

THE SYSTEM OF COLLECTIVE SECURITY

Review scientific paper

Sakib SOFTIĆ¹

Abstract

This article deals with international protection of peace and security known as Collective Security, established by the Charter of UN. The Charter of UN accepts right of States or group of States to individual or collective self-defense. Security Council has central role in protection of international peace and security. It decides what kind of measures to be employed: measures not involving the use of armed force or measures involving use of force. The Charter of UN is starting point for any discussion founded in international law, connected with the use of armed force for preservation and restoration of international peace and security.

With the aim to elaborate this topic, author researched, assessed, analyzed and compared relevant documents and teachings and afterwards outlined them at highly readable way. International law allows legitimate defense against illegitimate attacks committed not only by the States, but also by non-States actors harbored by States.

Key words

Collective security, armed force, self-defense, The Charter of the UN, self-defense against terrorism, humanitarian intervention.

1. INTRODUCTION

The United Nations established a system for the maintenance of international peace and security. This system is often called the system of collective security. The main role in guaranteeing the system of collective security belongs to the Security Council. According to Article 24 (1) of the UN Charter, the Security Council is given primary responsibility for the maintenance of international peace and security, and its decisions on Article 25 of the Charter are binding on all Member States of the United Nations.

The Charter of the United Nations not only prohibits the unilateral use of force in Article 2 Paragraph 4 but also controls the use of centralized power by the Security

¹ Sakib Softić, PhD. Professor at Faculty of Criminal Justice Sciences and Security Studies, University of Sarajevo; e-mail: softicsakib@gmail.com.

Council. One should distinguish the role of the Security Council, pursuant to Chapter VI of the Charter, in peaceful settlement disputes, which is solely to make recommendations, from its role when it acts pursuant to Chapter VII of the Charter, under which its decisions are binding.

The Preamble to the Charter begins with the words: "We, the peoples of the United Nations, determined to save future generations from the scourge of war," and the first goal of the UN contained (See Articles 46 and 47 of The UN Charter) in Article 1 of Charter is the maintenance of 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" The original plan of the Charter was to form its own Standing Army with the Military Staff Committee (See Articles 46 and 47 of The UN Charter)). However, this plan was not realized because of the Cold War between and among the main members of the Security Council. The result was that the actions undertaken by the Security Council were different than originally planned. The Permanent Army was replaced by a coalition of interested and willing countries, and individual Member States were given authority to take actions that were beyond the resources of the UN. Peacekeeping forces conduct peacekeeping operations. They also substitute for some kinds of enforcement measures under the jurisdiction of the Security Council.

In order for the Security Council to adopt measures to preserve peace and security under Chapter VII of the Charter, it must first establish "*the existence of threats to peace, breach of peace or acts of aggression,*" because these activate Chapter VII of the Charter. When, in accordance with Article 39, the introductory Article of Chapter VII of the Charter, the Security Council determines the character of the dispute or situation, and then it can avail itself of the measures prescribed in chapter VII to preserve international peace and security.

Determining the type of dispute or situation depends on the circumstances of the individual case and the relationship to the event. A negative vote by any one of the five permanent members of the Security Council is sufficient to block any Security Council action except procedural ones. The veto of one of the permanent members of the Security Council has been one of the major causes of disability in discharging its tasks of preserving peace and security.

The terms "threat to peace," "breach of the peace" or "act of aggression" used in Article 39 do not have precise definitions. This affords the Security Council a great deal of discretion when deciding whether a situation under Article 39 of the Charter exists, or whether the situation is an internal dispute to which Article 2 (7) applies, which prohibits interference by the United Nations in matters that fall within exclusively within the domestic jurisdiction of any state.

The first case of threats to peace that the Security Council found, in Resolution 54 (1948),² was in connection with the conflict in Palestine, where members of the Arab League had refused to accept the extension of the truce in Palestine in order to prevent application of the resolution creating a new state of Israel, which was deemed a "threat to peace in accordance with Article 39 of the Charter "and demanded immediate intervention of the Security Council.

2. LEGALLY IMPERMISSIBLE USE OF ARMED FORCE

The general prohibition of war is based on the provisions of Article 2 Paragraph 4 of the UN Charter:

"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."³:

The objectives of the United Nations, according to Article 1, are to maintain international peace and security, take appropriate collective measures to prevent and eliminate all threats to peace, combat attacks and other violations of peace, achieve peaceful means in accordance with the principles of justice and international law, and regulate and resolve disputes or situations that could lead to a breach of peace.

The way in which states shall resolve their disputes is set out in Article 2 (3), which reads:

"All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered. "

A complete and correct interpretation of Article 2 (4) would be that the use of armed force is prohibited by all UN member states, as well as by other countries that are not members of the United Nations, except in cases where the use of armed force is expressly permitted under the Charter.⁴

3. LEGALLY PERMISSIBLE USE OF ARMED FORCE

International law does not prohibit all use of armed force.

² United Nations Security Council Resolution 54 of July 15, 1948. Available at: <http://www.yale.edu/law-web/avalon/un/scres054.htm>, 20. 12. 2010.

³ *SI. List DFJ, 69/45.*

⁴ See also Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgement, ICT Reports 1986, p 14, para 190.

The right to self-defense is a fundamental right of each state and an exception to the prohibition of the use of force. Self-defense, which necessarily includes the right to use armed force, is a privilege to employ a specific form of self-help to which states are allowed to resort in their relations, when some of their rights have been violated. Self-defense in international relations can be defined as a lawful use of force under the conditions prescribed by international law, in response to an unlawful use of force by another state or states. The right of states to self-defense is embodied in Article 51 UN Charter but also forms part of customary international law.

According to the school of natural law, the right to self-defense is a natural right of every state. If self-defense is not an independent doctrine, but rather is an explanation of the relationship between just causes and just wars, then it is a duty that is imposed on the state by natural law. The traditional definition of the right to self-defense in customary international law arose out of a dispute between the United States and Great Britain known as the Caroline Case.⁵ In 1837, Great Britain attacked and destroyed an American ship, the Caroline, which the British suspected was being employed illegally to support rebels in the Canadian insurrection, in port in the United States. The United States arrested and imprisoned one of the British assailants on a charge of murder. The British government claimed that the attack on the Caroline had been an act of self-defense. The Caroline case figured prominently in treaty negotiations between the United States Secretary of State, Daniel Webster, and the British Foreign Minister, Lord Ashburton. Although not a subject of the Webster-Ashburton Treaty, the key principles of self-defense figured prominently in their correspondence. Most notably for the subject matter of this discussion, their correspondence focused on the difference between a civil war arising from a disputed succession and a protracted revolt of a colony against a "mother country" and the duty of noninterference that states have with regard to the internal disputes of other states. These principles were accepted by the British government and have subsequently become part of customary international law.

Article 10 of League of Nations Covenant⁶ sets forth the obligation of States to refrain from attacking the territorial integrity and political independence of another state, establishes the legal basis for the distinction between lawful and unlawful use of force, and, when combined with Article 16, gives the modalities of collective self-defense.

⁵ The Caroline Case, Available at: http://avalon.law.yale.edu/19th_century/br-1842d.asp, 20. 12. 2010.

⁶ The Covenant of The League of Nations (Including Amendments adopted to December, 1924) Available at: © 2008 Lillian Goldman Law Library, http://avalon.law.yale.edu/20th_century/leagcov.asp, 20. 12. 2010.

Article 2 of the *Locarno Pact*⁷ stipulates that Germany, France and Belgium would in no case attack or invade each other or resort to war against each other. The exception to this rule was also laid down in Article 2, which reads:

“This stipulation shall not, however, apply in the case of:

The exercise of the right of legitimate defense, that is to say, resistance to a violation of the undertaking contained in the previous paragraph or to a flagrant breach of Article 42 or 43 of the said Treaty of Versailles, if such breach constitutes an unprovoked act of aggression and by reason of the assembly of armed forces in the demilitarized zone immediate action is necessary. ”

Some states have, as a precondition for ratifying the *Briand-Kellogg Pact*,⁸ sought to clarify their rights to self-defense. The United States, in its note of June 23, 1928, averred that the treaty did not: “restrict or impair...the right of self-defense. That right is inherent in every sovereign State and is implicit in every treaty. Every nation is free at all times and regardless of treaty provisions to defend its territory from attack or invasion and *it alone is competent to decide whether circumstances require recourse to war in self-defense*” (Stone, J. 1958, p. 32. footnote 29).

The *International Military Tribunal at Nuremberg*,⁹ in its judgment, took the position that self-defense was permissible in a situation in which a country was attacked or threatened with imminent danger, subject to the rules of international law, whether the war is offensive or defensive. When a state is threatened, it must determine, in the first instance, whether to resort to the use of armed force in self-defense. After that, the international community, according to the rules of international law, evaluates, in the second instance, whether such use of force was in self-defense.

4. THE RIGHT OF SELF-DEFENSE UNDER THE CHARTER OF THE UNITED NATIONS

4.1. Introduction

Article 51 of the United Nations Charter states:

“Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Na-

⁷ Treaty of Mutual Guarantee between Germany, Belgium, France, Great Britain and Italy; October 16, 1925 (The Locarno Pact). Available at: http://avalon.law.yale.edu/20th_century/locarno_001.asp, 20. 12. 2010.

⁸ Kellogg-Briand Pact of 1928. Available at: © 2008 Lillian Goldman Law Library 127 Wall Street, New Haven, CT 06511. http://avalon.law.yale.edu/20th_century/kbpact.asp, 20. 12. 2010.

⁹ The Nuremberg Trials of 1945-49. Available at: <http://law2.umkc.edu/faculty/projects/ftrials/nuremberg/nuremberg.htm>, 20. 12. 2010.

tions, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security. ”

To determine the exact meaning of this article, one must consider it in the context of the entire Charter, as well as in relation to customary international law. Article 2 (4) of the Charter obligates all UN members to refrain in their relations from the threat or use of force against the territorial integrity or political independence of any state or in any manner otherwise be contrary to the aims of the United Nations. If an armed attack is directed against the territorial integrity or political independence of a state, such armed attack allows an exception to the general prohibition against the use of force under the Charter and gives the state the right to resort to self-defense.

This is the obvious situation, in which states, without any doubt, would have an excuse to resort to self-defense. These specific circumstances, *prima facie*, constitute a violation of the territorial integrity of the state, so that the permissibility of the use of armed force in self-defense is beyond any reasonable doubt. There are also situations in which the intensity and manner in which territorial integrity is threatened cast doubt on the reasons asserted for resorting to armed force in self-defense. For example, in the wars between Bolivia and Paraguay over the province of Chaco, there are disputes about sovereignty over the province. The League of Nations Commission Report of 1934 states:

“In this dispute each party claims ownership of the Chaco, and therefore maintains it is waging a defensive war in its own territory. How is aggressor to be determined in such a conflict? No international frontier has been crossed by foreign troops, since the Chaco question will only be settled by a determination of this disputed frontier ”(Bowett, 1958).

The question of whether the armed forces of a State may, in its exercise of the right to self-defense, cross the border of another state is also controversial. This issue should be considered in light of contemporary international law.

In connection with the issue of political independence, there is the problem of determining its content. What is the meaning of political independence?

“The right has been described as involving, inter alia, the right ‘to established, maintain, and change its own constitution or form of government and select its own rulers... to negotiate and conclude treaties and alliances...and to maintain diplomatic

intercourse with other members of the international community' "(Bowett, 1958. p. 42-43, note 1).

In the *draft Declaration on the Rights and Duties of States* of 1947, this right was defined as follows:

Every state has the right to its own independence in the sense that it is free to provide for its own well-being and to develop materially and spiritually without being subjected to the domination of other states provided always, that in so doing it shall not impair or violate the legitimate rights of other states (Bowett, 1958. p. 42-43, note 1)

"There is a general assumption by jurists that the Charter prohibited self help and armed reprisals " (Bowett, 1958. p. 43, note 2).

Article 51 of the Charter, stipulating the right to self-defense, provides a legal basis for both aspects of self-defense, the right of the individual and the right to collective self-defense. This right to self-defense is a "right" and not a "duty. " Thus, each sovereign state may use its "inherent" right but is not required to do so.

Article 51 of the Charter consists of several interrelated parts:

a) Nothing in the present Charter shall impair the inherent right of individual or collective self-defence;

This phrase, by its nature, is a purely declaratory expression of the earlier development of international law, both contractual and customary. The expression "inherent right" should be interpreted to mean that it is a natural right and is, therefore, of a philosophical nature. The expressed commitment to the right to self-defense for the existence of member states as such is something that is inseparable from the attributes of sovereignty. It also expresses the view that the right to self-defense exists independently of and prior to the Charter. The Charter does not establish this right it was already an inherent right of each state. The Charter only restates this preexisting right and, in a way, limits it in spirit and letter.

b) if an armed attack occurs;

The right of individual or collective self-defense exists only in the case of armed attack. It cannot be extended to cases that do not involve, an "armed attack. " This restrictive interpretation, if accepted, would involve two propositions: first, that action in self-defense may not be "anticipatory" but rather must await an armed attack; and, second, that purported self-defense is only legitimate if and when the measures used to violate the state's interests have taken the form of an "armed attack. " (Bowett, 1958. p. 188).

Such a restrictive interpretation of the right to self-defense, however, has not found confirmation in the international practice. Leading world powers have not adopted such a narrow interpretation of this article. Instead, in practice, they have extended this right beyond cases in which an armed attack has occurred.

According to customary international law, the right to self-defense exists not only in the case of actual attack, but also if such an attack is imminent.¹⁰

In the case of *Nicaragua v. the United States*, the International Court of Justice used the definition of aggression in Article 3 (g) to define the meaning of armed attack in international law. The court ruled that an armed attack included "the sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to," *inter alia*, an actual armed attack conducted by regular forces "or its substantial involvement therein."¹¹

After the terrorist attacks of September 11, 2001, Resolution 1368 of September 12, 2001 labeled a terrorist attack as a threat to international peace and security in terms of Chapter VII of the UN Charter.

c) against a Member of the United Nations;

A restrictive interpretation of this phrase could conclude that the reserved right to self-defense is reserved only for members of the UN and exists only if an armed attack occurs against a Member of the United Nations. This would mean that Member States could not assist a non-member State in the event of an armed attack. This is not what this provision means. "Art. 51 cannot take away non-members' rights of self-defense, so that if any restriction is intended it relates only to freedom of members to associate themselves with non-members in their defense." (Bowett, 1958. p. 193. nota 6).

This article provides an opportunity for member states to unite in defense with other members of the United Nations.

¹⁰ In the debate before the Security Council regarding the issue of the Pakistani invasion of Kashmir, the Pakistani representative justified the invasion of Kashmir under the theory that the alleged occupation of Kashmir by India posed an immediate threat to Pakistan, even though there was no doubt that there was no "armed attack" on Pakistan by India (See: Bowett, 1958. *Ibid.*, p. 189).

¹¹ Case Concerning Military and Paramilitary Activities in and against Nicaragua (*Nicaragua v. United States of America*), Merits, Judgement, ICT Reports 1986, p 103 (93.) para 195. Available at: <http://www.icj-cij.org/docket/files/70/6503.pdf>

d) until the Security Council has taken measures necessary to maintain international peace and security;

This phrase is a product of the centralization of the system of maintenance of international peace and security. It gives Member States the option to take necessary defensive measures that are, by nature, temporary, while the system is not functioning or until the Security Council begins to realize its intended role under the Charter. Under this provision, the Member States to cease the exercise of self-defense, individual or collective, as soon as the Security Council begins to exercise its role.

e) Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council;

This provision introduces a legal obligation upon a Member State that has taken measures in individual or collective self-defense to immediately inform the Security Council what measures it has taken in the exercise of its rights. This report serves as the basis for the Security Council's own decision about what measures it will take in exercising its role as the protector of international peace and security.

f) and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security;

This provision's sole purpose is to reiterate the temporary right of states to individual or collective self-defense and underline the Security Council's primary responsibility for maintaining international peace and security. It has no special meaning beyond this.

4.2. Prerequisites for the existence of the right to self-defense and other issues

In legal literature it is accepted almost unanimously that the right to self-defense only after the following conditions have been met: necessity, (which includes the immanency of the threat) and proportionality.

The International Court of Justice stated, in the Nicaragua case, that Article 51 "does not contain any specific rule whereby self-defense would warrant only measures which are proportional to the armed attack and necessary to respond to it, a rule well established in customary international law." (Dinstein, 1994. op. cit. p. 202, footnote 124).

The rules of necessity and proportionality, however, are rules of customary international law and their fulfillment depends on the circumstances of each particular case. Whether these conditions are met is determined in the first instance by the country

that finds itself in a situation that requires recourse to self-defense and, in the second instance, by the international community and its authorized bodies. "Each nation is free at all times and regardless of the treaty provisions to defend itself, and is sole judge of what constitutes the right of self-defense and the necessity and extent of same." (Brownlie, 2003. p. 237, note 4).

Necessity exists when the state has no other means of response to an armed attack to protect its rights. The customary right of self-defense includes the requirement that the force used be proportionate to the threat. (Brownlie, 2003. p. 261).

Proportionality and necessity are flexible concepts, but a state may not respond to a minor violation of its boundaries with disproportionate means, particularly because minor encroachments are often the product of mistakes or misunderstandings within the chain of command.

This issue arises in particular with regard to the question of whether a State that is the victim of a conventional assault could respond with nuclear weapons. "State practice existing on this question is not unequivocal but indicates that the governments of the United States, France, Canada, and the United Kingdom regard the use of nuclear weapons as permissible against an aggressor state irrespective of the weapons employed by the latter." (Brownlie, 2003. p. 263).

There is also a question whether actions in self-defense can occur before the provoking attack has occurred. This issue is particularly important for countries that possess nuclear weapons or could be the object of a nuclear attack, as well as for other countries whose first use of weapons could depend upon the result of such a war.

Article 51 of the Charter permits self-defense only in the case of an existing armed attack. Customary international law opinions on this subject, however, are divided. While some believe that there is no right to preventive war, most legal writers consider that customary international law permits anticipatory self-defense. According to *Westlake*:

"A State may defend itself, by preventive means if in its conscientious judgment necessary, against attack by another State, threat of attack, or preparations or other conduct from which an intention to attack may reasonably be apprehended" (Brownlie, 2003. p. 237, footnote 4).

Israel, in 1967,¹² made a preemptive strike against its Arab neighbors in response to their amassing of troops on its border, blockade of the Straits of Tiran a port of Eliat,

¹² Time Line of the 1967 Six day war (Israeli-Arab 6 Day war Chronology), Available at: http://www.zionism-israel.com/his/six_day_war_timeline.htm, 22. 12. 2010.

and execution of a mutual-defense pact between Egypt and Jordan (Bowett, 1958. p. 99 - 100, footnote 1). The United Nations, in the discussions that followed, did not condemn the Israeli attack or its characterization of it as self-defense. The International Court, in the case of *Nicaragua v. the United States*, did not address the issue of the imminent threat of armed attack, since that question was not before it.

An additional question is whether a state may use force to protect its citizens and property abroad. Until passing the UN Charter, this issue was unequivocally resolved. The position of customary international law was that a state could defend its citizens, persons who were subject to its jurisdiction, and its property, wherever they were located, even in the territory of another sovereign state. Location within the territory of the State was not necessary to the exercise of self-defense.

Article 51 of the Charter, however, does not recognize the right of self-defense to protect citizens and property abroad. Nonetheless, most legal writers are of opinion that customary international law continues to recognize this kind of self-defense. This is consistent with the contemporary practice in international relations, as well. Imminent danger to the life or property being protected, however, is still a precondition for exercising this extraterritorial self-defense. As the American representative to the conference in Havana in 1928 said:

“What are we to do when government breaks down and American citizens are in danger of their lives?... Now it is principle of international law that in such a case government is fully justified in taking action - I would call it interposition of a temporary character for the purpose of protecting the lives and property of nationals. I could say that is not intervention.” (Bowett, 1958. p. 99 - 100, footnote 1).

This issue has come up recently: for example, in the well-known US-Belgian rescue of hostages in the Congo in 1964. “The most famous incident, however, was the rescue by Israel of hostages held by Palestinian and other terrorists at Entebbe, following the hijack of an Air France airliner. The Security Council Debate in that case was inconclusive. Some states supported Israel’s view that it was acting lawfully in protecting its nationals abroad, where the local state concerned was aiding the hijackers, others adopted the approach that Israel had committed aggression against Uganda or used excessive force.” (Shaw, 1997. p. 792, footnotes 84-86). “The US conducted a bombing raid on Libya on 15 April 1986 as a consequence of alleged Libyan involvement in an attack on US servicemen in West Berlin. This was justified by the US as an act of self-defense.” (Shaw, 1997. p. 792, footnote 90).

“The UK Foreign Minister concluded on 28 June 1993 that:

Force may be used in self-defense against threats to one’s nationals if: (a) there is good evidence that the target attacked would otherwise continue to be used by the

other state in support of terrorist attacks against one's nationals; (b) there is, effectively, no other way to forestall imminent further attacks on one's nationals; (c) the force employed is proportionate to the threat." (Shaw, 1997. p. 793, footnote 92).¹³

4.3. Individual self-defense

In the case of an armed attack, the attacked state is authorized, in accordance with the provisions of Article 51 of the Charter and the rules of customary international law, to take measures of individual self-defense. This article refers to the attack undertaken by a State and directed against another state.

The attacked state has the authority to take all measures permitted by international law to repel the attack. These are primarily measures of armed response to armed attack. According to H. Kelsen: "(w)ar and counterwar are in the same reciprocal relationship as murder and capital punishment." (Dinstein, 1994. p. 230, footnote 75).

International law imposes a requirement of proportionality between the attack and the defense thereto, but the report of the International Law Commission on this issue states:

"It would be mistaken...to think that there must be proportionality between the conduct constituting the armed attack and the opposing conduct. The action needed to halt and repulse the attack may well have to assume dimensions disproportionate to those of the attack suffered. What matters in this respect is the result to be achieved by the 'defensive' action, and not the forms, substance and strength of the action itself" (Dinstein, 1994. p. 232-233. note 79).

The State that is the victim of aggression, as a general rule, is permitted to take all necessary military action to destroy the military potential of the aggressor. What is disputed in the international law literature is whether the attacked state has the right to continue the war in after the aggressor state, for whatever reason, has lost the will for further warfare. Some commentators have argued that the defensive state must stop its defensive war because legitimate self-defense requires proportionality. Others reject this approach.

¹³"Sir Humphrey Waldock reiterated these conditions in somewhat different wording, fitting better the specific context of the protection of nationals abroad:
There must be (1) an imminent threat of injury to nationals, (2) a failure or inability on the parts of the territorial sovereign to protect them and (3) measures of protection strictly confined to the object of protecting them against injury." (Dinstein, 1994. p. 226. Footnote 51).

War in self-defense must be conducted at the time of the attack, or there must be a temporal proximity between the act of aggression and the exercise of individual self-defense.

4.4. Collective Self-Defense

The right to collective self-defense had been established by customary international law prior to the adoption of the League of Nations Covenant, which became part of international treaty law. Articles 10 and 16 of the Pact developed the concept of collective defense. Many agreements on mutual assistance were concluded between the two world wars and contained provisions on collective self-defense between the respective countries.

Article 51 of the UN Charter states, inter alia, that the right to collective self-defense is the inherent right of each state. This idea is further developed in Article 52 (1), which states: "Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations."

These provisions have served as the basis for the conclusion of many postwar agreements on mutual assistance with the aim that, in the event that one of the parties to an agreement is attacked, the other members are obliged to come to its help. Thus, for example, Article 3 (1) of *The Inter-American Treaty of Reciprocal Assistance* of 1947 states:

"The High Contracting Parties agree that an armed attack by any State against an American State shall be considered as an attack against all the American States and, consequently, each one of the said Contracting Parties undertakes to assist in meeting the attack in the exercise of the inherent right of individual or collective self-defense recognized by Article 51 of the Charter of the United Nations."

These provisions of the Charter were used as the basis for the creation of military alliances, most notably North Atlantic Treaty Organization (NATO) and the now defunct Warsaw Pact. Article 5 of the North Atlantic Treaty provides:

"The Parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all, and consequently they agree that, if such an armed attack occurs, each of them, in exercise of the right of individual or collective self-defense recognised by Article 51 of the Charter of the United Nations, will assist the Party or Parties so attacked by taking forthwith, individually, and in concert with the other Parties, such action as it deems necessary,

including the use of armed force, to restore and maintain the security of the North Atlantic area.

Any such armed attack and all measures taken as a result thereof shall immediately be reported to the Security Council. Such measures shall be terminated when the Security Council has taken the measures necessary to restore and maintain international peace and security. ”¹⁴

"Organizations such as NATO and the Warsaw Pact have been set up since Second World War, specifically based upon the right of collective self-defense under Article 51. By such agreements, an attack upon one party is treated as an attack upon all, thus necessitating the conclusion that collective self-defense is something more than a collection of individual of rights of self-defense, but another creatures together " (Shaw, 1997. p. 794, footnotes 98 & 99).

"This approach finds support in the *Nicaragua* case. The Court stressed that the right to collective self-defense was established in customary law but added that exercise of that right depended both upon a prior declaration by the state concerned that it was the victim of an armed attack and a request by the victim state for assistance. " (Shaw, 1997. p. 794-795 footnotes omitted).

4.5. Self-defense against terrorism

In response to the terrorist attacks of September 11th, the United States launched a military campaign against Afghanistan, known as *Operation Enduring Freedom*, on October 7, 2001. ¹⁵ When the United states informed the Security Council of its intention to take action, it claimed to be acting in self-defense. Great Britain also recognized the United States invasion as an act of individual and collective self-defense. Despite earlier questions about the applicability of the right of self-defense in response to terrorist attacks, the actions of the United States encountered general support. Security Council Resolution 1368 of September 12, 2001 explicitly recognized the right to self-defense against terrorism. The subsequent Resolution 1373 of November 14, 2001¹⁶ also referred to the individual and collective right to self-defense.

This is obviously an extension of the traditional model of states' rights to self-defense as prescribed by the UN Charter. Since general support for the right to self-defense

¹⁴ The North Atlantic Treaty Washington D. C. - 4 April 1949. Available at: http://www.nato.int/cps/en/natolive/official_texts_17120.htm, 23. 12. 2010.

¹⁵Operation Enduring Freedom, available at: <http://www.history.army.mil/brochures/Afghanistan/Operation%20Enduring%20Freedom.htm>, 23. 12. 2010.

¹⁶ Security Council Resolution S/RES/1373 (2001), available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N01/557/43/PDF/N0155743.pdf?OpenElement>, 23. 12. 2010.

in case of terrorist attacks has inured, there has been a reinterpretation of the provisions of the Charter, creating a new international custom recognizing it. "Now it is apparently accepted that a terrorist attack on a State's territory by a non-State actor is an armed attack which justifies a response against the State which harbored those responsible" (Gray, 2003. p. 604). NATO, for the first time in this case, called for Article 5 of its founding treaty to stipulate that an attack on one member state be considered an attack against them all.

The United States and Great Britain believe that they have a right to anticipatory self-defense and preventive war. This right has been accepted by many countries, but only in relation to terrorist threats and no farther. This recognition is further tempered by the requirement that the Security Council recognize the existence of a putative terrorist threat by resolution.

5. MEASURES OF THE SECURITY COUNCIL PURSUANT TO CHAPTER VII OF THE UN CHARTER

5.1. Introduction

The original intent of the founders of the United Nations, enshrined in the relevant provisions of the UN Charter, was that the Security Council, which was to have at its disposal a standing army, decide on the use of force for maintaining or restoring international peace and security. This ambitious plan was never implemented, so practice has had to be modified. According to Article 24 of the UN Charter, the Security Council has primary responsibility for the maintenance of international peace and security, and its decision under Article 25 of the Charter are binding on all Member States of the United Nations. Because Article 27 of the Charter grants the right of veto to all permanent members of the Security Council, during the Cold War, Security Council action to preserve international peace and security was obstructed by an abuse of this veto right.

Chapter VII of the Charter gives the Security Council broad powers to take measures to achieve its primary task of preserving and protecting international peace and security. When carrying out these measures, the Security Council usually refers to Chapter VII without specifying the exact provision(s) of this chapter that forms the basis for its action. According to Article 39 of the Charter, the Security Council should determine whether there is a threat to peace, breach of the peace or act of aggression and make recommendations or decide what measures should be undertaken, in accordance with Articles 41 and 42, to preserve or restore international peace and security.

5.2. Measures not involving the use of force

Once the Security Council has determined that a dispute or situation constitutes a threat to peace, breach of peace or act of aggression, further measures are authorized. Before taking such measures, it may invite interested parties to abide by provisional measures that it considers necessary or desirable. Such measures are aimed at calming the situation. These actions are based on Article 40 of the Charter. These provisional measures may not affect the rights, claims or position of the interested parties. They are without prejudice to the rights or demands of the parties and are considered a temporary measure to stabilize crisis situations (See: Shaw, 2003. p. 1124).

These temporary measures often include a call for a cease-fire or a temporary withdrawal from occupied territory.

The adoption of provisional measures by the Security Council often has a greater effect than purely temporary action. They can create a calmer atmosphere, leading to negotiations, and help to resolve disputes along the lines of the Security Council resolution that established the provisional measures. (See: Shaw, 2003. p. 1125).

Once the Security Council has determined that there has been a threat to peace, breach of the peace or an act of aggression, it undertakes two types of actions, including: measures not involving the use of force, under Article 41 of Charter, which includes the application of economic or diplomatic sanctions; and measures that include the use of force, under Article 42 of the Charter.

According to article 41 of the Charter, the Security Council may decide what measures not entailing the use of armed force should be applied to the execution of its decisions and can invite members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radiographic and other connections, as well as the severance of diplomatic relations.

The first major action that did not involve the use of force occurred in connection in response to the Rhodesian white minority government making a unilateral declaration of independence in 1965. (See: Shaw, 2003. p. 1125).

The most thoroughly developed economic sanctions imposed by the Security Council were adopted at the time of the invasion of Kuwait by Iraq on August 2, 1990. (See: Shaw, 2003. p. 1125). Security Council Resolution 661 of 1990¹⁷ resolved that, if Iraq

¹⁷ Resolution 661 S/RES/0661 (1990), available at: <http://www.fas.org/news/un/iraq/sres/sres0661.htm>, 24. 12. 2010.

did not withdraw immediately and unconditionally from Kuwait, in accordance with Chapter VII of the Charter, the Council would introduce large-scale economic sanctions against Iraq, including a ban on all countries' importing or exporting from/to Iraq and occupied Kuwait and transferring funds to/from Iraq and Kuwait for such purposes.

In Resolution 757 of May 30, 1992, ¹⁸ the Security Council imposed various economic and diplomatic sanctions against the FRY (Serbia and Montenegro), as a penalty for noncompliance with previous resolutions, which demanded an end to its involvement in the war in Bosnia and Herzegovina. ¹⁹ This resolution was adopted pursuant to Chapter VII of the UN Charter. The sanctions were reinforced in Resolution 787 of 1992. ²⁰

Resolution 820 of 1993²¹ and Resolution 942 of 1994²² extended the sanctions to the parts of Croatia and Bosnia and Herzegovina controlled by Serb forces. Resolution 1022 of November 22, 1995²³ temporarily suspended these sanctions after the signing of the Dayton Peace Agreement. Resolution 1074 (1996)²⁴ permanently lifted the sanctions after elections were held in Bosnia and Herzegovina.

5.3. Measures that include the use of the force

In the event that measures not involving the use of force do not yield the expected results or the Security Council deems that measures not involving the use of force, as authorized by Article 41 of the Charter, are insufficient, the Council may, in accordance with Article 42 of the Charter, use the air, maritime and infantry forces of

¹⁸ Security Council Resolution 757 (1992) (S/RES/757, 30. May 1992). Bethlehem, D. , Weller, M. (ed.). (1997). *The Yugoslav Crisis in International Law, General issues, part I*. Cambridge: University Press. p. 9; But before started imposing economic and diplomatic sanctions the Security Council has repeatedly called for a ceasefire which essentially means the application of provisional measures pursuant to Article 40 UN Charter.

¹⁹ UN Resolution No. 752 of May 15, 1992. "...demands that all forms of interference from outside Bosnia and Herzegovina, including by units of the Yugoslav People's Army as well as elements of the Croatian Army, cease immediately, and that Bosnia and Herzegovina's neighbors take swift action to end such interference and respect the territorial integrity of Bosnia and Herzegovina. "

²⁰ UN Security Council Resolution 787 to extend the sanctions of November 16, 1992.

²¹ UN Security Council Resolution 820 of 1993 on the situation in B-H, s/res/820 (1993), available at: <http://www.ohr.int/other-doc/un-res-B-H/pdf/820e.pdf>, 24. 12. 2010.

²² UN Security Council resolution 942 (1994) on reinforcement and extension of measures imposed by the UNSC resolutions with regard to those areas of B-H under the control of Bosnian Serb forces. Available at: http://www.ohr.int/other-doc/un-res-B-H/default.asp?content_id=7074, 24. 12. 2010.

²³ UN Security Council resolution 1022 (1995) on suspension of measures imposed by or reaffirmed in Security Council resolutions related to the situation in the former Yugoslavia, Available at: http://www.ohr.int/other-doc/un-res-B-H/default.asp?content_id=7100, 24. 12. 2010.

²⁴ Security Council resolution S/RES/1074 (1996), Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N96/259/27/PDF/N9625927.pdf?OpenElement>, 24. 12. 2010.

members of the United Nations to establish or preserve international peace and security, including demonstrations, blockades, and other operations.

To contribute to the maintenance of peace and security, in accordance with Article 43 of the Charter, all members of the United Nations are committed to make available their armed forces, assistance and facilities, including granting rights of passage, at the request of the Security Council, in accordance with the special agreement or agreements for the maintenance of peace and security. Pursuant to Article 45, all member States should immediately make their air forces available to the aviation contingent for joint international action, in accordance with the established agreements or agreements mentioned in Article 43. The aim of these measures is to establish joint UN forces to act as the army of the Security Council and to prevent possible threats to peace or acts of aggression.

Article 47 of the Charter regulates the creation of the Military Staff Committee composed of the Chiefs of Staff the five permanent Security Council members or their representatives, whose mission is to advise and assist the Security Council on military matters and be responsible for the strategic direction of any armed forces placed at the disposal of the Security Council. Article 46 directs that plans for the operations of the armed forces be made by the Security Council with the assistance of the Military Staff Committee.

The first example of such operations in practice was the UN response to North Korea's invasion of South Korea in 1950. In June 1950, North Korean forces crossed the 28th parallel separating North from South Korea, which led to armed conflict. Almost immediately, the Security Council declared that this action constituted a breach of the truce and invited all members of the UN to help persuade North Korea to withdraw (See: Shaw, 2003. p. 1134). Two days later, a second Security Council resolution recommended that UN Member States should provide all necessary assistance to South Korea, while a third resolution authorized the UN to appoint a commander of the armed forces set up to help South Korea and the use of the flag of the United Nations by the forces (See: Shaw, 2003. p. 1134). The absence of the Soviet Union from the Security Council meeting made the adoption of these resolutions possible. The Soviet Union, at that time, did not participate in the sessions of the Council in protest of the People's Republic of China having been denied Taiwan's place as a permanent member of the Security Council, so the resolution authorizing the engagement of troops in the Korean War was made without the vote of the Soviet Union.

This made military action by the United Nations against North Korea possible, under the leadership of U. S. forces. The Soviet Union returned to the Council at the beginning of August 1950 and blocked further Council action in the Korean War, but could not reverse the previous resolutions, despite its claims that the Soviet boycott rendered them invalid (See: Shaw, 2003. p. 1134).

The United Nations troops, composed of military forces of sixteen states, were under the control of the United States forces. A series of agreements signed between the United States and all of the other participating countries dictated that they were not operating under the effective control of the General Assembly, but were only acting under the direction of the Security Council. This improvised operation clearly revealed the weaknesses of the UN system for the maintenance of peace and demonstrated that the collective security system, as originally envisioned by the Charter, could not function, but it also demonstrated how the system could reintegrate to function properly (See: Shaw, 2003. p. 1134).

After the Iraqi invasion of Kuwait on August 2, 1990, Resolution 660 (1990)²⁵ was adopted unanimously the same day by the Security Council condemning the invasion and demanding the immediate and unconditional withdrawal of Iraqi forces. The Security Council was dissatisfied with Iraq's response to the resolutions and adopted Resolution 678 on November 29, 1990,²⁶ which gave Iraq additional time to comply with previous resolutions and withdraw from Kuwait (See: Shaw, 2003. p. 1134). This "last chance" was supposed to expire on January 15th, 1991. After this date, member States were authorized, in cooperation with the Government of Kuwait, to use all available resources to implement Resolution 660 (See: Shaw, 2003. p. 1134) and to restore international peace and security in the region.

6. THE ROLE OF THE UN GENERAL ASSEMBLY

If the Security Council, because of the required unanimity of permanent members, is unable to act, are there alternatives to the Security Council, including the General Assembly?

The ability of any permanent member of the Council to veto any decision of the Council often hinders its work, rendering the Council unable to perform its duties. Because the permanent members of the Council are guided primarily by their self-interest, the responsibility of the Council to maintain international peace and security has very frequently been stymied. This became evident soon after the founding of the United Nations and the adoption of the Charter. The first significant crisis in the Cold War world, the events on the Korean peninsula, showed that there were situations that could paralyze the Council's work. This prompted a group of countries, led by the United States, at the extraordinary session of the 1950, to propose

²⁵ Security Council resolution 660 of 2 August 1990. Available at: <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/575/10/IMG/NR057510.pdf?OpenElement> 25. 12. 2010.

²⁶ Resolution 678 (1990) Adopted by the Security Council at its 2963d meeting on November 29, 1990. Available at: <http://www.fas.org/news/un/iraq/sres/sres0678.htm>, 25. 12. 2010.

a resolution, known as *United for Peace*,²⁷ which was adopted at that session. That resolution provided that:

*"if the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression, the General Assembly shall consider the matter immediately with a view to making appropriate recommendations to Members for collective measures, including in the case of a breach of the peace or act of aggression the use of armed force when necessary, to maintain or restore international peace and security."*²⁸

The procedure for the establishment and maintenance of peace that this resolution established can be applied only in cases in which the work of the Security Council has been paralyzed by the use of a veto by a permanent member. It in no way derogates the provisions of the Charter relating to the procedures in cases in which international peace and security are threatened. It also in no way impinges on the powers and responsibilities of the Security Council to maintain international peace and security. It has a subsidiary importance relative to the Charter -- i. e. , it complements the Charter.

"The main problem is that, in all matters pertaining to international peace and security, the General Assembly is authorized (under Charter IV) to adopt only non-binding recommendations" (Dinstein, 1994. p. 302, 303. Footnote 150). Each Member State "remains legally free to act or not to act on such recommendation"(Dinstein, 1994. p. 302, 303. Footnote 151).

The powers of the General Assembly and the Security Council in this matter are qualitatively different. While the General Assembly, moving within its (limited) powers established by the Charter, can only make recommendations, those recommendations have considerable moral weight deriving from the inclusivity and authority of the body that passes them The Security Council, by contrast, because of its coercive enforcement powers, makes binding decisions.

"In its Advisory Opinion of 1962, in the *Certain Expenses case*, the International Court of Justice held that – although, generally speaking, the responsibility of the Security Council respecting the maintenance of international peace and security is 'primary' rather than exclusive – only the Council possesses the power to impose

²⁷Uniting for Peace (UN Resolution 377). Available at: <http://www.un.org/depts/dhl/landmark/pdf/ares377e.pdf>, 25. 12. 2010.

²⁸ Security Council Resolution 377 (V) S. T. G: A. 10, id (1950), Dinstein, Y. (1994). p. 301-302. note 144; "The resolution was adopted on 3 November 1950 with the majority of 52:5 and two Abstentions, and was first applied on the occasion of the triple aggression against Egypt, made by Great Britain, France and Israel in October 1956, at the suggestion of Yugoslavia." (Avramov and Kreća, 1989. p. 172).

explicit obligations of compliance under Chapter VII ” (Dinstein, 1994. p. 303. footnote 152).

7. CONCLUSION

The security system established by the UN Charter is called the system of collective security. Central place in this system belongs to the Security Council. The UN Charter prohibits offensive conduct of the war but it is not completely banned the use of armed force. Charter recognizes the right of individual or collective self-defense and tied it to the existence of an armed attack. Customary international law extends the right to self-defense in case of a terrorist attack or threat.

As a prerequisite for the existence of a right to self-defense is the state of emergency and proportionality. Emergency condition exists when the state is forced to use its armed forces to protect some fundamental right that cannot be protected in other ways. The issue of proportionality relates to the proportionality between attack and defense and means of defense and means of attack.

The right to self-defense raises the issue anticipative defense or preemptive strike which is also actualized with the development of new types of weapons. Also, the right to self-defense under customary international law permits the use of armed force under certain conditions in order to protect citizens and their property abroad.

Chapter VII of the Charter gives wide powers to the Security Council to take measures in order to achieve its primary task of preserving and protecting international peace and security. In achieving these powers the Security Council has two types of measures: those that do not involve the armed forces and those that do it. The biggest and not yet solved is the dilemma of a humanitarian intervention, but peace-keeping operations gradually find their place within the framework of the system of United Nations.

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