

# **Collective security at Stake? Challenges of the current collective security system**

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## **Abstract**

*This paper aims to discuss the notion and application of collective security. This work problematizes the idea of collective security by interrogating the challenges that its application presents and the unevaluated successes that its proponents credit to it. The concept of collective security has been credited with averting likely wars, but has remained insufficient attempting to contribute to international peace and justice. Its application is increasingly paralyzed by the increasing resort to unilateral action by powerful nations, the persistent problem of double standards pursued by international political and judicial organizations, and lack of a real sense of oneness of the international community. As globalization takes centre stage as a result of the ever increasing interactions and technological advancements, the current collective security system still lags behind, incapable of handling the existing and future global challenges to peace and security. Hence, changing the traditional competitive, and at times, aggressive behavior of nations towards each other, changing the way poor nations perceive and interact with international political and judicial organizations, and introducing radical measures to reform the UN security council are but some of the recommendations that this paper fronts as central to meaningful collective security in principle and application.*

## **Key Terms**

Collective security, Security Council, unilateral action, double standard, international community.

## **Introduction**

The current collective security system is spearheaded by the United Nations Security Council (UN SC). The central purpose of this paper is to interrogate the underlying challenges of the concept of collective security in application. To effectively address this central thesis, the author employed the following research questions:

- (a) What is the historical evolution of the collective security concept?
- (b) What are the underlying principles/requirements of collective security?
- (c) What are the current trends of collective security?
- (d) What are the positive contributions of collective security?
- (e) What should be done to enhance the current situation of the collective security system?

It is important to note that despite criticisms advanced towards the application of collective security, the system has considerably contributed to the attempts to ensure international peace and justice. Instances where the UN stood to defend countries such as South Korea and Kuwait from aggressions by North Korea and Iraq respectively are indicators of this. It is however true that the collective security paradigm also faces major challenges when it comes to its application and the perceptions around its application. These challenges are: the increasing resort to unilateral actions by powerful nations, persistent double standards pursued by international organs such as the UN and the International Criminal Court (ICC), and lack of real sense of oneness of the international community. This paper proposes that as a solution there is a need to change the traditional competitive, and at times, aggressive behavior of nations towards each other. There is also an urgent need to change the way poor nations perceive and interact with international judicial and political organizations, and finally the need to introduce radical measures to reform the Security Council.

## **1. Background**

The concept collective security has long history of development albeit in different forms and it is not as such a recent creation. The treaties of Westphalia signed in 1648 to end the wars among the European states, the League of Nations that was established following the end of the First World War (WWI), and the United Nations that was established following the end of the Second World War (WWII) were basically intended to stop the recurrence of wars that were evident prior to the signing of the treaties. In the earlier treaties such as the Westphalia Treaty, attempts were made to avert future wars by proposing the recognition of territorial integrity and sovereignty of states and equal recognition of religions. In the 20<sup>th</sup> century, the treaties that were signed following the end of the two major world wars tried to come up with permanent organs that were mandated to safeguard peace and security. The principle upon which these organs were formed was that of collective security.

Different individuals contributed to the development of the collective security treaties and organizations. Deserving of mention is the contribution made by Cardinal Richelieu, who was the chief advisor of the king and the prime minister of France during the reign of Louis XIII, which proposed a scheme for collective security in 1629 which was partially reflected in the peace treaty of Westphalia. Bahá'u'lláh, the founder of the Bahá'í faith, also advocated for collective security as a means to establishing world peace in his writings during the 19<sup>th</sup> century.

As collective security is an evolving concept, its definition has varied from time to time and in its application. The other factor that affects the definition is the nature of the existing collective security organs. Some security organs are established to protect their member states from the attack of non-members; which are mostly understood as collective defense organs (Miller, 1999:304). A typical example is the North Atlantic Treaty Organization (NATO) (North Atlantic Treaty, 1949). On the other hand, the UN SC as a global security organ is mandated to act whenever there is a serious threat to global peace and

security including from its member states. This can be inferred from the UN Charter's preamble and the principles under chapter one. So, for regional organizations, collective security may mean an arrangement by which all member states agree, as a collective, to reverse any threat posed by an outsider state against any of its member states. For the United Nations, collective security may be defined as an arrangement through which the SC takes measures to reverse a threat posed by any state against the peace and security. A critical loop hole in the UN definition of collective security is that there is no consensus as to what amounts to a threat to the peace and security. The lack of a standard threshold that would guide intervention on the basis of collective security continues to be a basis for abuse of this notion when it comes to application. The discussions in this paper limit themselves to interrogating the application and understanding of collective security as per the UN collective security system.

To be able to effectively interrogate the challenges of this collective security application, it is imperative that there is an understanding of the basic prerequisites of an effective collective security system. An effective collective security system is one that is capable of deterring potential or actual threats to global peace and security. According to Morgenthau (1948), Organiski (1960), and Neuhold (2000), the following are the main prerequisites:

- The first important requirement is that the collective must have overwhelming military capacity when compared to the country or the group causing the threat. The collective must be able to demonstrate that the aggressor will face defeat if they resort to force to change the existing system or order. This implicitly means that any state that has the potential to outweigh the military capacity of any collective must not be left out of the collective security system. The UN system has been successful in achieving this criterion by ensuring that all the powerful states of the world are part of it although with varied privileges; with the most powerful enjoying veto power over any decision made by the UN SC. The members of the collective must have a uniform stand against the threat and the required action to stop the threat. They should be equally committed to accepting the consequences that may include human and material losses. The UN system has suffered from serious challenges regarding the attainment of uniformity on decisions it takes. Member states of the UN have on many occasions made decisions based on their national interests. Examples are the interventions in Korea where the then Soviet Union opposed the intervention, and interventions in Yugoslavia by NATO under the authorization of the UN where member states reflected different stands. It is also a fact that the burden of the cost of intervention has been borne by the few powerful members of the UN.
- The members of the collectivity must refrain from taking any unilateral action without the authorization of other members unless the action relates to the basic right of self defense. This principle of collective security is intended to act as a check on the likely excesses of particular states against others. The challenge to this principle has however been the

elusive interpretation of what constitute the 'right to self defense' and the frequent manipulation of that understanding to sanction unilateral actions by powerful member states in a bid to defend their interests. The invasion of Iraq by the United States and its allies is instructive of this. Ironically there have been instances when the UN system has been unable to intervene when there was a genuine threat to peace and security. The Rwandan genocide and the Ethiopia and Eritrea war (1998-2000) are instructive examples.

- The final principle of collective security is the aspect of genuine international solidarity, which implies the demonstration of international oneness. States would then make decisions on the basis of international good and sacrifice national interests so that the common good is realized. This structure of collective security will therefore require material and human resources so as to ensure its objective.

## **2. Current trends of collective security**

Based on the principle of collective security, the UN SC has intervened in many situations. It is also the principal organ that is duly authorized by the UN Charter to deal with issues of peace and security. Since 2004, there has been a collective understanding that the international community has the responsibility to protect where a state is unable or unwilling to protect its people from violations such as genocide, ethnic cleansing, and crimes against humanity (Stahn, 2007). It is this responsibility to protect that gives credence to the right to intervene. As the principal collective security organ, the SC bears this responsibility especially when the intervention involves military action (Stahn, 2007). Similarly, the African Union (AU) has adopted the principle of collective security based on the responsibility to protect that allows for intervention in the internal affairs of its member states as one of the basic tenets of its existence<sup>1</sup>. The current trend and understanding of security is, therefore, towards a more integrated means of protection that includes intervening in the internal affairs of states in instances of crimes against humanity such as genocide and ethnic cleansing despite the prohibition stated in article 2(7) of the UN Charter.

The actions taken by SC, and the actions taken by different organs such as NATO on the premise of collective security, right to intervention, or the responsibility to protect have been subjects of serious controversies among different stakeholders. The criticisms and debates also extend to situations where such organs have failed to act to protect citizenry. An example here is the criticism leveled against the UN and its agencies for not proactively engaging to stop or at the very least mitigate the Rwandan Genocide of 1994.

Criticism towards collective security can be seen from both a conceptual and practical application. On a conceptual criticism is the idea that the UN and the League of Nations before it sought to symbolize that all nations would be

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<sup>1</sup> See Art. 4 of the AU Constitutive Act.

regarded as equal so as to espouse the idea of oneness and global fairness. The endowment of veto power on the world's powerful states to the exclusion of others and regardless of the decisions made by the collective whole is one of the contradictions of the collective security system. The UN SC is composed of fifteen members<sup>2</sup>. Among the fifteen members, ten are elected by the United Nations General Assembly (UN GA) to serve for two years. The five, namely, China, France, Russia, United Kingdom, and USA are permanent members of the SC and they have the right to veto all decisions of the Council. It is not uncommon to hear member states blaming the SC for over acting or failing to act because it is manipulated by powerful states on the basis of their own national interests. The issue of fairness and equality which is a necessary ingredient of the collective security system comes to question when the structure of the UN is conceptually flawed i.e. the fact that the SC is also designed to maintain power balance globally by entitling veto power to the most powerful nations (Kupchan and Kupchan, 1995).

### **3. Assessing the contributions of the collective security paradigm**

#### **a. Contributions to peace**

Since the end of the WWII, there has been a decline in inter-state conflict. Despite the inherent inconsistencies of the veto power given to the 'super powers', it is the exercise of this power by the great powers, particularly, Russia and the United States that has contributed to decreasing use of 'hard' force to the increasing use of 'soft' force in the mandate of the Council. Although their exercise of veto power has always been in their own national interests, the invocation of veto has averted conflict and ensured peace and security globally. In this vein, the collective security paradigm has transitioned the world from a place of conflict to a platform of dialogue and negotiation of issues. So whilst there has been a decreased level of interstate conflict between rival super powers there has also been an increase following this of intra-state conflict, thus the ongoing problem of conflict.

The use of sanctions by the SC, in pursuing its collective security mandate as per the UN Charter, against the so called rogue states is another trend that has characterized the work of the UN. Sanctions against Iraq's aggressive behavior including the invasion of Kuwait, and sanctions against Libya's subversive activities including its alleged masterminding of the Lockerbie disaster where 270 people died as a result of a plane bombing, are just but examples of the collective efforts exerted to maintain global peace and security.

#### **b. Contributions to international justice**

Despite the efforts of the international community, mainly expressed by the acts and declarations of the SC, to maintain peace through various means such as encouraging dialogue between protagonists and imposing sanctions where

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<sup>2</sup> UN Charter, Art. 23.

smooth mechanisms fail to work, the world has continued to witness unparalleled atrocities in different times and places. The war in the former Yugoslavia, the genocide in Rwanda, the civil war in Sierra Leone, and the Darfur crisis of the Sudan are instructive examples to this end.

There is continued controversy of whether the SC did enough to avert these atrocities. There has however been an attempt to ensure justice through the establishment of international criminal tribunals as independent entities responsible for ensuring the retribution of war criminals. In the cases of the former Yugoslavia, Rwanda, and Sierra Leone *ad hoc* tribunals were established with the support of the SC in an effort to establish international responsibility for crimes and ensuring that the perpetrators are brought to justice. In the same vein, the SC also referred the Darfur crisis in the Sudan to the attention of the ICC prosecutor. All these are indicative of an international desire of the collective security paradigm to safeguard peace and security by ensuring international justice.

#### **4. Challenges to collective security**

##### **4.1. Unilateral actions**

Perhaps the most complex challenge of the collective security system is the increasing tendency to resort to unilateral actions by powerful states. This is especially true of the United States of America. Such unilateral action contradicts the obvious principles and intention of the concept collective security. This section therefore aims to illustrate by case study some of the instances where unilateral actions have undermined the intent and objective of collective security.

##### **a. Intervention in Afghanistan**

Following the September 11 terrorist attacks on the United States, the Bush administration declared war on terrorism, calling for a crusade against all that was deemed as terrorists. Al-Qaeda – a group identified as being responsible for the attack under the leadership of Osama Bin Laden was allegedly according to intelligence sources given sanctuary by the Taliban regime of Afghanistan. The US then saw this connection between the Taliban regime and Al-Qaeda as a legitimate basis to invade Afghanistan and remove the Taliban from power. There were many who cautious of the likely repercussions of such a war and the reference to it as a crusade for its religious connotation and the fear that referred to attacks on Islam. This caution however was disregarded; a coupling fear driven by an emotional drive to punish and apportion blame for the bombings saw the United States engage in a bloody war in Afghanistan.

After the September 11<sup>th</sup> bombings, the UN SC passed two unanimous resolutions: Resolution 1368 and Resolution 1373. The two resolutions condemned the terrorist attacks. They irrevocably recognized the inherent right of states to self as well as collective defense. They demanded that states should refrain from

harboring and supplying terrorists. The SC further made it clear that it is highly concerned with the issue of terrorism and it is ready to stipulate measures that would contain the threat posed by terrorism to global peace and security.

The US did make effort to justify the invasion as self defense and as an act taken in accordance with the spirit of the SC resolutions to maintain international peace and security. There was initially a lot of support from different countries that had witnessed the terrible tragedy (Mandel, 2004:33). This support wore off for many actors and some opponents of this war continued to question the legality and subsequent legitimacy of this war (Mandel, 2004; Kinzer, 2006; and Carlise, 2010). The legality of US action in Afghanistan was questioned for various reasons:

(1) The UN SC did not authorize taking any military action against Afghanistan. Since the SC is the organ that is duly authorized to decide on the matters of peace and security, it is illegal to take military action in the name of maintaining peace and security except in the strictly defined condition of self defense. Military action can be justified under self defense till the UN SC decides on the matter<sup>3</sup>.

(2)The war declared by the USA does not fall under self defense. This is because there was no immediate and explicit military threat posed by Afghanistan or the Taliban against the USA and the requirement of immediate and clear threat to declare a war of self defense under the international law were not fulfilled.

(3)The attack did not constitute a war that can justify declaring a defensive war against any government; it was just a criminal act for which individuals in this case members of the Al-Qaeda group, were responsible and

(4)The American government could have engaged in other mechanisms of retaliation first before declaring a war. The US could have used diplomatic pressure to make sure that the responsible entities are brought to justice. This would have been consistent with the resolutions passed by the SC regarding terrorist acts.

A significant repercussion of the war was the high numbers of casualties including civilian deaths. Data showed that the number of civilian deaths<sup>4</sup> from the American attack exceeds the number of deaths from the 9/11 attack (Mandel, 2004). The war waged by the USA and its allies unilaterally in the presence of other options such as diplomacy and collective actions under the SC, hence, became increasingly unpopular. The war also lacked moral or humanitarian justifications because neither the Americans were guaranteed the freedom from fear of further attacks nor did the quality of life improve for the Afghan people. This war is indicative of how unilateral action by some state players undermines the idea of the whole, resulting to a failure of the collective security paradigm.

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<sup>3</sup> see Art. 51 UN Charter.

<sup>4</sup> According to Mandel (2004: 30) there is no precise record of the number of civilian deaths but the British *Guardian* newspaper quoted in his work estimates civilian deaths to range from 10,000-20,000 by the end of July 2002.

## **b. Intervention in Iraq**

Another illustration of unilateral action is the US war in Iraq which began in 2003. The justifications given for the invasion by the US and its allies, particularly, the UK through its Prime Minister Tony Blair was the presence of weapons of mass destruction in Iraq and the threat it posed to the global peace and security. The illegality of the war was more explicit than the case of Afghanistan. The USA sought support from the SC for the war but the Council was not convinced that there were sufficient and reasonable grounds to authorize the USA and its allies to take military action against Iraq despite the council's directive that Iraq allow for free investigation of such weapons in different sites by a UN mandated group of experts. At the beginning, President Bush tried to present the war against Iraq as a war that was justified by the resolutions passed by the SC on Iraq. President Bush claimed that the contents of resolutions 678, 687, and 1441 were sufficient grounds to declare war on Iraq. Despite these claims, the first two resolutions were directly relevant to the first Gulf war and the third resolution did not contain any provision that authorized any unilateral action including war. It is important to note that despite the increased demand on Iraq for transparency and the numerous warnings given of their non-compliance, the SC did not authorize any action that would amount to war against Iraq.

The war could also not be justified on the grounds of self defense. Moreover, there was no clearly established relationship between Saddam Hussein's regime and the 9/11 attack. What is interesting is that although Al-Qaeda and Osama Bin Laden had no relationship with the Saddam regime, they hailed from countries close to the US such as Saudi Arabia and Egypt. In addition to the lack of any legal ground for waging the invasion, the allegation that Iraq possessed weapons of mass destruction proved to be untrue. The actions of the US and its allies in Iraq have been seen by some as fitting into the definition of aggression as defined by the Nuremberg Tribunal (Nuremberg Tribunal Judgment, 1946: 26.)

The invasion resulted in a devastated Iraq- a country with the second largest reserves of oil but unable to provide the basic necessities to its people. The death of civilian's from the war and war related attacks were high.<sup>5</sup> Death of soldiers was higher than the Afghanistan war (Los Angeles Times, January 9, 2011). The country remains very fragile, insecure, and heavily dependent on the US for as basic necessities and security since the invasion. A big concern now is that with the withdrawal of US troops at the end of this year, the impact of their exit might leave these communities more vulnerable.

The intention of this war and the constant rhetoric that this was the US' demonstration of the responsibility to protect continues to raise skepticism and fear about the excesses of power in stronger regimes. More importantly,

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<sup>5</sup>According to Mandel (2004:4) deaths from these attacks after the downfall of the Saddam regime from 1 May to 1 December 2003 alone were 200 American soldiers and about 3,000 Iraqi civilians.

humanitarian intervention should be done within the ambit of the principles of collective security and it must be validated by the collective and the absence of this validation takes away its humanitarian value. The incapacity of the UN SC to stop the invasion against Iraq and the actions of some states is another explicit demonstration of the weakness of the current collective security system led by the UN SC.

### **c. NATO's intervention in Libya**

The wave of popular uprisings in North Africa, particularly, Tunisia and Egypt starting from the late months of 2010 spread to Libya in early 2011. The uprisings in Libya demanded for regime change and an end to the more than 4 decades rule of Colonel Muammar Gaddafi. The Gaddafi government refused to give in to the demand and tried to contain the protests. The government zealously used excessive force to suppress the demonstrators. The people opposed to the regime, and the rebels now fighting to defend and overcome the Gaddafi regime remained consistent in their war against the then ruling government. The in-fighting between the government and the armed opposition could easily be associated with a civil war.

Due to worsened situations, the UN SC convened on 26 February 2011 to pass a resolution that authorizes intervention by the ICC prosecutor, among other things. However, intervention by the ICC did not act as a deterrent and neither did it bring any change to the people affected nor did it allegedly discourage the Libyan regime from committing more war crimes. The resolution 1970 of 2011 has unusual provisions such as forcing the member states of the Court to bear the costs of the litigation contrary to the spirit of Article 115(b) of the Rome Statute. The motivation of the Court to intervene in the Libya case has remained dubious as the Court had not previously intervened in other similar situations such as in Egypt, Syria or Yemen. The extremes of casualties given the gravity of the uprising may have varied but if the Court was intervening on a matter of principle then the action was questionable.

The measures prescribed by the first resolution of the SC did not improve the situation in Libya. The next step taken by the Council was to pass another resolution with stronger measures aimed at protecting civilians and establishing no fly zone in Libya except for some exceptional purposes. The resolution was to a large extent vague, and uncertain. It does not specify who does what and it does not give clear meaning to the phrase: "protecting civilians" except that it says any state or any organization can take any measure to make sure that the purpose is met.

Following resolution 1973 (the resolution that authorizes taking any measure by any state or any organization to meet the objectives of ensuring no fly zone and protection of civilians), NATO, specifically France, UK, and USA, began bombing Libya. The attacks resulted in deaths of Libyan civilians. No such military action was authorized by the resolution, and many have concluded that these actions were aimed at bringing regime change in Libya which is explicitly illegal and

contrary to the spirit of the UN Charter. Some of the actions of NATO that support this analysis are the bombing of the president's residence and the alleged killing of family members of the President. In August 2011, the Foreign Minister of UK did also stipulate that his country recognized the rebels as legitimate representatives of the Libyan people while Gaddafi was still in control of Tripoli.

The actions taken by the Court and NATO were also disputed by the African Union in which Libya is one of the active members. While the intentions of NATO and the ICC may be perceived as noble by some as they have resulted in the death of a dictator, it also sends a worrying concern that some states are acting in excess of their power. The current changes in Libya and the bringing in of Shariah law raises questions as to whether the actions that are now quickly hailed as successes will amount to progressive change and improvement of Libyan life. This is yet another manifestation of the failure of the current global collective security system as a result of unilateral decision making and action.

#### **4.2. Double standards**

International organizations such as the UN are usually blamed for acts of double standards; favoring strong nations and disfavoring weak nations in different situations. Probably, the best example to demonstrate the acts of double standards pursued by international organizations against weak nations is the conduct and application of the International Criminal Court (ICC)'s involvement in Africa. Whilst the questionable application of the ICC could be disregarded in conversations of collective security, this paper argues that there are pertinent reasons for which the ICC must be interrogated as part of the collective security paradigm: First, is the presumption that the work of the Court is done from a platform of oneness in the global community. The preamble of the Rome Statute (1998) states that all peoples are connected by common bonds and their cultures are pieced together and, hence, there is a need to protect this bond from the risk of getting 'shattered'. This is quite similar to the UN Charter's preamble which affirms the existence of basic common values such as human rights and equality and the need to maintain international peace and security to protect these values through a common collectivity. Second, the link between the SC and the ICC also gives credence to the ICC as an instrument of collective security. The SC has the power within its mandate to refer cases to the ICC for investigation and litigation or defer cases from being investigated or litigated before the court<sup>6</sup>. It is on this basis that this work interrogates the work of the ICC as an instrument of collective security. The challenge of double standards in the application of justice and how this undermines the intention of the collective security principle is of central concern.

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<sup>6</sup> See articles 13 and 16 of the Rome Statute. The SC is given this power in accordance with chapter VII of the UN Charter i.e. recognizing the fact that it is the supreme organ that decides on matters of peace and security and no other organ including a court should compromise this authority.

So far, the ICC has opened cases in six African countries. Among the six countries, the three (DRC, Uganda and CAR) voluntarily submitted to the jurisdiction of the court. Sudan and Libya were referred to the Court by the decision of the SC and the Prosecutor has opened cases in Kenya on his own cognition. These are legitimate ways of exercising jurisdiction by the Court, according to the Rome Statute. The issue under investigation is therefore related to the intention behind such interventions and their practical implication to peace, justice, and security of the affected people. In other words, the essential question is how committed is the SC to bring peace and justice to the people in need as an ultimate decision maker on issues of peace and security as per the UN Charter. This question is relevant to the situations in Africa where the ICC is involved because the situations are internationally recognized as serious crises that pose threat to global peace and security and, obviously, the concerned governments who have the prime responsibility to protect the victims are unable to do so.

It can be argued that in situations where the Court acted on its own cognition or self-referral, the prime responsibility should reside on the Court and not the SC. But this argument is not plausible because the SC is the ultimate decision maker on issues of peace and security and it can use the power to defer cases to stop the ineffective legal process, at least, temporarily and seek other solutions.

The observation from all the situations, including the ones referred by the SC, is that the contribution of the Court's involvement to peace and security of the affected remains negligible. The situations in each country can be summarized as follows:

The reason for the involvement of the ICC in Uganda was due to the alleged commission of crimes under the material jurisdiction of the Court by the Ugandan insurgent group called the Lord's Resistance Army (LRA). This matter was referred to the Court by the Ugandan government under Articles 13 and 14 of the Rome statute in December 16, 2003 (Akhavan, 2005: 2). Arrest warrants were issued against the five top leaders of the LRA: Joseph Kony, Vincent Otti, Okot Odhiambo, Dominic Ongwen, and Raska Lukwiya. Whilst there is merit to the engagement of the ICC there are criticisms raised to it such as the fear that the indictment of this rebel group could have easily served to radicalize the leadership of the LRA and forced them to intensify their attacks on civilians (Allen, 2006:24). And yet none of the alleged perpetrators appeared before the Court and the peace remains fragile. Of course, the conflict is not as intensive as it was in the early 2000s but this is due to other factors such as the Comprehensive Peace Agreement (CPA) that weakened the LRA by making them less important to the government of Sudan (Royo, 2008:14) than the Court's involvement. This brings to question the judgment of the ICC in vetting their cases and ensure good intention. This also does raise the question of the SC's power to defer cases so as to ensure peace and security. In this instance, the fact that the rebels have not to date signed a peace agreement and the growing regional concern over the activities and the violence caused by the LRA is a dark cloud that raises doubt in the application of the ICC.

The Court involved in Democratic Republic of the Congo (CAR) on the invitation of the government to try the alleged perpetrators of crimes that fall within the jurisdiction of the Court (Ocampo, 2009:11). Arrest warrants were issued against former insurgent groups' leaders: Thomas Lubanga Dyilo, Germain Katanga, Mathew Ngudjolo Chui, Bosco Ntaganda, and recently Callixte Mbarushimana. The cases of the DRC can be said somewhat different from the others due to the facts that all except one of the alleged perpetrators are under the custody of the Court and it resulted in fewer controversies when compared to the situations in the Sudan and Uganda as reflected in various literatures. But the less controversial nature of the cases in the DRC is related to the situation itself than any constructive role played by the SC to mitigate the violent conflicts in the country. Furthermore, the involvement of the Court had no tangible contribution to peace till now but there is an attempt to do Justice though the Court is unable to bring a single case to its end after five years now. Similarly, the court involved in the Central African Republic (CAR) on the invitation of the CAR government to try a Congolese insurgent group leader Mr. Jean Pierre Bemba for the alleged commission of crimes that fall within the jurisdiction of the Court (Arieff et al, 2010:26). The litigation is still ongoing.

The ICC, on the request of the SC by referrals, opened cases in the Sudan in 2008 and recently in Libya on the assertion of the commission of crimes that fall under the jurisdiction of the Court. The situation in the Sudan involved six individuals: Ahmed Muhammad Harun (also called Ahmed Harun) and Ali Muhammad Al Abd-Al-Rahman (also called Ali Kushayb), President Omar Hassan Al-Bashir, Bahar Idriss Abu Garda, and Abdallah Banda Abakaer Nourain and Saleh Mohammad Jerbo Jamus. The cases from Libya are related to the crisis since around February 2011. The suspects are President Muammer Gaddafi, his son Saif Al-Islam Gaddafi, and his intelligence minister Abdella Al-Senussi. The Court's contribution to peace and justice in the Sudan is very negligible because the main parties to the Darfur conflict such as President Al-Bashir are still at large and the peace in Darfur is still fragile. In the case of Libya, not only the suspects but others such as the AU have rejected the warrants of arrest since it was considered as an impediment to negotiated settlement of the crisis.

The most recent trial in the ICC involves cases from Kenya that are related to the post election violence of early 2008. The suspects are: William Samoei Ruto, Henry Kiprono Kosgey, Joshua Arap Sang, Francis Kirimi Muthaura, Uhuru Muigai Kenyatta, and Mohammed Hussein Ali. They are alleged to have committed or planned the commission of crimes that fall under the jurisdiction of the Court. The government, at the beginning, expressed its readiness to bring justice but it failed to deliver its promise. Then it looked only natural, as per the principles of

collective security, for the ICC to step in but similar to the other situations there is no tangible contribution to peace<sup>7</sup> though there is an attempt to do Justice.

In all situations the ICC involved there were/are, obviously, violations<sup>8</sup>. And, hence, an attempt to deliver justice to the victims is justified. But it is also true that violations are witnessed in many other places, *inter alia*, Palestine, Georgia, Afghanistan, Iraq, Colombia, and recently in Syria, and Yemen. Then why is the ICC involved in Africa only? Why are NATO and the West heavily engaged in Libya and not in Syria or Yemen while the violations are similar? One plausible explanation for these and related questions is the persistent pursuance of double standards by powerful nations.

A distinction can be made between the situations that are directly referred by the SC and the others. While the cases directly referred by the SC seem to directly involve the interest of the super powers, the others, except the Kenyan one, seem to involve the interests of the Court and the incumbent governments. The USA, for e.g., is not a member of the ICC and it is known for pursuing a policy that is against the Court but it encouraged the referral of the situations in Sudan and Libya. From logical point of view, the US would have been expected to veto against the resolutions that referred the situations in both countries to the Court. It can be argued that the Court is quickly resorted to when a violent situation involves unfriendly countries to the super powers. On the other hand, the governments of Uganda, and DRC had good reasons<sup>9</sup> to invite the Court to investigate the 'crimes' committed by groups contending their powers. The Court had also a good motive to accept such invitations to see what it can do<sup>10</sup> as this cannot be easily done targeting strong states in the West or the Middle East such as Israel; in the absence of effective collective security.

Notwithstanding the fact that justice must be done, it is ironical to push for the prosecution of people who were involved in some conflict which is already settled while doing nothing to stop live killings. One can compare the cases from Kenya and the situations in Syria and Yemen. The problem lies in the absence of effective, fair, and comprehensive collective security paradigm which is thwarted by double standards, among others.

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<sup>7</sup> The election-related violence in Kenya was already settled by power-sharing agreement signed by the contenders and the establishment of the government of national unity before the ICC stepped in.

<sup>8</sup> This can be inferred from the report of the UN special commission for investigating the situation of Darfur as referred by Ntsebeza (2009) and the fact that no country denied the existence of a problem in its territory. Differences come only when the issues of responsibility, cause, and solutions are raised.

<sup>9</sup> E.g. Akhavan, (2005:15) mentioned an argument that the Ugandan government is abusing the Court by using it as a tool to weaken its opponents and, more specifically, the Acholi community by elongating the war in the north.

<sup>10</sup> see also arguments mentioned by Sriram, 2009:309-328

### 4.3. Lack of a real sense of oneness as an international community

Many international documents<sup>11</sup> indicate the presence of a sense of oneness as an international community, but this assertion is more of a projection than a reality to many scholars since there are instances that challenge this assertion. There are multiple interests in the world and sometimes such interests compete against one another. There are obvious differences in military and economic powers among the nations of the world. Power inequality opens the road to dominance and incompatibility of interests (Fiseha, 2011). This is because one's interest is dependent on one's bargaining power and such power depends on economic and military powers. National interests, on the other hand, are political and they do not have any room for morality or fairness. There are differences of culture, religion, values, and perceptions. Besides, there may not be an agreement on certain terms such as 'what constitutes a threat to international peace and security'. Organizations such as the UN are the creations of these politically motivated 'sovereign' states and in such organs one's say is usually dependent not on moral sense of oneness but on the power one commands. The powerful ones tend to get what they want but the weak ones are right, at best, so far as their interests are not in conflict with the interests of the powerful ones. The UN SC is ineffective in the sense of representing the interests of all the peoples equally though it was established after, arguably, the 'international community' took adequate lessons from the failures of the earlier analogous organization-the League of Nations.

Looking into the international legal framework, in principle, states are equal before the laws-whether they are treaty based laws or customary laws, however, in practice if it is a powerful state, it can violate the laws, the norms, or the sacred values without any serious consequence but if it is a weak state, there is a high possibility of getting punished in the form of sanctions or direct military action<sup>12</sup>. If the rights of the citizens of a weak state are violated, they may be easily ignored but if the rights of the citizens of a powerful state are violated, they may result in serious consequences including very disproportional measures such as invasion. These deficiencies indicate as to who defines what is called the international community (Jacques, 2006). They also challenge the assertion of the existence of the sense of oneness as an international community.

On the other hand, regardless of the existence of differences in economic or military powers, religion, culture, or any other expression of status or identity,

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<sup>11</sup> For e.g., the preamble of the UN Charter begins with the phrase: "we the people of the United Nations..." indicating the presence of a single community of UN and the Rome Statute in the same section states: "...that all peoples are united by common bonds, their culture pieced together in a shared heritage..." confirming the oneness of the world community again.

<sup>12</sup> Here, one can note that while Israel explicitly and continuously violates international law by, *inter alia*, controlling territories of other countries without serious consequences, Iraq and Afghanistan were attacked by the US and its allies on vague allegations of being threats to international peace and security, as discussed in the earlier sections.

there are some common values to all human kind. One can observe this from the UDHR as proclaimed by the UN GA to serve "...as a common standard of achievement for all peoples and nations..."<sup>13</sup> and the overwhelming membership of the nations of the world to the UN Organization. More specifically, everyone needs the basic rights. Right to life, freedom of speech, peace, development in whatever manner they are defined are needed by all. States may not agree on how to manage a certain crisis or tragedy. They may neither agree as to who is responsible or as to the definition of a certain situation but they react when there is one. Every part of the world reacted to the disasters like the Rwandan Genocide and the Apartheid's rule in South Africa which the very perpetrators of Apartheid themselves were forced to accept its injustice and agreed to change it. Both were condemned by all States in the World, differences arise only on why they happened, who did them and how and what type of justice should be applied. These show, indeed, there are common things that tie humanity (Fiseha, 2011).

There are different activities performed both in times of peace and times of crisis that show the existence of a sense of oneness. When, for e.g., there are certain natural disasters, it is normal to see people who are totally anonymous to the victims helping the latter. Both may have never heard of each other before such an incident. Such instances demonstrate the existence of a sense of oneness-human family. In 'normal' times, people from different corners of the world, unimpeded by differences of various natures, sit together to deal with issues of common concern. Many examples can be mentioned here: issues of peace, justice, development, environment, etc. It is always attempted to establish institutions or structures that can help the furtherance of such common objectives.

There are various specialized agencies of the UN working in humanitarian issues such as child protection, education, health, refugees' protection, agriculture, environment and the like. They are indicators of the existence of some sense of oneness as they are least politicized organs. The presence of double standards and defects, however, make it difficult to fully accept the existence of a real sense of oneness as an international community, at least for issues of common concern. Unfortunately, the existence of a sense of oneness is one of the basic requirements to effective collective security system. Jacques (2006) argued that international community is "... the west, of course, nothing more, nothing less".

### **Conclusion: enhancing collective security is the way forward**

It can be concluded that there are two main reasons for the failure of the existing collective security system: (1) the lack of a sense of oneness as a global community on issues of common concern. It is argued that the most powerful countries are squandering the chance to create a better world by getting more obsessed with their narrow national interests (or imperial interests according to some authors). Hirsh (2003) explains how the USA is wasting the chance to build a

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<sup>13</sup> See last paragraph of the Preamble of the UDHR.

better world by increasingly resorting to unilateral actions. The increasing resentment of people on the use of basic resources such as oil is creating a rift that can continue to divide humanity, may be along civilizations as Huntington (1996) has argued. This poses a challenge on collective security. (2) The very undemocratic nature of the SC that have both practical and moral implications. Practically, few nations have taken the privilege to decide on issues of peace and security which usually use the privilege to safeguard their national interests. Morally, people who are subjected to such an unequal treatment by the single global collective security system feel alienated. Alienation breeds resentment and it proves the old adage 'might makes right' correct. This weakens the capacity of nations to establish an effective collective security system as they will tend to engage in continuous power competition that can be, at last, fatal to all.

The ideal way to deal with issues of peace and security is indeed to act as a collectivity. There is no better hope than to see states cooperating and working together to ease the common challenges to peace and security. This demands shifting from the traditional competitive and at times aggressive, relationship among nations to one that is based on mutualism and sense of oneness as members of the human family. This may not be easy because there can be resistance to change and interest to maintain the *status quo* from the better off parts of the world but it is not impossible.

As one can learn from history, no civilization or power hegemon has been everlasting. Roman, Arabic, or Turkish civilizations have once dominated and benefited most from the systems during their era but they all are history now. This indicates that a world that distributes its benefits equally to all; a world that guarantees the participation of all in deciding matters of global importance including peace and security is in the interest of the ones who may be currently better off as well. The more daunting issue is how to achieve this. This paper argues, among other things, establishing a democratic and devoted collective security system is a necessary condition. To achieve this, while there is a need to increase the pace for economic and cultural integration by building on the already existing structures and institutions, the way 'weak' nations perceive such institutions including the UN SC and other political or judicial organizations should be changed because it is obvious that there are unfair treatments and double standards.

The most perplexing challenge with establishing a democratic collective security organ will be the issue of implementation of decisions which demand huge material, financial, and human resources. But sacrificing fairness, justice, and equality for this reason, in the 21<sup>st</sup> century, is less convincing because there is a possibility to achieve both.

The first important step is for the weak to look for internal legitimacy and improved internal performance in all aspects. Signing international instruments and joining international organizations to show that you are 'copping up' is not helping much. It is good to remember here that the USA is usually the last one to sign international instruments but that does never mean that the USA provides

the protections included in such instruments to its citizens after everybody else. In other words, joining international organizations with elements of inequality such as the ICC must stop because though the explicit goals may be nice, they usually end up becoming instruments of suppression. The ICC's Statute is an amazing document and the issue of stopping impunity is appealing to all but the tiny-looking relationship with the unfair SC resulted in lots of controversies. The argument that nations must be more responsible to their people and should prioritize internal legitimacy may be misunderstood as perpetuating the state-centered current global system but that is not the case. Internal strength increases bargaining power internationally and it helps to come up with more fair institutions including collective security organs. It also facilitates socio-economic ties. As states become more assertive, more responsible for their people, and stronger; the more the possibility for the creation of a fair global system.

The other important action is to reform, more appropriately, to change the UN SC. Since the last decade, different attempts were made to reform the UN SC (Choedon, 2007). Most of the earlier proposals call for more inclusive and more representative SC. This includes opening the door for permanent seat with veto or without veto power to new states that are economically doing well. It also calls for more geographic distribution of the permanent seat. This doesn't, however, change the basic character of the UN SC system. It is not also helpful to transform the state centered, competitive, and aggressive system to one that considers the challenges and assets of humanity as common to all. The focus is just to appease people who increasingly resented the unfairness of the system and to a lesser extent to encourage economically better off countries such as Germany and Japan to share the costs of maintaining peace and security with the US but it still leaves substantial portion of the global community sidelined.

In order to have a SC that meets the prerequisites such as effectiveness and fairness, as discussed in the 'background' section, it is recommended:

(1). The Council must represent all the continents. More importantly, no civilization<sup>14</sup> should be left out unrepresented. For convenience, ten percent of the countries of each continent should have a seat in the Council. Percentages less than or equal to 0.4 should be ignored. This formula brings 5 countries from Africa, 4 countries from Asia, 5 countries from Europe, 2 countries from North America, 1 country from Oceania, and 1 country from South America to the council. Totally there will be 18 members.

(2). Permanent seat and veto power should be abolished altogether. The countries in each continent should rotate the seats available among themselves based on agreed time frame such as every two years.

(3). There should be a standby institution that has all the required facilities including soldiers to maintain international peace and security. The standby organ should be politically led by the 18 members jointly. The implementation of

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<sup>14</sup> This is to say that the Council should include countries from all traditions: Christian, Islamic, Chinese, African, Hindu etc.

the decisions should be done by professionals who are international public servants of the permanent collective security organ.

(4).The running costs should be covered by contributions from the member states. The contribution of each state can be assessed through a fixed percentage of GDP.

(5).The human resource including the soldiers of the standby organ should be contributed by member states based on the percentages of contributions and population number compared to other members.

This may look simplistic or unrealistic. It also demands commitment to the common interest particularly from the most powerful countries but it is only when this kind of collective security organ is established that the world will believe that indeed the powerful countries are contributing to global peace and security; not to their peace and security alone.

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