

# THE UNITED NATIONS AND COLLECTIVE SECURITY: SOME NORMATIVE AND EMPIRICAL CONSIDERATIONS

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Since the end of the Second World War and the establishment of the United Nations, more than fifty bilateral and collective defense treaties have come into effect. Most of them have among their parties at least one of the superpowers, either the United States or Russia. This development of leviathan blocs of international power has changed the fundamental nature of the United Nations, which was conceived to be the sole body of collective security. Trygve Lie once said: "If people generally began to accept alliances as substitute for a genuine, world-wide collective security, then the hope of a lasting peace would be greatly endangered."<sup>1</sup> However, the founders of the United Nations, aware of the potential for the formation of collective defense organizations, provided for them in the framework of the United Nations. It was hoped that these organizations would develop a normative potential to aid in the creation and preservation of a stable international order without hindering progress towards systemic harmony.

Collective-security organizations are a relatively recent development within the international community. Dexter Perkins points out that they were an outgrowth of the optimism of the nineteenth century, a time in which men thought that peace could be secured through law.<sup>2</sup> For the preceding two hundred and fifty years a system of balance of power, an outgrowth of the Treaty of Westphalia<sup>3</sup> which established a balance of power between Protestant and Catholic states,<sup>4</sup> had been dominant in the international system. In 1919 the family of nations decided to try a new approach to regulating their interactions; they undertook to end the

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<sup>1</sup>Quoted in *Hearings on the North Atlantic Treaty Before the Senate Comm. on Foreign Relations*, 81st Cong., 1st Sess., pt. 3, at 892 (1949).

<sup>2</sup>D. PERKINS, *AMERICA'S QUEST FOR PEACE* 49-50 (1962).

<sup>3</sup>The Peace of Westphalia consisted of two treaties: the Treaty of Peace Between France and the Empire, Oct. 24, 1648, 1 CONSOLIDATED TREATY SERIES 271 (C. Parry ed. 1969) and the Treaty of Peace Between Sweden and the Roman Empire, Oct. 14, 1648, 1 CONSOLIDATED TREATY SERIES 119 (C. Parry ed. 1969). The former treaty is known as the Treaty of Westphalia (or the Treaty of Munster) and the latter, as the Treaty of Osnabruck.

<sup>4</sup>Gross, *The Peace of Westphalia, 1648-1948*, in *INTERNATIONAL LAW IN THE TWENTIETH CENTURY* 25, 27 (L. Gross ed. 1969). The Gross article provides an excellent history of the continued influence of the Peace of Westphalia.

Machiavellian balance-of-power system which had predominated for centuries and supplant it with the Wilsonian assumptions of organized international relations. The formation of the League of Nations signaled the first time that the majority of nations of the world had agreed to settle their disputes collectively and without resort to force. A system of general collective security, it was thought, would provide the stability that the fluid system of shifting alliances had been unable to accomplish. Some years later, the president of the United Nations General Assembly, Dr. Herbert V. Evatt, stated that the League of Nations failed to prevent the Second World War solely because some of its member governments preferred to resume the great game of power politics and let down the League.<sup>5</sup>

In 1945 the founders of the United Nations attempted to establish and redefine a universal approach to international security. They envisioned the United Nations as the sole collective-security organization. Further, they assumed that international cooperation would be of sufficient measure for the organization to provide security for the international community as a whole.<sup>6</sup> Pragmatically, however, they recognized that certain groups of nations (*e.g.*, Arab League<sup>7</sup> and Act of Chapultepec<sup>8</sup>) either had or would sometime have regional agreements and that these organizations should therefore be provided for in the United Nations Charter so that they could function as part of the general collective-security system.<sup>9</sup> Additionally, the founders realized that mechanisms of response to breaches of the peace within the United Nations would perhaps, unavoidably, function slowly; thus they provided that nations or groups of nations would have the right of individual and collective self-defense.<sup>10</sup>

It is the embodiment of these considerations<sup>11</sup> in the Charter of the United Nations that has been used in support of the formation of collective-defense organizations. This discussion will include an examination of some of the normative questions which arise from conflict between general collective security, as provided for by the United Na-

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<sup>5</sup>N.Y. Times, Apr. 6, 1949, at 6, col. 1.

<sup>6</sup>See U.N. CHARTER art. 1.

<sup>7</sup>Pact of the League of Arab States, March 22, 1949, 70 U.N.T.S. 237.

<sup>8</sup>Agreement on Reciprocal Assistance and Solidarity, Mar. 8, 1945, in INTER-AMERICAN CONFERENCE ON PROBLEMS OF WAR AND PEACE, MEXICO CITY, FEBRUARY 21-MARCH 8, 1945, at 30-33 (Pan American Union, Congress and Conference Series No. 47, 1945), 60 Stat. 1831, T.I.A.S. No. 1543.

<sup>9</sup>The relationship between regional organizations and the United Nations is described in U.N. CHARTER arts. 52-54.

<sup>10</sup>See U.N. CHARTER art. 51.

<sup>11</sup>U.N. CHARTER art. 1, para. 1 and arts. 51-54.

tions Charter, and collective-defense organizations. The particular questions that will be considered are: (1) How does the Charter affect the right of collective defense? (2) What are some of the juridical bases of the right of collective defense? (3) Are collective-defense pacts consistent with the United Nations Charter?

Several provisions of the United Nations Charter have already been mentioned; it may be well at this point to discuss how they have been interpreted and, thus, how they affect the right of collective self-defense. First, article 1(1) of the Charter states that one of the purposes of the United Nations is "to take effective collective measures for the prevention and removal of threats to the peace and for the suppression of acts of aggression . . . ." It would seem that the location of this provision under article 1, which specifically defines the purposes of the United Nations, indicates that there was no intention to define collective-defense organizations as outside the United Nations.

Second, article 51 states that "[n]othing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs . . . ." By the exclusion of article 51 from chapter VIII,<sup>12</sup> which deals with regional arrangements, and by the limitation of the right to instances of armed attack, it would appear that the article was intended to include ad hoc agreements or actions and not preestablished collective self-defense organizations.

Finally, chapter VIII<sup>13</sup> of the Charter provides specifically for regional arrangements for the maintenance of international peace and security, provided that such arrangements and their activities are consistent with the purposes and principles of the United Nations.<sup>14</sup> It is also provided in chapter VIII that U.N. members that enter into such arrangements shall make every effort to achieve pacific settlement of local disputes<sup>15</sup> and that no enforcement action should be taken without authorization from the Security Council.<sup>16</sup> These regional organizations, fundamentally nonmilitary, but perhaps political, are potentially valuable extensions of the United Nations to deal effectively and rapidly with local disputes and thereby to increase the efficiency of the Security Council in its role as peacekeeper.

The right of a nation to defend itself against external aggression is a long-established principle of international law which is incorporated in

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<sup>12</sup>U.N. CHARTER arts. 52-54.

<sup>13</sup>*Id.*

<sup>14</sup>U.N. CHARTER art. 52, para. 1.

<sup>15</sup>U.N. CHARTER art. 52, para. 2.

<sup>16</sup>U.N. CHARTER art. 53.

the Charter<sup>17</sup> of the United Nations. But it was not until the early nineteenth century that any real attempt was made to define the limits on the right of self-defense. The *Caroline* Doctrine<sup>18</sup> established as a condition for the application of the right that there be an instant and overwhelming necessity for self-defense, leaving no choice of means and no moment for deliberation.<sup>19</sup> Article 51 of the Charter further limited the right of self-defense by restricting the authority of member nations to act, to situations where "an armed attack occurs"; this provision would appear to preclude preemptive strikes, which might otherwise be lawful under the *Caroline* Doctrine.

The right of a nation to defend itself may be extended to multinational situations. In a hypothetical alliance-free world, collective defense is an option that a state may exercise in the event of armed attack upon another state. In this setting, the option to come to the aid of another state is open until exercised, and decisions can be made on the merits of an individual case. However, with the formation of collective-defense organizations, a nation theoretically elects in advance how it will act, without reference to the particular situation at hand. The obligation is usually framed contractually by language such as, "an attack on one is an attack on all."<sup>20</sup> On a normative level, it seems difficult to understand how a contractual agreement between state *P* (protector) and state *D* (defender) to treat an attack by state *A* (attacker) on state *D* as an assault on state *P* is necessarily substantive; but such treaties do exist, and attempts have been made to have them appear consistent with the United Nations Charter. Declarations of faith in the general collective security by the United Nations, and particularly by article 51 and chapter VIII, are used to justify regional organizations and make their establishment, by implication, consistent with the inherent right of individual or collective self-defense.

Nevertheless, no inherent right can generate from a hypothetical con-

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<sup>17</sup>See, e.g., U.N. CHARTER art. 51.

<sup>18</sup>For a discussion of the episode during which the *Caroline*, an American vessel, was destroyed while in an American port during the Canadian insurrection of 1837 and the subsequent exchange of notes between the American and British governments, see 2 J. MOORE, A DIGEST OF INTERNATIONAL LAW 409-14 (1906).

<sup>19</sup>See Note from Secretary of State Webster to Lord Ashburton, British plenipotentiary, Aug. 6, 1842, quoted in part, 2 J. MOORE, *supra* note 18, at 412.

<sup>20</sup>See, e.g., Treaty of Friendship Co-operation and Mutual Assistance Between Albania, Bulgaria, Hungary, German Democratic Republic, Poland, Romania, Union of Soviet Socialist Republics and Czechoslovakia (Warsaw Pact), May 14, 1955, art. 4, 219 U.N.T.S. 3; Security Treaty Between Australia, New Zealand and the United States (ANZUS Pact), Sept. 1, 1951, art. 4, [1952] 3 U.S.T. 3420, T.I.A.S. No. 2493, 131 U.N.T.S. 83; North Atlantic Treaty (NATO Pact), Apr. 4, 1949, art. 5, 63 Stat. 2241 (1949), T.I.A.S. No. 1964, 34 U.N.T.S. 243.

struct or deeming clause. Perhaps this extension of the right of self-defense to the point of forming collective-security organizations outside the general collective security, theoretically provided by the United Nations, is derived from the assumption that, as in the past, states remain free to enter into military alliances. Yet, article 103 of the Charter specifies:

In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.

Objections may be raised over this conflict of commitments. For a state to provide assistance to another, based on a contractual promise outside the context of the Charter, is an admission that a state believes itself capable of assessing the legality of another nation's claim to the exercise of self-defense, and in some ways places the state in the position of judging its own case. Furthermore, a U.N. member state should find it difficult to reconcile unilateral support of a nation, which it deems to be acting in self-defense, with its delegation of primary responsibility for the maintenance of international stability to the Security Council.<sup>21</sup>

There is an obvious advantage in the use of article 51, rather than chapter VIII, as primary justification for the formation of collective self-defense organizations, since article 51 does not require that self-defensive measures be preceded by notice to or action by the Security Council. On the other hand, chapter VIII clearly states that no action shall be taken by a regional organization without the authorization of the Security Council.<sup>22</sup>

There apparently exist two fundamental standards that might logically be applied to the formation of regional organizations. These are contiguity and interdependence. In this age of potential atomic war and Armageddon, theoretical international law notwithstanding, the security and stability of neighboring states cannot be ignored. An attack on a particular member of a collective-security organization might easily endanger the security of a neighboring state, in which case it may choose to act under the provisions of article 51. However, other states who are also members of the same regional organization, but not close enough to be affected by the attack, might be hard pressed to justify any action not consistent with article 2. Using NATO as an example, an attack on Belgium might well affect the Netherlands and France, but not necessar-

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<sup>21</sup>See U.N. CHARTER arts. 39-51.

<sup>22</sup>U.N. CHARTER art. 53.

ily Canada or the United States.

To overcome the lack of contiguity, a collective-defense organization might, as NATO has, turn to interdependence and commonality of interest as the basis for establishing the organization. To some extent, NATO has accepted the statement of former U.S. Secretary of State Dean Acheson that "[t]here is a community of spirit, a community of history, a community of interest in these Atlantic countries."<sup>23</sup> There are cases where the interdependence of which Mr. Acheson spoke is obvious, like the relationship between Great Britain and the United States; however, this type of interdependence must be separated from that which is artificially created by political doctrines of expedience or spheres of influence.

The artificiality of interdependence provided by political expedience is perhaps best demonstrated by the Czechoslovakian and Soviet actions during the 1968 uprisings.<sup>24</sup> Additionally, the actions of France vis-à-vis NATO in the early sixties exemplifies the national propensity to avoid artificial interdependence. It seems that France was no longer willing to exchange portions of its sovereignty for dependence on collective self-defense. Although the pressures applied to France were not as obvious or successful as in the Soviet-Czechoslovakian situation, the pressure was nonetheless real.

As a final element of this paper, let us examine three hypothetical world situations which demonstrate some possible applications of collective self-defense.

Scenario one is the most simple. An attack on state *D* by state *A* is considered by virtue of a collective self-defense treaty to be an attack on *P1* and *P2*. However both *P1* and *P2* are distantly situated from *D*. *D*, of course, always has the right of individual self-defense, which is specifically and clearly defined by the Charter. *P1* and *P2* ideally would not act under the *Caroline* Doctrine,<sup>25</sup> and technically would be precluded from participation in collective self-defense, since they were not attacked.<sup>26</sup>

In a second scenario let us move *P1* and *P2* close enough to *D* so that an actual or threatened attack by *A* may reasonably be construed a serious threat of attack on *P1* and *P2*. Here, by virtue of the *Caroline* Doctrine, *P1* and *P2* might participate at their discretion in the defense

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<sup>23</sup>Statement of Dean Acheson, Secretary of State, in *Hearings on the North Atlantic Treaty Before the Senate Comm. on Foreign Relations*, 81st Cong., 1st Sess., pt. 1, at 4, 15.

<sup>24</sup>See R. OGLESBY, *INTERNAL WAR AND THE SEARCH FOR NORMATIVE ORDER* 128-31 (1971); Oglesby, *Use of Force in Bloc Situations* pp. 77, 82-86 *supra*.

<sup>25</sup>See note 19 and accompanying text *supra*.

<sup>26</sup>See U.N. CHARTER art. 51.

of *D*.

The third scenario differs from the second in that *P2* is not close enough to be threatened by the attack on *D*. In this case only *P1* would be able to act in accordance with the *Caroline* Doctrine, and *P2* would be constrained not to act.

In each scenario the parties are depicted as acting in accordance with the provisions of the collective-defense organization and in accordance with established legal doctrine. One might characterize the reactions as utopian rather than realistic responses to real-world situations. But before categorizing the reaction as utopian, it may be well to consider a fourth hypothetical situation.

The fourth scenario involves *P1*, a superpower with *P2*, *A* and *D* as client states. Additionally (*P1*)' is another superpower with its client states (*P2*)', (*A*)' and (*D*)'. The conditions described in the first three scenarios apply to the extent that an attack by state *D* by state (*A*)' involves *P1*, or conversely an attack on (*D*)' by state *A* involves (*P1*)'. Since the collective self-defense organizations have made prior decisions about a course of action to render aid, the superpowers will become involved to a degree that depends upon "thresholds of involvement" in the two organizations. Thus, it appears that the superpowers do not have complete and immediate control over the extent of their involvement when they render aid to another state.

The "utopian" situation of the scenarios realistically calls for an intermediate step—action by the Security Council—while a "realistic" course of action which avoids the Security Council results in direct involvement of the two superpowers. It might be reasoned that the creation of opposing collective-defense organizations results in a zero-sum-game relationship between the Soviet Union and the United States in which the winnings of one become the losses of the other. Against the real interests of the superpowers, support given to rival states has the potential of confrontation in the real sense.

The reconciliation between a utopian and a real world is at best difficult. This has been an attempt to view the real world from the viewpoint of a utopian. It seems that in their own way the framers of the United Nations Charter were careful to attempt to separate the concept of collective self-defense from that of regional organizations. It was done so that regional organizations would have the potential to become stabilizing forces that could be called upon by the Security Council to enforce decisions. The deterioration of relations among the allies after the close of the Second World War led to the formation of quasi-regional organizations which in fact have done little towards sta-

bilizing the world situation as a whole. If the United Nations were a truly effective collective-security organization, with regional organizations playing a proper role, the potential for conflict would approach zero.