 41 refers to the enforcement actions, other than the collective military action that the Security Council can recommend to the members of the United Nations for compelling the concerned parties to end the violation of peace and security. It can recommend sanctions against the state involved in aggression. Article 42 empowers the Security Council to take military action for securing or maintaining international peace and security. Art. 43 makes it the responsibility of all the members of the United Nations to contribute their support, efforts, resources and forces for raising the Collective Security force that may have to be raised when the Security Council decides to undertake action under Article

⁴ Ibid. See Article 2(4).

⁵ Ibid. See Article 2(7).

⁶ bid. See Articles 39-51.

The next four Articles of the Charter⁷ lay down the procedure for raising, maintaining and using the UN Peace Keeping Force for Collective Security force. Article 48 states that the action required to carry out the decision of the Security Council for the maintenance of international peace and security shall be taken by all the members of the United Nations, or by some of them, as the Security Council may determine. Whilst Article 49 asserts that the members of the United Nations shall join in affording mutual assistance in-carrying out measures decided upon by the Security Council. Article 50 further lays down the ways in which non-member states can adjust their policies and actions towards the decision that may be taken up by the Security Council under Articles 41 and 42. However, Article 51 accepts the right of the states to individual or collective self-defense if an armed attack occurs against a member, until the Security Council has taken the measures necessary to maintain international peace and security. With all these provisions, Chapter VII of the Charter lays down the Collective Security system for preservation of international peace and security.

The Security Council has been assigned the responsibility and power to initiate collective security action for meeting any threat to international peace by a war or aggression. It is a political body; entitled to adopt measures having legal consequences. The competence granted to the Security Council by the Charter is a normative one. Under Chapter VII it can take enforcement action to maintain or restore international peace and security. Such measures range from economic sanctions to military interventions in case the Security Council has previously established the existence of any threat to the peace, breach of the peace or act of aggression.⁸ After a decision under Article 39 stating that a situation constitutes any threat to, or breach of the peace, the Security Council can order states to undertake provisional measures under Article 40, or take enforcement actions normally referred to as sanctions under Article 41 and finally, it can take military action under Article 42, against the entity responsible for the threat or breach.⁹ The Security Council seldom states explicitly on which article it is basing its resolution, it usually only states that it is acting under Chapter VII of the Charter.¹⁰ The only

⁷ Ibid. See Article 44-47.

⁸ Ibid. See Article 39.

⁹ I. Osterdahl, *Threat to the Peace*, 1998; J.A. Frowein, "Article 41 and Article 42", in: B. Simma (ed.), *The Charter of the United Nations: A Commentary*, 1995, 621 et seq.

¹⁰ S/RES/824 (1993) of 6 May 1993; S/RES/841 (1993) of 16 June 1993; S/RES/917 (1994) of 6 May 1994; S/RES/1160 (1998) of 31 March 1998.

recourse the Security Council has for the enforcement of peace and security is military action led by coalitions of member states that are not under the United Nations purview. The UN has also evolved a customary practice under Chapter VII of the Charter whereby the Security Council may authorize States to use armed force in order to give effect to its decisions under Article 39 for example, the eviction of Iraq from Kuwait by a Security Council authorized multinational force in 1991. Thus, the general concept of international peace and security can cover all kinds of situations.¹¹

THE UNITED NATIONS COLLECTIVE SECURITY SYSTEM VIS-À-VIS COLLECTIVE DEFENCE

The concept of Collective Security System has been gaining a new credibility in contemporary international relations. Preservation of international peace and security as well as securing of development through cooperation at all levels of international relations can be described as the two major objectives of our generation. Collective Security of peace and collective efforts for development stand accepted as the two means for attaining these objectives. The notion of Collective Security forwarded by scholars are deemed to apply global security interests in a broad manner, to avoid grouping powers into opposing camps, and refusing to draw dividing lines that would leave anyone out.

Since 1945, the Collective Security system has been tried in a number of cases. It was used for the first time for meeting the Korean Crisis of 1950. However, during the period 1956-90 the Collective Security system under the United Nations failed to work successfully in securing international peace and security because of several factors. The cold war between the two super powers, the bipolarity in international relations, the inability of the General Assembly to act under the Uniting for Peace Resolution, and the changed nature of aggression and war, all combined to prevent the operationalization of the Collective Security system during this period. The Lebanon crisis, the Iran-Iraq War and several other local wars kept on going and the UN failed to act. During the Cold War various treaties were formalized as a part of bloc formations in case the UN too failed. Under these arrangements' participant states committed support in defence of a member state if it was attacked by another state outside the organization. Such treaties formed the base of a newer concept, which seemed similar to Collective Security but was termed as Collective Self-Defence. On a comparative analysis Collective Security is

¹¹ CTY Appeals Chamber Tadić Decision 1995 IT-94-1-AR72, para. 28.

differentiated from Collective Self- Defence by the pledge that the defence would be against a threat from an external country. The most relevant example of Collective Self-Defence is Article V of the NATO treaty.¹² This article was invoked after the 9-11 attacks in the US for other NATO members to provide assistance to the US war on Terror in Afghanistan. The only advantage that may be seen in favour of Collective Self-Defence in the modern day is the fact that it also takes the presence of non-state actors into account. Thus, the countries can take action against terrorists even in the backdrop of failing UN action.

However, during the last decade of the 20th century, the Collective Security System began acting as a popular and useful device for the preservation of international peace and security. It was successfully operationalized to meet the Iraqi aggression and occupation of Kuwait. To meet the violations of international peace and security resulting from the Iraqi act of aggression, the Security Council first called upon Iraq to vacate aggression, and when it failed to comply with, enforced economic sanctions against Iraq. The Security Council later on decided to take military action, i.e. Collective Security action against Iraq. A UN peacekeeping force was raised under the US leadership and to which 42 countries contributed their armed contingents. On 17th January 1991, a Collective Security war against Iraq was initiated and within few days Iraq's resistance was neutralized and liberation of Kuwait was secured. Collective Security war was successfully made to secure international peace and security and to negate Iraq's aggression.

In spite of the enormous strides made by collective security in ensuring world peace and security, many see Collective Self-Defence as an alternative to Collective Security. This is because in the modern day with terrorism rising as a challenge in the face of Collective Security principles, the persistent inability of the UN to provide and maintain a functioning system can reasonably be viewed as a massive, radical multilateral failure of consideration. To add to the wounds of the UN if some members choose to suspend or even terminate their performance of the restrictions encapsulated in Article 51, the UN would be reduced to a mere vegetable like presence. However, it may be too premature to call Collective Defence as an alternative to the concept of Collective Security as it also involves risky commitments. Member states can become embroiled in costly wars in which neither the direct victim nor the aggressor benefits. The policy of non-interference of the UN and its sticking to just peacekeeping missions for

¹² North Atlantic Treaty, Apr. 4, 1949, 63 Stat. 2241, 34 U.N.T.S. 243.

security on the other hand has ensured a better result with budgets almost a 10th of what the NATO spent in Iraq alone.¹³

During the last two decades, UN economic sanctions have come under harsh criticism. The experience of the sanctions imposed on Iraq by the UN Security Council in the 1990s, and still in place, shows the ethical and legal concerns of sanctions. The humanitarian problems caused by economic sanctions against Iraq illustrate their adverse impact on the population.¹⁴ For a long time, different UN organs and humanitarian agencies have called for an end to many of the sanctions in order to facilitate a greater flow of food and medicines.¹⁵ The UN General Assembly's debate emphasized the need to lift the sanctions in order to end human suffering in Iraq,¹⁶ although the international community must ensure compliance with the sanctions imposed by the Security Council as measures to restore international peace and security. Many lessons have been learned from the economic sanctions against Iraq and the implementation of the oil for food program¹⁷ as the sanctions have affected the civilian population more than the Iraqi Government. Indeed, the Government of Iraq pointed to sanctions as the primary cause of suffering in Iraq, while others blamed the authorities in Baghdad. A reliable assessment right at the beginning could have identified the processes that affected humanitarian conditions, and could therefore have assisted in mitigating the unintended negative consequences of the sanctions. In most of these cases sanctions have unintentionally contributed to the emergence of black markets, creating huge profit-making opportunities for ruling elites and their collaborators.¹⁸

Worst of all, economic sanctions tend to hit the wrong targets; instead of the regime, the population at large and particularly the weakest in society become the true victims. Faced with these situations, scholars have condemned economic sanctions as being inhumane and destructive diplomatic measures that jeopardize human rights in target countries.¹⁹ The Report

¹³ Anthony Cordesman, 'US Military Spending: The Cost of War'. Available at the Centre for strategic and International Studies website: <https://www.csis.org/analysis/us-military-spending-cost-wars>.

¹⁴ S. Willett, *The Gulf Crisis: Economic Implications*, 1990; P. Clawson, *How Has Saddam Survived?*, *Economic Sanctions: 1990-93*, 1993.

¹⁵ D. Jehl, "UN Official Calls for an End of Sanctions against Iraq", *International Herald Tribune*, 21 September 1999, 10.

¹⁶ UN Press Release GA/9618 of 30 September 1999.

¹⁷ E. Hoskins, "The Humanitarian Impacts of Economic Sanctions and War in Iraq", in: Th. Weiss (ed.), *Political Gain and Civilian Pain*, 1997, 92 et seq. (106-108).

¹⁸ 2005 World Summit Outcome, A/RES/60/1 of 16 September 2005, para 50.

¹⁹ L. Damrosch, "The Civilian Impact of Economic Sanctions", in: L. Damrosch (ed.), *Enforcing Restraint: Collective Intervention in Internal Conflicts*, 1993, 279.

of the Secretary-General, *In Larger Freedom: Towards Security, Development, and Human Rights for All*, outlines that “the task is not to find alternatives to the Security Council as a source of authority but to make it work better²⁰ within the competences of Chapter VII. The language of Chapter VII is inherently broad enough, and has been interpreted broadly enough, to allow the Security Council to approve any chosen coercive action, including military action, against a state when it deems this “necessary to maintain or restore international peace and security.”²¹ Some critics hold the view the Collective Security system is a dangerous system as it can transform a local war into a global war involving all the nations for example, the situation in Syria which is gradually metamorphosing as a war between on one side, the Syrian government and its foreign allies, and on the other side, the rebels and their foreign allies.

CONCLUSION

Despite the mandate in the UN Charter and prior to it, the League of Nations, the very legal framework to ensure Collective Security, in its aims as an integrated whole has failed because smaller group of countries with singular political aims, such as NATO, performing similar functions has undermined global consensus and overall security. This has resulted in Kelsen’s view of Collective Security as a legal aspect of a political balance of power, to be segregated at the hands of the few superpowers. In conclusion, with no other alternative, it seems that theoretically, self-defense may be the new security. Security matters. The acceptance of the security, conceptualized in the manner described above, can become the basis for a quieter and harmonic future. Thus, developed with four basic security parts - individual security, collective security, collective defence and promotion of stability - the system of cooperative security asks from the democratic countries which are its members, for a will for closer mutual cooperation, such as interventions outside of their territories, which can affect their common peace and security. As security communities, NATO and the EU have developed dense networks of multilateral institutions which promote the denationalization of security policy and serve the needs of entire regions. It is by no accident that NATO and the EU promote liberal democracy, and they do it because they partly believe that the security is greater with the cooperation of the countries which have adopted liberal democracy as a form of government.

²⁰ Doc. A/59/2005 of 21 March 2005, para. 126.

²¹ Article 42 UN Charter.

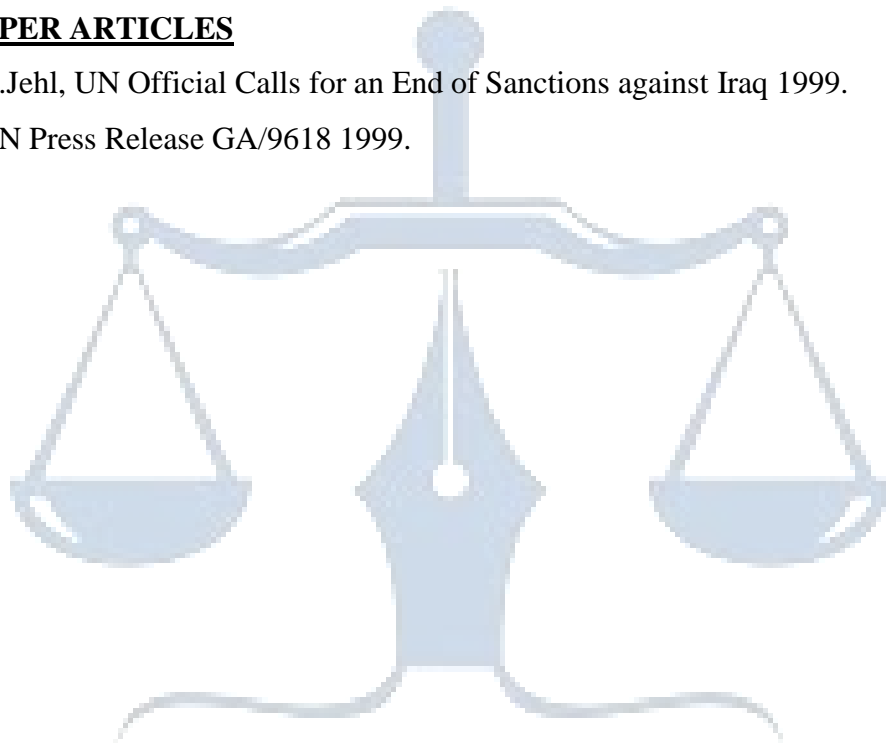
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