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A CONTRIBUTION TO THE STUDY  
ON  
SOUTHEAST ASIA COLLECTIVE DEFENCE  
TREATY ORGANISATION

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deeper understanding about the said organisation which is the due subject of the research mainly from the view-point of international law, would have to be fully utilised in writing of the writer who has been privileged to receive international helps from such distinguished sources.

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It is also encouraging that some nations' concern of external affairs is amicably based on the attainment of the said organisation's purposes, whether or not they are the participants to SEATO.

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#### 1. Preliminary Arrangements and Situations towards the Conclusion of the Southeast Asia Collective Defence Treaty.

(A) In April 1954, a conference was held in London. In the course of the conference, the United Kingdom and the United States Governments showing much concern to "taking part, with the other countries principally concerned, within the frame work of the United Nations Charter, to assure the peace, security and freedom of Southeast Asia and the Western Pacific" declared to consider the problem of SEATO at the end of the conference. With the Philippines government's offering of facilities at Baguio, the international conference for establishing the collective defense

organisation in Southeast Asia has set an actual stride in action. The participant nations to this Baguio Conference under the chairmanship of Mr Garcia, present President and then chief delegate of the Philippines were Australia, France, New Zealand, Pakistan, the Philippines, Thailand, the United Kingdom and the United States.

(B) Against the background of the Indo-China War which marked the central character of the defense organisation in international political sense, many separate conference has been held in many capitals so that all nations intending to participate in the organisation could share the advance common understanding about the purposes, schemes and practical measures to be taken under the treaty in order to reassure the peace in the Southeast Asian Region. Although some disagreement was seen on how to settle the Indo-China problem at Geneva, it was the outcome of the efforts in London and Washington that as communist powers seemed not willing to participate in the organisation, the newly developed countries situated in Southeast Asia who were sure to substantiate the treaty with their constructive contribution would be primarily invited to become a member, while in that connexion the United Kingdom and the United States were ready to underwrite the Geneva Agreement as soon as possible with the defensive treaty.

(C) Some countries, however, were not in favour of the Treaty, owing to their respective foreign policies. The neutral group of states, inter alia, were against the positive purpose of establishment of the collective defense organisation based on the said treaty. They were India, Bur-

ma, Indonesia and presumably Afganistan and others. All arrangements to conclude the defensive treaty so that the Southeast Asia could assure themselves the peace and further development in international and national plane finally brought about a fruit of the long continued efforts of many nations in the form of the conclusion of the treaty, although it is admittedly clear that the initiative was apparently taken by the Western nations.

(D) On September 8, 1954, Australia, France, New Zealand, Pakistan, the Philippines, Thailand, the U. K. and the U. S. A. signed at Manila the pact which endorses continuous and effective self-help and mutual aid under a collective defense system in Southeast Asia.

The treaty, generally known as Manila Treaty, is definitely a mutual security treaty aiming at the regional peace based on the provisions of the United Nations Charter to which reference will be made later.

The chairman, Mr Garcia in his address at the conference then expressed the view which pointed out the important legal pillar of the defense system, declaring that the members of the Treaty would be committed to immediate action in the case of any aggression against any one of their co-signatories.

(E) In regard to "the treaty area" which the specific mention seems necessary in view of uniqueness of its conception and provisions involved in the treaty, the most noticable is the lack of overt designation and participation of Cambodia, Laos and others who would bear, as late Mr Dulles termed it, "common destiny" to develop and defend their territor-

ial integrity from any aggression with positive participation in SEATO.

These rising countries could have benefited to much more extent by SEATO's increasing functioning, if the treaty and the organisation had not such political tincture as due to the consequence of the Indo-China War.

The newly independent states, whether they are great or small, would have to be respected not only as to their political integrity and sovereignty but also as to their very national development ; they have so far exerted so much energy for paving the way for the attainment of international peace, though regional, in which they possess common bright future and destiny as neighbours.

## 2. Collective Self-Defense and the Short Analysis of its Meaning.

It is not an exceptional phenomenon in the present day's world situation to join in any collective defense treaty which establishes lawful scheme of the exercise of the right of self-defense, whether collective or individual, under the United Nation Charter.

For instance, approximately more than 50 states are members of such treaties whether they are politically close to Washington or to Moscow. The typical treaty which made a large scale of collective defense are North Atlantic Treaty and Warsaw Treaty.

Although collective defense is a novel concept which first appeared in article 51 of the United Nations Charter, the reason why this concept bears the rôle of fulfilling some legal as well as factual gap concerning

measures to be taken in the case of the imminent attack against Member state from without became clearer, following the discussion at San Francisco and other later authoritative interpretation of collective self-defense.

It is a clear fact that the term of collective self-defense was inserted at the discussion at San Francisco in the U. N. Charter drafting Committee III/4, whereas, in the Damberton Oaks draft made in 1944, no mention was made as to collective self defense; the denotation of that term, however, is as not yet juridically well defined since the Charter has nothing to say about it, excepting to provide in article 51 as follows;

“Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member.....”

Thus, what to be examined first seems why the notion of collective self-defense was given the legal place parallel to individual self-defense, the latter which has been theoretically and practically warranted in international law.

In 1837 with regard to the Caroline Case, Mr Webster, then Secretary of State of America, in lodging the protest with Britain, rather clarified the necessary legal elements for the self-help when he stated, in connection with the action taken by Canada, in the effect that it was admitted that there existed some legal exception evolving from the principle of self-defense, and that, that exception, namely, the preventive action in the foreign territory, must be justified only in case of “an instant and overwhelming necessity for self-defense, leaving no choice of means and no moment



of deliberation.” The legal justification of self-defense or preventive action in international law has been for long time grounded on this absolute notion, namely, instant and overwhelming necessity for defense.

In so far as this justification — the existence of imminent illegal attack and reasonable necessity for protection — does exist, the cause for belligerency (including any measure authorised to be taken by the U.N. member in accordance with article 51) is approved in present international law for the sake of any state under attack.

The preventive attack, however, is forbidden by article 2, paragraph 4 of the Charter which laid down the Member’s duty to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any states, or in any other manner inconsistent with the purposes of the United Nations.

Therefore, as a sort of lex specialis to the aforesaid provision, article 51 is now generally to be understood in view of the legal priority of peaceful settlement of international dispute as shown in the Charter. Since article 51 sanctions the existence of a right of self-defense as “inherent” right of state, article 2(4) would have the reason to be considered a restriction, as Dr. Bowett views the restriction as “certainly unrecognised by general international law, which has always recognised an “anticipatory” right of self-defense.” (1)

Article 51 , above all, approves the exercise of self-defense only if an armed attack occurs. In this connexion, however, there exists some factual dilemma which such conditional sanction of self-defense can

not overcome.

If collective security is perfectly maintained and prevailing in international relations, certainly there would be no need of collective self-defense as many states willingly join to deter any attack or aggression against any state on the ground that the notion of collective security is nothing but international security among themselves.

Turning to the actual international situations, however, such collective security does not seem to be established and so collective defense comes to the fore in order to supplement the shortcoming of collective security that must be a final pattern of international peace.

In consequence of this practical differentiation of collective security and collective defense, the term of collective self-defense would have to be understood as legal action which, in short of the existence of collective security in general, must be prepared by states who are exposed to any potential attack.

Thus, although the definition of the right of collective defense at least by any verbal term and the reason why to set parallel the said right with that of individual self-defense in international law are evidently in lack in the United Nations Charter, the necessity of collective defense has some factual endorsement from the viewpoint of still unattained international collective security (here, the concrete study of transitional security arrangements provided for in article 106 and article 107 is not dealt with, though such arrangements are of legal importance still now in the sense that those articles are especially problematic as far as they are applied

to any state which during the second war has been an enemy of original signatories of the Charter) .

In the mean time, there is some room to consider that this novel notion of “right of collective self-defense” nevertheless is still different, it should be submitted, from “inherent right” of state of self-defense, and the inclusion of the right of collective self-defense in the provision of the Charter has the reason to be termed, as professor Takano opines, as a maladroit adaption of international law to the international general security problem. (2)

When “self-defense” is construed equivalent to “*légitime défense*” as in French law—the extensive exercise of self-defense is said to have been warranted in ancient Roman law in view of the maintenance of family integrity— which broadly implies defense against attack to not only the individual but also any other person who could be protected with anyone’s instant assistance standing for the cause of social public justice, then the two notions, i., g., individual self-defense and legitime defense in general sense have due reason to be regarded legally identical with one another in so far as the central legal characteristics of the both notions is founded on repelling or preventing any illegal and groundless attack.

If this view can be literally applicable to international law, it would mean that the right of collective self-defense as mentioned in article 51 is also stemming from the conception in natural law as Kelsen pointed out (see p. 913, *Recent Trends in The Law of The United Nations*) . Consequently it is correct to say that “collective” defense implies.

“organised” defense; otherwise the newly appeared notion of collective defense would lead to conflict with the purpose of the Charter especially concretised in article 2, paragraph 4.

### 3. Collective Self-Defense on the Basis of Regional Arrangements .

With regard to collective self-defense, its exercise is not categorically limited to the case as the article 51 set forth, that is, the exercise of the right with the authorisation of the Security Council only after the armed attack occurs. Should the interpretation of that sort be taken, the exercise of right of individual self-defense in joint form taken by some states in a particular region, would be paralysed and become unconstitutional under the Charter.

As for the collective measures on regional basis, it should be taken into consideration that the authorisation of the Security Council is impossible under certain circumstance owing to the exercise of veto as provided for in article 27.

Accordingly, the measure which should be taken by states in any collective or organised form, basing their legality on article 51, the measure principally aimed at the centralised or integral collective security system under the Charter, does not enable the regional Members to legally rely on the U. N. security system at easy. Invoking the right of collective self-defense, the nations today want to safeguard their security apart from the provision about the regional collective defense as laid down in article 53, because by so interpreting the context of the Charter, any regional

arrangement can contribute to joint exercise of the right of collective self-defense, quite independently from the legal limit conditioned by the authorisation of the Security Council, and there lies the most positive reason that such joint (collective) exercise of right of self-defense must be considered in essence as a sort of individual exercise of the right of legitime defense.

This way of viewing the exercise of right of defense in international collective form would be justified by the rather identical provisions which appear in main collective defense treaties such as North Atlantic Treaty (article 5 ) or Southeast Asia Treaty (article 4) .

In addition, those articles set forth the member states' duty to make immediate report about the measure taken to the Security Council. If the exercise of the right of regional collective defense consists in the enforcement measure which the Charter defines, probably the duty of reporting about measures taken against any imminent attack would be superfluous, since the action which any U. N. member must take in the fulfilment of such a duty has little in common with the action it takes as a member of regional arrangement.

Although the legal arrangement to consult among the participant states to any regional arrangement about measure for self-defense in order to let it consort to the provision of article 51 is very constructive, yet the concept of self-defense which is nominally identical in so far as it is termed "collective", should be differentiated into two concepts, namely the collective self-defense on the one hand, which is equivalent to the U. N.

enforcement measure genuinely under direction of the Security Council and the joint and consorted exercise of individual self-defense rights of respective nations on regional basis, on the other.

Otherwise, legal ground for the right of collective self-defense which is established independently on the basis of regional security would hardly be supported in the context of the provision of article 51.

#### 4. The Central Provisions of Southeast Asia Collective Defense Treaty and its Comparison with Article 5 of North Atlantic Treaty.

With regard to the legal stand of SEATO which covertly means to resist collectively against any potential aggressor while leaving some room for the governmental consultation which would be required as to measures to be taken in the light of constitutional procedures of respective participant nations. The defensive position of SEATO seems not as much efficiently guaranteed as in the case of NATO, at least inasmuch as defensive military measures are concerned in comparison with NATO.

Temporally putting aside the analysis of ways and means and of special feature as to the designation of the area to be defended—"treaty area"—to which reference later should be made, firstly attention should be drawn to the central provision of Southeast Asia Collective Defense Treaty, that is, the article 4.

Therefore, the said provision and article 5 of North Atlantic Treaty deserve the textual comparison with one another.

Southeast Asia Collective Defense Treaty provides in article 4 as

follows;

(1) Each party recognises that aggression by means of armed attack in the treaty area against any of the parties or against any State or territory which the parties by unanimous agreement may hereafter designate, would endanger its own peace and safety, and agrees that it will in that event act to meet the common danger in accordance with its constitutional processes. Measures taken under this paragraph shall be immediately reported to the Security Council of the United Nations.

(2) If , in the opinion of any of the parties, the inviolability or the integrity of the territory of the sovereignty or political independence of any party in the treaty area or of any other State or territory to which the provisions of paragraph I of this article from time to time apply is threatened in any way other than by armed attack or is affected or threatened by any fact or situation which might endanger the peace of the area, the parties shall consult immediately in order to agree on the measures which should be taken for the common defense.

(3) It is understood that no action on the territory of any State designated by unanimous agreement under paragraph I of this Article or on any territory so designated shall be taken except at the invitation or with the consent of the Government concerned.

In comparison with article 4 of Southeast Asia Treaty, the main purpose of North Atlantic Treaty is laid down in article 5 as follows;

The parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them

all; and consequently they agree that , if such an armed attack occurs, each of them, in exercise of the right of individual or collective self-defense recognised by Article 51 of the Charter of the United Nations, will assist the party or parties so attacked by taking forthwith, individually and in concert with the other parties, such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area.

Any such armed attack and all measures taken as a result thereto shall immediately be reported to the Security Council. Such measures shall be terminated when the Security Council has taken the measures necessary to restore and maintain international peace and security.

- (1) Bowett, "Collective self-defence under the Charter of the United Nations" p.131, *The British Year Book of International Law*, 1955-6.
- (2) Prof. Takano, "Regional Security and Collective Self-Defense" p.224, *Kokusairengo-no-junen*, 1957, Edited by Japanese International Law Association.

— to be continued —