Chapter 2

Rethinking Collective Security

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I Why Rethink Collective Security?

One of the many seminal insights Professor Yoram Dinstein has brought to the field of international law is his linking of the law pertaining to war with the law of human rights. In essence, the enterprise established in the opening line of the United Nations Charter – “to save succeeding generations from the scourge of war” – has its footing not only in the *jus ad bellum*, but also in the then barely nascent law of human rights.

In World War I, ten million people died. In World War II, with advances in both fanaticism and technology, sixty million died. Since then, human rights have developed exponentially and, in the growing *corpus* of human rights, the right to life surely takes pride of place. It follows that, since the greatest threat to life, everywhere, comes from war – whether from civil wars, wars between states or the religious-cultural wars waged by terrorists – the law limiting recourse to military force has become the cornerstone of the law of human rights and *vice-versa*. In an age of weapons of mass destruction, the threat of war can now be seen in terms of fatal casualties potentially measurable in the hundreds of millions. The prospect of such massive deprivation of the right to life forces all of us to examine the *jus ad bellum* in human rights terms.

In an effort to fulfill its central mission, the UN Charter establishes as the organization’s first Purpose (Art. 1(1)) “To maintain international peace and security, and to that end: to take effective collective measures....” The design of this new system for the prevention of war is new and also clear: nations were to renounce the “threat or use of force” (Art. 2(4)) except when actually attacked (Art. 51). In return, the members of the UN, upon a determination of “the existence of a threat to the peace, breach of the peace, or act of aggression”, shall take the collective measures necessary “to maintain or restore international peace and

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security” (Art. 39). These measures may include “action by air, sea, or land forces” if less draconian measures fail to maintain or restore peace (Art. 42).

This, then, was the design of a regime for collective measures that would make unilateral state recourse to force unnecessary. Right from its inception, however, the design evinced serious flaws. These have been exaggerated by critics, and the successes have been excessively discounted. In the words of Canada’s longtime Ambassador to the UN:

The UN gave birth to a body of international law that stigmatized aggression and created a strong norm against it. Although the Cold War saw international law breached by both sides, the norm against aggression was much more respected than not, as was the legal force of the Charter. There were fewer interstate wars in the second half of the twentieth century than in the first half, despite a nearly four-fold increase in the number of states. While the Cold War destroyed the post-war consensus, hobbling the security vocation of the UN for many years, and the prevention of World War III owed at least as much to nuclear deterrence and collective defence through NATO, there is no doubt that the world would have been a much bloodier place in the last fifty years without the world body.²

Nevertheless, the flaws can no longer be ignored. Collective security under UN auspices is a weak reed upon which to rely in return for states’ renunciation of the right to use force unilaterally to protect their security and advance their national interest.

II Weaknesses of UN Collective Security

The first flaw to appear in the Charter’s design was the failure of member states to give effect to Article 43, by which they had undertaken “to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces... necessary for the purpose of maintaining international peace and security.”

That the members failed in their obligation to give the Security Council stand-by military forces was partly obscured by the Cold War, which, anyway, would have made it virtually impossible to deploy any such forces by reason of the frequent recourse to the veto by the Soviet Union. However, such recurrent use of the veto, then and now, by one or more of the five permanent members of the Council entitled in this way to halt any proposed collective action (Art. 27(3), has constituted a second flaw in the Charter’s design which, understandably, makes nations very cautious about abjuring recourse to force to protect their security and national interest.

² Id. p. 184.