

UNIVERSITY OF NAIROBI

**OBSTACLES TO THE UNITED NATIONS AS A COLLECTIVE
SECURITY MECHANISM DURING THE IRAQ WAR, 2002-2005**

BY

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DECLARATION

This project is my original work and it has not been presented anywhere for a degree in any other University.


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Signature: 

Date: 2 - 12 - 2005

This project has been submitted for examination with my approval as University Supervisor.

Prof. Olewe Nyunya

Signature: 

Date: 5/12/05

DEDICATION

This thesis is dedicated to my entire family; Reuben my dad, Rose my mum, my sisters: the late Tabitha, Faith, Doris, Rhoda, and Mary and my brother Andrew.

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ABBREVIATIONS

- ABM - Antibalistic Missiles
- NATO - North Atlantic Treaty Organization
- ORHA - Office of Resolution and Humanitarian Act
- U.K - United Kingdom
- U.S - United States
- U.S.S.R - United Soviet Socialist Republic
- UN - United Nations
- UNESCO - United Nations Economic Social Council
- UNSCR - United Nations Security Council Resolutions

ABSTRACT

This study looks at the obstacles of the UN as a Collective Security mechanism with reference to the 2002-2005 Iraq war. It looks at the concept of collective security as a technical term in the field of international relations and how it contributes to international peace and security.

The UN played a role that was totally against its underlying principles because a Collective Security mechanism always prohibits the use of force or in one word war. The study gives a strong discussion on the obstacles that led to the war in Iraq and views on how such can be avoided in the future.

The UN used force, an act that is considered antithetical to a Collective Security mechanism. Those obstacles that laid the impetus which later conglomerated and culminated to the UN Iraq war forms the focus of this study.

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CHAPTER ONE

OBSTACLES TO THE UN AS A COLLECTIVE SECURITY MECHANISM: AN INTRODUCTION.

1.0 Introduction

Empirically, history reveals that international relations is all about conflict, competition and co-operation, that is a struggle between law and politics, because of one inherent characteristic of the international political system namely anarchy. International conflicts as a matter of fact have been a major characteristic of that system and in reference to these, different methods have been thought as modalities through which such conflicts could be settled and a modicum of order maintained in the absence of a world government.

There are at least six methods of attempting to settle such international conflicts. These include, no action taken by disputing parties, settlement through the parties own initiative, intervention by an international agency to facilitate peace, collective action by an international agency to restore order, coercive self-help including recourse to war and intervention by other states to promote or secure their own interests.¹ The basic purpose of collective security² is to help in the evolution of peaceful international relations. Collective security can be said to be the hallmark of international organizations as it has been the crowning principle in the two major international organizations in the world namely; League of Nations and the UN.

¹ A Leroy Bennett (1995) 6th ed. International Organizations, Principles and Issues. New jersey, Prentice Hall p.143

² Kumar Mahendra, Theoretical Aspects of International Politics. Shiva Lal. Agarwala and Company Publishers 1990 p.401.

The first assumptions of collective security can be seen by referring to numerous efforts which were made before the First World War and which have been interpreted by some writers as adumbrations of the idea of collective security. Thus it is held that the treaty of Osnabruck provided in Article 17 that "all and each of the contracting parties shall be held to defend and maintain all and each of the dispositions of this peace, against whomsoever it may be".³ William Penn the Quaker also put forth schemes for European order.⁴ Similarly William Pitt suggested in 1805 that all major European powers should jointly support a new status quo against "any future attempts to trouble the general tranquility."⁵

All said, nevertheless, the first attempt to adapt the vague concepts of collective security to a worldwide system for preventing war was the establishment of the League of Nations in 1919.⁶ Thus collective security became the crowning principle of League of Nations as it came to be for the United Nations.

Practically, therefore, it was only in the UN that the idea of collective security was accepted in a practical sense of the term. Once accepted, this idea was sought to be effective in the efforts made for the improvement of the machinery of International Organization.⁷ All in all, the UN in Iraq failed to act according to its basic principle as evidence today shows that the role that the UN played in Iraq remains illegal and

³ George A. Finch, The Sources of Modern International Law Washington D.C 1937 p.64.

⁴ Frederick L. Schuman, "The Dilemma of the peace seekers" American Political Science Review 39 (February 1945) P.13, E.C.O Beatty, William Penn as a Social philosopher (New York 1939) pp.107-112.

⁵ Walter Alison Phillips. The Confederation of Europe (London 1920) p.40

⁶ Thomas G. Weiss Collective Security in a Changing World. Lynne Rienner Publishers. USA 1993 pp.1-40.

⁷ David Mitrany, The Problem of International Sanctions (London 1925) pp.1-50.

totally against its preamble that force shall not be used, human rights respected and that justice will be upheld irrespective of the size of a nation.

The proponents of collective security viewed it as a method of controlling war in a world of sovereign states as experience had brought disillusionment with the capacity of balance of power system to maintain peace⁸. Although collective security is the prime crowning principle of the UN and that war remains antithetical to such a system, war was fought in Iraq in the name of promoting international peace and security. While the main objective of the UN is to maintain international peace and security by joining together the governments of all states to prevent any member from using coercion to gain advantage, this was done in Iraq by some members of the UN and upto today such an act remains illegal and totally against the crowning principle of the UN. Why did the UN fail to exercise collective security?

The study therefore attempts to contextualize the obstacles faced by the UN as a collective security mechanism in Iraq because the mere fact of war in Iraq in the name of the UN contravenes the basic assumptions of its crowning principle and its preamble. The study examines the origin and justification of collective security as a means of maintaining peace and security as well as the political, legal and institutional obstacles therein.

⁸ G. Mattingly, *Renaissance Diplomacy* (Baltimore: Penguin Books 1935) 75-76, 144-145.

1.1 Definitions

Collective security is a specialised concept, a technical term in the vocabulary of international relations.

1.1.1 Conceptual definition

Conceptually, Morgenthau defines collective security as an international principle that can be translated as “one for all and all for one”⁹. Ideally, it is a system that will be devoid of any threat to international security as all the members of that system will be aware of the consequences thereafter and so measures will be taken to preclude any act that will be considered to be an act of contumacy.

1.1.2 Operational definition

Operationally a collective security system can be defined or approached by a process of elimination, “it represents the means for achieving national security and world order which remain when security through isolation is discarded as an anacronism, security through self help is abandoned as a practical impossibility, security through alliance is renounced as a share and a delusion and security through world government is brushed aside as a dream irrelevant to reality hence it is a system that cannot permit eternal friends or everlasting foes”¹⁰. This certainly means an alliance like North Atlantic Treaty Organization which is between friends who set pressure against an existing or an identifiable potential enemy is a threat to collective security system.

⁹ Hans J. Morgenthau, Politics Among Nations, New York 1949, P. 331

¹⁰ Cited in Philip C. Jessup, International Security, New York: Council on Foreign Relations. 1935, P.52

This means therefore on a continuum delineating preponderance of power and centralization constitute the other end and collective security becomes the middle zone of the spectrum. It is the halfway house between the terminal points of international anarchy and world government¹¹.

1.2 Statement of the Research Problem

The study investigated obstacles to the United Nations as a collective security mechanism in the Second Iraq war.

As a collective security mechanism, the United Nations main purpose in Iraq was supposed to prohibit war by urging all its members to be ready to settle that dispute peacefully. This did not take place and instead UN member states used force against Iraq and secondly there was no proper terms on the basis as to why force was used against Iraq as this violates and conflicts with the fundamental principles of the UN Charter and most important violates International law. United Nations was founded on the principle of collective security where the notions of universality, proper definition of goals, impartial decisions and fairness must highly be considered. This means that if any act by a member state against such a system is considered a breach to peace or threat to international peace and security, it should amount to all states acting unanimously because peace is considered indivisible. This means that the identification of the guilt should not be political as this would paralyse the basic assumptions of collective security system. In the case of Iraq war, it is widely

¹¹ Kenneth W. Thompson, Collective Security Re-examined. American Political Science Review. Vol. 47, Sept 1953. Pg. 758.

acknowledged that the UN's role was totally played by a section of member states and that many states did not agree that Iraq was a threat to international peace and security, yet a resolution was passed against Iraq by the Security Council which was a total violation of the basic assumptions of a collective security mechanism, that war is antithetical and instead disputes should be settled peacefully.

The United Nations has in practice refrained from simply following the pattern laid down by its crowning principle and instead has improvised policies related to the general problem of collective security, like in Iraq a coalition U.S and U.K was forged to act in the name of the UN. In this case, in the United Nations, little evidence can be seen in the urge to patch up the political legal, structural and institutional factors to make it conform more closely to the requirements of a full-fledged collective security system.

The arbitrary use of force or even threat of force by any state and in the name of UN or by the UN though morally wrong and politically unwise was used within the UN system. Today, is peace no longer indivisible? The use of force against Iraq and the language of the resolution 1441 which reminded Saddam Hussein of serious consequences if he failed to disarm is also against the basic principles of UN as a collective security mechanism.

Legally, lack of proper creation of legal and structural apparatus capable of giving institutional expression to its basic principles remain a dream and such affect the UN as a collective security mechanism in Iraq. Practically, the UN needs to define

aggression, needs to define breach of peace because the question remains; what was the basis used to define Iraq as a threat to international peace and security? How comes that the Security Council defines all what should be taken as breach to peace and that a problem remains on the legal basis against which Iraq was defined as acted against international peace and security, and whether such was unanimously accepted by all states.

The Charter, most importantly, establishes the role of great power unanimity in the Security Council. The adoption of great power unanimity in Iraq and the adoption of Resolution 1441 clearly reflects a deliberate decision not to attempt to institute a system of collective security applicable to the great powers, the very states which possess the greatest capacity to threaten the security of other states as U.S and U.K did in Iraq.

What was the legality and the plausibility of the resolution 1441 as it was only adopted by a few states after a long period of diplomatic slogging to be carried by the UN but in favour of the U.S policy?

Purportedly, such political disposition that gives precedence to a few great powers and even other more factors have affected the UN efficacy leaving it almost docile as a collective security mechanism.

The above stated considerations will pragmatically be appraised against the UN as a collective security mechanism in the Second Gulf War to show that the role played by

the UN in that war as a collective security mechanism remain pejorative and demeaning.

1.3 Level of Analysis

The study focused on institutional level of analysis. This took into consideration that many methods/approaches have been thought as strategies of mitigating anarchy in the international political system and as means of settling international disputes. Collective action by an international agency to restore order after international peace has been breached or threatened is one of those means. This research took into consideration that the international system is anarchic, no arbitration exists to solve conflicts peacefully and in addition, that a world government remains a dream today. The only means to ameliorate the harsh conditions of international anarchy remains the collective security system, through an international organization like the United Nations.

1.4 Objectives of the study

The study was guided by following objectives:

- (a) To establish what obstacles inhibited the United Nations (UN) to act as a collective security mechanism with reference to Second Iraq War 2002-2005.
- (b) To establish the political obstacles to the UN as a collective security mechanism with reference to the 2002-2005 Iraq war.
- (c) To establish the legal obstacles to the UN as a collective security mechanism with reference to the 2002-2005 Iraq war.

1.5 Literature Review

The study posited to investigate obstacles that inhibited the United Nations to act collective security mechanism in the Gulf War. In this accord the literature review was divided into two sections. The first section reviewed literature on collective security as an approach to international peace and security, while the second section reviewed literature on UN as a collective security mechanism in Iraq.

1.5.1 Literature on Collective Security as an approach to International Peace and Security

This section reviewed literature on the meaning of collective security and how collective security qualifies to be a technical concept that has specific aspect's different from any other approach to international peace and security.

Collective security is one of the most invoked schemes since the latter part of the twentieth century as the ultimate for saving the world from the scourge of interstate military confrontations and conflict which invariably seems to lead to breach of world peace¹². As a means of achieving international peace and security collective security became the basis of League of Nations and also became the crowning principle of the United Nations. The goal which the league sought and which the UN is seeking through collective security has been to prevent war by providing a deterrent to aggression and act on breach of peace and to defend the interests of peace loving states in case of a War by concentrating a preponderance of power against the aggressor¹³.

¹² Naidu M.V.R. (1977) *Collective Security and the United Nations*. The Macmillan Ltd, p.6

¹³ Marina and Lawrence. *The Future of Collective Security*. An Essay in Collective Security. (San Francisco: Chandler 1956)

The principle of collective security implies that international order should rest not on a balance of power but on a preponderance of power wielded by a combination of states acting as the agents of international society as a whole that will deter challenges to the system or deal with them if they occur¹⁴.

Similarly, collective security revolves around the ideal that governments of all states would join together to prevent any of their member using coercion to gain advantage over the rest¹⁵.

From the time it was instituted in 1919 to the present, collective security has been applied only very occasionally under the UN, fairly crudely even though the term has frequently been stretched to cover a multitude of actions that fit badly with any sensible notion of the original idea. As a result one may feel justified to approach the history of collective security with certain skepticism¹⁶.

In the collective security mechanism, the word "security" represents the "end". "collective" defines the nature of the "means" and "system" denotes the "institutional component" of the effort to make the means serve the end¹⁷. But since the means is collective the nature of the goal is also bound to become collective. Collective security is security of all states by all states and for all states, hence according to Hans Morgenthau, collective security can be translated as an international principle that

¹⁴ Briery, J.L. *The Covenant and the Charter*. 1946, 23 *British Yearbook of International Law* 83 at 92.

¹⁵ Thomas, G. Weiss. *Collective Security in a Changing World*. Lynne Rienner Publishers. U.S.A 1993, p.30.

¹⁶ Miller Lynn. *The Idea and Reality of Collective Security*. July 1999 Vol.5 Issue 3, p.303.

¹⁷ Inis, L. Claude. *Swords into Plowshares*. New York 1963, p.250.

means "one for all and all for one"¹⁸. The above statement means that security measures will be taken on behalf of all states and not any particular power alliance, that every state will be entitled and obliged to participate in the decision making and in the enforcement action of the system. The security measures will defend all states without discrimination against any threats or acts of aggression. In other words the systems of collective security is based on the presumption that peace is indivisible thus universalisation and centralisation are fundamental characteristics of the collective security system¹⁹.

Collective security is a device to control or what Inis Claude calls, the management of power, not that of elimination of power. The other devices of management of power are according to Claude, the balance of power and world government. Collective Security occupies the central position between balance of power and world government, in the sense that the control of power under collective security is more than what it could be under balance of power and less than what it could be under world government²⁰. Collective security is conceived of as the alternative which could be useful because world government is not feasible²¹.

The first collective security mechanism in the world history was league of nations but numerous efforts had been made before the first world war and which have been interpreted by some writers as adumbrations of the idea of collective security. Thus it is held that the Treaty of Osnabruck, the Amphictyonic council of

¹⁸ Op. Cit 9, p.33.

¹⁹ Op. Cit 12, pp.1-30.

²⁰ Op. Cit 17, p.6

²¹ Op. Cit2, pp.403-404.

ancient Greece were limited collective security mechanisms²². All in all such predilection of labeling such schemes as collective security measures have been castigated.

Collective security brings a lot of weight on the creation of an international mechanism through which peace could be ensured by the combined use of sanctions and deterrence but not through force²³.

A collective security mechanism differs a lot from any forms of systems selective security like NATO which embodies the principle of some for some whereas a collective security mechanism is dedicated to the concept of all for all²⁴.

As an approach to peace, a collective security mechanism has to define its competence legally such that no political grounds will be used to do so. Breach to peace must be defined legally. All said and done the idea of establishing collective security has neither been realized nor abandoned²⁵.

The basic purpose of collective security is to help in the evolution of peaceful international relations²⁶. This was used as a basis in the study to help delineate the obstacles that lead to war in Iraq by the UN yet it's prohibited by Collective Security.

1.5.2: UN as a Collective Security Mechanism in Iraq war

²² Op. Cit 3, p.64

²³ The Related Documents are available in D.H. Miller, the Drafting of the Covenant, New York 1928.

²⁴ Op. Cit 17, p.275

²⁵ Ibid. 292

²⁶ Op. Cit 1, p.405

This section will review literature on the role played by the UN in the Iraq war as a collective security mechanism.

The military action against Iraq under the existing UN resolutions remain unlawful and contravenes²⁷ the crowning principle of the UN as a collective security mechanism. As a matter of principle, international law precludes UN member states from relying on any implied authorization to use force²⁸. The use of force without clear collective authorization would be in conflict with the fundamental principles of the UN Charter and in violation of international law yet this was used in Iraq. The UN Charter for instance articles 41 and 42 make it clear that war is a matter of the last resort. International law traditionally allows for pre-emptive strike but only if the event of an imminent threat. Few agree Iraq poses such a threat and particularly with the UN weapons' inspectors in the country²⁹.

A question is asked of what force was designed to achieve by the UN resolution as there is no precedent in international law for aiming to use force to change a regime³⁰ as this violates sovereignty and territorial integrity, legal aspects that a collective security mechanism must respect.

The legal community is deeply divided on the question of the legality of using force against Iraq in the absence of a further UN resolution. According to the UN Charter exceptions, there are only two possible solutions in which one country can take military action against another. The first is in individual or collective self defence a

²⁷ O'Connell Mary, The Occupation of Iraq: What International Law Requires Now, 2003 Columnist 4.

²⁸ Taylor Richard, Law unto Themselves. March 14th 2003.

²⁹ Op. Cit 3, p.30

³⁰ Delphy Christine, International Law and the Humanitarian Crisis in Iraq. March 27th 2003.

right under customary International Law, which is expressively preserved by Article 51 of the UN Charter, the second is where under Article 42 of the Charter, the Security Council decides that force is necessary to maintain or restore international peace and security where its decisions have not been complied with, other words where a UN resolution clearly authorizes military action³¹.

In the above analysis. Starmer Keir criticizes the use of force under all terms and of important, points at Article 2 of the UN Charter which requires all states to refrain from the threat or use of force that is inconsistent with the purposes of UN which emphasized that peace is to be preserved if at all possible³².

Further Ford noted that with or without Security Council resolution authorizing use of force pre-emptive force is extremely dangerous and flat out illegal³³. The war in Iraq could be legitimized even though it is illegal if all the issues against Iraq were justified says Anne Marie but all in all, it is going to require the U.S and U.K truly prove their cases³⁴ she adds. But Currie quickly points out that Article 2(3) of the UN Charter requires that all members shall settle their international disputes by peaceful means, in such a manner that international peace, security and justice are not endangered and Article 2(4) requires that all members shall refrain in their international relations from the threat or use of force against the territorial integrity or

³¹ Op. Cit 1, p.30

³² Keir Starmer, Sorry Mr. Blair but 1441 Does not Authorize Force, Guardian March 17th 2003.

³³ Ford Peter, As Attack on Iraq Begins, Question Remains, is it Legal, March 21st 2003.

³⁴ Anne Marie, Law Groups Say its Illegal, march 21st 2003.

political independence of any state or in any other manner inconsistent with the purposes of the UN and so resolution 1441 by security Council remains illegal³⁵.

In reference to the above views about the UN as a collective mechanism in Iraq, experience shows that the UN with regard to handling threat to peace and breach to peace has been filled with disappointment and frustration. The failure of collective security thus call for substitute innovations to respond to international peace and security.

It is true that the shadow still falls between the idea and reality of collective security today as experienced in the Iraq war. Those obstacles that have rendered hopeless the high aspirations of the UN as a collective security mechanisms to maintain international peace and security thus challenging the deepest preconceptions of the UN as a collective security mechanism forms the central concern of this study.

1.6 Significance of the study

The study focused on investigating those factors that inhibited the United Nations to act as a collective security mechanism in Iraq war. This was implemented and has provided recommendations that will improve the United Nations performance on meeting the basic objectives of its preamble. This will improve performance in policy formulation.

The study also came up with concrete modalities of overcoming the shortfalls of the organisation's principal goal of maintaining international peace and security.

³⁵ Currie Duncan, Preventive War and International after Iraq, 22nd May 2003.

The study too established whether collective security as the crowning principle of UN has been abandoned and if so, how.

Withal the study has also contributed to the academic debate on how and why the United Nations has in practice refrained from simply following the pattern laid down in its basic document and has instead improvised policies related to the general problem of collective security.

1.7 Theoretical Framework

The study attempted to investigate obstacles to the UN as a collective security mechanism in the Iraq war.

The study was based on the ideal theory of collective security, its tenets were taken as the epitome of the United Nations Organisation because the ideal theory of collective security forms the basic assumptions of a collective security mechanism. As a matter of fact, the research critically appraised the ideal theory of collective security against the United Nations assessing its applicability in the contemporary international political dispensation.

A lot has been advanced by different scholars concerning the theory of collective security in the early twentieth century, it is but until the 1950's that the ideal theory of collective security clearly and comprehensively was consolidated, its assumptions defined and its analytical components identified. Thus, Inis Claude in his book

Swords into Plowshares published in 1956³⁶ became the first writer in the recent years to specify the elements and delineate the characteristics and assumptions of the theory.

The ideal theory of collective security rests on the basic assumption that wars are likely to occur and that all nations share a primary interest in maintaining peace.³⁷

The ideal theory of collective security has several assumptions, these include:

The theory prohibits use of force³⁸. The arbitrary use of force or even threat of force by any state is morally wrong and politically unwise and should therefore be legally and permanently prohibited³⁹. This assumption forms the hallmark of this study, first, why is it that force was applied yet it is considered to be unscrupulous, myopic and legally wrong by any collective security system and secondly, why did the United States play the role of an international policeman or a world government? And thirdly, why did United States and Britain as individual states go to war in Iraq on behalf of the U.N?

A second assumption of the ideal theory collective security is, the collective guarantee of security⁴⁰. In the light of the fact that the modern world is becoming increasingly interdependent, modern wars are no longer a bilateral affair under the system of collective security, therefore the motto is "one for all and all for one."⁴¹ No state can claim the right of neutrality or even of self-help⁴². Some commentators have

³⁶ Inis L. Claude Jr. Swords into Plowshares (New York 1965) pp. 250-294.

³⁷ For Various Meanings of Collective Security, see Earnst, B. Haas "Types of Collective Security, *American Political Science Review* 1955, pp.35-62.

³⁸ *Op. Cit* 12, p.255

³⁹ *Ibid.* p.256

⁴⁰ *Ibid.* p.257

⁴¹ Hans J. Morgenthau Politics Among Nations (New York 1949) p.331

⁴² Kenneth W. Thompson "Collective Security Re-examined" *American Political Science Review* 47 (September 1953) pp.272.

suggested that self-help is an exception to the system of collective security⁴³ but this is not true as the right of self defence would undermine the system of collective security as it has been defined. In this case, collective security theory places collective responsibility under collective security and this means that collective security is placed on both moral and pragmatic bases.⁴⁴ Against this assumption, it will be considered of importance that, peace under collective security is indivisible, but then why did some states counter the initial decision that Iraq was a threat to peace and security, a condition that precipitated to few countries supporting that war. The study established why.

A third tenet of the ideal theory of collective security is collective force as deterrence/sanction⁴⁵. The principle of prohibition of force and the principle of collective guarantee become effective, through the principle of deterrence/sanctions. The combined forces under the collective security system can inhibit the potential threat to peace, when they seem irresistible. And if the aggressor actually starts a war the combined forces should be able to overwhelm the illegal use of force, to drive home the lesson that aggressor actually does not pay. This would be sanction. Deterrence can be achieved only when collective power is overwhelming and irresistible. Even after it was agreed that force was to be used, then all U.N members should have joined militarily to ensure that its power was overwhelming and irresistible, such that the war could even have ended before it started, but it has taken several years to win the war, if so can be argued, the study established why.

⁴³ Hula *Collective Security and the United Nations*. London, 1965

⁴⁴ Arnold Wolfers *Collective Security and the War in Korea* Yale Review vol. Xliiii no.4 pp.480-496.

⁴⁵ Op. Cit 12, p.280

Another tenet of ideal theory of collective security is the automatism in collective action⁴⁶. In this, any form of threat to international peace and security will automatically trigger off the mechanism of collective security. Collective security theory puts it that, collective guarantee should be absolute and certain in the sense that they do not permit in the words of Claude, ifs and buts either in warning the potential threat or in assuring the potential victim⁴⁷. This principle of automatism of security action implies three elements; first, the guarantee of response against aggression, the quickness of responses and the impartiality of response. The study established why member states of the U.N did not act automatically, why lobbying to go to war provided the guarantee to go to war and also why there was no absolute participation by all members of the UN in Iraq.

Another principle is anonymity of victims or aggressors⁴⁸. The principle of automation implies the anonymity of victims and of aggressors. When the collective guarantees under the system of collective security are automatically released the moment international security is endangered, it also means that the collective sanctions are applied against the wrongdoers without any discrimination of race or religion, ideology and affluence, strength or applying sanctions on behalf of the organisation. A nation might even be required to defend or strengthen an arch enemy against a close ally. In one word collective security acts against aggression *per se*. It cannot permit eternal friends or everlasting foes⁴⁹. This principle was of great

⁴⁶ Ibid. p.283

⁴⁷ Op. Cit 17, p.250

⁴⁸ Op. Cit 12, p.290

⁴⁹ Ibid. p.291

importance that the study investigated why Iraq had been viewed by some members of the U.N as a threat to international peace and security even when it could not be properly established that it had weapons of mass destruction. The study established why some states held inimical orthodoxies against Iraq and why Iraq has been considered by some states as an everlasting foe and how this acted as a principal reason to attack Iraq.

Another important tenet of ideal collective security theory is assignability of guilt⁵⁰. The operation of the principle of automatism of sanction is conditional to the occurrence of any threat to international peace and security. This means that aggression has to be defined first before releasing the mechanism of sanctions. Here, the study investigated whether the United Nations has legal definition of aggression and whether the definition of an act as being an act of aggression is done politically and/or the definition is left to few members who guided by their andocentric fallacies built on their unpreceded mental constructs discriminatively insinuate that an act of aggression has occurred

The last tenet of ideal collective security theory is the principle of permanency and generality of the system⁵¹. The collective security system unlike an alliance of a balance of power is not adhoc, expedient or particularistic. A system of collective security is a permanent and institutionalised arrangement for international security against all dangers. It is therefore permanent abstract and general⁵². Under this

⁵⁰ Ibid. p.292

⁵¹ Op. Cit 17, p.256

⁵² Inis Claude pp.256

assumption, the study investigated why the U.N acted against Iraq yet Iraq was not a threat to international peace and security.

However, the ideal theory of collective security also assumes and stipulates some complex network of requirements and/or prerequisites for the suitability of the global situation for the operation of a collective security system. These are divided into two; subjective prerequisites and objective prerequisites.

The subjective prerequisites of the ideal theory of collective security include faith in the rationality/goodness of man. The study therefore established whether the war in Iraq was one against undemocratic ideas in Iraq and whether Iraq could not be considered democratic.

Secondly, faith in world community. The concept that world peace and security can be and should be guaranteed by all the governments of the world (i.e. assumption of collective guarantees and defence) implies the concept of the brotherhood of man or the conviction that rational governments will not be foolish and desperate enough to fight losing battles as or to win pyrrhic victories. Nations that accept collective security must say in the words of Sir Arthur Salter "friends are we, with all enemies are we of none, except of any who break the peace"⁵³ Thus the study attempted to establish whether it is universally agreed by all members of the UN that peace and security are the core ingredients of a world community and whether people belong to one global community.

⁵³ Salter Sir Arthur Security London Oxford University Press (1939) pp.55.

Third prerequisite is faith in the indivisibility of peace. The conviction that world peace is indivisible can arise out of the moral conviction that you are your brother's keeper or out of the factual considerations of international interdependencies, products of modern science and technology and war⁵⁴. The study hence investigated whether all countries today view peace as being indivisible and that today we are living in a global village where one act of aggression could affect the whole world due to interdependence.

Another prerequisite is faith in the impartiality of the system. The principle of anonymity of aggressor or victim is founded upon the faith in the honesty that is morality or the objectivity that is rationality of the decision-makers in charge of operation of the security system. The objectivity of the security system demands impartiality. But impartiality without effectiveness is not enough⁵⁵. The system must prove impartiality. Here the study investigated whether the U.N system adopted its decision to go to war impartially.

On the other side, the four basic objective prerequisites include;

The world of diffused power. Ideally, the collective security theory stipulates that, the collective security system requires an international society in which power is not concentrated⁵⁶. The study investigated how the U.S hegemony affected U.N as a collective security mechanism.

⁵⁴ Op. Cit 17, p.297

⁵⁵ Ibid. p.299

⁵⁶ Ibid p. 298

Another objective prerequisite is legality of concepts, procedures and institutions. The theory of collective security assures that concepts have to be defined legalistically. The study of importance will establish whether the U.N has legal definition of its core concepts such as aggression, peace and others.

The last objective prerequisite of the theory of collective security is that, in the process of international organisation there will be an approximation to world government⁵⁷. The study investigated whether U.N is there to stay and whether the organization respects sovereignty as such a system of collective security withholds sovereignty with high esteem. This formed the study of this research. A lot has been done as factors that affected the U.N system before the end of the cold war as compared to the period after the cold war. Many changes took place after the cold war and hence the research sought to fill that gap by providing specific reasons that could have laid the impetus to the political fiascos that instigated to a modicum of success by the UN in the second Iraq war.

1.8 Hypotheses

1. The current international political system (unipolar) has greatly affected the United Nations Organization as a collective security mechanism.
2. Lack of proper legal definition of terms (e.g. aggression and proper legal definition of structural apparatus in the UN Charter) affected decision making and policy adoption in the UN as a collective security mechanism in the Iraq war.

1.9. Methodology and Data Collection

The study utilized both secondary and primary sources of data.

⁵⁷ Ibid p. 301

Secondary data

This basically involved library research, published and unpublished materials like books, journals, periodicals, newspapers, reports, documents and bulletins, magazines, public documents, seminar papers and other papers deemed relevant to this study. The internet acted as an important source of secondary data

Primary data

Primary data was gathered by use of personal interviews with lecturers and students of international relations in Moi University and Maseno University and also a senior officer in the United Nations office Gigiri. The oral interviews were reinforced by official documents concerning UN and Iraq war. Articles on the Iraq war also provided an indepth information about the war.

1.10. Summary on Chapter outline

Chapter one.

Chapter one of this study included the introduction, the research problem, objectives, literature review, justification, theoretical framework, hypotheses, methodology and data collection and summary of chapter outline.

Chapter two

Chapter two of the study looked at the meaning of the concept of collective security, its origin, evolution and justification. This chapter traces the history of collective security upto 2005.

Chapter three

Chapter three looked at the political factors that affected the United Nations to act as collective security mechanism in the Second Gulf war.

Chapter four

Chapter four looked at the legal aspects that affected the United Nations to act as collective security mechanism.

Chapter five

Chapter five carried a critical analysis on the role played by the UN as a collective security mechanism during the 2002-2005 Iraq war.

Chapter six

Chapter six focused on the conclusion and recommendations of the study.

CHAPTER TWO

2.0 LITERATURE REVIEW

2.1 Introduction

This chapter focuses on the meaning of collective security, its origin as a technical term in international relations, its evolution and justification. Therefore the chapter traces the history of collective security as a means of enhancing international peace and security during the Iraq war 2002 – 2005 .

2.2 Meaning of Collective Security

Collective security postulates the institutionalization of the lawful use of force in the international community¹. What is required is a multilateral treaty whereby contracting parties create an international agency vested with the power to employ force against aggressors and perhaps other law-breakers. Such an instrument is basically introverted in character (designed against a potential future aggressor from among the contracting parties) unlike a collective self-defense treaty which is extroverted envisaging aggression from outside the system². Collective security holds with a lot of importance the fundamental premise that recourse to force against aggression must be made by those who are not the immediate and direct victims³. Collective security operates on the strength of an authoritative decision made by an organ of the international community.

Collective security adopts a universalistic approach which requires universal participation in a system of multilateral response to any potential threat against any individual state. It

¹ Schwarzenberger and E.D Brown, A Manual of International Law 27 G.y.1.L429 2001 p 246

² H. Rumpf. The Concepts of Peace and War in International Law 153 1976

³ Dinstein, Y. War, Aggression and Self Defence Cambridge University Press 2001P 246

asserts that the peace of the international community can be maintained through a binding predetermined agreement to take collective action to preserve it⁴. Collective security does not require predetermined enemies, since the presumed aggressor can be any member of the system, unknown before hand.

As Inis Claude (1971) noted, collective security recognizes no traditional friendship and no hardened enmities and permits no alliances with or alliances against⁵. He says that any illegal threat or use of force by any sovereign member of the international community against any other, potential or real should trigger the combined force of all the rest.

It expects to combine so much collective power in opposition to that of a lawbreaker, that the latter should be constrained from the self defeating illegal action by that threat or quickly be repulsed by the community's action if it should persist in its warlike course⁶. It seeks in the words of its chief advocate early in the 20th Century 'not a balance of power but a community of power; not organized rivalries but an organized common peace'⁷.

A collective security system is essentially a system for the management of means. Strictly speaking the members of the system and its organs need not be concerned with the substance of the issue over which aggression is committed. It isn't necessary to consider the intrinsic merits of the dispute. The system is involved with the penalization of disturbers to peace without too much consideration of the factors that make the peace susceptible to disturbance and members must be willing to curb aggression without

⁴ Inis L.C Swords in Plowshares; 1971 p256

⁵ Ibid P270

⁶ Wood Robert (ed) The Process of international Organisation (New York; Random House Inc 1971 p78

⁷ Woodrow Wilson's Address to the U.S Senate 22 Jan 1917

regard to any underlying sympathies they may have⁸.

Psychologically the system of collective security has two functions to perform: It should act as a deterrent to potential aggression and at the same time impart a sense of security to all participating states. Following an early post-war United Nations Economic and Social Council (UNESCO) report, collective security was defined as consisting of three distinct sets of policies: the regulation of armaments, the pacific settlement of disputes and collective action. In the light of these facts collective security can be defined as a system in which each state in the system accepts that the security of one is the concern of all. Each state agrees to join in a collective response to aggression to defend the status quo⁹.

2.3 Collective Security a Historical Overview

The collective security system is one of the most invoked schemes since the latter part of 20th century as the ultimate panacea for saving the world from the scourge of interstate military confrontations and conflicts which invariably seem to lead to a breach of world peace. It is thus one of the many methods of attempting to settle international disputes. Collective security system is not unique to the 20th Century as certain aspects of the Amphictyonic Council of ancient Greece and the Truce of God of the Middle Ages have been credited as limited collective security systems¹⁰. The first assumptions

⁸ This allows the members muster the flexibility of alignment and the unbalancing of power required to contain an aggressor.

⁹ Ugu Gungor Kho 'Collective Security' (Savunna Bilmleri Dergisi, 1(2) 2002 44-56. See also Falk R. and Black C (eds) 1969.

¹⁰ Bennet Leroy, International Organizations, Principles and Issues. New Jersey: Prentice Hall, 1995 p.144.

also can be seen by referring to numerous efforts which were made before the first world war and which have been interpreted by some writers as adumbrations of the idea of collective security. Thus also it is held that the Treaty of Osnabruck provided in Article 17 that "all and each of the contracting parties shall be held to defend and maintain all and each of the dispositions of this peace, against whomsoever it may be"¹¹. William Penn the Quaker also put forth schemes for European order¹². Similarly, William Pitt suggested in 1805 that all European powers should jointly support a new status quo against "any future attempts to trouble the general tranquility"¹³.

These adumbrations apart, the idea of collective security is generally taken to have started in the beginning of the 20th Century. Theodore Roosevelt declared in 1902 that it was "incumbent on all civilized and orderly powers to insist on the proper policing of the world"¹⁴. This idea was explained by him with vigour during the First World War and he appealed to nations to work for a device by which aggression could be checked by the combined forces of all¹⁵. Van Vollenhoven, a Dutch scholar, had already emphasized in 1910 the need for an international enforcement mechanism and this idea was blessed with the approval of the U.S Congress¹⁶.

During the First World War, an international association¹⁷ functioned at the Hague to promote the idea of collective security. President Woodrow Wilson of the U.S was the

¹¹ Quoted by George, A. Finch. *The Source of Modern International Law*. Washington D.C, 1937 p.64.

¹² See Fredrick, L. Schuman. "*The Dilemma of the Peace Seekers*". *American Political Science Review*, 39 Feb 1945 p.13.

¹³ Walter Alison Phillips, *The Conferendation of Europe*. London 1920, p.40.

¹⁴ Theodore Roosevelt, Nobel Peace Prize Address in Vide Nicholas, S. *Politics, Neutrality and Peace*. Washington D.C 1935, p.38.

¹⁵ Hermann Hagedon ed. *The Works of Theodore Roosevelt*. New York, 1925 vol.xx p.97.

¹⁶ Han Wenberg. *Theory and Practice of International Policing*. London 1935, pp.57-69.

¹⁷ See *Recuell de Rapports. The Hague* 1916-19.

key figure behind the movement for a project to collective movement of peace¹⁸. But by the time he took a clear stand in favour of collective security, the idea had already become an established passion in international life¹⁹ so much so that the concept of collective security was generally accepted at Paris negotiations which led to the signing of the Treaty of Versailles and the establishment of the League of Nations. The covenant of the league clearly showed that there was an awareness of the need for an international mechanism by which peace could be ensured by the combined use of force²⁰.

Thus it was only in the League of Nations that the idea of collective security was accepted in a practical sense of the term.

2.4 League of Nations and Collective Security

The League of Nations which was established after World War I was a pioneer attempt to make collective security work. Once accepted, this idea was sought to be effective in the efforts made during the interwar period for the improvement of the mercenery of international organization²¹. The covenant of importance incorporated the prohibition of aggression and provided a basis for legal action against defaulting states and the obligation of assistance to victims of aggression²². Article 11 proposed that any war or threat of war whether immediately affecting any of the members of the league or not, is hereby declared a matter of concern to the whole league²³.

¹⁸ Edward, H. Buchring, Woodrow Wilson and the Balance of Powe. Bloomington, 1995 p.207

¹⁹ See Ruhl, J. Bartlett. The League to Enforce Peace. Pp.55-56.

²⁰ The Relevant Documents are available in D.H. Miller, The Drafting of the Covenant. New York 1928.

²¹ David Mitrany. The Problem of International Sanctions. London 1925, pp.30-46.

²² Article 10 League of Nations.

²³ Article 11 League of Nations.

All in all, the League of Nations had minor success during 1920's, for example, it resolved the Aaland Islands disputes between Finland and Sweden in 1920 and succeeded in forcing Greek, Italian and Yugoslav troops out of Albania in 1921. The international system which became increasingly unstable during the 1930's tested the League of Nations on more than six occasions which include Japanese invasion of Manchuria in 1931; the Chaco war of 1932-1935; Japanese invasion of China in 1937; Italy's aggression against Ethiopia in 1935; the Germany occupation of Rhineland in 1936; the Soviet invasion of Finland in 1939, and as a matter of fact the League of Nations failed each test and was effectively useless by the late 1930's by reason of not being able to prevent and solve disputes immediately. The League of Nations had made inadequate legal restraints upon potential aggressors and exerted insufficient commitment for enforcement action by member states. Similarly, it had no universal membership of states that is the U.S., Germany the then Soviet Union among others, hence any enforcement measures [such as economic sanctions] meted out against aggressor states was circumvented by non-party states and was ineffective.

In the Covenant, Article 11 stated the ideological premise of the new regime; the proposition that "Any war or threat to war whether immediately affecting any of the members of the league or not is hereby declared a matter of concern to the whole league"²⁴. Article 16 stipulated that, if any member resorted to war in violation of its obligations of the Covenant it was *ipso facto* deemed to have committed an act of war against all other members²⁵. All trade or financial relations with the transgressor

²⁴ Article 16 Covenant of the League of Nations 1919.

²⁵ J.F. Williams, Some Aspects of the Covenant of League of Nations p.156-157 (1934).

including commerce between nationals had to be severed. The Article also provided for the possibility of collective military sanctions to be initiated upon the recommendations of the Council but it is important to point out that such recommendations were not binding²⁶.

The League scheme of collective security was subjected to the most searching critical scrutiny from its very inception. Its flaws were fairly obvious. The 'gaps' of the covenant which theoretically opened the way for states to resort to the arbitrary use of force without violating the letter of the law and thereby triggering off the enforcement mechanisms were quickly spotlighted. The criticism that the league had no teeth was invited by the lack of a positive obligation of states to participate in military sanctions either in fulfillment of treaty commitment or in obedience to an international decision.

Thus the covenant had in built obstacles which meant that it was far from a perfect design for collective security. It imposed inadequate legal restrictions upon potential aggressors and exacted insufficient commitments for enforcement action from member states.

The League which was created by the Covenant was deficient in legal authority and practical competence for making the international decisions required for the management of a collective security system. The Wilsonian ideal had inspired the Covenant but it had not been translated by the Covenant into a set of definite prescriptions for guaranteeing that the combined resources of the community would be available to frustrate aggression.

²⁶ Inis Claude p.271

The history of the league was a record of constant efforts to strengthen and to weaken the collective security provision of the Covenant. This was not so much a contest between friends and enemies of the principle of collective security, as a vacillation between the desire to enjoy the benefit and the urge to avoid paying the price of collective security. The league could neither take collective security nor leave it alone.

All said, the root predicament of the League of Nations could be explained categorically by the fact that, it was an organization that could not obligate member states to impose military sanctions against an armed attack and therefore when referring to the League one cannot speak of a veritable collective security system.

2.5 United Nations and Collective Security

The UN was established to provide collective security around the globe and seal the loopholes of the League of Nations. The UN hence was also founded on the principle of collective security the same principle which formed the basis of League of Nations. From the point of view of the genesis of the idea of collective security, therefore, the credit goes to the League of Nations and not to the UN, for collective security under the league was a reflection of the acceptance of a new idea, while collective security under UN was a reflection of the concern with a more effective functioning of an idea already accepted by its precursor. Thus collective security under the league marks a revolution in international politics and under the UN it represents an attempt to consolidate the fruits of that revolution. But frankly speaking and by giving a fair judgement, the UN offers

comparatively more effective machinery for the operation of the collective security mechanism.

Better said, the UN substituted the limited prohibition of war for a more comprehensive proscription of the threat or use of force²⁷ and put the self defence and enforcement measures [previously used during the league days] to the control and supervision of the security council²⁸. Its membership is more universal and it incorporated more elaborate provisions for both economic and military sanctions.

However, the UN was never tested as a collective security apparatus during the Cold War because of the East-West cleavage, during which time the veto power was misused along state interest lines. Power was no longer diffuse but was instead concentrated on the two blocs²⁹.

During the cold war, the UN only authorized states to use force in response to an act of aggression in two conflicts: The Korean War in 1950 and during Iraq's invasion of Kuwait in 1990. This was partly because of the veto powers of the five permanent members and also the lack of political will both to initiate enforcement action and to bear its consequences³⁰.

²⁷ Article 24 UN Charter.

²⁸ Article 52 and 53 of UN Charter.

²⁹ Robert Wood Suggests that notwithstanding the deadlock Collective Security functions were still performed in the international systems by alternative structures such as restraint imposed by Nuclear Balance of Terror.

³⁰ Supra note 6.

UN involvement in Korea was the first coercive action taken in the name of the UN. Some observers consider the UN to have been engaged in a type of collective security there between 1950 and 1953. It was not based on the consent of the parties to the conflict and was fully engaged in active combat operations. Others call the UN involvement in Korea a police action. The Cold War made the organizations ability to perform many of the tasks envisaged for it in the charter difficult and sometimes impossible. Due to the disagreement between the former Soviet Union and the West, the Security Council could not take effective action to resolve conflicts so the collective security systems did not become operationally effective during this time.

Since the cold war ended, there has been much talk in the West about building a collective security system. The success of the American led coalition that pushed Iraq out of Kuwait led some experts to conclude that the UN might finally be ready to operate as a collective security institution. The annexation of Kuwait in August 1990 was a clear-cut case of aggression of one member state against another. It was eventually followed by the authorizing of an enforcement force against Iraq under Chapter VII of the Charter. Security Council Resolutions 678 authorized member states cooperating with Kuwait's legitimate government to use all necessary means to expel Iraq from Kuwait. Similarly military action has been authorized in the former Yugoslavia, Somalia and East Timor³¹.

³¹ Security Council Resolution 1264 of 1999 over East Timor.

Be as it is, the ideal of establishing a full-fledged collective security mechanism has been neither realized nor abandoned. The goal has been pursued more ardently and consistently in words than in deeds and statesmen have regularly turned to other objectives when confronted with concrete situations of urgency. The world and more specifically the UN faces legal, political and institutional obstacles that hinders the satisfaction of the essential requirements for permitting the operation of a collective security system, and such a system, even if feasible, is in fact a less attractive ideal than it has often been considered.

With the above historical analysis, the ability of putting into practice such a doctrine backed up by a universal ideology remains a miracle, but once such a system is established, it will not work miracles but realities. This statement upholds that the UN as a doctrinal system has been faced by some obstacles that hinder the organization from attaining the maximalist assumptions of its underlying principle.

The UN presence in the Iraq war fails to recognize the basic syllogism that war anywhere is a threat to order everywhere. The contemporary concept of collective system in the UN today has been muddled by its *modus operandi*. The challenge faced by the UN system comes as a result of legal, political and institutional obstacles that saw the Iraq war affecting international system and international organization greatly as something unusual happened which is antithetical to collective security that war was fought by UN member states.

The conventional phase of the battle for Iraq has been won at a cost of thousands of military and civilians dead and at least \$45 billion in wealth consumed or destroyed³². Now that the war is won, the political, legal and institutional presence of the UN in Iraq remains under a very tough challenge as it goes against its preamble that we the people of the UN determined to save the succeeding generations from the scourge of war... and re-affirm faith in fundamental human rights³³. This openly shows that the legal political and institutional problems in the UN finally would not be far from truth to conclude that the collective security system that emerged in the Iraq war had a narrow base and a limited range.

Today it can be argued that the legal, political and institutional obstacles within the UN in the Iraq war have atrophied the security system of the Charter and hence the UN Iraq action was not an example of collective security but it was an unprecedented collective military operation taken on behalf of the UN.

Such political gains attained by big and small nations in the name of collective self defence arrangements like the coalition of the willing, did in Iraq in the name of the UN produces a political balance of power at best not a collective security system.

In spite of the UN Charter emphasis on collective security enforcement, the UN role in Iraq relied on an alliance method as a result of certain political, legal and institutional obstacles stemming from the conditions and the developments of the post-cold war era hence the immanent political, social, economic, cultural and legal dispensation.

³² How the Iraq war will affect International System, PDA Briefing Report. #15, 6 May 2003.

³³ H. Kelsen -The Law of the United Nations: London Stevens, 1951 p.727.

In short such political, legal and institutional tests and obstacles to the UN collective security system may lead to conclusions that the UN security system in reference to Iraq war only resembles the system of collective security. Such political, legal and institutional obstacles in the UN as a collective security mechanism makes the other chapters of this research.

The combination of such obstacles calls into question the future role of the UN in situations involving threats to or beaches of the peace.

2.6 Justification of Collective security as a method of maintaining and creating international peace and security

Historically, several methods have been thought to have been modalities through which international peace and security could be enhanced. These include balance of power, creation of a world government and the creation of a collective security mechanism. On a continuum delineating preponderance of power and centralization of authority, the balance of power constitutes one end, world government constitutes the other and collective security becomes the middle zone of the spectrum.

A world government would have an institutional scheme with the authority to make rules for proper conduct and also a scheme that would have coercive power to arrest deviant behaviour and to enforce conformity to the roles. Hence a world government implies the establishment of a permanent system in which there is a single superior authority over all the member states and is capable of making all laws and possesses the coercive competence to enforce conformity with those laws.

Proponents of collective security viewed it as a method of controlling war in a world of sovereign states. Thus the events that culminated to war in Iraq contravenes the basic lodestars of a Collective Security mechanism and mutilated the integrity of the United Nations. Experience has brought disillusionment with the capability of balance of power system to maintain peace. The world was not ready to surrender enough national sovereignty to make possible the establishment of a world government even one with limited powers. The idea of collective security seemed to provide the bridge between the crumbling world of past centuries and the kind of ideal world yet to be created³⁴.

Proponents of collective security also say it is a much more effective approach to security than individual countries trying to act alone as weaker countries cannot possibly defend themselves and countries that try often become involved in never ending arms races which actually detract from rather than enhance their security over the long term. In addition it is argued, collective security arrangements encourage international cooperation while balance of power deterrence leads to competition and conflicts instead.

While roots of the concept of collective security reach back several centuries through a long series of proposals for maintaining international peace, the central idea has remained the same: the governments of all states would join together to prevent any of their members from using coercion to gain advantage thus, no government would undertake forceful policies that would fundamentally disturb peace and security³⁵. But this took place in Iraq yet the advent of the UN was to mark a new historical epoch that would

³⁴ Op. Cit 1 p.144.

³⁵ Inis Claude p.294.

totally prohibit the use of force in international relations and enhance peaceful settlement of disputes.

In such a system all nations share a primary interest in maintaining peace and that peace is indivisible³⁶. The distinctiveness of collective security as an approach to peace lies in its assertion that the security of a nation is no longer the exclusive concern of that particular nation and that it has now become the concern of international society as a whole³⁷. Under the collective security system, all nations take care collectively not individually of the security of each of them as if the security of all of them were in danger. If one nation threatens the security of a second nation, all other nations will take measures on behalf of the threatened nation. Collective security demands a singleness of purpose and devotion to the principle of peace maintenance.

Collective security has been viewed as a better option as compared with a coalition or an alliance which is established against a specific enemy, collective security has no known enemy until a member of the community acts aggressively. The father of modern concept of collective security, Woodrow Wilson propounded and popularized in strong terms the concept of collective security and kept connecting collective security with peace, morality and a new balance of power. Wilson described the pre-world war one era in international relations as the old and evil order that was build on an ugly plan of armed nations and alliances ready to go for war. Discrediting alliances and balance of power as

³⁶ Kumar Mahendra p.403.

³⁷ Op. Cit 20 p.297

solutions to end wars Wilson suggested a system of collective security in his words he stated:

*There must now be not a balanced of power, not one powerful group of nations set off against another but a single overwhelming powerful group of nations who shall be the trustee of the peace of the world*³⁸.

Wilson emphasized the rule of collective military force as the ultimate guarantor of peace³⁹.

All in all, collective security of all states by all states and for all states. Security measures will be taken on behalf of all states and not any particular power or alliance, every state has to participate in decision making, and the enforcement action of the system. The security measures that defend all states without discrimination against any threats or acts of aggression. Today, the integrity of the UN remains unknown as many feel that the UN actions in Iraq propagated a wide miscarriage of justice and that the exegesis of the UN in Iraq lacks clarity and proper political acumen.

To justify that collective security qualifies to be the best alternative that would promote international peace and security, the preamble of the UN Charter expresses the ideals and common aims of all the peoples whose governments joined together to form the UN that:

We the peoples of the UN determined to save the succeeding generations from the scourge of war which twice in our lifetime has brought untold sorrow to mankind

³⁸ Woodrow Wilson Address to the U.S Senate 1917.

³⁹ Ibid .

and to re-affirm faith in fundamental human rights ... ensure that armed force will not be used ... ensure cooperation.

The UN actions that led to the use of force in Iraq are characterized by a panorama of certain important issues within the UN system that have precluded sabotaged and intimidated the UN efforts from attaining its core objective of maintaining international peace and security.

2.7 Conclusion

Historically, a full-fledged collective security system has remained a dream but credit has to be given to the UN that has been able to overcome many obstacles towards establishment of an international organization under the principle of collective security.

From this chapter collective security denotes an objective, a condition and a method. A system whose objective refers to a condition in which war will never occur and one that is achieved by a method of co-operative action. The above principle is the net contribution which collective security made towards justifying its own relevance as a means of maintaining international peace and security. It is therefore reasonable to argue that, collective security is a way of working for a stable and a peaceful international order. The need for such a world order was never more pressing today. As such, the basic postulate of collective security represents the most pressing need of our time yet such a system has remained unattainable.

The UN is faced by a mass of obstacles that have affected its operation as a collective security mechanism. These obstruct the working of the UN and evidently also some conducive factors are non-existent for the functioning of such a system.

The existence of certain political, legal and institutional obstacles have had diverse effects on the UN system and as a result the UN has called for substitute innovations that contribute to international peace and security rather than using peaceful settlement procedures. Owing to such obstacles the UN has innovated peacekeeping and preventive diplomacy to deal with international peace and security.

Peaceful settlement of the dispute in Iraq failed and a war was fought which is antithetical to collective security. The elimination of war, remains the key reason for the UN but this did not happen in Iraq. Such obstacles that led to war forms the following chapters.

CHAPTER THREE

3.0 POLITICAL OBSTACLES TO THE UN AS A COLLECTIVE SECURITY

MECHANISM

3.1 Introduction

The hallmark of this chapter is to focus on the political obstacles to the UN as a collective security mechanism during the Iraq war. This will be done by exploring the inner political logics and the dynamic propensities with reference to the war so as to derive the political obstacles that laid down the impetus that later conglomerated and culminated to the war, which is antithetical to a collective security mechanism, an act which totally demeaned and also intimidated the main purpose of the UN as a collective security mechanism that is to maintain international peace and security by developing friendly relations among nations and acting as a centre for harmonising the actions of nations towards attaining common ends.

The UN is in crisis, in crisis because we are a period of profound¹ flux in world political affairs which would be attributed to two key factors, first the end of the Cold War. Cold War ended peacefully although we may not appreciate just how profound a change this represented but all in all this created important obstacles in relation to the UN.

Secondly, the breakdown of consensus over the second Iraq War left the UN and the international system profoundly shaken. Never have the Western powers/allies failed to agree on such a fundamental issue of international security. So this crisis in the UN

¹ Basic Facts about the UN Department of Public Information UN New York 2000 Ny 10017, P.4

system as a collective security mechanism is a crisis based on the immanent political ambience that need to be addressed immediately.

3.1.1 Power, purpose and principles of the UN in the UN Charter

The Political obstacles in the UN system as a collective security mechanism in reference to the Iraq War could be based in the acronym that there exists a tension between power and principle in or between idealism and realism² if you like and this has been in the UN system since its inception. This has been a major characteristic of the UN as a collective security mechanism and as a matter of fact this has led to a confusing mix of backroom deals and lofty rhetoric in the pursuit of self interest and high ideals and aspect which we see in the UN all the time.

Be as it is, the UN Charter reflected power realities of the day and as a matter of fact these political or power realities in the Charter have remained persistent and detrimental to the UN efficacy as a collective security mechanism in the Iraq War.

Such political obstacles that affected the UN as a collective security mechanism in the 2002-2005 Iraq War and which extirpated the propensity of a common action by the UN forms the study of this chapter.

² Robert Hutchings, Keynote Address UN Conference 6 Nov. 2003 University of Pennsylvania.

3.2: The Security Council in Iraq and its mandate in the UN as a Collective Security

Mechanism

The Security Council has the primary responsibility under the Charter for the maintenance of international peace and security. The council has 15 members, 5 permanent and 10 elected by the General Assembly for two year terms. In this sphere, because of great power unanimity, its powers are greater and more well defined than those of the General Assembly. This means that the basic issue of determining who is a threat to international peace and security has been reserved to the Security Council rather than the General Assembly.

It is a common belief that the founders of the UN based their ideas on coining an organization based on equality a core political assumption of collective security. The assumption of great power unanimity is an absurdity to collective security. It also beats logic that an organization based on the sovereign equality of nations affirmed from the outset that some nations are more equal than others, yet the UN was established to provide collective security around the globe. United Nations Security Council resolution 1441 which under the Security Council accused Iraq of repeatedly violating the UN was designed to ensure that Iraq does not pose a threat to international peace and security. In this case the presence of the Security Council as the most important organ in the UN, signifies perhaps a fatal flaw in the political edifice of the Charter by granting more political power to one organ on behalf of the UN. With this obstacle, it unfolds that national interests of the powerful states take precedence over international obligations to support the principle of indivisibility of peace. With the adoption of UNSCR 1441, even

with a lot of criticisms from other states, the stage was set for war just because the Security Council had said so without unanimous agreement from all the members of the UN or the General Assembly. The mere political creation of the Security Council in the UN was a serious move against the crowning principle of UN as a collective security mechanism.

The concentration of governance in the hands of Security Council is a direct concern to collective security law while being conceived primary as an executive body bestowed with policing power and the capacity to use coercive force in the form of military and economic sanctions, the Security Council has also acted in the judicial and legislative way³. In the liberal democratic theory, the failure to separate these powers in different organs (executive, judicial and legislative) is seen as a recipe for abuse of power given that this may lead to one organ making law, applying the law and enforcing the law. In this regard the Security Council in the UN and its operation in Iraq portrays a failure of putting the correct political institutional mechanism for a collective security mechanism to operate. Actually, statements in the UNSCR 1441 states that, the Security Council has repeatedly warned Iraq and that it will face serious consequences as a result of its continued violations of its obligations⁴. This shows openly that the Security Council in Iraq acted on its own without the blessings of the General Assembly because many states even upto today do not agree with the act of the Security Council in Iraq.

³ K. Harper, Does the UN Security Council have the Competence to act as a Court and a Legislature? 1999 pg.27

⁴ White House Background Paper "A Decade of Deception and Defiance Washington D.C Nov. 8 2002.

The contemporary concept of collective security in relation to the Iraq War, has been muddled by the presence of the Security Council in the UN the body mandated to make and carry out collective decisions vide chapter 7 which is against collective security principles as should have been based on the General Assembly.

The problem here was that the Security Council concluded that Iraq was a threat to international peace and security even without unanimous agreement within the General Assembly. The political mandate of the Security Council in reference to the 2nd Gulf War remains a major political obstacle to the UN as a collective security mechanism today.

3.3 Nature of the International Political System

The extant international political system is one that no one can deny as being unipolar in terms of U.S hegemony. It is a unipolar international political system and as a matter of fact this has profound effects on UN decision-making. It is therefore not worth to castigate the fact that U.S set the cause for war in Iraq even with many states opposing to the move.

One of the basic objective prerequisites of a collective security mechanism, ideally is a world of diffused political power. The ideal collective security theory requires an international society in which power is not concentrated⁵. This means that the world must consist of a number of states of equivalent power so that none is too strong to be dominating or too weak to be ineffectual. This is a very important political obstacle as far as UN is concerned.

⁵ Naidu, M.V.R 1997, P. 298

The predilection of the U.S. regarding Iraq as a threat to international peace and security yet even today no weapons of mass destruction have been found in Iraq was myopic although it was done with attractive terminologies to justify that Iraq had violated the UN. It is today lucidly accepted that no state can challenge the U.S. hegemony and this justified U.S. carrying openly their unilateral foreign policy against Iraq.

A superpower (hegemony) a state against which the rest of the world cannot master preponderant power cannot be contained in its aggressive designs by any centralised force and action nor can it be always accepted or expected to play a role of the legislator, the policeman and a judge of the world⁶. In real sense, the U.S. is the only hegemony and this can be seen from the fact that no state could attempt to exercise its political rights against U.S. when the U.S. even declared war against Iraq unilaterally. Thus single superpower is antithetical to the political requirements of a collective security mechanism.

Today the politics of the U.S. carry the day as might is always right and so the mere presence of an hegemony and its interests in Iraq nullifies the conception of UN as a collective security mechanism in the Iraq war.

The above realities can be appraised against the pressures under which resolution 1441 was adopted. Judy Dempsey 2003, points out that it took 8 weeks of a hard diplomatic slogging to negotiate the final wording of the resolution but the U.S. made sure that any action taken by the UN proved its credibility as a UN support for U.S. foreign policy⁷.

⁶ Ibid. p.299

⁷ Judy Dempsey, 2003, How the US set a Course for War with Iraq, Financial Terms May 26, 2003.

Russia, Germany, Belgium and France were all opposing to the initial decision of going to Iraq. Chancellor Gerhard Schroeder of Germany called it a military adventure but Washington condemned his words as cynical electioneering. Schroeder said that Germany would not back U.S action even if it had UN approval⁸. But funny enough Germany came to bow to U.S pressure and later supported the decision.

The common European policy was against the war, that is, U.S led action but with the U.S power, Donald Rumsfeld the blunt spoken U.S defence secretary dismissed U.S from having any fear of any state in the world and that the train had already left the station and that even without unanimous and universal decision to go to war by the other states, U.S was prepared.

A speech given by President George .W. Bush showed that the U.S Congress voted overwhelmingly to support the use of force against Iraq which is prohibited by a collective security mechanism. He said that, "America tried to work with the UN to address this threat because we wanted to resolve the issue peacefully but the UN Security Council has not lived upto its responsibility and so we will rise to ours⁹."

President Bush openly as I quote him copiously said, "As we enforce the just demands of the world, we will also honour the deepest commitments of our country¹⁰." He continues to say as I paraphrase his speech that the U.S with other countries will work to advance

⁸ Ibid.

⁹ New York Times March 18, 2003. President George W. Bush's Speech on Iraq.

¹⁰ Ibid.

liberty and peace in that region and thus the U.S goal will not be achieved overnight but over time. With U.S criticizing Iraq of violating human rights, supporting terrorist groups, failure to heed to weapons inspectors, Iraq government being a dictator and in need of a democracy, Saddam being a dictator and having weapons of mass destruction, the U.S justified its reasons to go to war in Iraq. Hence, U.S politics as an hegemony has greatly affected the U.N as a collective security mechanism.

3.4 National Interests Versus Indivisibility of Peace

In the light of the fact that modern world is becoming increasingly interdependent, modern war is no longer a bilateral affair under the system of collective security, therefore the motto is "One for all and all for One"¹¹. Every member in a collective security mechanism like the UN is politically bound to render assistance in preventing breach of peace anywhere and in restoring peace everywhere because peace is considered indivisible. No state can claim the right of neutrality or even self-help¹².

In a collective security mechanism like the UN, the political right of U.S and Britain did undermine the UN as a collective security mechanism as it has been defined. In this case, the ideal collective security theory places collective responsibility under collective security and this means that collective security is placed on both moral and programmatic basis. In the contemporary world the base of collective security based on moral underpinnings has failed even during the Iraq war. The heart of the matter is national

¹¹ Hans J. Morgenthau, *Politics among Nations*. New York 1949. P.331

¹² Kenneth W. Thompson, *Collective Security Re-examined*. *American Political Science Review*, 1955 p.272

interests (politics) totally forms one of the biggest obstacles to the UN as a collective security mechanism. National interests in the UN has nullified the idea of indivisibility of peace and the collective guarantee of peace. If the UN could be said to have achieved anything in Iraq then that can be understood by looking at the U.S and U.K national interests.

The UN Charter most agreeably accepts the concept of collective protection but also makes specific provisions on collective determination of crisis, for example in Articles 24, 39, or armed collectivised forces, Articles 43-45 on collective military policy. But this provisions have been undermined by other provisions or by the actual practice of the UN to take care of national interests of great powers at the expense of collective guarantees meaning indivisibility of international peace and security.

Thus the veto, Article 51, 106 and 107 of the Charter nullifies the provision of collective guarantees by permitting coalition war rather than the collectivised security. Thus the prudent wording of the resolution and issuing an ultimatum to Iraq's President Saddam Hussein to leave the country or face attack, demands that were not included in any security council resolution, portrays U.S and U.K asserting their sovereign political right of self-defence.

A leaked memo to Tony Blair, the U.K Prime Minister from the Attorney General, Lord Goldsmith appears to indicate that a whole range of actions taken by the coalition between U.S and U.K in pre-war, wartime and post war Iraq may have been political

hence illegal in the continuing absence of a resolution to justify a war and give both U.S and U.K mandate to continue acting in Iraq even in the post war era in the name of the UN. With enormous criticisms to the U.S and U.K coalition on almost everything the U.S – U.K led office of Resolution and Humanitarian Act (ORHA) then it goes without saying that such efforts are against the core principles of a collective security mechanism.

The biggest political obstacle to the UN today as a collective security mechanism is the reality of national interest in the name of self-help as opposed to collective guarantees of security. UN lacked a grand world interest that could define its role in Iraq as a collective security mechanism. Politics took the day and national interests confirmed the right to go to Iraq in the name of the UN.

3.5 Collective force as Deterrence/Sanction

Another important obstacle that undermined UN role in Iraq as a collective security mechanism is lack of proper collective force as deterrence and/or sanction. The heart of the matter here is, how UN members displayed collective force as deterrence or sanctions in Iraq other than war which is prohibited by a collective security mechanism.

Collective security totally discourages the use of military force but comes up with a remedy which makes the principle of collective guarantee more effective and this is through principle of deterrence and/or use of sanctions. It's true that, if Iraq had foreseen a great coalition by all UN members against her, she never would have prepared for a war or refused to honour any resolution against her.

Deterrence in this case means preponderance of international force. This means that deterrence can be achieved only when collective power is overwhelming and irresistible¹³.

The argument on deterrence touches on two areas, one that Iraq would have been seen as a threat to international peace and security and also deterring Iraq from disobeying the force and secondly, when some states could not agree with the U.S and U.K that Iraq was a threat to international peace and security, would forge a force enough to deter them from going to war in Iraq.

In the first instance, the divisions that faced the UN in the initial stages of determining that Iraq was a threat to international peace and security, openly displayed lack of a force enough to deter Iraq from disobeying the UN force or getting into a war that it was sure of losing, but this never happened as many states gave Iraq moral support and sympathised with Iraq. On the second instance, the invasion of Iraq was seen by many to be illegal, and so, it was incumbent that all states opposing U.S and U.K would have forged a force to deter them from going to war in Iraq but this never happened.

The question here is, whether the UN is ready to provide a collective force as deterrence or sanction other than war to send a message to any state that any attempt to breach peace would be dangerous or intolerable by the UN? This was properly seen in the Iraq war and the failure to do so confirms that, this is a political obstacle affecting the UN as a collective security mechanism.

¹³ Arnold Wolfers, 1939. *Collective Defence versus Security*. Baltimore. P.448

3.6 Automatism in Collective Action

The principle of deterrence can be effective if after an act of aggression like armament just like it was in Iraq triggers on automatic collective action of the mechanism of collective security. A collective security mechanism upholds that collective guarantee should be absolute and certain in the sense that they do not permit in the words of Inis Claude if's and but's either in warning the potential aggressor or in assuring the potential victim¹⁴.

Therefore, the principle of automatism of a collective action implies three elements: first the guaranteed response against aggression, the quickness of response and lastly the impartiality of response¹⁵. The three elements came under a very strong critique in the Iraq war and this challenged the UN system at large.

In the war even after Iraq had been labeled politically as an aggressor, only a few states were willing to provide their political will to back the UN and even the few who came around did so after a long process of negotiation and so the response to breach of peace was too slow.

In the UN, the Security Council has to determine the crisis and decide the measures, without any obligation to act quickly or automatically. The council's response may start with provisional measures (Article 40) and may ultimately reach the stage of military

¹⁴ Inis Claude. P.259

¹⁵ Kelsen Hans, The Law of the UN New York. 1964 p.30.

sanctions (Article 42). In the post cold war era actually since the first Gulf war, all possibilities of UN military sanctions have practically disappeared.

It is true that, war came as a result of failure of sanctions. In short, automatism is not a built in feature in the UN security scheme with reference to 2002-2005 Iraq war. This can be properly described by a syllogism that defines how resolution 1441 was adopted “through compromises and a hard diplomatic sloggling in the direction of U.S policy¹⁶.” The deliberate decision of hierarchical arrangement of state relationships within the UN system and the coercive measures undertaken in the operation and the mandate of the Security Council intimidated the basic assumptions of automatism in the UN system as a Collective Security mechanism.

3.7 Anonymity of victims against which Collective Security Mechanism is entrusted to act against

In a collective security mechanism, the principle of anonymity means that collective guarantees under the system of collective security are automatically released the moment when international peace and security is endangered. It also means that the collective sanctions are applied against the wrongdoer without any discrimination of race, or religion, ideology and affluence, strength or weakness or of being a friend or foe of those deciding or applying sanctions on behalf of the organization.

¹⁶ Financial Times. How the U.S set a Course for War with Iraq. May 26, 2003.

Similarly, collective guarantees are made available to any available party without discrimination. A nation might even be required to defend or strengthen an archenemy against a close ally. In one word the collective security system acts against aggression *per se*. It cannot permit eternal friends or everlasting foes¹⁷.

In the principle the UN is expected to act against any aggression to protect any victim anywhere in the world and at anytime, but the UN cannot act against the big fire who can thwart any action of the Security Council by exercising their veto in their own favour. Such exercise of veto may be purely political and subjective other than legalistic or objective. Resolutions by Security Council differs depending upon the parties in dispute. Today, no small state can think of challenging the international peace and security unless it is prompted to do so or is promised protection by the superpower.

In the Iraq war, no one can dispose that U.S and Iraq have had harsh relations since the first Gulf war. Wording on the UNSCR 1441 after U.S manipulation can easily be understood by looking at the historical inimical relations between the U.S and Iraq. Secondly, a statement released by Security Council that 'Saddam Defiance of UN Resolutions' that were designed to ensure that Iraq does not pose a threat to international peace and security¹⁸ shows that Iraq and U.S have been foes and in support of this, following President George W. Bush's speech on Iraq that "events in Iraq now have

¹⁷ Inis Claude, 1956. P.280

¹⁸ Security Council Resolutions Concerning Iraq. A White House Background Paper. A Decade of Deception and Defiance. Washington D.C Nov. 8, 2002.

reached final days of decision¹⁹ show's UN implementing U.S policy even without enough evidence to prove Iraq a threat.

3.8 Lack of faith in the status quo

Central to Collective Security concept is a binding obligation to defend a particular status quo against forceful change. Collective Security can succeed only if it operates in a context where peaceful alternatives exist for the advancement of competing values. Where such alternatives are not reliably in place, the idea of Collective Security will remain more illusory than real. The maintenance of status quo in a Collective Security mechanism must be a common interest to all member states.

Two essential attributes of the state are political independence and territorial integrity. Therefore Collective Security aims at maintaining the existing political and territorial status quo. A corollary of the acceptance of the status quo is that the Collective Security system does not interfere in domestic jurisdiction either of the aggressor or the victim²⁰.

The UN political system today, and with specific evidence of what conspired in Iraq shows clearly that the contemporary world is not prepared to dedicate itself in maintaining status quo. Essentially a system of Collective Security is helpful in maintaining a status quo. Though the system is not against change perse, it is against violent change like what happened in Iraq.

¹⁹ New York Times. March 18, 2003. President George W. Bush's Speech on Iraq.

²⁰ Haas Ernst Types of Collective Security, An Examination of Operational Concepts 1955 pp.40-62

Provisions that the Charter give specifically Article 51 that allow a pre-emptive attack on the basis of self defence, provided for states within the UN system to justify military action against Iraq. Saddam Hussein was required to end his repression of the Iraq people allow UN officials full access to Iraq facilities individuals means of transportation and documents aspects that show clearly that that UN does not respect political independent of its member states. Further Resolution 1441 called for immediate and complete disarmament of Iraq a condition that did not respect the internal political dispensation of Iraq. Based on self defense the U.S and U.K carried a pre-emptive attack which is extremely dangerous and flat not illegal, implying a right to take at a regime that threatened them. This provision is quite threatening to the international legal order. As White House Counsel Alberto Gonzales and British legal authority stresses that, "We are putting that resolution into effect not avoiding it, because the UN Security Council Resolution 1441 is all the political and legal authority Washington needs for the war"²¹.

The existence of Article 51 provides political realities that practice suggest a possibility of lack of respect to internal political dispensation of states. A system that provides for political exceptions that will lead to international of states internal organization is one that yet does not embrace Collective Security aspects to the best of their knowledge.

²¹ Mary Ellen, The Occupation of Iraq. What International Law Requires Now Jurist Guest Columnist for March 14, 2003.

3.9 Conclusion

It has emerged from this chapter that there exist political obstacles in the contemporary world that affected the UN collective security mechanism during the 2002-2005 Iraq war. These factors, it may be concluded, arise because collective security is a specialised subject of international relations and as such, it should be treated as a highly technical term which must embrace equality of men on earth, requires specific institutions standing above national authorities and proper transformation of political realities and attitudes.

Politically, the international atmosphere since the inception of the UN has been unsuitable for transforming the deficient security system of the UN into a full-fledged collective security system.

This means that the parlance of the term collective security in reference to the UN should be done with a lot of prudence as such a mistake would be detrimental to undermining the political acumen that need to be inculcated in the UN system to operate as its Charter subscribes.

UN furnishes the issue of how to deter states from armed conflict and bring about peace. It also subscribes to the fact that military power is of cardinal in international politics. But as of Iraq's case the UN did not outlaw and renounce totally the political right to resort to war as an instrument of national policy, because Iraq war was fought in the name of the UN to further particular political interests other than general interests of U.S and U.K. Under a collective security mechanism any war anywhere in the world tends to be

potentially a world war. The UN today must outlaw war totally because any provision for war even if it is for self defence will be pursued for political reasons as in Iraq.

A collective security system should demand a singleness of purpose and devotion to the principle of peace maintenance but states show little evidence of accepting this today. Even if there are other difficulties and obstacles within the UN, and may be for some the UN has been able to overcome, selfish and competitive aspects of international relations present a major obstacle to the UN. States are not willing and able to participate in collective action against breach of peace anywhere in the world. National goals, values and interest and international commitments compete with the demands of collective security political interests take precedence over collective security.

It is proper to argue that, the epistemology of using the orthodoxy of collective security system as one that has been totally embraced in the UN under the political circumstances today is one that has lost its contemporary vitality and that idea connotes and insinuates myopism and instigates terminology imbroglio. This means that there is need to address the political obstacles in the UN pragmatically for a better international organisation in the name of a collective security mechanism.

CHAPTER FOUR

4.0 LEGAL OBSTACLES TO THE UNITED NATIONS AS A COLLECTIVE SECURITY MECHANISM

4.1 Introduction

The tension between power and principle has been with the United Nations since its founding. It is not just a characteristic of the UN: it is the primary dynamic which has enabled the organisation to evolve and adapt overtime.

The UN Charter is an expression of the idealism. With the dawn of a new century the UN continues to undergo profound changes reflecting the momentous changes of our era. The 21st Century of collective security is one that can be described as one characterised by struggle between idealism and realism. Indeed the role that the UN played in Iraq in principle today remains under a very tough examination as to whether the move was legal or illegal.

The legality of military action against Iraq under existing UN resolutions today remains promiscuous and a question may be asked whether the occupation of Iraq was scrupulous. This chapter seeks to discuss those obstacles that precluded the UN to act as a collective security mechanism in the 2002-2005 Iraq war.

4.2 Legal obstacles to the UN as a collective Security mechanism in the 2002-2005

Iraq war.

4.2.1 Conceptual Inflation

Inis Claude, 40 years ago, warned against the Misappropriation of collective security as a term to describe almost any international arrangement whose aim is peace¹. Only quite specific joint efforts by governments to maintain peace, prevent conflicts and form alliances against an outlaw state should be described as collective security. It is the term of art of international political analysis, not a catchall healing for various and sundry political ventures of governments. Furthermore, the death of scholarly attention to the subject for the last four decades requires serious effort to fill gaps in understanding².

There are very many definitions and discussions of what is meant by “collective security” – very generally we can delineate these areas of international relations as any collective action designed to defuse situations that endanger the peace or to combat threats to and breaches of the peace.

Using the United Nations (UN) Charter terminology, collective security can both promote the peaceful settlement of situations that endanger peace (Chapter VI processes) and take the action with respect to the threats to the peace, breaches of the peace and acts of aggression (Chapter VII action). Much debate mostly legal then confers a need for the meaning of terms such as “threat to peace”, “breach of peace” and more judgemental concept of “aggression”.

¹ Inis Claude Jr. *Swords into Plowshares*. New York House 1971 p.260

² <http://www.cia.gov/ic/speeches-UN-Multilateralism.html>.

The well documented³ lack of consistency and certainty in the development and application of collective security suggests that the balances between law and politics in this area leans towards the political. If the balance moves significantly towards the political then the rule governed character of collective security will disappear and with it, the system of deterrent force. It will start to seem just like any other contest for politics. If the keys that unlock the collective security procedures and machinery are simply political ones, then the law will struggle to play a profound role in this area⁴. However, I would suggest that this is not necessarily the case.

Certainly there is no inexorable move towards the rule of law in international relations, but with the inception of the UN Charter the legal foundations for such a move were laid. The Charter contains the fundamental norm prohibiting the threat of use of force⁵ and it creates the mechanisms for its enforcements. On occasions the rule of law seems to be enforced by the UN, the primary example being the unprecedented support for the military action against Iraq following its invasion of Kuwait in 1990. Faltering steps forward have been balanced by regression towards the anarchic situation that preceded the UN Charter. Total regression though has not occurred, for such a collapse is more difficult in the face of the international community.

³ M. Koskenniemi, *The Place of Law in Collective Security*, 1996, *Michigan Journal of International Law* 455 al 464

⁴ *Ibid.*

⁵ Article 2(4) of UN Charter

As a legal factor conceptual inflation became major obstacle in Iraq as collective security could be understood from so many perspectives and this laid the impetus of the few states that formed a coalition against Iraq predilecting and decorating their co-operative venture using the very attractive term of collective security, but this was myopic. Academically, the lack of proper legal definition of collective security leads to a conceptual inflation and as a matter of fact this makes one to approach the UN as collective security mechanism with a lot of scepticism.

Although the adoption of resolution 1441 on 8th November 2002 was done with a lot of intricacy as many states saw such a move as contravening the law, lack of proper definition of the UN as a collective security mechanism challenged the integrity of the UN in Iraq.

4.2.2 Collective Security Prohibits Use of Force: Law unto themselves

Indeed, international law should reflect the needs of the community – as the saying goes *Ubi societas Ubi Jus*⁶ (as the society so is the law). However, if change is to be affected, it must be carried out in a way that promotes international peace and security through multilateral action and the rule of law. This may be time consuming and frustrating but the alternative danger is a weakening or even abandonment of the rule of law and undermining the prohibition on the use of force which has been the product of not only the international consensus to avoid war following two world wars but decades of consensus.

⁶ verma S.K. An Introduction to Public International Law. New Delhi. Prentice Hall India Limited 1998. P.368.

Indeed, the arbitrary use of force or even threat or force by any state in the name of collective security is morally wrong, barbaric, precarious and legally unwise and therefore should be legally and permanently prohibited. This is what Immanuel Kant means by an alliance of peace (*foedus pacificum*) which is different from a peace treaty (*pactum pacis*). While the latter aims at ending the particular war, the former seeks to end all wars forever (Kant, p.267).

In the contemporary world it is true that the UN Charter is emphatically against the arbitrary use of force. But on the other side the UN Charter Article 106 permits the big five, pending the creation of a UN force based on national contingents supplied through special agreements to in Article 43 to take any kind of joint action for maintaining peace and security in the world which includes use of force and so this leaves the UN collective security paralysed and devoid. So far Article 43 has not been implemented and the possibility of a close military collaboration among the five powers has remained nil. Further, the UN allows any state to take any action considered necessary against any state that was during World War II an enemy of the signatories of the Charter (Article 107). Even with the UN allowing the use of force for self-defence aggressions have been committed in the name of national self-defence. Under Article 51 the UN members can resort to force on the basis of their own judgement and initiative⁷. Right to self-defence in particular is antithetical to collective security.

⁷ Stanley Hoofman Delusions of World Order. New York Review 39 No.7 (1992) p.38

Military action against Iraq under existing UN resolutions remain unlawful despite claims to the resolution 1441, by which U.S and U.K laid so much hope on. Resolution 1441 reminds Saddam Hussein of the “serious consequences⁸” of a failure to disarm referred to in earlier UN resolutions. The phrase falls far short of an instruction to UN member states to use all necessary means – the traditional UN euphemism for armed force. The language of 1441 is restrained precisely because if it had been stronger it would not have got the full support of the Security Council.

In legal terms and opinion, Resolution 1441 did not authorise use of force because of four reason: First, language used to authorise force is bold and consistent, second as a matter of principle international law precludes the UN member states from relying on any implied authorisation to use force, third the use of force without clear collective authorization would be in conflict with the fundamental principles of the UN Charter and in violation of international law and fourth in principle it would be against the crowning principle of the UN as a collective security principle.

Legally, a question can be asked of what force was designed to achieve in Iraq by the UN. This as a matter of fact leads to a confusion as to what was the political and legal significance of the UN resolutions against Iraq and also challenges in legal terms the toppling of Saddam Hussein government in the name of disarmament. There is no precedent in international law for aiming to use force to change a regime. All in all, as the legal community is divided on the question of the legality of using force against Iraq with or without a further UN resolution to support resolution 1441, it must be

⁸ White House Background Paper. “A Decade of Deception and Defiance”. Washington D.C Nov. 8 2002.

properly understood that the mere use of force at whatever level is antithetical unscrupulous and against the principle of collective security.

Pre-emptive force is extremely dangerous and flat-out illegal implying a right to take out a regime that threatens U.S – that is quite threatening to the international legal order. International law and the way the UN Charter is interpreted has evolved over the years⁹. The 1999 intervention in Kosovo for example was seen as legitimate by western powers though it had no Security Council backing because it was casted as a humanitarian intervention. Interpreting Article 51 to suit a changed world could justify a pre-emptive strike. If it is shown that the Iraq leadership is in possession of some – sort of weapons plus a means to get it to the U.S, plus actually imminently intending to do that. But otherwise not.

The war could be legitimised even though it is illegal, if the UN inspectors found all what they say they wanted to find such as chemical and biological weapons and this means that U.S and Britain have to truly prove their case of invading Iraq. All said and done the presence of any Article authorising use of force at whatever level is against collective security.

4.2.3 United States and International Law and its role in the United

Nations

The framework of international law is currently under threat by the determination of the U.S. to redraw international law to allow its strategic imperatives¹⁰. The

⁹ Ford Peter As Attack on Iraq Begins Question Remain: Is it legal? March 21, 2003.

¹⁰ www.globe.com

unilateralist unsigning by the U.S of the Rome statute of the international criminal court, its withdrawal from the Antiballistic Missiles (ABM) Treaty, its failure to ratify the Comprehensive Test Ban Treaty, thus ensuring that it will not enter into force and its decision not to ratify the Kyoto protocol all represent significant departures from multilateralism and rule of law.

The theory of collective security stipulates that a collective security system requires an international society in which power is not concentrated. Instead of one or two mighty powers, the world must consist of a number of states of equivalent power so that none is too strong to be dominating or too weak to be ineffectual. A single super power is antithetical to collective security law¹¹.

Following World War I, U.S and France renounced war as an instrument of foreign policy in the Kellogg-Braind pact in 1928 – sixty three countries were parties. The pact failed to prevent World War II, but in condemning recourse to war and renouncing war as an instrument of national policy, it formed the basis for crimes against peace. In short, the attack of Iraq by U.S and U.K as the coalition authorities remain unlawful in the continuing absence of a new UN resolution to support resolution 1441.

In a speech given by U.S President George .W. Bush on 18th March 2003, the President told Americans that events in Iraq had reached final days of decision¹². He

¹¹ Verma S. K. An introduction to Public International Law. New Delhi Prentice Hall India. Ltd 1998 p.368.

¹² New York Times 18. 2003. President George W. Bush's Speech on Iraq.

pointed out that, Iraq regime hated America and its friends and that it trained and harboured terrorists including operatives of Al Qaeda. He said that the U.S had the sovereign authority to use force in assuring its own national security. By recognising the threat to America, Bush said that the U.S Congress voted overwhelmingly in 2002 to support the use of force against Iraq. He of important said that America tried to work with the UN to address Iraq as a threat because U.S wanted to resolve the issue peacefully but that had failed and that the U.S was ready to rise to its own national interest. He promised that even without the backing of the Security Council, U.S would go to Iraq.

It is highly remembered that whatever decision was made, both in the Security Council and General Assembly, it was meant to support U.S policy and as matter of fact, the final wording of resolution 1441 took eight weeks of hard diplomatic sloggling to negotiate it in favour of U.S policy. Even with initial opposition by France and Germany, U.S was determined to go to war. As Bush concluded his speech he pointed out that, U.S was enforcing the just demands of the world¹³.

In legal terms a collective security system will work best if power is widely dispersed. Since the theory requires the possible application of preponderance force against an aggressor, the presence of a very powerful state capable of defying the collective reduces the odds for effective action.

¹³ New York Times 18 March 2003 President George .W. Bush's Speech on Iraq.

With the U.S hegemony, the balance between law and politics is in constant flux as politics will take the day and law decline but it is important to point out that law is not dead but still alive.

4.2.4 Lack of proper legal definition of terms and its institutions

One of the major obstacles to the United Nation as a Collective Security mechanism is lack of proper legal definition of terms and its institutions. The operation of collective security in ideal form should follow proper legal definition of terms. In other words, terms must be legally determined before releasing any mechanism in the name of collective security. Such a determination will be possible only when we have a definition of aggression, that is a universal concept of right and wrong and such a determination will be effective only when the definition is easily available and readily applicable. Thus, determination of aggression, predetermined easy procedures for the determination and a predesignated impartial institution entrusted with the responsibilities of determining the aggression and the aggressor¹⁴.

In this case, one of the most serious defects in the UN collective security system in Iraq was the absence of a definition of aggression and/or armed attack. Nor are the phrases "threats to peace" or "breach of the peace" which are used in the Charter but left to the Security Council, which is expected to determine the nature of a crisis (Article 39). With an objective definition, the issue of determining crisis becomes a political matter. As a result UN resolutions on international crisis have avoided naming the aggressor, except in very few cases like in Korean crisis when the

¹⁴ Kelsen Hans. *The Law of UN* London Stevens 1951 p. 727

Security Council in the absence of U.S.S.R from the council in 1950 named Communist China and North Korea as the aggressors and in the post cold war era in the first Gulf War when Iraq was named as the aggressor.

Besides, the Charter under the grant of the right of self-defence expects the state or states that invoke this right to determine when an armed attack occurs and who launches such an attack¹⁵. Hence under this principle the UN Charter does not reflect the wholesome requirement of collective security theory. Hence the theory becomes too difficult to be put into practice in the contemporary world especially under this principle because it is very difficult to define aggression.

Further, lack of proper legal definition of terms at this primary constitutional level is under greatest political pressure. Even relatively clear terms such as “breach of the peace” while retaining their core certainty have been applied selectively. While other terms such as threat to the peace have an inherent ambiguity deliberately chosen so as to allow a significant amount of discretion. The amount of discretion however is debated, with there being strong contentions that even determinations of threats to peace by the Security Council are subject to law.

It has been suggested that legal principles applicable include the concept of bonafides, the principle of due process, the norms *Jus Cogens* as well as the purposes and principles of the UN Charter¹⁶. Such issues are hotly debated particularly in relation to the Security Council’s coercive action against Iraq and Iraq’s attempt to question the

¹⁵ T. Frank. Power the Bonafides of the Security Council and Threats to Peace. 1993 p.240.

¹⁶ R. Cryer “The Security Council and Article39: Threat to Coherence” 1996.

legality of this action before the international Court of Justice. Although the case has not been preceded to the merits and may never do so, the issue is of profound significance for collective security law. The existence of discretion is not inconsistent with the idea of the rule of law. It is perfectly possible to state that discretion must be exercised in accordance with the law. Beneath this level of primary constitutional norms, we can evaluate the application of collective security in legal terms.

More-over, institutional development within the UN and entities operating in the field has led to the implication and assertion of other powers. This includes the creation of a consensual military option in the form of a peacekeeping force (sometimes labelled chapter VII/2 action) as well as the more controversial use of international criminal tribunals in a collective security context. Fierce debate is still to be found at this level of legal analysis for example in the discussion of whether international criminal tribunals can actually contribute to international peace and whether the Security Council has the power to create such tribunals. All in all, as an obstacle affecting UN, terms must be legally defined. There was need to show how Iraq has been seen as an aggressor legally not politically. Show for example that, by disobeying UN economic sanctions, by failure to allow international weapons inspectors to oversee destruction of weapons of mass destruction, by supporting terrorists and many others are acts of aggression.

4.2.5 Legal necessity of Article 51 which preserves the inherent right of individual or collective self-defence.

There are two aspects of international law dealing with the law of force: *Jus ad bellum* or the rules relating the use of force and *Jus in bello*, or the rules regulating the

conduct of hostilities. This paper primarily addresses the *Jus ad bellum* or the legality of the attack on Iraq and the consequences of that as well as aspects of *Jus in bello*, in particular the obligations of belligerent occupants of attacked territories.

Article 2(3) requires that all members, shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice are not endangered¹⁷ and Article 2(4) requires that all members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the UN¹⁸.

The general rule prohibiting force established in Customary Law allows for certain exception. Resolution 2625(XXV) demonstrates that the states represented in the General Assembly regard the exception to the use of force constituted by the right of individual or collective self-defence as already a matter of customary international law. This is where the heart of the matter lies and it is this that inhibits the UN to act as an instrument of collective security.

The only stated legal exception in the Charter lie in Article 51, which preserves the inherent right of individual or collective self defence if an armed attack occurs against a member of the UN, until the Security Council has taken measures necessary to maintain international peace and security and collective actions under chapter VII and in particular Article 42.

¹⁷ Article 2(3) in UN Charter.

¹⁸ Article 2(4) UN Charter.

The legal test for necessity and proportionality in self-defence today relates to the long dispute between U.S, Britain and Iraq. The burning issue here is, it is for U.S and Britain governments to show the necessity of self defence hence attack on Iraq. The reason that U.S and U.K gave to justify the use of force against Iraq could not typically be based on pure self defence but also it could be openly shown that U.S and U.K had gone through long periods of animosity with the Iraq government even during the cold war.

The Bush doctrine of preventive war¹⁹ declared in an introduction to national security strategy of the U.S published in Sept. 2002, that the U.S will act against emerging threats before are fully formed²⁰. The document states that: for centuries international law recognised that nations need not suffer an attack before they can lawfully take action to defend themselves against forces that present an imminent danger of attack.

Legal scholars and international Jurists often conditioned the legitimacy of pre-emption on the existence of an imminent threat – most of them a visible mobilization of armies, navies and air forces preparing to attack. We must adapt the concept of imminent threat to the capabilities and objectives of today's adversaries. Rogue states and terrorist do not seek to attack U.S using conventional means. They know such attacks would fail. Instead they rely on acts of terror and, potentially the use of weapons of mass destruction that can be easily concealed, delivered covertly and used without warning²¹. This statement implies that the U.S in this new posture is willing

¹⁹ Graham R. Financial Times 2003. How the U.S set a Course for War with Iraq.

²⁰ Jurist Guest Columnist 4 The Occupation of Iraq what International Law Requires now 2003.

²¹ Ibid.

to act beyond the constraints of international law and even beyond limits it has been observed in the past.

There is need to openly state that, the presence of a clause in the UN Charter that allows for use of force for self defence is totally antithetical to collective security. The use of force for self defence and in the name of pushing for justice in the world as U.S did display a danger and a weakening and more swiftly, an abandonment of the rule of law and undermining the prohibition on the use of force which has been the product of decades of consensus. The danger of setting a precedent for the use of force by other states is self-evident if Article 51 still continues to survive in the UN Charter. It is a matter of fact that this Article has inhibited the UN to act as a collective security mechanism.

4.3 Collective Security law and the legal mandate of the Security Council

(Article 39)

In legal terms the UN charter endows the Security Council with the whole array of powers enabling it to maintain or restore international peace and security. The fulcrum of Article 39 is the determination by the council of the existence of a threat to the peace a break of the peace or an act of aggression once that determination is made the door is automatically opened to enforcement measures of a non-military or military kind.

Such legal scope of the discretion granted to the Security Council, in discharging its duties within the ambit of the Charter is very wide. Article 39 highlights the Council's freedom of action.

In exercising collective security according to the Charter the Security Council is not just free to decide whether and how to use force, but it is also at liberty to determine when to do so and against whom. It is completely within the discretion of the Security Council to decide what constitutes a "threat to the peace"²². The Council may opt to stigmatize as a threat to the peace a situation that doesn't appear to anyone else as disturbing the equilibrium of international of security. In legal terms a threat to the peace in the sense of Article 39 seems to be whatever the Security Council says is a threat to the peace²³.

United Nations Security Council Resolution 1441 adopted in November 8, 2002 designed in the auspices of Article 39 opened the legal grounds, for the U.S and U.K leaders of the coalition of the willing to wage war against Iraq, even without proper information on whether Iraq was a threat to peace. Many members of the General Assembly could not see how Iraq was a threat to international peace and security.

After adopting the resolution, which even in legal terms did not authorize use of force, but called for immediate and complete disarmament, the Security Council discarded war against Iraq. The biggest obstacle that crops form this Article is too much power given to the Security Council. Today it remains un-established and the Security

²² H. Kelsen, *The Law of United Nations: A Critical Analysis of Fundamental Problems* p.727 1951.

²³ Akehurst's *Modern Introduction to International Law* 426 7th ed. 1997

Council. Today it remains un-established and the Security Council needs to explain in no uncertain terms how the Iraq government posed security threats to the international political system.

It is very important to remember that the Security Council is a political and not a judicial organ. It is composed of member states and its decisions are not necessarily congruent with legal considerations. As a non-judicial body, the Council is not required to set out reasons for its decisions as it did in Iraq. Yet a determination by the Council that a threat to the peace exists is conclusive. All member states must accept the Council verdict, despite any misgivings that they may entertain concerning the merits of the case. This openly reminds the UN community that such unchecked legal powers given to the Security Council poses a threat to international peace and security as it did in Iraq.

4.4 Lack of the “teeth” as provided by the UN Charter

One of the biggest legal problems that affected the League of Nations was lack of an enforcement system to implement decision past when international security is under threat. Thus such “teeth” that were lacking in league were supposed to be furnished under the terms of Article 43 of the Charter. The Article provides for prompt negotiation of agreement by which United Nations members will make available on the call of the Security Council armed forces assistance and facilities for use in applying military sanctions²⁴. Hence the fact that Article 43 provision never came to pass means that the Collective Security system of the UN is factored upon the good

²⁴ A Leroy Bennet 1995 6th ed p.150

will states particularly the United States that wields the largest military force to carry out collective security measures. These states then dictate their whims to the international organization thereafter.

In the case of the Iraq war, lack of a UN military force also had adverse effects to the UN Collective Security. In the case of Bosnia 1999, it was NATO that acted on behalf of UN. U.S and UK organized the military force on behalf of the UN to go to Iraq in the name of a coalition that was to enforce the just demands of the world. After the security failed to live to its responsibilities according to the U.S, there was no alternative other than, the United States rising to their interests and establishing a military force.

It is very critical that Article 43 need to be actualized. The fact that the supply national contingents under this Article is also voluntary. The Charter does not make any specific provisions on raising an independent force for the UN through Collective Security system and for Iraq it was more serious as U.S and U.K provided almost 95 percent of the forces. This does not amount to what a collective security entitles.

4.5 Conclusion

What has emerged from this chapter is that, there are legal obstacles in the UN as a collective security mechanism. The challenge faced by collective security law in the UN in attempting to regulate violent actions by states is encapsulated by the statement of Dean Acheson, the former U.S secretary of state, when he considered legal obligations to the U.S quarantine of Cuba in 1962. Acheson stated that the power, position and prestige of the U.S had been challenged by another state: and law simply does not deal with such question of ultimate power that comes close to the sources of sovereignty²⁵. The UN protects such powers to a great extent by elevating the P.5 to a position where they cannot normally be subject to enforcement action.

The UN Charter has been caught in between the legal privileges it has given to some of its members specifically the Security Council and the legal requirements of a full-fledged legal collective security mechanism. As shown, the UN Charter is emphatically against the arbitrary use of force but on the other hand, Article 106 of the UN Charter permits the big five pending the creation of a UN force as provided by Article 43 to take any kind of joint action for maintaining international peace and security which includes use of force. The UN upto today is devoid of proper legal definitions of concepts which include aggression, breach of the peace and threat of the peace. There still exists a wide conceptual inflation and the most dangerous Article 51 which has been misused as in the case of Iraq and encouraged wide miscarriage of justice and one that was designed rhetorically to ensure that when the interests of great powers are challenged, fundamentals of rule of law and due administration of

²⁵ Naidu M.V.R p.267

justice will not be considered. In short, the legal obstacles the UN is facing today can be understood by interpreting the legal necessity of Article 51 which preserves the inherent rights of individual or collective self-defence. Further, Article 39 which endows the Security Council with the whole array of powers to determine which act is a threat to international peace and security contravenes the central concern of collective security.

Such provisions within the UN Charter mutilate the legal integrity of the UN Charter as one that give birth to a collective security mechanism. Lack of the teeth as provided by Article 43 also has enough legal implications as has always instigated a political decision and force as in Iraq the coalition of the willing.

Collective security law within the UN has lost its credibility because this has been left to the Security Council. Once Resolution 1441 was adopted, states who went to Iraq in the name of the UN claimed that it authorized use of force.

On the one side, it is clear that in collective security within the UN law is not determinative at least in a formalist sense. In the real world to achieve solutions we cannot simply apply the law to the facts, though it is an exercise that the academicians and international lawyers love to engage, in as students of international law know all too well. On the other hand, it is too simplistic to dismiss law as irrelevant. Arguing that normative factors are either irrelevant or only marginally relevant to Security Council action undermines the degree to which the UN can be considered as a collective security mechanism. Although there may be great debate and controversy about the content of the factors delineated above, their presence and essence signifies that there are legal obstacles affecting the UN to act as a collective security mechanism.

CHAPTER FIVE

5.0 CRITICAL ANALYSIS ON THE ROLE PLAYED BY THE UN AS A COLLECTIVE SECURITY MECHANISM IN THE 2002-2005 IRAQ WAR

5.1 Introduction

This chapter posits to critically analyse the mandate and the role played by the UN as a collective security mechanism in the Iraq war accessing its applicability in the contemporary international political system. The chapter thus will discuss the impact of UN presence in Iraq and it will establish why the UN did not act within the ambits of a Collective Security mechanism hence establishing the theoretical and empirical implications based on the theory of Collective Security.

5.2 Role of the UN as a Collective Security Mechanism in the 2002-2005 Iraq war

Consciously the UN has failed to bring a solution in the conflict situation in Iraq today and also in other conflicts such as Middle East and North Korea. The real solutions are undertaken elsewhere between the great powers as exemplified in Iraq war where members of the coalition of the willing sought to justify the illegal invasion of Iraq by coining reasons to design an approach that would tint their violations to the core principles of UN.

The strenuous efforts to get authorization before the invasion and the attempt to justify the invasion on some legal basis afterward indicate as much. The UN currently controls Iraq oil revenues. Given the widely held conclusion that the invasion was unlawful, the better approach for the UN is not to turn control of Iraq which does not comply to the UN

principles but to seek modalities through which such unprecedented illegal belligerent occupation is not repeated as this will set further violations and wide miscarriage of justice in the future.

Prudently, the UN has prerogative rights to intervene in any conflict that seems to be of threat to the international peace and security. Today the military action against Iraq even with the existing UN resolutions remain unlawful despite the ministers resolution 1441 which only reminds Saddam Hussein of the serious consequences of a failure to disarm, referred to in earlier UN resolutions. The phrase falls far short of an instruction to UN member states to use all necessary means the traditional UN euphemism for armed force and secondly the crowning principle of any collective security mechanism that arbitrary use of force or even threat of force by any state would be morally wrong and politically unwise and so the role played by UN in Iraq remains wanting and one that the need to be explained with a lot of pragmatism, as the invasion of Iraq by UN should have been justified in theory through the lenses of the basic principles of collective security, failure to this, then shows how the UN has obstacles denying it from acting as a full-fledged collective security mechanism.

5.3 International Law and the United Nation's charter relevance on 2002-2005 Iraq war

International law and order and the way the UN Charter is interpreted has evolved over the years. According to the UN Charter exceptions, there are only two possible situations

in which one country can take military action against another. The first is in individual or collective self-defence¹ – a right under customary international law. The second is where under Article 42 of the Charter, the security council decides that force is necessary “to maintain or restore” international peace and security² where its decision have not been complied with, in other words where a UN resolution clearly authorises military action.

The question whether Article 51 self-defence route justifies a pre-emptive attack has been keenly debated. Article 51 itself is silent on the matter. But even if it does justify a pre-emptive strike against Iraq which is surely the sounder position in a nuclear world, any threat to the U.S and U.K or its allies would have to be proportionate before Article 51 can be relied on. The mere fact that Iraq had a capacity to attack at some unspecified time was not enough to justify UN invasion on Iraq. Further, Resolution 1441 itself does not authorise the use of force against Iraq and if some people mistook it as one that did, they should be reminded that it is also against the crowning principles of UN as a collective security mechanism. The argument that all the security council members including France and Russia intended to authorise the use of force when they voted for resolution 1441 is hardly compelling and arguments that resolution 1441 implicitly authorises the use of force run into the same difficult.

Be as it is, as a matter of principle, international law precludes UN members from relying on any implied authorisation to use force and in addition the use of force without clear collective authorisation would be in conflict with the fundamental principle of UN

¹ Article 51 UN Charter

² Article 42 UN Charter

Charter and so the use of force by UN in Iraq rely amounts to a promiscuous move that demeans the plausibility of a UN led invasion to Iraq. But although all the above issues are unquestionable, the heart of the matter is that UN resolutions should be seen in their contemporaneous context that making decisions in support of international law will not necessarily be easy. The U.S is likely to pressure governments to recognise its mightiness today a move that will see illegitimate invasions being supported by its allies just like U.K, Russia, France, Belgium and other states did in Iraq war. Responding to this pressure will be part of a choice by the international community between maintaining the current system of international law and elevating the UN Charter by inculcating issues of collective security that have been overlooked in the UN Charter and doing away with policies that contradict international law like the Bush doctrine of pre-emptive force that laid the impetus that later conglomerated to the war in Iraq in the name of UN initiative.

The UN Charter makes it clear that war is a matter of last resort. International law traditionally allows for pre-emptive strikes but in the event of an imminent threat. Few agree Iraq possess such a threat and particularly with the presence of UN weapons inspectors in the country. With this in mind there is no precedent in UN for arming to use force to change a regime and so today the question remains that, what was force designed to achieve in Iraq?

To crown it all, Article 2(3) requires that all members shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered³ a core assumption of a collective security mechanism and Article 2(4) requires that all members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state or in any other manner inconsistent with the purposes of the UN⁴. The purpose of the UN is to maintain international peace and security by stabilising international relations and giving peace a more secure foundation after the aftermath of two devastating world wars. Promoting peaceful relations is the main function of UN⁵. This is in support of international law, but in reference to Iraq war, the UN played a role that undermined international law and the UN Charter and in principle its crowning assumption of preventing dangerous situations from escalating in to a war and persuading opposing parties at the conference table rather than on the battle field⁶. The UN supported a war against one of its member states and so the role played by the UN in the Iraq war totally undermines its crowning principle and of importance international law.

5.4 The UN's changing role with reference to Iraq war

Governments in all political persuasions continually affirm their devotion to the UN and all its purposes and express their determination to uphold its objectives, strengthen its effectiveness, all core and cherish and preserve it in every possible way. But all this notwithstanding, the underlying presumption has been that the UN is ineffective. It has

³ Article 2(3) of UN Charter

⁴ Article 2(4) of UN Charter

⁵ Article 2 of UN Charter

⁶ United Nations uniting for peace and security pp.1-7.

failed and in addition, it has emerged that the UN has no power to change the traditional conduct of international relations of states.

In reference to the UN-Iraq war, the UN has been regarded as the sinister instrument of hostile and seditious forces and a feeble mouthpiece of ineffective busy bodies, not as a threat but an irrelevant body because it has changed its role in the current world⁷.

The UN is pointed out as a mirror of the world as it is. It merely assembles together the multiplicity of individual nation states with all their imperfections. Today the UN is as good or as bad as the world reflects. All said and done, the UN's role in Iraq played a role it was not expected to play. The total experience of the UN with regard to Iraq war in respect to handling threats to peace, breaches of peace has been filled with disappointment and frustration. The failure of collective security measures in Iraq in favour of other innovations like the coalition of the willing clearly shows that the UN has failed in its mandate and that measures undertaken on behalf of UN to contribute to international peace and security do not respond to peaceful settlement procedures.

5.5 Analysis of legal obstacles and their impact on Iraq war

In the light of the legal obstacles discussed in chapter three, it is fair to acknowledge and conclude that, collective security is a specialized subject of international relations and as such it should be treated as a highly technical concept that empirically needs specific institutions standing above national authorities. In one sense the UN has established many institutions, procedures and concepts, but with particular reference to Collective

⁷ Ibid pg. 20

Security, the UN system is lacking in many respects, definition of concepts. Crucial concepts in the UN Collective Security system remain undefined or ill defined for example, aggression, armed attack, breach of peace, threat to peace and self-defence. All this factors provided a precedence and gave way for some members of the UN to carry out their own myopic national interests against Iraq. Lack of such proper legal definitions of such terms means the propensity of them being political definitions remains high.

But, being as it is, the Charter of the UN put forth very important conditions that even without prior definition of concepts, the states that went in Iraq could not surpass. In this accord the Charter of the United Nations is in many respects a more satisfactory constitutional basis for a collective security system. This explains the reason as to why members of the coalition of the willing had to ensure that their invasion was justified by the Security Council and as a matter of fact it took more than eight week for the adoption of the Resolution 1441.

In no uncertain terms, the UN Charter leaves no such convenient gaps in the legal fence for aggressors to crawl through as did the covenant; it substitutes for a limited prohibition of war the more comprehensive proscription of the threat or use of force⁸ and it even undertakes to close the gap of fictitious defensive and law enforcement measures by subjecting all coercive activity to the control and supervision of the Security Council⁹.

⁸ Article 2 paragraph 4

⁹ Article 51 and 53

Nevertheless, the Charter falls significantly short of providing an ideal institutional system for the realization of Collective Security. It is actually an incomplete document, in the sense that it postpones to the future – a future that shows no signs of arriving – the agreed allocation by states of military contingents to function as coercive instruments of the UN. This remains one of the biggest legal predicament as shown in Iraq war, because Article 43 has never been actualized. But even with this problem at hand, the UN offers some more assurance than did the covenant, that disarmament and peaceful change, both basic prerequisites for Collective Security will be achieved.

While the UN is subject to legal criticism when it does not act, it is also subjected to criticism when it does as depicted in the Iraq war. With the end of the Cold War in the late 1980, the Security Council has flexed its muscles in a variety of ways in different conflicts like in Sudan, Somalia, Bosnia, not forgetting Iraq. Sometimes this has been legally problematic as more often question marks over the legitimacy of individual actions, and for this matter, the legitimacy of the coalition of the willing in Iraq in the name of the UN narrows the probability of UN acting on the basis of its principles. This has properly been shown in Iraq case, administered in the favour of U.S and U.K.

Although the great powers may have wanted to create an organization based on order, they failed to eradicate all references to justice and authority in the Charter core legal issues in a Collective Security mechanism and this fact propagated and gave some leeway to the Iraq war. The great powers made minor concessions to the smaller states which

wanted the General Assembly to have some competence to deal with some matters of international security.

Further, pressure on Collective Security law was exerted by states claiming to act in support of Security Council's resolution. Although such may be supported by reasons of claiming the right of humanitarian intervention as NATO did in Kosovo and also in the Iraq war where Saddam was accused of violating human rights, these position contravene the Collective Security law which prohibits use of force in clear language.

Though the initial Security Council authorization given in November 8, 2002 to use force against Iraq war lawful, there is much greater doubt about the legality of the continued military actions by the dwindling coalition after the capture of Saddam and failure to find the so, weapons of mass destruction.

As a way of justifying their case in Iraq, the invading states later came to claim that Iraq posed security threats to their territories hence using Article 51 which preserved the inherent right of individual or collective self defence¹⁰. This means that we appear to be heading towards a disintegration of the system in that, it seems that law does not shape the debate; it is simply a tool in the hands of powerful states.

Such claims, as they get wider and wider, and further removed from the basic principles governing the use of force in the UN Charter, will lead to a situation of lawlessness, though we are not there yet. The presence of additional or wider customary rights is not

¹⁰ Article 51

necessarily an anathema to the idea of Collective Security, thus it may be argued that if those rights are recognized as wide ranging and subjective, then it is no longer possible to talk about Collective Security in the UN.

Notwithstanding the above legal criticisms against the UN in Iraq, it must be noted that, the Charter provisions have taken a more objective view on the interest in fundamentals of rule of law and administration of justice. The Charter legal provisions can be viewed in some respects as improvements over and in other respects as retrogressions from the corresponding covenant terms.

5.6 An assessment on political obstacles and their effects on the Iraq war

This paper sought to establish how international politics has affected the UN operations in Iraq more so, the U.S hegemony.

In terms of political realism, the Iraq war can be seen as an expedient for extending the theoretical range of the United Nations Collective Security as one marked by serious deficiencies. Its operative organ, the Assembly, has only recommendatory authority, too big, too slow, and too diffuse in political composition to constitute the ideal instrument for Collective Security; thus the creation of the Security Council to deal with security matters and when the Security Council fails to address the Iraq case according to U.S interests, the coalition of the willing was formed.

Politically this alteration of the Charter scheme was not intended as a move to institute Collective Security in a realm left vacant by the statesmen of Security Council. It was an American initiative which clearly can be conceived as a device whereby the United States might invoke the moral support of the United Nations for such resorts to force as it might find necessary and desirable in the course of its agenda of strengthening its mightiness in the Middle East. This shows clearly that in theory and practice, the UN Collective Security remains under a serious threat because of the U.S power that cannot be matched by any state today.

In political terms and in the objective sphere, the league had the advantage of being born into a world characterized by a considerable diffusion of power meaning that states of great power rank were numerous enough at the end of the First World War, and the concept of universality of economic vulnerability was sufficiently reflected in reality, to provide a setting reasonably well adapted to the operation of Collective Security, if other conditions had been favourable. But other conditions were not favourable, and the result was that the world lost its chance.

Indeed, based on political and theoretical requirements of a Collective Security mechanism, history may record that the first chance to institute Collective Security was also the last, for the relatively favourable configuration of power which prevailed when the league was created was not duplicated at the end of the World War II, and at the end of the Cold War, and, given the distinct trend towards unipolarisation of power by the U.S, is not likely to occur again in the foreseeable future.

In the case of Iraq war, the Bush administration approach to the Iraq crisis has put the U.S at odds with the framework of the institution of the UN, to the extent that these cannot be bent to the administrations agenda and methods, it is being cast aside and even vilified¹¹. In the administrations view, its prosecution of the Iraq war has given notice to adversaries and allies alike that a new post-911 world order is taking shape.

The American action in Iraq has shaken the foundation of trust and mutual restraint on which America's cooperative efforts with other nations depend. Among the war's casualties will be the type of close multilateral cooperation cultivated during the Cold War and expanded in the 1990's. America's relative power and wealth is presently too great for others not to seek some accommodation with it.

All in all, it is my belief that, even if the U.S power is too much for any other state to challenge, I think that the other states should have sought ways to at least prevent the U.S from consolidating its position of being the only superpower. Other states should have coalesced to at least balance against U.S prerogatives by showing some eagerness as opponents of the war to mend fences with the U.S to find a common ground that would have avoided war.

Washington was intent on exercising extra-ordinary prerogatives in pursuing unilateral vision that pressed hard against the vital interests and concerns of other nations. It is true

¹¹ Carl Connetta, How the Iraq War will affect the International System PDA Briefing Report 2003 May.

that the U.S is too powerful but it is my feeling that, other nations had some roles to play even if it meant showing tactical and temporary signs to accommodate the U.S. This could have given some room, that maybe in future we could expect more nations to move on a parallel track seeking and developing ways to counter-balance American power. This should not be taken to mean that, the goal sought would pose security challenge to U.S interests, but instead the goal of such counter balancers would be to retain their relative power position and compete with the United States for influence.

The above issues against the U.S should not be seen as a dream because this can be achieved, for example, the so known as "old Europe" should have been a more self-consciously defined cluster and the core opponents of the Iraq war. France, Germany and Russia, who initially opposed the move towards the war in Iraq should now seek to better coordinate their interests. One barometer of the continental appetite for counter-balancing would be the resources invested in the new four nation plan for defense cooperation involving Germany, France, Luxemburg and Belgium.

And so in as much as one can openly say that U.S power poses a threat to the UN Collective Security system, this should be approached with a lot of skepticism because this can be checked by other states if they wish to and this should have provided a more sober alternative other than going to war.

5.7 Critical assessment and appraisal of the Collective Security theoretical

assumptions during the Iraq war

In theory this paper sought to establish whether the current international political system affects the UN as a Collective Security system and later assess how. Secondly, the paper sought to establish how lack of proper legal definition of terms in the UN Charter has affected decision making and policy adoption during the Iraq war.

Collective Security is like a mirage. It beckons on the horizon. It seems full of promise. But it remains unattainable. It remains unattainable because the basic requirements of Collective Security – that nations subordinate their conflicting purposes and interests to collective action for the suppression of prohibited acts no matter how or where they may occur – has remained an illusion¹².

Ideally, the Collective Security theory stipulates that, the Collective Security system requires an international society in which power is not concentrated. A single superpower is antithetical to Collective Security.

A Collective Security system too needs to have an elaborate legal definition of all terms and all institutional apparatus within itself. Lack of such definitions give room for unprecedented decision that demean the integrity of such organizations.

Such theoretical shortcomings within the UN have had diverse and serious consequences when it comes to policy adoption as shown in the Iraq war. The contemporary

¹² Marina and Lawrence Finkelstein 'The Future of Collective Security' An Essay in 'Collective Security' San Francisco Chandler 1956.

international political system is unipolar and this has caused the UN more harm than any other theoretical shortcoming. The United States today possess a serious threat to the survival of the United Nations in theory and in practice. This is because, the U.S has the prerogative powers to arrive to a determination of aggression, as it did in Iraq or as more often, fail to arrive at a determination of aggression for purely political rather than legal reasons. It is important to know that Iraq war was United States war period.

Further, the Security Council is a political organ which acts for political reasons. It is true that, even after France, China, and Germany could not find reasons of going to Iraq for war, they at long last came to bow to the compelling force of the United States hence the adoption of Resolution 1441 which according to the United States declared war against Iraq but legally, not the case as other states understood the matter at hand. Today, in reference to Iraq war, any action undertaken in the name of maintaining international peace and security by the United States shall be taken by the Security Council and all the members of the United Nations. Hence, the system has affected UN operations but such a problem can be ameliorated if other states chose to compete with the U.S.

Theoretically, the UN has not yet developed a comprehensive definition of aggression that can act as a standard and be applied to each situation as it arises. If this is a problem the UN should come up with alternative approach to determine for each situation, by vote of an authorized agency and on the basis of evidence of that body a state is declared guilty of aggression.

United Nations efforts to define aggression were initiated in San-Francisco in 1945 and upto today, the problem persists and this has opened for aggression to be defined based on political interests other than legal criteria and so this has remained to be one of the theoretical legal problems the UN faces. Though such universal definition has been perceived as hard to come up with, a general definition would even do less harm than none. This problem was more accentuated when the Security Council was given the power to determine acts of aggression. This remains to be a theoretical obstacle to the UN and unless the UN sobers up and deals with this problem, wars will be fought in the name of the UN yet use of force is against Collective Security assumptions.

Prudently also, a threat to the peace¹³ must not be confused with a threat ...of force mentioned in Article 2(4)¹⁴. Evidently, a threat of force by a state against another may be considered by the Council a threat to the peace. But the expression 'threat to the peace' is elastic enough to stretch away from the contemplated use of force and beyond interstate relations¹⁵. Resolution 1441 was adopted by the Security Council on behalf of all other states after subjectively defining Iraq as a threat to peace. But there solution was unprecedented in authorizing force to remove one regime and install another however democratically elected within a member state Iraq. One may wonder the legal basis that can be used to explain this, but all this comes as a result of failure to define terms for example aggression, threat to the peace and many others.

¹³ Article 39 of UN Charter.

¹⁴ Article 2(4) of UN Charter.

¹⁵ B. Comforti, *The Law and Practice of the United Nations* 774, 1996.

In theory, aggressive war just like what happened in Iraq, remains currently forbidden by both customary and conventional international law and even in no uncertain terms constitutes a crime against peace. The legal proscription of war forms the bedrock of the contemporary international legal system. Admittedly, to date, the prohibition has not had a profound impact on the actual conduct of states. Because of the current international political system and lack of proper legal definitions of terms and institutions within the UN, one may say, in a combination of cynicism and realism that so far the legal abolition of war was stamped out not wars but declarations of war¹⁶.

Ideally, as long as the Charter's scheme of Collective Security fails to function adequately because of the reasons discussed earlier, states are left to their own devices when confronted with an unlawful use of force. Again and again, they invoke the right of self defence as U.S and U.K did in response to an armed attack. Thus, instead of being a provisional interlude pending the exercise of Collective Security, self defence has virtually in my opinion taken the place of Collective Security and this forms the epitome of Iraq war. During the Cold War the very centre of gravity in the United Nations swung from Article 39 to Article 51.

Notwithstanding the palpable changes in the world political dispensation since the termination of the Cold War, the right of self defence - individual and collective - the international political system of U.S hegemony, and lack of proper legal definitions of terms in the UN Charter remains the principle obstacles shielding for armed attacks.

¹⁶ Dinstein Yoram War, Aggression and Self Defence, p.283

5.8 Conclusion

UN as a collective security mechanism is seen as a means of controlling war in a world of sovereign states. This came as a result of failure of balance of power and absence of a world government. The combination of political, structural, constitutional and theoretical obstacles paralysed UN's efforts to act as a collective security mechanism in Iraq war. UN's role in Iraq is full of surprises because all what happened in Iraq can be challenged theoretically and empirically. Today the mandate of UN's role in Iraq remains weird and mediocre. It can be pointed out that a full-fledged collective security mechanism cannot be achieved at one full swoop but that an incomplete and imperfect system may do more harm than good by inducing states to rely upon it when it is unreliable and by promoting the universalisation of wars when it is in no position to achieve the collective frustration of aggression.

The point remains that in theory and in real sense, the UN has contributed a lot to the maintenance of peace and also a recognition that war anywhere is a threat of peace and order everywhere but this was not fully embraced in Iraq war by the UN. UN's presence in Iraq calls into question the future role of UN in situations involving threats to or breaches of the peace.

A number of questions remain unanswered with reference to the UN in Iraq for example, should the UN continue to involve itself in states internal organisation as it did in Iraq? Will the UN be overwhelmed by the involvement in a plethora of regional, national and ethnic conflicts? Will the UN members be willing to strengthen the organisation along

some of the line's suggested by Secretary General Boutros Boutros Ghali in his "Agenda for Peace" issued in 1992 to make it a more effective agency for conflict resolution? All in all, all is not done as the future role of the UN as laid by its role in Iraq in the peace and security arena will be largely determined by the answers to these questions and the answers lie within the collective wisdom and will emanating from the member states.

Though a lot has been advanced insinuating a further irrelevance of UN today because of the UN role in Iraq, it can nemonly be agreed that the idea of the UN as a mechanism of collective security has survived and its activities in the field have increased dramatically as seen in Iraq war and this is illustrated by the fact that, although the powerful states chose to ignore the Charter in one way or another none has sort or can afford to be outside the UN.

To tie it together, the heart of the matter is, international organisation is a process and international organisations are the outcome of the process. The UN has evolved dramatically since its inception and that it has been able to meet the challenges posed to it; and even embrace such obstacles to act as a collective security mechanism. The fact remains, such obstacles have helped the UN evolve day after day.

CHAPTER SIX

6.0 DISCUSSIONS, CONCLUSIONS AND RECOMMENDATIONS

This chapter gives a synopsis of the previous chapters with an elaborate and comprehensive conclusion based on the research findings. A number of recommendations for improving the UN performance will be highlighted and also areas for further research will be suggested.

The research instrument employed in the study was interview's with academicians who have good knowledge on the UN as a collective security mechanism.

The data elicited from these interviews was organised and analysed qualitatively in description form, according to the objectives of the study.

On the basis of the findings, various conclusions and recommendations are warranted.

6.1 Conclusions

The research identified a number of important obstacles affecting the UN as a collective security mechanism using the 2002-2005 Iraq war as a case study. The study provides the UN community with a strong conceptual framework for understanding how the UN performance can be improved.

Based on the research findings, the study aimed at some conclusions reflecting the thematic objectives of the study. These are elaborated in the paragraphs that follow concerning the obstacles to the UN as a collective security mechanism. The basic

requirements of a collective security mechanism were also used as pointers towards delineating obstacles of UN as a collective security mechanism in reference to 2002-2005 Iraq war.

Based on the first general objective, it was established that the UN's role could not be described as a full-fledged collective security mechanism with reference to the 2002-2005 Iraq war. Thus, it was acknowledged that a number of obstacles exist that affect the UN as a collective security mechanism. The study results revealed that, the UN operations have improved over the years but its performance has been hindered by certain obstacles that if taken seriously can be improved on and better results obtained.

According to this objective, the study established that such obstacles intimidated UN's role in Iraq. The study acknowledged that such obstacles exist because it was evident from the study that at least not all people agreed with the role played by the UN in Iraq one that a collective security mechanism should play.

Based on the second objective that opted to establish and reveal the political obstacles to the UN as a collective security mechanism with reference to 2002-2005 Iraq war, it was also acknowledged that, true the UN is a political organisation and as such, findings show that U.S hegemony, powers given to the Security Council and its mandate, national interests of the states, lack of collective force as deterrence/sanction and the other political factors affected the UN as a collective security mechanism. It was evident that the UN needs to address such political obstacles.

Based on the third objective that sought to reveal the legal obstacles to the UN as a collective security mechanism with reference to the 2002-2005 Iraq war it was revealed that such obstacles exist. These include, conceptual inflation, clauses that permit use of force, lack of legal definition of terms and institutions amongst other.

All the above obstacles really have had adverse effects on the UN as a collective security mechanism such openly show that UN has not yet qualified to act as an ideal collective security mechanism.

6.2 Recommendations

Following the conclusions reached, the study wishes to make the following suggestions and recommendations.

First, although the UN is a political organisation, its mandate should not lean too much on politics but there should be consistency and certainty in the development and application of its resolutions between law and politics as today the balance between law and politics in the UN leans towards politics. Politics played a major role in determining and justifying the war in Iraq and such leads to a disappearance of a rule governed character of collective security, and so both should be taken as bases for determining what should be done when international peace and security is threatened.

Secondly, one of the most important fact the study revealed was that, the UN lacked proper legal definition of terms and statements, such as “aggression, breach of the peace” and “threat to the peace and that, such have all been politically defined particularly threat

to the peace” and that such have all being politically. Particularly, threat to the peace have an inherent ambiguity. Secondly, events that amount to aggression should be listed to ensure proper and easier determination of any if they happen. In this accord, it has been hotly debated particularly in relation to the Security Council coercive action against Iraq because, Iraq occupiers today need to show how Iraq was a threat to international peace and security. UN Charter therefore must define such terms legally.

Also the Security Council should be advised to get away from the tradition of passing resolutions only. It spends a lot of time negotiating in support of a certain resolution to support one of its members. The advice given is that, the Security Council should be ready to promote substantive negotiations to promote peace rather than spending too much time on a resolution in support for war. This was exemplified when U.S and U.K took eight weeks of diplomatic slogging to negotiate resolution 1441 in favour of U.S policy. Germany, France, Italy and Belgium were all opposed to war but peace, but later the coalition of the willing managed to woe them to war.

Super-power politics has been a major obstacle to the UN as a collective security mechanism and this too was exemplified in the 2002-2005 Iraq war. The U.S hegemony has complicated UN's role in gamut. Indeed, the other members of the UN must be ready to stand against the extreme U.S power to support the UN and not the U.S. As a matter of fact, UN in Iraq was U.S in Iraq. Be as it is, U.S politics must be checked to ensure that its national interests do not propel over the heads of all the other states.

Today it is true that, the UN cannot determine an outcome. It is true that the UN cannot impose settlements on the basis of a majority even if it is against the Security Council resolutions. Majority of the states were against the war in Iraq but just because the Security Council opted for a war, it was so. This means that the Security Council needs to be more representative to ensure that better decisions are adopted. Five members deciding a war dogmatically on behalf of more than two hundred states is weird. This happened in Iraq and should not be repeated because such a move should be termed to be too precarious; a process that accepts wide miscarriage of justice.

Indeed, also the UN must come up with new institutions or respect the existing one's to tackle either new or old determined issues respectively. The UN for example should come up with an institution to address international terrorism but has institutions that could have been used to address the sixteen violations that the security council sought to address in Iraq; and this may be could have been done more prudently than UN did, such include violation of human rights, sanctions, nuclear weapons all which have respective institutions. The study seeks to advise the UN to respect such institutions for better results as such have interests in fundamentals of rule of law and seek for the administration of justice.

One of the key assumptions of a collective security mechanism is that force is antithetical. This means that the UN must be able to invoke reason and goodness of man to all its members. The language of a just war should not exist in the UN.

Article 106 permits the big five to use force before the creation of a UN force, Article 51 gives UN members a basis to resort to force based on their own judgement and initiative, the so-called self-defence. The UN should know that, right to self-defence in particular is antithetical to a collective security system. U.S and U.K justified their case for Iraq war on the article which justified a pre-emptive attack. All in all, this has been keenly debated but the heart of the matter is, force is antithetical to a collective security mechanism. The fact is that the UN should be aware of the all-destructive character of a modern war and should prohibit all wars even if justified on self-defence.

6.3 Suggestions for further Research

This study covered only one case study out of many where the UN has been involved as a means of enhancing international peace and security. Apparently, from the discussion of the findings, it was realized that the obstacles affecting the UN as a collective security mechanism have really influenced its performance in one way or another.

The information obtained can provide a healthy data bank for those concerned with research to improve the UN performance. In order to obtain more information on obstacles to the UN as a collective security mechanism, research should be conducted on these areas:

- (a) Identify the approaches of enhancing the UN staff understanding and translating what they have learned into practice.

- (b) Examine the availability of information on the obstacles to the UN as a collective security mechanism in order to understand them and deal with them in the most prudent manner.
- (c) Assess the sources of such obstacles and how they affect the UN as a universal organisation.
- (d) Assess UN's capability of handling the problems of maintaining international peace and security as an instrument of collective security, other than through means like coalition of the willing or the so-called alliances which really affect the performance of such an organisation.

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