CHAPTER FIVE

COLLECTIVE INTERVENTION
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CONCEPT OF COLLECTIVE SECURITY

Security is an essential precondition of an ordered human existence; it is natural for humans to take precautions against danger. Nature provides all life forms with mechanisms to aid in self-defence and preservation on a mundane level. Governments must provide a secure environment which would allow people to pursue their economic and social goals without undue anxiety and fear. The concept of security covers every facet of life, and governments find it difficult to meet every contingency which might arise. The actual process of providing social and economic security has too frequently brought about a condition of insecurity caused by excessive State interference in private matters. Sometimes an unpleasant offshoot of this is rebellion, civil war, insurgency against the government or established power.

States have both internal and external functions: the first in relation to their own citizens and the second in relation to other States and non-State actors on the international scene. Prima facie, the task of maintaining external security would seem to be a simple one— to defend the State against possible attack, to make provision for such contingency, and to maximise the State’s position in relation to that of potential aggressors. The concept may be simple, but its application is incredibly complex.\textsuperscript{271} Aggression, for one, can manifest itself in

\textsuperscript{271} The idea of “peace and security” dominated the Israeli general election campaign in May 1996 of both prime ministerial candidates, the right-wing Binyamin Netanyahu (Likud) and Shimon Peres (Labour) seeking re-election. Peace, here, meant peace with Israel’s neighbours and the Palestinians. In the first direct election to the post of prime minister in Israel, on 29 May 1996, Netanyahu won a narrow victory, thereby setting the cat among the Arab pigeons. The right-wing victory in Israel served, pro tem at least, to unite the Arab world, fearing, collectively, for its...
many forms and on varied fronts. The community of States, though theoretically and legally equal, is in fact a hierarchy, the order of which is determined by the capability and power potential of individual States. The definition of ‘capability’ in this context is not simple. Tangible factors, such as numbers and quality of population, area, location, population density, actual and potential economic power, access to raw materials, can be assessed with relative ease; intangible elements which include political traditions, social structure and morale are much more difficult to define in exact terms. It is generally true that States find greater security in combining with other States, which on the whole share some of their values and most of their interests. Historically, these combinations or alliances have been more cohesive when they were formed for a very specific purpose and with a ‘preferred enemy’ in mind. Ideally, a world-wide combination of all States, directed against all potential aggressors could create a global system of collective security. But this seems to be a contradiction in terms. Moreover, such a concept has often foundered on the rocks of national interest. The second best but more effective solution has been attempted in Europe essentially as a result of perceptions of threats and subsequent confrontation of the United States of America and the erstwhile Soviet Union which developed after World War II. This has been in the form of the North Atlantic Treaty Organisation (NATO)\textsuperscript{272}. The system of regionalised collective self-defence may have served to stabilise the military position particularly in Europe and in this sense they have contributed to the consciousness of security in rival camps. The direct military threat in Europe has receded—indeed it is barely credible now, since the collapse

security and the West Asia Peace Process which has since been stalled. \textit{Cf.} Comments of Prime Minister Netanyahu made on 9 July 1996.\textsuperscript{272} A politico-military organisation established 1949, during the early part of the Cold War, to protect non-Communist States from a perceived threat from Communism. NATO’s membership includes most western European nations along with U.S.A., Canada, Norway, Denmark and Turkey. France is only partially a member. NATO works by co-ordinating the military capacities of its member-States and allotting specific peace-time and war-time tasks. Under war conditions units of all member-States would come under a uniform command structure, the head of which is usually a U.S. general in recognition of the huge and disproportionate cost to the U.S.A. of NATO membership. Similar bodies, like SEATO and CENTO, at one time covered military threats elsewhere in the world. But, it is NATO that has survived and is now in the forefront of East-West European relations. It has now formed, jointly with the defunct Warsaw Pact (an alliance of former Soviet Union and its satellite States in eastern Europe), the North Atlantic Co-operation Council (NACC).
of the Soviet Union in 1990. NATO has, as a result, taken on peace-enforcement, peace-implementation and peace-making roles, as is evident in the former Yugoslav Republic of Bosnia-Herzegovina where its forces are deployed under the acronym of S-FOR (the Stabilisation Force).²⁷³

It could be argued that this ‘cold peace’ was maintained during the Cold War years because of a rough and ready equilibrium of forces and political will. There is a risk, however, of such a policy of containing threats by means of expensive military establishment becoming unpopular.

Ironically, it is this ‘balance’ which perhaps made it possible for politicians to discuss security across the East-West divide in Europe (the Churchillian Iron Curtain), and to try to institutionalise this balance in a way which would facilitate a realistic reduction of force levels while maintaining and, if possible, increasing the feeling of mutual security in Europe. Such efforts led to conclusion of agreements such as the Strategic Arms Limitation Treaties (SALT) I and II, the Conventional Forces in Europe Treaty (CFE) 1990, and the Strategic Arms Reduction Treaties (START) I and II, etc., and the negotiations now underway at Geneva for a Comprehensive Nuclear Test Ban Treaty (CTBT) to outlaw the conducting of nuclear tests world-wide whether over-ground and underground. “Without this equilibrium, force would dominate politics.”²⁷⁴ Collective security might have provided Europe with a framework for exploring a new range of negotiating options.

Force is not the sole constraint on the use of force. It is closely tied, as in the case of Europe, to the concept of military balance, which in turn, some argue, depends on the deterrent effect of nuclear arsenals of the Big Powers so-called, especially the Big Two, United States of America and Russia (formerly the Soviet

²⁷³ NATO is acting here in conjunction with the European Union (EU), the Organisation for Security and Co-operation in Europe (OSCE), and the United Nations Security Council: the common denominator of all these organisations being the Big Five Powers.
Nuclear war as an instrument of policy may become virtually useless in the future. Some would argue that the values of international relations have changed and that modern societies have acquiesced in the erosion of the sovereign nation-State concept. It would be extremely hazardous to accept that security hinges on arms and alliances, but it is nevertheless true that the security of States, in certain circumstances, can only be guaranteed by stable alliance system which must be credibly armed. This is particularly beneficial for smaller States. Force retains considerable validity in the international system. It is argued that the collective self-defence systems in Europe helped to create the climate of mutual security in which change has become possible. These alliances have proven themselves to be sufficiently malleable to accommodate this change, and have also lent to a reduction in the level of armaments.

In open societies, where political choices are made at regular intervals by a democratic electorate, it is extremely difficult to sell the idea of external security to the citizenry. The citizens are preoccupied with different aspects of

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275 The International Court of Justice at The Hague on 8 July 1996 ruled that “the use or threat of use of nuclear weapons is generally against international law” but is permissible when the existence of a State is threatened. Thus, the Court, in effect, condoned the possession of nuclear weapons and their use in self-defence. Critics accused the Court of kow-towing to the Big Five, the declared nuclear powers. Others believe that the nuclear issue (the ‘n’ factor) is not governed by its legality but politics. Either way the decision would help the cause of the “threshold States” (the undeclared nuclear powers) like India, Israel, Pakistan.

The term nuclear ‘power’ itself glorifies and makes fashionable the possession and threat thereof of nuclear weapons. The declared and undeclared n-States have often used the possession or threat of use of n-weapons as part of a cry-wolf strategy and for policy brinkmanship.

276 The Comprehensive N-Test Ban Treaty, e.g. Even after two and a half years of negotiations, the CTBT could not be concluded at the United Nations Disarmament Conference in Geneva on 21 June 1996. India refused to sign the CTBT in its present form and wants it to incorporate a guarantee from the five declared n-powers that they would dismantle and destroy all n-weapons in their possession by a certain date. This is not acceptable to the Big Five. The CTBT also does not ban laboratory- or computer-simulated n-tests. India maintains that the Big Five (all n-powers) seek to legitimise their own n-arsenals through the CTBT.

On 6 June 1996, China agreed to sign the CTBT only if the Treaty excepts n-testing for peaceful purposes. She added that she could put aside peaceful n-explosions as well if the CTBT is reviewed every 10 years.

277 The best example of this is the provisions made under the United Nations Charter.

278 See discussion above.
security—they are worried about their economic welfare and they are concerned to make their society safer internally by spreading the benefits of welfare economics as widely as possible. President William Jefferson (Bill) Clinton won the 1992 United States Presidential election on the promise that he would give domestic policy priority over foreign policy. Whilst it is a true that, in the long run, a government which presides over a completely unstable and insecure society cannot guarantee the external security of the State, it is equally a verity that a stable and secure society cannot develop in an ambience of complete international insecurity, when the very existence of the State may be at risk or its “interests are threatened”. On attaining office, President Clinton found himself constrained to give almost equal priority to foreign policy, inter alia, due to the United States becoming the dominant power in a unipolar world.

Internal stability and external security interact continuously. It is ultimately true that without external security, policies designed to create and maintain internal social cohesion cannot succeed. This was indeed one of the postulates of Chanakya’s Dandaniti (Laws of War) as well. On the other hand, excessive preoccupation with external security could set up internal stresses and conflicts which can be deleterious to the political and social fabric of the State: the problem is to achieve a realistic mean. Politicians, like President Clinton, find it difficult to persuade the electorate that security is indivisible.

The economic costs of maintaining an armed security appear to be too great, and there are always people who genuinely and sincerely object on moral and economic grounds to the whole apparatus of military preparedness. Military capability represents force, and force is regarded as a clumsy and tainted political tool. The inherent danger is that politicians are tempted to oversell the external

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279 A phrase often employed by U.S. governments to intervene in situations abroad, e.g., during the Gulf War II crisis in 1990-91. In a unipolar world, the sphere of U.S. “interests” has widened even further.
threat to 'attempt to create a moral equivalent war'\textsuperscript{281} and this happened to some extent during the Cold War, and continues in countries like Pakistan and India. This calculated demonology, if it continues for a protracted period, can be self-defeating and be hoisted by its own petard. People may become complacent and the economic costs could be debilitating.

Some members in regional alliances may have interests beyond the area covered by the alliance. This could create tensions within the alliance, for example, with NATO during United States involvement in Vietnam. A vital aspect of alliance theory is that national interests of allies are never completely identical and only people who regard politics in terms of irreconcilable absolutes look for this utter identity of interests. The adjustment of interests even among allies is a very involved and delicate process, and compromise is almost always the result of political bargaining, the \textit{sine qua non} of \textit{realpolitik}. Collective self-defence is an imperfect alternative, but it has worked for some period of time, to some effect, in some parts of the world.

As an ideal, collective security is without flaws; it presents indeed the ideal solution of the problem of law enforcement in a community of sovereign nations.\textsuperscript{282} Two attempts have been made at the international level to put the idea of collective security into practice: Article 16 of the Covenant of the defunct League of Nations, and Chapter VII of the Charter of the United Nations, which are discussed later.


The idea that a group of the like-minded individual entities is more effective collectively than individually in safeguarding its security is neither new nor original. The human being’s escape from what Hobbes called ‘the state of nature’ into the allegedly more secure environment of organised society brought about some relief from ‘continual fear and danger of violent death’, some improvement in the life of the human being, ‘solitary, poor nasty, brutish and short’. In the Hobbesian view the innate aggressive nature of the human being creates insecurity, and the consequent quest for security leads to the creation of a social and political system—Leviathan—capable of enforcing order and stability. This judgement is as false or true as the Panglossian optimism of the political idealists about the inherent goodness of the human being. The Hobbesian view is balanced by the argument that human beings are by their very nature social beings and that some form of social organisation and, therefore, mutual help, is natural and basic to human behaviour. The ‘social contract’ is purely notional, of course, and there has never been a time when men and families of men were not united in tribes, clans and villages for their mutual benefit and security. The family, consisting of at least parents and children, is a universal social unit, the one social phenomenon we are justified in calling ‘natural’. The tribal qualities of the human species are so basic to us that, were we ever to lose them, it would mean that we had mutated into another species altogether.

"Our tribalism began millions of years ago with our simian ancestors. Anthropological and ethological evidence and studies suggest that they did not live in pairs, like nesting birds, but instead moved about in semi-nomadic groups.


284 “All is for the best in the best possible of worlds”: Dr Pangloss in Voltaire’s Candide (New York: Dover, 1991), Ch.30.


At dusk they all slept near one another; at dawn they set off together to forage for victuals. In the heat of the day the adults rested and groomed one another while the youngsters played. There was little division of labour, each adult finding food for himself or herself without any aid from the others. Only when the group was threatened by a predator would this condition change: the strongest males of the group might gang up against the attacker and try to drive it off with combined threats. In this behaviour we see the seeds of the later development of tribalism. It is the expansion into groups and societies which brings them into potential and real conflict with other groups and societies, thus enlarging and accentuating the problem of security.

The theorists of social contract—Thomas Hobbes (1588-1679), Baruch Spinoza (1632-1677), Jean-Jacques Rousseau (1712-1778), and John Locke (1632-1704)—saw the setting up of the State as a kind of agreement on the part of its inhabitants intended to solve the problem of security. Society would provide security for itself, and the State—Hobbes's Leviathan—would be the means to this end. Some of them, Locke in particular, were also concerned with the problem of the individual with an omnipotent State, while Rousseau argued that only within the 'civil state' would man acquire that 'moral liberty which alone makes him master of himself.'

287 Ibid.
288 Ethics, his main work, was published posthumously. He owed much to Descartes. An independent thinker, his criticism of the Scriptures led to his being excommunicated from the synagogue. Born in Amsterdam; his parents came to the Netherlands from Portugal to escape the Inquisition. See, Gutmann, J: Ethics/Spinoza (New York: Hafner; London: Collier-Macmillan, 1949).
289 Credited with inspiring the French Revolution, even though by then he had died. His best known work, The Social Contract, which begins “man is born free and everywhere he is in chains”, offended the authorities and he had to temporarily free France for Britain. See, Rousseau: The Social Contract, and, Discourses, trans. G.D.H. Cole (London: Dent, 1913).
290 English liberal philosopher and founder of empiricism: the doctrine that all knowledge is derived from experience, he was very much in the natural law tradition, but, unlike Hobbes, his perception of natural law was much more orthodox. His main theories are set out in the First and Second Treatise on Civil Government.
There are, of course, other theories about the origin of organised political communities, i.e., States, but the social contract theories are particularly relevant to the concept of collective security for they underscore the need for collective agreement to achieve political, social and economic stability. Security must be maintained and the quest for security puts a premium on power, which too often becomes an end in itself. The tendency to disguise the pursuit of power by emphasising the ethically more palatable need for security is, therefore, always present.

The social contract theorist finds it logical to compare the behaviour of States in an unregulated community of political units with that of individuals in conditions of anarchy—in ‘the state of nature’. “The hard core of necessity in the choice of goals in the international environment consists of survival, the self-perpetuation of the State and its security; its traditional, instrumental goals are concerned with power, especially military power.”292 This is as good a definition of the ‘classical’ theory as any, and not far removed from Hobbes’s solitary, nasty, and brutish condition of man. Yet “the analogy with the state of nature, which notionally preceded the social contract, is questionable, for the decision-making process of communities cannot be easily compared to the exercise of individual will (volition). The decision-making process has become complex and convoluted in keeping with the intricate and mechanistic evolution of the communities. Overtly, the decision-making process might seem far removed from the knee-jerk reaction but it has atavistic overtones, and stripped of its gloss it is just that, even though the constraints, capabilities and area of action seem very different. Furthermore, States are not even the only actors on the international scene, although their governments too often behave as if this were the case. Nevertheless, the rise of the modern nation-State with its claims to absolute external and internal sovereignty and to complete freedom of action on behalf of the nation has coincided with the growth of power theories of international relations, which, roughly speaking, regard the community of States as a jungle,

where might is right and total power prevails totally. This view of international relations is by no means generally accepted, but, unfortunately, most practitioners of international politics believe it to be approximately true and act accordingly."293

Whatever its limitations, the nation-State can be a very powerful organism indeed: a nuclear super power controls the means of destroying organised existence on planet Earth. The untrammelled clash of interests among States has led to conflict time and again. Lesser States have had to give way to pressures exacted by their stronger neighbours and war has been too frequently the result. Various devices have been tried to reduce the risks. The concept of alliances is as old as politics itself. Greek city-states combined against foreign aggressors, and they formed Leagues to limit or reduce the influence and power of Athens or Sparta.

One of the first such models was the Amphictyonic League.294 This League was originally a religious organisation of twelve neighbouring tribes, established for the purpose of safeguarding the temple of Delphi.295 Its functions gradually increased to include the protection of its members from aggressive acts, both within and without the League. Each tribe sent two delegates to League conferences and was allowed two votes of equal weight. Each tribe took an oath pledging never to annihilate any of the other tribes during warfare. Those considered guilty of acts of aggression were to be confronted collectively with all available means by the remaining tribes.296

The kings and dynasts of mediaeval Europe created and recreated alliances and compacts, and the nation-States, which succeeded them, did the

293 Morgenthau, Politics Among Nations, op.cit.
295 Delphi was the town in which there was a shrine of Apollo famous for its oracles.
same. Alliances, however, are valid only when there is a measure of identity of interests among the allies, and at times it becomes impossible to maintain this. The alliance disintegrates.\textsuperscript{297} Coalitions are of necessity transient phenomena. Alliances are concerned with the temporary alignment of power and, in this sense, they fit within the framework of the power-political analysis of State behaviour.

**Balance of Power**

The theoretical rationalisation for this, developed over several centuries, is the concept of the balance of power. "If the power of State A equals that of State B, they are in a situation of power equilibrium and there is, therefore, no point in either of them attacking the other. Perfect peace prevails between them. The trouble is that in reality A rarely equals B, and that perceptions of interest and assessments of capability are imperfect at the best of times. Furthermore, States can only act within the total international environment; they are interdependent rather than independent.

But playing the balance-of-power game, State A looks for allies in order to equal State B (and to create a balance), and the ‘other side’ does the same. The point is often reached when either one side or the other thinks that it enjoys a temporary advantage; it then takes pre-emptive action to drive home its advantage while it can and the unhappy result is war. At other times, wars are fought by alliances to cut a powerful State, or group of States, down to size in order ‘to restore the balance of power’.\textsuperscript{298} Herein lies part of the explanation for the statement that ‘war is a continuation of politics’.\textsuperscript{299} The condition of perfect equilibrium is rarely achieved. In theory, the concept of balance of power is simple and logical. In practice, however, many wars have been fought to adjust,

\textsuperscript{297} The most typical example is the 1941-45 alliance between Soviet Union, United States and Britain, which could not be sustained after the defeat of Germany, which represented the overriding common interest of the Allies. The failure, till the 1980s, of the Great Power-dominated peace-keeping structure of the United Nations stemmed primarily from this cause.

\textsuperscript{298} Morgenthau, op.cit.

preserve or restore this balance. "The system breeds competition; it is pervaded by a spirit of rivalry."300 "Quarrels would not last if the fault were on only one side," said Duc de la Rochefoucauld. In the words of United Nations Secretary-General Boutros Boutros-Ghali (1991-95): "I like to compare war with disease. The doctor tells his patient, you have had a heart attack, so stop smoking, stop eating, stop drinking, walk every day, take pills. You do not respect the doctor's instructions and so after two months, you have a second heart attack."301

Though the idea became crucial in the age of nuclear deterrence, the concept of balance of power is drawn from international relations and strategic theory which dates back at least to the eighteenth century. A number of conclusions follow on this concept. One, as already mentioned, largely responsible for the Arms Race, is that any increase in the military capacity of one side must be met by an equal increase in military expenditure on the other side, else the 'balance of power' will be disturbed. But consideration of the balance of power might also limit a military build-up on the grounds that one's own increased capacity would only provoke an increase in the capacity of the potential enemy, leading, at best, to a stabilisation at a higher, more perilous and more expensive level.

The doctrine involves several problems, not least being the question of whom the balance is to be struck between. It makes sense only if one assumes there are no more than two really important sides in any conceivable conflict.302

In a scenario303 where the United States and Russia (or the former Soviet Union)

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301 The Times of India, New Delhi, 20 February 1996.
303 A 'scenario' is an imaginary description of a possible future strategic problem, in terms of which complex equations dealing with matters of, usually nuclear, strategy and force requisites can be calculated. Against this background one can study the political, diplomatic and military consequences of varieties of defence postures that might be adopted. At its most technical, a scenario can be the basis for extremely complicated and even computerised simulations. More generally, it has come to mean any plausible future turn of events against which one can test out ideas, or check one's assumptions. It is no different in principle from the technique sometimes used by physical scientists called a 'thought experiment': Robertson, ibid.
were the only Super Powers, there might be a sensible argument for a balance of power approach; but if western Europe is seen as an independent third force, the doctrine would be hard to apply. A second problem arises through the sheer power of nuclear weapons. The concept of overkill suggests that one country might have fewer nuclear weapons than its rival, but that the system would still be in balance as long as the weaker country retained a guaranteed second strike capacity. Second strike capacity, according to Robertson, is one of the many technical terms developed by strategic theorists after the development of nuclear weapons, and as part of the overall doctrine of nuclear deterrence. It means that a country must have sufficient nuclear weapons, or weapons sufficiently well-hidden and protected that, even if an enemy successfully launched a nuclear attack with total surprise, the defenders can guarantee to have, after bearing the attack, enough nuclear capacity to inflict guaranteed damage on the attacker. This level of guaranteed damage must be enough to make the original attack not worth the inevitable cost. Typically, second strike capacity involves the special protection of the defender’s nuclear weapons, either by sitting them in almost invulnerable silos, or putting them to sea in nuclear submarines. The problem with the doctrine is that it refers not to a static concept but a dynamic one, because what was an invulnerable silo, or an undetectable location at one time, can cease to be if the potential enemy improves the power of his weapons, or the sophistication of his reconnaissance. Thus, the search for the, essentially defensive, second strike capacity, can in itself lead to an arms race. The calculation of what is an effective second strike capacity involves the idea of Mutual Assured Destruction, popularly known by its acronym MAD. This refers

304 Robertson, ibid.
305 ‘Overkill’ is a concept in strategic theory, relating to nuclear warfare. It means a situation where one or more nations have so much nuclear weaponry that, whatever the enemy may do, they can guarantee to destroy the enemy’s country totally and still have unused capacity. Alternatively, it can mean that the combined nuclear capacity of the major States would serve to destroy the entire world and still not be used up. More figuratively it has come to mean using or threatening any force or political option which is stronger than is necessary or appropriate in the context. One might thus use ‘overkill’ in threatening an irritating neighbour more dramatically than was necessary to stop him doing something you dislike (which would be a clear case of intervention). It arises as an important concept because of the way arms races can lead to further and further build-up of forces beyond any rationally-needed level: Robertson, ibid.
306 ibid.
to a situation where the forces of the opposed countries are equivalent in capacity and invulnerable to such an extent that neither can possibly hope to inflict damage on the other, however great, which would prevent the other imposing an unbearable cost on the aggressor.

It should be noted that forces need not be equal for mutual assured destruction to exist, as long as the stronger power cannot hope to remove enough of the power of the weaker in a First Strike to save itself from prohibitive damage. It should also be noted that unless ‘destruction’ is taken as very literal and very total, the concept involves an unavoidably subjective element, because how much damage country A is prepared to risk to take country B out of the game is a matter of judgment of the rulers of country A. Some argue that MAD prevented a United States-Soviet Union clash during the Cold War years.

The theory of *rajamandala* in ancient Indian texts is akin to the modern-day theory of balance of power. It is not known when exactly the theory of *rajamandala* became crystallised but its first clear picture is found only in the *Manusmriti*. The theory took centuries to develop. Kautilya made it the cornerstone of the foreign policy of the monarch. No previous author on ancient Indian polity attached to much importance to it as he did. He took the theory from where Manu left it, and perfected it to suit the needs of his own and later times. Kautilya elucidated the theory thus:

“"The conqueror, his friend, and his friend’s friend are the three primary kings constituting a circle of States. As each of these three kings possess the five elements of sovereignty, such as the minister, the country, the fort, the treasury, and the army, a circle of States consists of eighteen elements. Thus, it needs no commentary to understand that the (three) circles of states having the enemy (of the conqueror), the Madhyama king, or the neutral

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307 Saletore, B.A: *Ancient Indian Political Thought and Institutions* (Bombay: Asia Publishing House, 1963), Ch.X.
308 Saletore, *ibid.*
king at the centre of each of the three circles, are different from that of the conqueror. Thus, there are four primary circles of States, twelve kings, sixty elements of sovereignty, and seventy-two elements of States."309

The concept of *rajamandala* or *mandala*, or *cakra*, or the Circle of States may be analysed thus:

Circle I: Consisting of the would-be conqueror (*vijigisu*)+ his friend+ his friend’s friend (3 rulers)
Circle II: Consisting of the enemy+ his friend+ his friend’s friend (3 rulers)
Circle III: Consisting of the *madhyama* king+ his friend+ his friend’s friend (3 rulers)
Circle IV: Consisting of the *udasina* or neutral king+ his friend+ his friend’s friend (3 rulers).

"Thus, a king in the circle of sovereign States shall, by adopting the six-fold policies (*sadgunyasya prakritimandalam yonih*), endeavour to pass from the state of deterioration to that of stagnation, and from the latter to that of progress."310

The outbreak of hostilities in 1914 and the horrifying impact of the modern war as demonstrated by 1914-1918 convinced many that a new conceptual structure was needed to regulate the lawlessness of the community of States. Any attempt to introduce a universally valid set of norms to govern the behaviour of States comparable to the function of laws within States comes up against the problem of law enforcement. Public international law is useful as far is it goes, and States submit to it as long as it does not conflict with their national interests. Once this happens, there is, at present, no power available which could

310 Ibid., Book VII, Ch.I, pp.263, 266.
compel States to subordinate their interest to the general good. A ‘balance of interests’ has tended to subtly replace a ‘balance of power’ system in the present day. And, *realpolitik* determines the ‘balance of interests’. *Realpolitik* is a German political concept dating from the mid-nineteenth century and often thought to be especially characteristic of Otto Eduard Leopold von Bismarck’s (1815-1898) policies both at home and in foreign policy. Literally, it means nothing more than the politics of realism, an injunction not to allow wishful thinking or sentimentality to cloud one’s judgement. It has taken on more sinister overtones, particularly in modern usage. At its most moderate, *realpolitik* is used to describe an over-cynical approach, one that allows little room for human altruism, that always seeks an ulterior motive behind another actor’s statements or justifications. At its strongest it suggests that no moral values should be allowed to affect the single-minded pursuit of one’s own, or one’s country’s self-interest, and an absolute assumption that any opponent will certainly behave in this way.

Whilst *realpolitik* in either of its current meanings is clearly characteristic of a good deal of modern political behaviour, the fixed assumption that people do only act in this way is probably itself an illusion that would not be acceptable to a practitioner of *realpolitik* under its original meaning. Perhaps a more useful modern definition of *realpolitik* is that it is, in Game Theory terms, a loss minimising strategy or ‘fail safe’—a way of conducting politics which, though it may occasionally involve one in getting a sub-optimal result when one might have trusted to another or taken an optimistic assumption, will minimise the catastrophes that would happen were one regularly to calculate on a ‘best-case scenario’.

The tradition of contending nation-States is not the only historical model. It is opposed to the universalist view of the world, which has its origins in ancient Rome. The Roman Empire virtually included the entire political world known to its inhabitants and, in that sense, it was 'universal'. The writ of Roman Law ran as far as the legions could march, and the task of 'global' peace-keeping was essentially a 'national' problem. In fact, the reality of security was never complete, and it did not last very long.

But the notion of the Empire as providing the framework of the civilised world and even much of its mechanism became strongly rooted in the political subconscious of Europe. Byzantium was the accepted centre of the Empire—at its height under Justinian I (483-565), who codified Roman Law. But its writ had ceased to run in Northern Italy and western Europe by the end of the eighth century. The Papacy, by restoring the 'Holy Roman Empire' in the west endeavoured to make it the secular counterpart of the Catholic church. Despite some powerful German emperors and the mass of theoretical support for the idea of the universal monarchy, of which Dante's _de Monarchia_ was the last and the most famous expression, the Empire, though it existed in a state of decline for a thousand years, could not prevail against the rise of dynastic nationalism, particularly in France, England, and Spain. The rift with the Eastern Empire and the Orthodox church became total. It took a long time for universalism to recover from the Protestant Reformation, which, for some, was a theological justification of nationalism. The end of the wars of religion in Europe in the middle of the seventeenth century saw the beginnings of the modern system of sovereign States. The ideal of 'one world' lingered on, largely ignored by the nation-States intent on acting out the roles allotted to them by the power theorists.

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312 See Chapter on Sovereignty, _supra_.
313 The idea of Sir Thomas More (1478-1535), English writer and statesman. His _Utopia_ describes an ideal State, and "that commonwealth, which verily in my judgment is not only the best, but also that which alone of good right may claim and take upon it the name of a common wealth or public weal".
But the main contribution of the Catholic church to the ideal of world order was not the unsuccessful political device of the ‘Holy Roman Empire’. It was found in the adoption of the Stoic philosophy of the natural law, determining the mutual rights and duties of individuals in society, culminating in the basic concept of the ‘natural society of nations’. The 1914-18 War revealed the capricious nature of the balance of power and its inadequacy as a stabilising mechanism.

**PROBLEM OF INTERNATIONAL ORDER AND PEACE**

“In a working system of collective security, the problem of security is, as already discussed, no longer the concern of the individual nation, to be taken care of by armaments and other elements of national power. Security becomes the concern of all nations, which will take care, collectively, of the security of each of them as though their own security was at stake. If A threatens B’s security C, D, E, F, G, H will take measures on behalf of B against A as though A had threatened them as well as B, and vice versa.

As already discussed, one for all and all for one is the *sine qua non* of collective security. As Bismarck put it to the British ambassador Lord Lofus on 12 April 1869, according to the latter’s report to the British Foreign Secretary, the Earl of Clarendon, on 17 April 1869: ‘If you would only declare that whatever Power should wilfully break the Peace of Europe, would be looked upon by you as a common enemy— we will readily adhere to, and join you in that declaration— and such a course, if supported by other powers, would be the surest guarantee for the Peace of Europe.’

The logic of collective security is flawless, provided it can be made to work under the conditions prevailing on the international scene. For collective
security to operate as a device for the prevention of war, three assumptions must be fulfilled:

1. the collective system must be able to muster at all times such overwhelming strength against any potential aggressor or coalition of aggressors that the latter would never dare to challenge the order defended by the collective system;
2. at least those nations whose combined strength would meet the requirement under (1) must have the same conception of security which they are supposed to defend;
3. those nations must be willing to subordinate their conflicting political interests to the common good defined in terms of the collective defence of all member States.314

It is conceivable that all these assumptions may be realised in a particular situation but the odds are strongly against such a possibility. History and the general nature of international politics do not suggest that such a situation is likely to occur. Even Gulf War II (between Iraq on the one side and an Allied forces led by United States on the other) exposed the weaknesses inherent in such a system and especially when regional interests have to be countervailed against the international order. Under present conditions of warfare, no less than under those of the past, no single nation is strong enough to defy a combination of all other nations with any chance for success.

As the Cold War and the military alliances of the North Atlantic Treaty Organisation (NATO) and now-defunct Warsaw Pact showed, more than one nation will actively oppose the order collective security tries to defend, and other nations will be in sympathy with that opposition. Quaere, whether this will hold true for the future.

314 Morgenthau, op.cit.
The reason for this situation, according to Hans J. Morgenthau (1904-1980), lies in the character of the order defended by collective security.\(^ {315}\) "That order is of necessity the status quo as it exists at a particular moment. Thus the collective security of the League of Nations sought the preservation of the territorial status quo as it existed when the League of Nations was established in 1919. But in 1919 a number of nations were already strongly opposed to that territorial status quo—the nations defeated in World War I, as well as Italy, which felt itself despoiled of some of the promised fruits of victory. Other nations, such as the United States and the former Soviet Union, were, at best, indifferent toward the status quo, their pre-eminent position in world affairs seemingly assured. For France and her allies, who were the main beneficiaries of the status quo of 1919, and most anxious to defend it by means of collective security, security meant the defence of the frontiers as these had been established by the peace treaties of 1919 and the perpetuation of their predominance on the continent of Europe. Security of the dissatisfied nations meant the exact opposite: the rectification of those frontiers and a general increase in their power relative to France and her allies."\(^ {316}\) This then was a macrocosmic reflection of the psychosocial behaviour of human society: the beneficiaries from status quo favour its prosecution, the rest want a change.

"The grouping of nations into proponents and opponents of status quo is not idiosyncratic to the post World War I period alone. It is the elemental pattern of international politics and is recurrent. The antagonism between status quo and imperialistic nations provides the dynamics of the historic process. This antagonism is resolved either in compromise or in war. Only on the assumption that the struggle for power as the moving force for international politics might subside or be superseded by a higher principle can collective security have a chance for success. Since the actuality of international relations belies that assumption, the endeavour to freeze a particular status quo by means of collective

\(^{315}\) ibid.
\(^{316}\) ibid.
security is in the long run set to fail. Collective security may succeed pro tempore in prosecuting a particular status quo due to the temporary weakness of the opponents. The absence of the third assumption, supra, on which the success of collective security is predicated is the reason for the failure of collective security in the long run. In the early 1980s, Britain and Argentina clashed over the Falkland Islands (Malvinas, for the Argentines), Israel invaded Lebanon (when Ariel Sharon was defence minister), and the United States sent troops into Grenada (under President Ronald Reagan’s orders). Whatever Resolutions the United Nations passed, neither it nor its Members were able to turn back the States engaged in such interventions.

History and the actual nature of international politics show that conflict of interest will continue on the international scene. No nation or combination of nations, howsoever strong and devoted to international law, can afford to oppose by means of collective security all aggression at all times, regardless of by whom and against whom it may be committed. The United Nations and United States came to the aid of Kuwait when it was invaded, and subsequently annexed, by Iraq in 1990 because they had the strength, interest and willingness to do so. The United States openly declared that its ‘special interests were threatened’ by the Iraqi invasion and annexation of Kuwait. But no such action was taken when China overran Tibet in 1957 and annexed it as one of its provinces, or when Indonesian forces invaded and annexed East Timor in 1975; no action has been taken against the continuing occupation by Israel of the euphemistically-called Occupied Territories, of a portion of southern Lebanon, and the Golan Heights.

“The ideal of collective security requires collective measures against all aggression, regardless of circumstances of power and interest. The principles of foreign policy and realpolitik, as already discussed, require discrimination among different kinds of aggression and aggressors, according to the circumstances of power and interest. Collective security as an ideal is directed against all

317 ibid.
aggression in the abstract; foreign policy can only operate against a particular concrete aggressor. The only question collective security is allowed to ask is: “Who has committed aggression?” Foreign policy is constrained to ask, “What interest do I have in opposing this particular aggressor and what power with which to oppose him? Collective security demands of individual nations to forsake national egotisms and the national policies serving them. Collective security expects the policies of the individual nations to be inspired by the ideal of mutual assistance and a spirit of self-sacrifice which will not shrink even from the supreme sacrifice of war should it be required by that ideal.”\textsuperscript{318} In other words, a compromise between national sovereignty and collective security is called for. National security becomes part of the “collective security” and it is assumed that what is good for the latter is good for the former. By agreeing to the concept of collective security, the State has signed away a portion of its national sovereignty: its prerogative to take decisions independent of external control.

The third assumption really is tantamount to the assumption of a moral revolution infinitely more fundamental than any moral change that has occurred in the history of civilisation. It requires a revolutionary moral change in the attitude of statesmen (if there are any) and the people they represent. The common citizen is expected to stand by all national policies even those which may be adverse to national interest and also to lay down his/her life to safeguard the interests of any nation anywhere on planet Earth. Such supranational character is difficult to inculcate, let alone replicate. Supranational character of this nature is nascent in some sections of the world but is limited to actions beneficial to interests of the respective nations and not otherwise which runs counter to the ideal of collective security. There is no law-enforcing agency above the individual nations, and there are no overwhelming moral and social pressures to which they could be subjected. Thus, they are bound always to pursue what they regard to be their own national interests. Friction between national and supranational interests and morality is inevitable. In case such conflict is resolved

\textsuperscript{318} \textit{ibid.}
in favour of individual, i.e., national interests, it makes redundant the operation of
the system of “co-operative defence”.319

PROVISIONS UNDER LEAGUE OF NATIONS COVENANT AND
UNITED NATIONS CHARTER

“The concept of collective security is essentially legal, and not political,
as it implies the notion of the general interests of the whole community of States
in the preservation of the peace, and in safeguarding the territorial integrity and
political independence of States, which have suffered from armed aggression. In
this respect it differs from collective defence by a group of States under a treaty
of alliance or mutual security, for there the interest in peace and security is not
that of the whole community of States, but is limited to the specific members of
the alliance or mutual defence group. The point has never been better expressed
than in the famous letter of 16 August 1918 written by Senator Elihu Root, a
distinguished jurist, to Colonel House who had been authorised by President
Woodrow Wilson of the United States to study the subject of a proposed League
of Nations:

“The first requisite for any durable concert of peaceable
nations to prevent war is a fundamental change in the
principle to be applied to international breaches of the
peace.

“The view now assumed and generally applied is
that the use of force by one nation towards another is a
matter in which only the two nations concerned are
primarily interested, and if any other nations claims a right
to be heard on the subject it must show some specific
interest of its own in the controversy...The requisite change
is an abandonment of this view, and a universal formal and

319 A term used by Charles G Fenwick. See his International Law, London: George Allen and
Unwin Ltd., 3rd edition.
irrevocable acceptance and declaration of the view that an international breach of the peace is a matter which concerns every member of the Community of Nations—a matter in which every nation has a direct interest, and to which every nation has a right to object.”

Professor Maurice Bourquin has eloquently written on the matter: “A collective organisation of security is not directed against one particular aggression, but against war considered as a common danger.”

The League of Nations Covenant restricted the right of Member-States to go to war in breach of obligations related to acceptance of arbitration or judicial settlement of peace endangering disputes, or against the recommendations thereon of the League of Nations Council. Then, in 1928, under the Briand-Kellog Pact, or more precisely the Treaty of Paris for the Renunciation of War, the States parties agreed generally to renounce recourse to war for the solution of international controversies, and as an instrument of national policy, and also not to seek the solution of disputes or conflicts between them except by “pacific means”.

In terms, the United Nations Charter of 1945 went much further than either of these two instruments, the primary emphasis on war in the strict meaning of that word having disappeared, while in its stead appeared the conceptions of “threats to the peace”, “breaches of peace”, and “acts of aggression”, any of which could engage collective action to maintain or restore peace. The conceptions of “threat of force” and “use of force” received

320 ibid.
322 Article 1 of the Charter of the United Nations reads:
“The Purposes of the United Nations are:
1. To maintain international peace and security, and to that end: to take collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of peace, and to bring about by peaceful means, and in
expression in Article 2,323 by which the Member-States agreed to settle their disputes by peaceful means so as not to endanger peace and security and justice, and to refrain from the “threat or use of force” against the territorial integrity or political independence of any State. They also bound themselves to fulfil in good faith their obligations under the Charter, including not only (a) the restriction that in the case of disputes likely to endanger peace and security, they should seek a solution by the peaceful procedures set out in articles 33-38 (Chapter VI: Pacific Settlement of Disputes); but also (b) the obligation to submit to the overriding peace enforcement functions of the Security Council, including the decisions and recommendations that the Council might deem fit to make concerning their hostile activities. This idea of ‘peace enforcement’, not pre-

323 Article 2 of the Charter of the United Nations:
“The Organisation and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles:
1. The Organisation is based on the principle of sovereign equality of all its Members.
2. All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter.
3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.
4. 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 manner inconsistent with the Purposes of the United Nations.
5. All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any State against which the United Nations is taking preventive or enforcement action.
6. The Organisation shall ensure that States which are not members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security.
7. Nothing contained in the present Charter shall authorise the United Nations to intervene in matters which are essentially within the domestic jurisdiction on any State or shall require the Members to submit to such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.”
determined in specific obligations under the Charter, but to be translated *ad hoc* into binding decisions or recommendations by the Security Council, which must be accepted by States resorting to war or to hostilities, represented the most striking innovation of the Charter, and impinges on the sovereign acts and decisions of the Member-States by impose a régime of conduct, behaviour, omission and commission on them as envisaged especially in Article 2. The United Nations under *non obstante* provision of Article 2 (7) has the over-riding authority to intervene even “in matters which are essentially within the domestic jurisdiction any State”.

The Charter expressly refers to “acts of aggression”. The object of an effective system of collective security has generally been considered to be the provision of safeguards against aggression, but the difficulty has remained of determining what acts constitute aggression. The labours of three Committees appointed by the United Nations General Assembly in 1952, 1954, and 1957 respectively, to deal with the problem of defining aggression, have not to date produced any generally accepted results, and the inference probably is that a complete definition is an unattainable goal.

The concept of “self-defence” also receives express mention in the Charter, for Article 51\(^{324}\) recognises an inherent right of individual and collective “self-defence” by Member-States against “armed attack” (generally taken to signify an actual armed attack), pending enforcement action by the Security Council, and reserving to the Security Council full authority in the matter.

\(^{324}\) Article 51 (Chapter VII) reads:

“Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if and armed attack occurs against a Member of the United Nations, until the Security has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence 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.” Discussed at length later in this Chapter.
All that has been said above concerning the Security Council is subject to the reservation that the Security Council may fail to take action within its legal powers, either because of the veto\textsuperscript{325} of a permanent member, or because the necessary voting majority for its decision has not been obtained.

The impact of nuclear weapons and the balance of nuclear deterrence, the intensity of the Cold War between the United States and former Soviet Union, the blurring of questions of responsibility by the over-riding purpose under the United Nations Charter of maintaining or restoring peace and security and the range and variety of methods of pressure and coercion that may be adopted by States to secure political ends have rendered it difficult to work always with the aforesaid traditional concepts of “threat of force”, “use of force”, “aggression”, and “self defence” employed in the Charter. “For the new conditions, the Charter may sometimes turn out to be an imperfect instrument for the control of unilateral acts resulting in a breach of peace, or for the maintenance or restoration of peace and security. In other words, the Charter cannot be relied upon in certain instances where the supreme necessity is to maintain peace.”\textsuperscript{326}

Even though they fall far short of the ideal of collective security, two best attempts made so far in this regard have been Article 16 of the Covenant of the League of Nations, and Chapter VII of the Charter of the United Nations.

\textsuperscript{325} Article 27 is thus:
1. Each member of the Security Council shall have one vote.
2. Decisions of the Security Council on procedural matters shall be made by an affirmative vote of seven members.
3. Decisions of the Security Council on all other matters shall be made by an affirmative vote of seven members including the concurring vote of the permanent members; provided that, in decisions in Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting.”

The issue is treated in detail later in this Chapter.
\textsuperscript{326} Morgenthau, \textit{op.cit.}
Article 16 of the Covenant of the League of Nations

The Covenant of the League of Nations made the pioneering attempt at putting into effect a system of collective security. The first three paragraphs of Article 16 provide for collective security limited to one type of violation of international law, i.e., resort to war in violation of the provisions for the peaceful settlement of international disputes laid down in Articles 12, 13 and 15 of the Covenant. “For all other violations of international law only the

\[327\] Article 16 of the Covenant of the League of Nations reads:
1. Should any Member of the League resort to war in disregard to its Covenants under Article 12, 13 or 15, it shall ipso facto be deemed to have committed an act of war against all other Members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the Covenant-breaking State, and the prevention of all financial, commercial or personal intercourse between the nationals of the Covenant-breaking State and the nationals of any other State, whether a Member of the League or not.
2. It shall be the duty of the Council in such case to recommend to the several Governments concerned what effective military, naval or air force the Members of the League shall severally contribute to the armed forces to be used to protect the Covenants of the League.
3. The Members of the League agree, further, that they will mutually support one another in the financial and economic measures which are taken under this Article, in order to minimise the loss and inconvenience resulting from the above measures, and that they will mutually support one another in resisting any special measures aimed at one of their number by the Covenant-breaking State, and that they will take the necessary steps to afford passage through their territory to the forces of any of the Members of the League which are co-operating to protect the Covenants of the League.
4. Any Member of the League which has violated any Covenant of the League may be declared to be no longer a Member of the League by a vote of the Council concurred in by the Representatives of all the other Members of the League represented thereon.”

\[328\] Articles 12, 13, and 15 read:
Article 12:
1. The Members of the League agree that if there should arise between them any dispute likely to lead to a rupture they will submit the matter either to arbitration or judicial settlement or to enquiry by the Council, and they agree in no case to resort to war until three months after the award by the arbitrators or the judicial decision or the report by the Council.
2. In any case under this Article the award of the Arbitrators or the judicial decision shall be made within a reasonable time, and the report of the Council shall be made within six months after the submission of the dispute.”

Article 13:
1. The Members of the League agree that whenever any dispute shall arise between them which they recognise to be suitable for submission to arbitration or judicial settlement,
and which cannot be satisfactorily settled by diplomacy, they will submit the whole subject-matter to arbitration, or judicial settlement.

2. Disputes as to the interpretation of a treaty, as to any question of international law, as to the existence of any fact which, if established, would constitute a breach of any international obligation, or as to the extent and nature of the reparation to be made for any such breach, are declared to be among those which are generally suitable for submission to arbitration or judicial settlement.

3. For the consideration of any such dispute, the Court to which the case is referred shall be the Permanent Court of International Justice, established in accordance with Article 14, or any tribunal agreed on by the parties to the dispute or stipulated in any convention existing between them.

4. The Members of the League agree that they will carry out in full good faith any award or decision that may be rendered, and that they will not resort to war against a Member of the League which complies therewith. In the event of any failure to carry out such award or decision, the Council shall propose what steps should be taken to give effect thereto."

Article 15:

"1. If there should arise between Members of the League any dispute likely to lead to a rupture, which is not submitted to arbitration or judicial settlement in accordance with Article 13, the Members of the League agree that they will submit the matter to the Council. Any party to the dispute may effect such submission by giving notice of the existence of the dispute to the Secretary-General, who will make all necessary arrangements for a full investigation and consideration thereof.

2. For this purpose, the parties to the dispute will communicate to the Secretary-General, as promptly as possible, statements of their case with all the relevant facts and papers, and the Council may forthwith direct the publication thereof.

3. The Council shall endeavour to effect a settlement of the dispute, and if such efforts are successful, a statement shall be made public giving such facts and explanations regarding the dispute and the terms of settlement thereof as the Council may deem appropriate.

4. If the dispute is not thus settled, the Council either unanimously or by a majority vote shall make and publish a report containing a statement of the facts of the dispute and the recommendations which are deemed just and proper in regard thereto.

5. Any Member of the League represented on the Council may make a public statement of the facts of the dispute and of its conclusions regarding the same.

6. If a report by the Council is unanimously agreed to by the Members thereof other than the Representatives of one or more of the parties to the dispute, the Members of the League agree that they will not go to war with any party to the dispute which complies with the recommendations of the report.

7. If the Council fails to reach a report which is unanimously agreed to by the Members thereof, other than the Representatives of one or more of the parties to the dispute, the Members of the League reserve to themselves the right to take such action as they shall consider necessary for the maintenance of right and justice.

8. If the dispute between the parties is claimed by one of them, and is found by the Council, to arise out of a matter which by international law is solely within the domestic jurisdiction of that party, the Council shall so report, and shall make no recommendations as to its settlement.

9. The Council may in any case under this Article refer the dispute to the Assembly. The dispute shall be so referred at the request of either party to the dispute provided that such request be made within fourteen days after the submission of the dispute to the Council.

10. In any case referred to the Assembly, all the provisions of this Article and of Article 12 relating to the action and powers of the Council shall apply to the action and powers of the Assembly, provided that a report made by the Assembly, if concurred in by the Representatives of those Members of the League represented on the Council and of a majority of other Members of the League, exclusive in each case of the Representatives of the parties to the dispute, shall have the same force as a report by the Council.
individualised, decentralised system of enforcement provided for by the general international law was available.\textsuperscript{329}

The violations of international law that put the first three paragraphs of Article 16 into operation create the following legal effects:

(i) The law breaking nation "is deemed to have committed an act of war against all other members of the League";

(ii) Members of the League are under the legal obligation to isolate the law-breaking nation, through a complete boycott, from any kind of intercourse with any other member of the community of nations;

(iii) The Council of the League is under the legal obligation to recommend to the Member-nations the military contributions to be made by them for the defence of the violated provisions of the Covenant;

(iv) The Members of the League are under the legal obligation to give each other all economic and military assistance in the execution of the collective action.

The Covenants of the League and its Resolution lead to the conclusion that while the obligation to take action under Article 16 remains decentralised, the actions decided upon by the individual nations are to be executed under the centralised direction of the Council of the League.

Assembly Resolutions virtually reformulated Article 16 and the decentralised character of law enforcement was thus reaffirmed. The practice of the League of Nations confirmed the reluctance of member-States to avail themselves of even the limited opportunities for the centralised execution of sanctions which the reformulated Article 16 offered.

\textsuperscript{329} Morgenthau, \textit{op.cit.}
Collective measures of enforcement under Article 16 were applied in only one of the five cases in which undoubtedly a member of the League resorted to war in violation of the Covenant. With regard to the Sino-Japanese War that started 1931, the Assembly of the League of Nations found unanimously that "without any declaration of war, part of the Chinese territory has been forcibly seized and occupied by the Japanese troops," and that far-flung hostilities, initiated by Japan, had taken place between troops of the Chinese and Japanese Governments. Yet the Assembly found, too, that Japan had not resorted to war in violation of the Covenant and that, therefore, Article 16 did not apply.

In 1934, during the Chaco War (1932-35), when Paraguay continued hostilities against Bolivia in violation of the Covenant, many members of the League limited the arms embargo, originally imposed upon both belligerents, to Paraguay. This was a discriminatory measure falling far short of the spirit and the letter of the first paragraph of Article 16. When Japan, which by then had resigned from the League, invaded China in 1937, the Assembly found that Japan had violated the Nine Power Treaty of 1922 and the Briand-Kellog Pact, that Article 16 was applicable, and that the Members of the League had the right to take enforcement action individually under that provision. It is another matter that no such action was ever taken. When the Soviet Union went to war with Finland in 1939, it was expelled from the League by virtue of Article 16, paragraph 4, but no collective action of enforcement was taken against her.

In contrast to these cases, the Assembly found in 1935 that the invasion of Ethiopia by Italy constituted resort to war within the meaning and in violation of the Covenant and that, therefore, Article 16, paragraph 1, was to apply. As a result, collective economic sanctions against Italy were decided upon and applied. Yet, the two measures, provided for by Article 16, paragraph 1, that offered the

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best chance of making international law prevail under the circumstances and that in all probability would have compelled Italy to desist from its attack upon Ethiopia, \textit{i.e.}, an embargo on oil shipments to Italy and the closure of the Suez Canal, were not taken. “However, although the sanctions of Article 16, paragraph 1, were formally put into operation and although an elaborate machinery was set up with a view to their successive and gradual enforcement, the nature of the action taken was such as to suggest that the repressive measures were being adopted as a manifestation of moral reprobation rather than as an effective means of coercion.”

It can, therefore, be concluded that in most cases that would have justified the application of sanctions, sanctions were not applied at all. In the sole case in which they were applied, they were applied in such an inept manner as virtually to assure both their failure and the success of the recalcitrant State.

\textit{Chapter VII of the Charter of the United Nations}

Chapter VII of the Charter of the United Nations is entitled, “Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression”, and comprises Articles 39 to 51. This Chapter is the counterpart to Article 16 of the Covenant of the League of Nations as the attempt the overcome the weakness of a decentralised system of international law enforcement. As such, it takes a big step toward the establishment of a centralised law enforcement agency. Articles 39, 41 and 42 of the Charter, which are the heart of the United Nations system of law enforcement, go far beyond anything contained in the Covenant of the League of Nations or any other provision of international law ever contemplated.

The first Secretary-General of the United Nations, Trygve Lie, thus said: “I believe that the development of a strong and effective United Nations

\footnote{Oppenheim-Lauterpacht, \textit{International Law}, Volume II}
collective security system combined with renewed efforts at mediation and conciliation, can improve the chances of ameliorating and, in time, settling the great political conflicts that most endanger world peace today. The greater the ability of the United Nations to foil attempts to solve conflicts of national interest by force, the more likely will it be that those conflicts can be settled by negotiation."332

The Covenant of the League of Nations leaves it to individual nations to decide whether the Covenant has been violated.333 Resolution 4, interpreting Article 16 of the Covenant, reads: "It is the duty of each Member of the League to decide for himself whether a breach of the Covenant has been committed."334 According to Resolution 6,335 the Council of the League renders no decision in this matter, but only a recommendation with nothing more than moral authority. In contrast, Article 39 of the Charter of the United Nations reads: "The Security Council shall determine the existence of any threat to the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Article 41 and 42, to maintain or restore international peace and security." It is the Security Council, and not the individual Member-States that decides authoritatively in what situations measures of enforcement are to be taken. Such a decision is not a recommendation the execution of which depends upon the discretion of the individual Member-States, but is binding upon the latter, which in Article 25 of the Charter "agree to accept and carry out the decisions of the Security Council in accordance with the present Charter".

The same kind of binding, authoritative decision on the part of the Security Council determines the enforcement action to be applied in a particular case, and here again the individual Member-States have no discretion to exercise. With respect to economic sanctions dealt with in Article 41, the Security Council

332 Annual Report to the General Assembly, 1951 (Fall)
333 Supra.
334 For complete text see League of Nations Official Journal, Special Supplement No.6 (October 1921), p.24 ff.
335 Ibid.
may “decide” and “call upon” the Members to comply with its decisions. With respect to military sanctions, provided for in Article 42, the Security Council “may take...action”. In order to make military action on the part of the Security Council possible, Article 43 imposes upon the Member-States the obligation “to make available to the Security Council...armed forces, assistance, and facilities...necessary for the purpose of maintaining international peace and security”, and Article 45 emphasises this obligation especially with respect to air force contingents “for combined international enforcement action”. These obligations are to be discharged by way of agreements between the Member-States and the Security Council. The agreements shall determine “the number and types of forces, their degree of readiness and general location, and the nature of the facilities and assistance to be provided.”336 However, no such agreement between the Security Council and a Member-State has been concluded so far.

These agreements present the sole decentralised element in the enforcement scheme of Chapter VII of the Charter. By refusing to agree to more than a modest contribution to the military effort of the Security Council, a Member-State is in a position to limit correspondingly its subsequent obligations under the decisions of the Security Council. By withholding agreement altogether, it may evade completely the obligation to partake in military enforcement actions decided upon by the Security Council. Therefore, the military aspect of the enforcement mechanism under Chapter VII can be put into existence and operation only on condition that the individual Member-States agree, individually, to allow it to exist and operate. Once the military contingents have been created by individual agreements, the discretionary power of the contracting States comes to an end, and the Security Council becomes supreme, at least within limits of the law of the Charter. So far, not a single such agreement has been concluded under Article 43; hence, there is no United Nations standing military contingent force.

336 Article 43, paragraph 2.
Even after the conclusion of such agreements, Member-States are still able to refuse, even if in violation of their obligation under Article 43 of the Charter, to heed the “call” of the Security Council and to make available to it the contingents and military facilities agreed upon. This could be interpreted as the retention by States of an element of the hallowed concept of ‘external’ sovereignty and of the exercise of their ‘free will’.

The provisions of the Charter relative to the military measures of law enforcement have thus far remained a dead letter, since no agreement under Article 43 has been concluded. In consequence, Article 106 of Chapter XVII (Transitional Security Arrangements) applies. This Article provides that in the absence of such agreements the United States, Britain, Russia (formerly, the Soviet Union), China and France shall “consult with one another and as occasion requires with other Members of the United Nations with a view to such joint action on behalf of the Organisation as may be necessary for the purpose of maintaining international peace and security.” With this provision, the Charter of the United Nations reverts to the decentralisation of the use of force to be found in Article 16 of the Covenant of the League of Nations and in common international law. Thus, the ‘will’ of the States, i.e., decentralisation, is still of the essence of law enforcement, and a semblance of an exercise of external sovereignty by the States is sought to be imparted by this provision.

The operation of the enforcement system of Chapter VII is necessarily and permanently limited also by two other provisions under the Charter of the United Nations.

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337 Article 106 reads:
“Pending the coming into force of such special agreements referred to in Article 43, as in the opinion of the Security Council enable it to begin the exercise of its responsibilities under Article 42, the parties to the Four-Nation Declaration signed at Moscow, October 30, 1943, and France, shall, in accordance with the provisions of paragraph 5 of that Declaration, consult with one another and as occasion requires with other Members of the United Nations with a view to such joint action on behalf of the Organisation as may be necessary for the purposes of maintaining international peace and security.”
Nations: Article 51 (Self defence) and Article 27, paragraph 3 (the veto)\textsuperscript{338}, both of which have been summarily discussed below.

**Self Defence**

Individual self-defence as the right, in the absence of the law enforcement agent of the State, to meet an attack with commensurate force is an exception to centralised law enforcement, inherent in all legal systems, domestic or international. It would limit the law enforcement mechanism of the United Nations even though it were not expressly recognised by Article 51. Individual self-defence under international law is the retaliatory armed action taken by a State to restore its political independence and territorial integrity violated by another State by means of an armed attack. Having rights which accrued upon the advent of an armed attack, the victim State itself determines its defensive actions, their character and execution, since it is not bound to honour any commitments to make peace with the aggressor. Action in the form of individual self-defence may be 'offensive', in military terms, and extend to the aggressor-State's territory to the extent it is necessary to eliminate an armed attack, or to prevent, its resumption. Any weapons which are not banned by international law, and possessed by a defending State, may be used as a means of individual self-defence. This kind of action must be stopped as soon as the goal of individual self-defence has been achieved, \textit{i.e.}, the restoration of \textit{status quo ante bellum}. All measures resorted to thereunder must comply with provisions of Article 51 of the Charter of the United Nations. Taking of armed action by a State in self-defence is perhaps one of the clearest and strongest manifestations of its sovereignty.

Collective self-defence, on the other hand, is a relatively new entrant to legalese and might be considered antinomical. Article 51 perhaps aims at the recognition of the right of any nation, whether directly attacked or not, to come to

\textsuperscript{338} See note 55.
the aid of any nation that has been so attacked. This would virtually amount to a
reiteration and reaffirmation of the traditional salient principle of common
international law: it is for the injured nation to enforce international law against
the law-breaker, and that nation can rely only upon the voluntary co-operation of
other nations and casus foederis 339 make international law prevail. Armed
assistance rendered by one State to another that is victim to an armed attack by a
third State would be covered by collective self-defence. As a consequence,
therefore, the subject of collective self-defence is a State which has not been
subjected to an armed attack but desires to help voluntas or casus foederis a State
which has resorted to individual self-defence and is ready to accept such help.
Depending on the form of agreement to accept assistance, collective self-defence
may be contractual (casus foederis) or non-contractual (non casus foederis). In
the former case, the right to collective self-defence, provided for by Article 51 of
the United Nations Charter, is formalised in bilateral or regional treaties on
mutual assistance in case of an armed attack; such treaties are concluded in
advance. In the latter case, agreement to accept help to expressed by a State that
has fallen victim to the armed attack in the concrete situation with respect to the
State which wishes to render such assistance. The aid rendered on the basis of
collective self-defence may take different forms: from a delivery of armaments
(indirect/covert military/armed or intervention) to direct armed action
(direct/overt military/armed intervention) against the aggressor. The beginning,
implementation, and end of armed action on the basis of collective self-defence
are governed by the rules binding resort to individual self-defence.

In so far as the violation of international law takes the form of an armed
attack, Article 51 reaffirms the decentralisation of law enforcement, not only for
the immediately injured nation but for all other nations as well.

There are three qualifications to Article 51, all of verbal-procedural rather
than substantive nature:

339 Circumstances contemplated in treaty as requiring the action of the parties when these arise.
i) the right of collective self defence shall remain unimpaired only “until the Security Council has taken the measures necessary to maintain international peace and security”;

ii) measures taken in self defence have to be reported forthwith to the Security Council;

iii) such measures shall not affect the authority and responsibility of the Security Council to take appropriate action itself.

Under modern circumstances of the New Age, in the age of on-site, on-the-spot live news coverage and of the World Wide Web and Internet and the Information Superhighway, the second formality is but just that and obviously superfluous. The swiftness, precision and ferocity of late-twentieth century and the New Millennium Warfare would present the Security Council, in cases of self-defence, whether individual or collective, with a *fait accompli*. The Security Council would, at the most, be only able to substitute its own enforcement measures for the ongoing hostilities and that, too, on terms that will necessarily have to be subordinated to the strategy of the individual belligerent States already engaged in all-out war. Euphemism would provide the garnish of justification to on-going hostilities.

As a matter of fact, the reverse happened in the case of the former Yugoslav republic of Bosnia-Herzegovina where United Nations Protection Force (UNPROFOR) pulled out in December 1995 and was replaced by the peace Implementation Force (IFOR) which is under NATO command and deployed under the aegis of the Dayton Accords, negociated and signed November 1995 at Dayton (Ohio), United States of America, by the three rival factions in the Bosnian conflict. The IFOR was later re-named the Stabilisation Force (S-FOR) after the mandate of IFOR expired.
Quaere, whether the three qualifications can be complied with in war games which involved (self) defence mechanisms like former United States President Ronald Reagan’s Strategic Defence Initiative (SDI).\textsuperscript{340}

The Veto\textsuperscript{341}

The crux of the enforcement system of the United Nations, affecting every action to be taken by the Security Council under the provisions of Chapter VII, is Article 27, paragraph 3, of the Charter.\textsuperscript{342} It stipulates that “decisions of the Security Council...shall be made by an affirmative vote of nine members including the concurring vote of the Permanent Members”.\textsuperscript{343} According to Article 23, the Permanent Members are Britain, China, France, Russia, and United States of America. Thence, the consent of all five Permanent Members (a.k.a. P-5) is needed for putting the enforcement machinery of Chapter VII into effect. Dissent by one of the Permanent Members suffices to obstruct the execution of any enforcement measure even if all other fourteen members of the Security Council have consented.

The veto, therefore, reintroduces into the system of law enforcement of the United Nations the principle of decentralisation by making the operation of

\textsuperscript{340} President Reagan offered Strategic Defence Initiative (SDI) as an alternative to Mutual Assured Destruction (MAD), discussed above. He proposed a goal of “eliminating the threat posed by strategic nuclear missiles” (quote from \textit{Weekly Compilation of Presidential Documents}, Monday, 28 March 1983) by a near-perfect defence mechanism involving space-based lasers directed by computer programs millions of lines long that would protect the cities of U.S.A. from (Soviet) nuclear warheads. Popularly known as the “Star Wars” system (from Reagan’s 1983 speech), it would have involved exotic technologies. The “directed energy” systems such as lasers, \textit{e.g.}, the hydrogen fluoride and X-ray lasers, and particle beam guns would destroy missiles by attacking them in launch or boost phase (in space). This destruction of missiles would take place between 100-300 seconds of launch. An SDI deployment would add $750 billion on to U.S. government revenue requirements over a decade (\textit{Worldwatch Institute}, 1988). The SDI programme has since been shelved. Some critics call it the “Some Dumb Idea”.

\textsuperscript{341} The word ‘veto’ nowhere appears in the United Nations Charter. The ‘formula’ was part of the Yalta agreement in February 1945 between Britain, Soviet Union, and the United States and was a modification of the Soviet view that the Security Council should take no action at all without the unanimous consent of the major Powers.

\textsuperscript{342} See note 55.

\textsuperscript{343} \textit{Ibid.}
the system dependent upon the will of each of the Permanent Members. The right of veto is in no way an affirmation or recognition—let alone conferment—of a State's sovereignty. It is rather a privilege which certain States gifted or reserved unto themselves due to their status at a particular historical moment. Nonetheless, the centralising effect of Chapter VII is thus diluted. The enforcement measures will, logically, be taken against small and/or medium Powers—those which have no veto—either directly or through one of the Permanent Members in the Security Council. Most 'vulnerable' to enforcement action of the United Nations are those small and/or medium powers that are not even aligned to one of the so-called Great Powers, *i.e.*, the Permanent Members of the Security Council.

Power relations amongst the Permanent Members and not international law would determine whether enforcement measures against a particular State are consented to or not. “Special interests” in a particular region of the world would be another determining factor whenever two or more Permanent Members are actively engaged in the competition for power, and when such enforcement measures will have a direct bearing upon their power positions, the unanimous consent of the Permanent Members will be impossible to obtain. During the years of the Cold War, it was difficult to envisage a case of collective military action (by a number of nations) in which not at least one of the Permanent Members of the Security Council was involved on one or the other side. This has somewhat changed since the end of the Cold War and the collapse and disintegration of the Soviet Union. But, it cannot be gainsaid that the veto negates, for all practical purposes, the qualifications by which Article 51 endeavours to subordinate the right of collective self defence (*supra*) to the centralised enforcement system of Chapter VII.

“Article 27, paragraph 3, *344* of the Charter puts the so-called Great Powers beyond the pale of any enforcement action to be taken under the Charter. And,

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*344 ibid.*
The "Uniting for Peace" Resolution

A retrospectively vain attempt to overcome the weaknesses of the United Nations system of collective security—exposed by the Korean conflict of 1950—was made in November 1950. The Security Council was able to apply the collective security provisions of the Charter against North Korea only by virtue of the fact that the Soviet Union had absented itself temporarily from that body and, hence, could not veto the relevant Resolutions.

With the return of the Soviet Union to the Security Council, the General Assembly was called upon to carry the burden of organising the collective action of the United Nations. The functions of the General Assembly with regard to measures of collective security are limited by Articles 10 and 18 of the Charter to making recommendations to the Member-States by a two-thirds majority. It is the nature of a recommendation to leave it to the discretion of the addressee whether or not she wishes to follow it. Measures of collective security, therefore, taken by virtue of such recommendations, are completely decentralised.

The weakness and ineffectiveness of the Security Council were exposed by the Korean crisis. Its failure to live up to its role as an agency of collective security forced the General Assembly to assume to itself such a role. In consequence, the General Assembly passed the so-called “Uniting for Peace Resolution” in November 1950, which aims to strengthen the General Assembly as the principal agency for the organisation of collective security.

345 Morgenthau, op. cit.
346 A Permanent Member’s abstention from voting on a substantive question is not regarded as a veto, although a reading of the Charter stricto sensu would suggest that it should be regarded as a veto. See, for example, note 55.
This historic measure was a three part affair, but only Resolution A is the longest and the most important of the three parts, preceded by a lengthy preamble. The five main features of the Resolution are:

i) A provision that the General Assembly can meet in twenty-four hours if the Security Council is prevented by the veto from exercising its primary responsibility for international peace and security;

ii) A provision that in such cases the General Assembly can make recommendations to Member-States for collective measures, including the use of armed forces;

iii) A recommendation that each Member-State maintain within its national armed forces elements that could promptly be made available for possible service as United Nations units;

iv) The establishment of a fourteen-member Peace Observation Committee to observe and report in any area where international tension exists;

v) The creation of the fourteen-member Collective Measures Committee to study and report on the ways and means to “strengthen international peace and security in accordance with the Purposes and Principles of the Charter” of the United Nations.

Resolution A recognised “that enduring peace will not be secured solely by collective security arrangements”, and urged the Member-States to co-operate in other important ways.

Resolution B urged the Security Council to “devise measures for the earliest application of Articles 43, 45, 46, and 47 [of Chapter VII] of the Charter regarding the placement of armed forces at the disposal of the Security Council by States members of the United Nations and the effective functioning of the Military Staff Committee”.
Resolution C recommended that the Permanent Members of the Security Council “meet and discuss, collectively or otherwise...all problems which are likely to hamper the activities of the United Nations, with a view to their resolving fundamental differences and reaching agreement in accordance with the spirit and letter of the Charter.”

In view of the fact that the General Assembly has the right only to recommend, but not order, action on the part of the Member-States, the “Uniting for Peace Resolution” and the work of the Collective Measures Committee can only serve the purpose of the strengthening the willingness and ability of the Member-States to take speedy and effective action, in case the General Assembly should recommend such action. The Collective Measures Committee has, thus, concerned itself primarily with the stimulation of measures by the individual Member-States, the co-ordination of such measures, and their support with advice and supplementary measures by the Specialised Agencies of the United Nations.

The Uniting for Peace Resolution was a conscious effort to develop and implement the security provisions of Charter of the United Nations. It “was clearly put forward as a device for making the United Nations a collective security system”. 347

Decentralisation is the constitutional foundation upon which the “Uniting for Peace Resolution” is based and upon which the Collective Measures Committee operates.

“The enforcement of international law is as decentralised under the Charter of the United Nations as it was under the Covenant of the League of Nations and in common international law. Wherever and whenever an attempt has been made to give international law wherever and whenever an attempt has been

made to give international law the effectiveness of a centralised legal system, reservations, qualifications, and the general political conditions under which nations must act in the modern State system have nullified the legal obligations entered into for the purpose of establishing centralised functions.

No concerted efforts have been made to reform the legislative function of international law. But successive attempts have made to reform the judicial and executive function. Against each such attempt the decentralised character of the international law has reasserted itself. Decentralisation, then, seems to be of the essence of international law itself. And, the basic principle that makes decentralisation inevitable is to be found in the principle of sovereignty. The principle of sovereignty and decentralisation are what make the issue of intervention so sticky and contentious.

348 Morgenthau, op. cit.