

# Collective Security in Pre and Post-Cold War Eras: A Comparison

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## I. INTRODUCTION: ESSENCE & MEANING OF COLLECTIVE SECURITY

National security is the primary concern of States, and protecting the security interests of the State lies at the very heart of any viable collective security arrangement. Prior to the United Nations, under general international law the principle of self-help prevailed;<sup>2</sup> that is, an individual member of the international community, in case of a violation of its rights, could resort to reprisals or war against that state which was responsible for the violation.<sup>3</sup> Collective security is a system wherein the protection of the rights of the states, in the form of a reaction against the violation of the law, assumes the character of a collective enforcement action.<sup>4</sup>

The collective security system has been developed by States in order to most effectively promote the endurance of the survival of individual States.<sup>5</sup> States agree to follow certain rules to maintain stability and take collective action against aggression with the intent of avoiding war, which results in

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<sup>2</sup> Hans Kelson, *Collective Security and Collective Self-Defense Under the Charter of the United Nations*, 42 AJIL 783 (1948) [Kelson].

<sup>3</sup> *Horst Fischer & Peter Danchin, United Nations Reform and the New Collective Security 2* (Cambridge University Press, 2010), [Fischer & Danchin].

<sup>4</sup> *Supra* n. 2, Kelson at 783.

<sup>5</sup> Thomas R. Cusack & Richard J. Stoll, *Collective Security and State Survival in the Interstate System*, 38 Intl Studies Quarterly 33(1994) [Cusack & Stoll].

the maintenance of peace.<sup>6</sup> In the case of collective security, States that are not directly violated in their rights are obliged to assist the violated State.<sup>7</sup> In some instances wherein, one State or a group of States take action in response to any violation, they do so, on behalf of the international community.<sup>8</sup>

This article focuses on the collective security system which operates under the United Nations Charter [hereinafter UN Charter]. The article presents an analysis of the failure of the system during the Cold War, and how this changed subsequently in the post-Cold War years. Further, the change in the collective security system after the 9/11 attack is also discussed in the light of expanded security concerns and consequent security innovations.

## II. COLLECTIVE SECURITY IN THE UNITED NATIONS PARADIGM

The Security Council [hereinafter SC] has the primary responsibility for the maintenance of international peace and security.<sup>9</sup> The competence of the SC granted by the Charter is a normative one.<sup>10</sup> Under Chapter VII the SC can take a wide range of enforcement action. However, the SC must first establish the existence of “any threat to peace, breach of peace or act of aggression” under Article 39. After a decision under Article 39 stating that any act constitutes any one of the above, the SC can order the States to undertake measures u/Article 40 & 41 (sanctions) or Article 42 (military action).

In its functioning, the SC is a political body and not a legal one.<sup>11</sup> Its principal function is to maintain peace and security in accordance with

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<sup>6</sup> Charles A. Kupchan & Clifford A. Kupchan, *The Promise of Collective Security*, 20 *Intl Security* 53 (Summer, 1995) [Kupchan & Clifford].

<sup>7</sup> *Supra* n. 2, Kelson at 784.

<sup>8</sup> Alexander Orakhelashvili, *Collective Security* 22 (Oxford University Press, 2011), [Orakhelashvili].

<sup>9</sup> United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI, art. 24 (1): “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, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.”

<sup>10</sup> Eugena Lopez-Jacoiste, *The UN Collective Security System and its Relationship with Economic Sanctions and Human Rights*, 14 *Max Planck Yearbook on UN Law* 279 (2010) [Lopez-Jacoiste].

<sup>11</sup> *Ibid.*

Article 39. The Charter does not define what constitutes a “threat to peace, breach of peace or act of aggression”, hence the Council has the discretion to decide on a case by case basis.<sup>12</sup>

Further, the SC is not a law-enforcing organ and enjoys unfettered discretions as a political one;<sup>13</sup> this is because the idea behind Article 39 is to not restore the law but to maintain the peace, which may not necessarily be identical with the law<sup>14</sup>. Thus, through the length of this article, the analysis shall include an evaluation as to whether the SC has managed to maintain international peace and security and not whether its actions were per se legal.

### **III. PRE-COLD WAR AND POST-COLD WAR COMPARISON OF THE SUCCESS OF THE SECURITY COUNCIL IN ENFORCING ACTIONS OF COLLECTIVE SECURITY**

#### **1. During the Cold War:**

Throughout the era of the Cold War, Chapter VII of the UN Charter remained little more than a blueprint for the maintenance or restoration of international peace and security by the SC.<sup>15</sup> The practice of the Council was shaped and often thwarted by superpower deadlock and paralysis of the veto.<sup>16</sup> During the subsistence of the Cold War, the SC passed a mere 650 Resolutions, on an average less than 11 per year.

Even though there were numerous failures of the SC in maintaining international peace and security during this period, there were some successes which are noteworthy. In the Korean War (1950-53), the Council passed a Resolution in order to repel an attack from North Korea. Even though this was possible only because the Soviet Union boycotted the

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<sup>12</sup> 15 P/3, 1 UNCIO, Representative of the USA at Opening Conference in San Francisco, 4 (1945).

<sup>13</sup> David L. Bosco, *Five to Rule Them All: the UN Security Council & the Making of the Modern World*, 23 (Oxford University Press, 2009).

<sup>14</sup> *The Charter of the United Nations: A Commentary I*, 719 (2<sup>nd</sup> ed, Oxford University Press, 2010).

<sup>15</sup> Sean D. Murphy, *The Security Council, Legitimacy and the Concept of Collective Security After the Cold War*, 32 Colum J Transnat'l L 201 at 207 (1994-1995).

<sup>16</sup> *Supra* n. 1, Fischer & Danchin at 1.

session, the decision of the SC was prompt and successful.<sup>17</sup> In 1960, the UN Operation in Congo (UNOC) managed to bring order to the breakaway State of Katanga by restoring it to the control of the Democratic Republic of Congo.<sup>18</sup> Further, the Authority in West New Guinea in 1962 and UN Peacekeeping Force in Cyprus in 1964 are examples of missions that managed to achieve their objective of maintaining peace and security.<sup>19</sup>

However, these successes were stray events and often, because they had nothing to do with the Cold War that the SC was able to intervene. Any other occurrence which involved the USA or the Soviet Union, either directly or indirectly, was ignored or met with indecision or the less than adequate attention of the Council. In eight major interstate conflicts between 1956 and 1982, the Council played only a marginal role.<sup>20</sup> Hence, it was no surprise when the UN started concentrating its energies ostensibly on secondary goals of economic development and cultural exchange.<sup>21</sup>

## 2. After the Cold War:

The ebbing of the Cold war saw a revitalized Council ready to take upon the challenge of fulfilling its mandate and maintaining world peace.<sup>22</sup> The UN negotiated an end to the Salvadoran Civil War, launched successful peacekeeping missions in Namibia, oversaw democratic elections in post-Apartheid South Africa and post Khmer-Rouge Cambodia, and assisted the peace process in Sierre-Leone.<sup>23</sup> The most significant event that marks the transition in the Council's attitude and functioning is the unanimous

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<sup>17</sup> Stanley Meisler, *United Nations: A History* 58-59 (Atlantic Monthly Press (Grove-Atlantic), 2011) [Meisler].

<sup>18</sup> Meisler at 115-134.

<sup>19</sup> Mats Berdal, *The Security Council and Peacekeeping* 184, United Nations Security Council and War: The Evolution of Thought and Practice Since 1945 (Oxford University Press, 2008) [Berdal].

<sup>20</sup> Mark A. Weisburd identifies (1) the attack on Egypt by France, the UK and Israel in 1956 (Suez Crisis); (2) Indonesia's campaign against Dutch possession of New Guinea in the 1960-62; (3) Somalia's invasion of Ethiopia in 1975; (4) Tanzania's conquest of Uganda in 1978; (5) Vietnam's invasion of Democratic Kampuchea in 1978; (6) Soviet Union's campaign in Afghanistan in 1979-89; (7) Iraq's invasion of Iran in 1980; (8) Argentina's attack on UK's Falkland Islands colony in 1982. See *The War in Iraq and the Dilemma of Controlling the International Use of Force*, 39 *Texas Int'l L J* 521 at 547 (2007) [Weisburd].

<sup>21</sup> *Supra* n. 17, Meisler at 167-168.

<sup>22</sup> *Supra* n. 1, Fischer & Danchin at 2.

<sup>23</sup> *Supra* n. 17, Meisler at 252-277.

condemnation of Iraq's occupation of Kuwait in August 1990. The SC acted with vigour and promptness by authorizing a USA-led coalition which successfully repulsed the Iraqis out of Kuwait.<sup>24</sup> The Council's afore-stated actions, however, were a part of a very brief period of success within the Council.<sup>25</sup>

The short-lived unity among the P-5 began to disappear around the mid-1990s and is best characterised by the totally inadequate response to the outbreak of the horrific Rwandan genocide in 1994.<sup>26</sup> The Council was further disgraced in 1995 when thousands of Bosnians were massacred in UN safe zones in Srebrenica after UN troops retreated in the face of the Serbian attack.<sup>27</sup> The Council's political and military clout was discredited after these 2 incidents; however, things only got from bad to worst in the future. The ability of the Security Council to maintain peace came into serious question on the following 3 separate counts wherein the SC collective security machinery was disregarded, ignored and even completely bypassed.

#### **i) Kosovo 1999:**

Kosovo was gripped by political violence since 1992 as the fighting among the Bosniak, Croat and Serb factions continued unabated. This situation indubitably threatened international peace and security, as the SC had held in several prior resolutions.<sup>28</sup> In 1998-99 Kosovo begged for intervention by any states that could do so, however, the SC failed to reach any conclusion on the matter.<sup>29</sup> This is because, even after the Cold War, geography and politics rendered unanimity by the permanent members in support of military action (especially in the Balkans) highly unlikely.<sup>30</sup>

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<sup>24</sup> *Supra* n. 20, Weisburd at 552.

<sup>25</sup> *Supra* n. 1, Fischer & Danchin at 106.

<sup>26</sup> Romeo Dalhaire, *Shake Hands with the Devil: The Failure of Humanity in Rwanda* 4 (Random House Canada, 2003).

<sup>27</sup> *Supra* n. 1, Fischer & Danchin at 106.

<sup>28</sup> SC/Res/1160 (Mar 31, 1998), SC/Res/1199 (Sept 23, 1998), and SC/Res/1203 (Oct 24, 1998).

<sup>29</sup> Ruth C. Lawson, *Some Contributions of the North Atlantic Community Towards Improving Organization for Security*, 51 *Am Soc'y Int'l L Proc* 116 (1957) at 123.

<sup>30</sup> Louis Henkin, *Kosovo and the Law of "Humanitarian Intervention"*, 93 *AJIL* 824 (1999) at 825 [Henkin].

NATO (North Atlantic Treaty Organisation) heeded the call and went ahead to intervene in Serbia. NATO forces bombed the country even though Serbia had not attacked any member of the NATO alliance. The Western powers believed that the failure of the SC to reach any conclusion was attributable to Russia's illegitimate quest to support its ally and former satellite State Serbia no matter what.<sup>31</sup> It was only after that, that the Security Council passed an ex-ante resolution stating that NATO's military actions were 'illegal but legitimate'.<sup>32</sup> Here it is clear that the Council could have saved many lives if it had acted promptly with a sense of direction.

## ii) **Afghanistan, 2001:**

In September 2001 the Al-Qaeda carried out an astonishing attack on the USA. In an instant, the Council (especially the USA itself) and the UN collective security regime alike were presented with a moment of simultaneous opportunity and peril.<sup>33</sup> The US-led forces invaded Afghanistan in order to combat terrorists in a State which "supported, harboured, provided safe haven to, financed, supplied weapons to, help recruit them".<sup>34</sup> This invasion was done under the "inherent right of self-defense"<sup>35</sup>, and notwithstanding the SC's approval of this attack, there were concerns that clouded this decision.

First, USA's argument in the Council suggested that a victim State was entitled to use military force against aggressors within the territory of another State which are today categorized as "non-State actors", such that violence was resorted to without so much as employing diplomatic or

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<sup>31</sup> Annie-Marie Slaughter, *Good Reasons for Going around the UN*, New York Times, March 18, 2003.

<sup>32</sup> SC/Res/1244 (June 10, 1999).

<sup>33</sup> *Supra* n. 1, Fischer & Danchin at 3.

<sup>34</sup> SC/Res/1267 (October 15, 1999).

<sup>35</sup> Peter Danchin, *Human Rights: Jus ad Bellum: The New Bush Doctrine* 4, A Global Agenda: Issues before the General Assembly of the United Nations (UNA & Rowman & Littlefield Publishers, 2012).

peaceful means.<sup>36</sup> Second, it posited responses to terrorism as an unidentified new category under international law.<sup>37</sup>

### iii) Iraq, 2003:

The US-backed invasion in Iraq is one of the most controversial events, the legality of which has vexed many a legal thinker. The Iraq debate postulated a unique challenge to the SC. The Western world was divided between the USA and UK on one side and other EU nations like France, Russia, and Germany (then elected member) who were increasingly apprehensive of USA's true motives to go ahead with the invasion. Anticipating disagreement within the Council on this point, the USA decided to circumvent the UN collective security process and act alone.<sup>38</sup> This severely tarnished the United Nations' perceived power and legitimacy, as it brought forth a question as to how relevant really was the UN collective security apparatus.

The Kosovo crisis and the Iraq invasion were dealt with by a select group of States without the permission of the SC. However later in the case of Kenya (2008), Ivory Coast (2011) and Central African Republic (2013) the exact opposite happened. The SC led from the front and played a proactive role in initiating the peace process and maintaining security in the respective countries and regions.<sup>39</sup> The Council's push towards the bombings in Syria (2011 to 2013), Libya (2011) and the Islamic State (Iraq and Syria) are however extremely controversial and the US-led coalition has gone ahead with such bombings despite Russia and China vetoing the same.<sup>40</sup>

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<sup>36</sup> Carl Schmitt argues that the Bush doctrine would usher in several "wars of annihilation" wherein the so-called victim State will not consider the dignity or territorial sovereignty of another nation, and any resistance will appear immoral and illegal. See *Die Wendung zum totalen Staat*, Positionen und Begriffe in Kampfh mit Weimar-Genf-Versailles (Dunker & Humblot Publishers, 2002).

<sup>37</sup> Gerry Simpson, *Great Powers and Outlaw States: Unequal Sovereigns in the International Legal Order* 43 (Cambridge University Press, 2004) [Simpson].

<sup>38</sup> *Ibid.*

<sup>39</sup> The International Coalition for the Responsibility to Protect, Crises, available at <<http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-iraq>>.

<sup>40</sup> Paul Harris, *Syria Resolution Vetoed by Russia and China*, *The Guardian* (Feb 4, 2012).

### 3. What is the Change that Occurred after the Cold War?

Before one delves into the analysis of what is the nature of the change that occurred after the end of the Cold War, one must first answer the question whether there was any change that occurred at all. Did things improve? Was there more agreement as a result of the end of hostilities between the 2 biggest power-blocs in the history? Can the fact that these blocs, both with nuclear weapons capabilities did not ever plunge into a full-fledged war, be considered as a mark of success of the UN collective security system? Evidently, these questions need to be answered before one can truly discern the nature of the change if any that occurred after the Cold War.

#### i) **Successes of the UN collective security system, and why they are not attributable to the UN at all:**

It is first, essential to identify the nature of the UN's collective security machinery's success or failure. It is true that there has been no war which assumed the dimensions of the First and Second World War since the formation of the United Nations. It is also true that apart from Yugoslav Wars which culminated in its break-up in 1999, there has been no war in Europe, the very place where unfolding events ushered in the previous 2 World Wars. Further, it is also true that the number of interstate wars has declined since 1950.<sup>41</sup> Yet the fundamental question that remains is how many of these positive results are actually attributable to the SC?<sup>42</sup>

When assessing the UN collective security system, other factors have to be considered which may have been at play in preventing a war. There was a great deal of mutual fear among the US and Soviet blocs, as both were aware that an actual war would lead to total nuclear destruction. Also, these powers had a common interest in economic development which led to robust globalization of trade and commerce. Further, the decline of aggressive nationalism in Europe and the growth of a European identity with the advent of the European Union ensured that there was no stimulus

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<sup>41</sup> Ian Hurd, *Myths of Membership: the Politics of Legitimation in UN Security Council Reform*, 14 *Global Governance* 199 (2008) at 208 [Hurd, *Myths of Membership*].

<sup>42</sup> Zainab Lokhandwala, *Realizing One thing Real in a Utopia*, available at <<http://maverickpolitic.blogspot.in/2013/06/realizing-one-thing-real-in-utopia.html>>.

to enter into armed conflict.<sup>43</sup> Most importantly, global power dynamics have changed noticeably if not completely, thus resulting in a multi-polar world wherein several countries have come to enjoy political and economic clout. Hence, the proposition of success of the UN security system falls apart when one finds that, breaches of peace which were otherwise inevitable were never prevented from actuating due to the actions of the Security Council, as there was always something else at play.<sup>44</sup>

**ii) Failures of the UN collective security system, and why the existence of a unified Council after the Cold War is a myth:**

As stated above that no war similar to the proportions of the Second World War took place, yet the war of smaller proportions yet with an immense human cost stirred its ugly head time and again. The gargantuan multitude of wars in Africa, the war in Korea, the war in Vietnam that spanned 2 decades, the unending and ever-increasing in intensity conflict between Israel and Palestine, and the resultant hostilities in the Arab-Israeli rivalry, all of which ought to be the Council's business, yet how much did the UN collective security apparatus really deliver? The SC seemed only to act at the fringes of the actual conflict, while all along something else was at play at the core. What?

At the time when the UN Charter was drafted and the idea of a collective security system under the Charter was conceived, civil strife and domestic human rights violations were never understood as threats to international peace and security.<sup>45</sup> Further, the significant inter-state conflicts before and after the Cold War were all raised either due to Western powers which were either colonialists of the numerous warring countries of Africa and South America or were driven to strengthening their respective spheres of influence during the Cold War. Hardly any of these wars had a purely local agenda.

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<sup>43</sup> Alina Polyakova and Neil Fligstein, *Is European Integration Causing Europe to Become More Nationalist? : Evidence from the Recent Financial Crisis*, Annual Meetings of the American Sociological Association, New York City, 5(Aug9- 12, 2013) available at <<http://sociology.berkeley.edu/sites/default/files/faculty/fligstein/European%20d%203.1.pdf>>.

<sup>44</sup> This form of analysis and style of questioning the effectiveness of collective security has been taken from Iris Claude, *Swords into Plowshares* 249-261(4<sup>th</sup> ed, McGraw Hill Publishers, 1984).

<sup>45</sup> Thomas Franck, *Resource to Force, State Action Against Threats and Armed Attacks* 41 (Cambridge University Press, 2002).

It is the members of the Security Council who set the agenda for the day and determine its substantive competence under Article 24 of the Charter. And unless they, especially the P-5 work in unison, the Council is bound to be enveloped in dysfunction due to lock jams. Thus, the core issue that underlines the UN collective security system is that, the outbreak of an act of aggression or the prevention or containment of one has never truly been the failure or success of the Security Council; it has, in fact, been the failure or success of its permanent members, especially the United States of America.

The problem with a viable collective security system was never the lack of resources; this is evident from the military strengths of its members even today.<sup>46</sup> The problem lies in finding consensus within the Council.<sup>47</sup> The Council has been riddled with indecision on significant moments even after the Cold War. Resultantly, some members thought it expedient to by-pass the entire UN machinery altogether.<sup>48</sup> Non-consensus didn't change even after the end of the Cold War; this is because even though the practice of exercising the veto saw a decline, permanent members nevertheless enjoyed it. This meant that if it was evident that a particular action under Chapter VII powers of the SC was not going to pass in the Council then it was never tabled, and countries that wanted to go ahead with it went ahead anyway.

As it wasn't the level of cooperation and consensus that increased after the Cold War, then was there any change that occurred at all? There was most certainly a remarkable change in the scope of the powers of the SC. With the dilution of the sovereignty principle and the growth of terrorism, wherein it was non-state actors who were responsible for an internationally wrongful act, Chapter VII was invoked with startling innovation. This was partly to meet the challenges of a new era, and partly to serve the interests of some powerful countries.

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<sup>46</sup> Ian Hurd, *After Anarchy: Legitimacy and Power in the UN Security Council* 36 (Princeton University Press, 2007); Robert Snyder, *Reforming the Security Council for the Post-Cold War World*, 14 *Intl J on World Peace*, 16 (1997).

<sup>47</sup> *Supra* n. 41, Hurd, *Myths of Membership* at 209.

<sup>48</sup> USA went ahead with invasion of Iraq in 2003, later US-led forces bombing Syria in 2011 and 2013 without Council's approval.

## IV. INNOVATIONS UNDER CHAPTER VII POWERS POST-COLD WAR

Innovative measures primarily evolved due to new and emerging threats to international peace and security. Ideas like a humanitarian intervention, responsibility to protect and pre-emptive self-defence developed in the post-Cold War era, especially after the 9/11 attacks. There were innovations even during the persistence of the Cold War<sup>49</sup>, however, after the end of the Cold War, the innovations of the SC have been more striking, and have even gone to the extent of being questioned as against the very idea of the collective security.<sup>50</sup>

### 1. Breaking through the veil of “purely domestic disputes”: The concept of Humanitarian Intervention

After the end of the Cold War and especially in the wake of the 21<sup>st</sup> Century, the world has seen major shifts in challenges against the maintenance of international peace and security. Human rights violations strictly within the territory of a State have been understood to pose a threat to international peace.<sup>51</sup>

In the light of this development, “humanitarian intervention” emerged as an international norm whereby the violation of Article 2 (4) of the Charter was balanced by humanitarian considerations.<sup>52</sup> It is defined as “military force against another state when the chief publicly declared aim of that military action is ending human-rights violations being perpetrated by the state against which it is directed”.<sup>53</sup> Humanitarian intervention has been used

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<sup>49</sup> *Supra* n. 19, Berdal at 179.

<sup>50</sup> Michael Glennon, *Why the Security Council has Failed*, 82 *Foreign Affairs* 16 (May-June, 2003).

<sup>51</sup> The Kosovo intervention in 1999 by NATO forces marks this change of attitude, wherein matters within the territory of a State become the concern of the international community as a whole.

<sup>52</sup> Jeff Holzgreve and Robert Keohane, *Humanitarian Intervention: Ethical, Legal and Political Dilemmas* 84 (Cambridge University Press, 2003).

<sup>53</sup> Anne Orford, *Reading Humanitarian Intervention* 202 (Cambridge University Press, 2003); Henkins at 826 [Orford].

most prominently in Kosovo in 1999, although it was employed even before that several places with the authorization of the SC.<sup>54</sup>

The controversy however surrounding the concept of humanitarian intervention is that it has been wielded in order to justify interventions with a hidden economic or political agenda. Like in the case of Afghanistan (2001)<sup>55</sup> and Iraq (2003)<sup>56</sup>, the intervention and the prolonged stay was disguised as a “just war” however it is now clear that the US-led forces entered into these wars unilaterally for the purposes of changing the existing regime and assuming the administration of the State.

## 2. Responsibility to Protect

The US-led global “war on terror” has added another layer of complexity to the concept of collective security.<sup>57</sup> The emerging norm of the responsibility to protect (R2P) is seen by many as a continuation of the concept of humanitarian intervention, only with greater legitimacy and more safeguards against abuse.<sup>58</sup> The theory of R2P<sup>59</sup> provides a framework for using tools that already exist, like Chapter VI and VII powers to prevent mass atrocities.<sup>60</sup> It is based on the premise that that sovereignty is not an absolute right, but that the international community must protect

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<sup>54</sup> Jennifer Welsh identifies SC authorized humanitarian intervention in the post-Cold War context: Northern Iraq, 1991, Somalia, 1992, Haiti, 1992, Rwanda, 1994, East Timor, 1999; see *The Security Council and Humanitarian Intervention* 533, United Nations Security Council and War: The Evolution of Thought and Practice Since 1945 (Oxford University Press, 2008).

<sup>55</sup> The prolonged stay in Afghanistan was justified by the then Secretary of State- Colin Powell as “due to restoration of the rights of Afghan women and girls against Taliban brutality”, in Orford at 202.

<sup>56</sup> Colin Powell justified the Iraq invasion on the grounds of “repression of the Iraqi population and the willingness to use weapons of mass destruction against its own people”, in Orford at 204.

<sup>57</sup> *Supra* n. 1, Fischer & Danchin at 155.

<sup>58</sup> George Andreopoulos, *The Challenges and Perils of a Normative Overstretch* 263-288 (Sandholtz and Stiles, 2009) [Andreopoulos].

<sup>59</sup> The Secretary-General, *In Larger Freedom: Towards Development, Security and Human Rights for All*, available at <<http://www.responsibilitytoprotect.org/index.php/about-rtop/core-rtop-documents>>.

<sup>60</sup> *Supra* n. 58, Andreopoulos at 269. Jose Alvarez states the problem with R2P is that it means different things to different people; to some it is the concept of humanitarian protection with some superfluous features, others perceive it as a legitimate means of intervention, and others think it is one of the tools the US will continue to exploit to meet its ends; see *The Schizophrenias of Responsibility to Protect* 275 (Oxford University Press, 2008).

populations from mass atrocity crimes like genocide, ethnic cleansing etcetera.

This principle has been employed in Kenya (2008), Ivory Coast (2011), Libya (2013) and Syria in 2011 and 2013.<sup>61</sup> The current bombings on the ISIS were also initiated under R2P.<sup>62</sup> Just as in the case of humanitarian intervention, this concept has run into its share of controversies. Questions about its legitimacy have been raised within the Council itself, opening the doors for a whole new debate over the point that, if such innovative measures are being employed anyway, does the SC need to “catch-up” or adapt itself to make these measures more legitimate and lawful?

Today there exists a multitude of threats to international peace and security; these threats differ in their cause, intensity, purpose, methodology, and consequences. And as the system’s collective security commitment is based on the restraint of use of force, in the light of this growing array of threats restraint becomes problematic. Thus, the SC and its workings will remain relevant as long as it tries to evolve to these threats by bringing credibility to its actions and taking human rights abuses by any country seriously.

### **3. Collective Security systems other than under the UN Charter**

Due to the legal constraints of the powers of the SC and the lack of consensus within the Council in facing new challenges, many regional collective security systems gained importance. There are a host of regional alliances and organisations that envisage provisions of collective security.<sup>63</sup>

One of the most significant of regional collective security systems is the NATO. The very object behind the creation of the NATO is to ensure continuous preparedness of the allies to defend themselves against an

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<sup>61</sup> *Supra* n. 1, Fischer & Danchin at 167.

<sup>62</sup> US-led forces went ahead with the ISIS bombings in September, 2014, available at <<http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-iraq>>.

<sup>63</sup> Articles 7-12 of the African Union Constitutive Act, 2000; Articles 9-12 of the ECOWAS Treaty, 1975; Article 3 of the Charter of the Arab League, 1945; Articles 3, 6 and 9 of the Charter of the OAS, 1967; Article 3 of the North Atlantic Treaty, 1949; Chapter VI of The Treaty of Amity and Cooperation in Southeast Asia, 1976.

armed attack.<sup>64</sup> The NATO treaty does not provide for any legal form or force behind its actions<sup>65</sup> and yet has been instrumental in intervening in several countries<sup>66</sup>, justifying its action under international law.

Even though the rise of some regional collective security systems tends to undermine the authority of the SC, they do not necessarily run mutually exclusive to the UN apparatus. This is because in the past the Council itself has authorized such regional bodies to take action on behalf of the UN.<sup>67</sup> And some believe that this trend will continue to be on a rise due to many factors, such as regional systems are more united and can thus take more spontaneous action; also a belligerent state is more likely to comply with international standards of peace if urged by regional forces than by alien forces.<sup>68</sup>

## V. CONCLUSION

Collective security has its roots in the perpetuation of the nation-state and the pursuance of its interests. Collective action against an internationally wrongful act ensures a form of deterrence to such acts and in turn, maintains an atmosphere of peace and security. The UN Charter is the constituent instrument which captured the idea of a sustained and arguably fair system of collective security. Today with a change of world dynamics, a new range of threats and a renewed fear of the use of weapons which are more harmful than they ever were in the past, the UN collective security system has come under great criticism.

In order to meet the challenges of the day, it is important to revisit the mandate of the UN and ensure that the SC is acting within its parameters. The SC needs to adopt a strategy that involves greater credibility through the removal power asymmetries that persist in the Council today. A lack of

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<sup>64</sup> Article 3 of the North Atlantic Treaty, 1949.

<sup>65</sup> *Supra* n. 8, Orakhelashvili at 79.

<sup>66</sup> NATO's military operations in the absence of SC consent: Bosnia and Herzegovina, 1992, Kosovo, 1999, Iraq Training Mission, 2004, Libya, 2011.

<sup>67</sup> Office of the Secretary General, *A Regional-global Security Partnership: Challenges and Opportunities*, A/61/204-S/2006/590, at 16 (para 80).

<sup>68</sup> Ugo Villani, *The Security Council's Authorization of Enforcement Action by Regional Organizations*, Max Planck UNYB 6 (2006) at 541; R Duward, *Security Council Authorization for Regional Peace Operations: A Critical Analysis*, 13 Int'l Peacekeeping 350 (2006) at 360.

legitimacy and representation of States that may be affected by the Council's decision will only lead to further subsidiarity<sup>69</sup> whereby regional power systems will take things in their hands. Although this is not entirely such a bad thing, however, it will indeed lead to further confusion as to what use of force is legal what is not. The future for collective security is indubitably linked to legitimacy if it is to survive and remain relevant in the midst of new and emerging threats to international peace and security.

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<sup>69</sup> Subsidiarity: the devolution of power to lowest level, whereby decisions are made by those who are most likely to be affected by the consequences of the same.