

A Chinese Perspective on Enhanced Collective Security

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By analysing China's statements in meetings of the United Nations Security Council, this brief examines China's application of the system of collective security under the United Nations ('UN') Charter, including unsatisfactory aspects that show the need for improvement. For this purpose, the controversial cases of Kosovo, Libya and Syria will be considered. It is in relation to the complex issues in such situations that a constructive contribution by China – as a permanent member of the Security Council and a "responsible major country"¹ – seems particularly important. The brief argues that, in order to contribute fully to the system of collective security, China has and should endeavour to actively avoid counterproductive actions and vigorously exploit the full potential of pacific settlement of disputes under Chapter VI of the Charter.

1. UN Security Council Authorization of the Use of Force

If Chapter VII of the United Nations Charter was properly observed by Member States, they would enter into a special agreement with the Security Council under Article 43 on their contributions to the Council's maintenance of international peace and security, including on "the numbers and types of forces, their degree of readiness and general location, and the nature of the facilities and assistance to be provided" to the Council.² Member States are obliged under Article 45 to hold immediately available contingents in "order to enable the United Nations to take urgent military measures". Article 47 speaks of the "Security Council's military requirements" and the "employment and command of forces placed at its disposal".³

Regrettably, UN Member States have so far not fulfilled these provisions of the Charter. The Security Council has not been equipped to authorize and implement combined international enforcement action as intended. Instead, the Council has in practice ended up providing mere authorizations of use of force, implemented by a small group of like-minded States.

Council resolution 678 on Iraq in a case in point. Attracting much criticism, the Council is said to have "eschewed direct UN

responsibility and accountability for the military force that ultimately was deployed, favoring, instead, a delegated, essentially unilateralist determination and orchestration of world policy, coordinated and controlled almost exclusively by the United States".⁴ In the relevant Council meeting, Yemen stated: "the draft resolution before us is not related to a specific Article of Chapter VII of the Charter [...] It is a classic example of authority without accountability".⁵ Malaysia argued that "any proposed use of force must be brought before the Council for its prior approval, in accordance with the specific provisions of Chapter VII of the Charter. We regret that this point is not clearly reflected in this resolution".⁶ According to Cuba, "the text [...] moreover violates the Charter of the United Nations by authorizing some states to use military force in total disregard of the procedures established by the Charter".⁷

It is against this backdrop that the cases below – particularly Libya – should be analysed.

2. Kosovo

At its 3988th meeting of the Security Council on 23 March 1999, China called for an immediate cessation of the military attacks by NATO against the Federal Republic of Yugoslavia, as "this act amounts to a blatant violation of the United Nations Charter and of the accepted norms of international law".⁸ It argued that the "settlement of the Kosovo issue should be based on respect for the sovereignty and territorial integrity of the Federal Republic of Yugoslavia and on guaranteeing the legitimate rights and interests of all ethnic groups in the Kosovo region".⁹ Importantly, it stressed that "it is the Security Council that bears primary responsibility for the maintenance of international peace and security [...] it is only the Security Council that can determine whether a given situation threatens international peace and security and can take appropriate action".¹⁰ China expressed its opposition to

⁴ Burns H. Weston, "Security Council Resolution 678 and Persian Gulf Decision-Making: Precarious Legitimacy", in *The American Journal of International Law*, 1991, vol. 85, p. 517.

⁵ UN Doc. S/PV. 2963, p. 33.

⁶ *Ibid.*, p. 76.

⁷ *Ibid.*, p. 58.

⁸ UN Security Council, Fifty-fourth Year, 3988th Meeting, 24 March 1999, UN Doc. S/PV. 3988, p. 12.

⁹ *Ibid.*

¹⁰ *Ibid.*

¹ See Prime Minister LI Keqiang's report on the work of the government on 5 March 2017 (on file with the author): "As a responsible major country, China has been playing a constructive role in international and regional issues and has made significant contributions to world peace and development".

² See UN Charter, Article 43(2) (<http://www.legal-tools.org/doc/6b3cd5/>).

³ *Ibid.*, Article 47(2).

“power politics whereby the strong bully the weak”.¹¹

In other words, in response to the Kosovan situation, China strived, firstly, to defend the exclusive authority of the Security Council in determining whether a situation threatens international peace and security; and secondly, to take appropriate action by calling for an immediate cessation of illegal use of armed force in violation of accepted norms of international law (such as sovereignty and territorial integrity) in meetings of the Security Council. Both can be seen as contributions by China towards the system of collective security. When the exclusive authority of the Security Council to determine whether a given situation threatens international peace and security and take appropriate action cannot be effectively maintained, the genuinely collective nature of the security system is inevitably in doubt.

The authority of the Security Council hinges upon respect for accepted norms of international law, including sovereign equality and territorial integrity. An Ambassador of Algeria once observed:

[W]e do not deny that the United Nations has the right and duty to help suffering humanity. But we remain extremely sensitive to any undermining of our sovereignty, not only because sovereignty is our last defense against the rules of an unequal world, but because we are not taking part in the decision making process of the Security Council [...].¹²

In order to boost the trust of States not taking part in the decision-making process in the Security Council, and to dispel their likely fears of power politics, China as a permanent member of the Council needs to firmly insist in its meetings on the respect for accepted norms of international law, as it did in the Kosovan case. This insistence should also include an effort in the Council to cease military attacks in disregard of classic principles of international law.

The concern for human rights is not a reason to undermine or override this exclusive authority provided in the UN Charter, for instance under the auspices of the responsibility to protect. As indicated in the report of the Secretary-General, “the responsibility to protect does not alter, indeed it reinforces, the legal obligations of Member States to refrain from the use of force except in conformity with the Charter”.¹³ In fact, as shown in its Kosovan response, China as a permanent member of the Security Council as well as a responsible major country can also call on members of the Council to promote human rights protection in ways that do not include the use of force. Undeniably, an *effective* response to gross violations of human rights should be regarded as an inherent requirement of the system of collective security. Nevertheless, it does not mean that the use of force, collective or not, is necessarily or likely to be effective. As already pointed out by the International Court of Justice in the Nicaragua case:

[W]hile the United States might form its own appraisal of the situation as to respect for human rights in Nicaragua, the use of force could not be the appropriate method to monitor or ensure such respect. With regard to the steps actually taken, the protection of human rights, a strictly humanitarian objective, cannot be compatible with the mining of ports, the destruction of oil installations, or again with the training, arming and equipping

of the contras.¹⁴

China should endeavour to establish consensus within the Security Council that the use of force as a means can be incompatible with the end of human rights protection or, to be more exact, the impartial protection of human rights. The Independent Commission Report on Kosovo, which argued that the NATO military intervention was illegal but legitimate,¹⁵ admitted that “the legitimacy of such use of force will always be controversial, and will remain so, so long as we intervene to protect some people’s lives but not others”.¹⁶ Similarly, even when the use of force had been approved by the Security Council, its legitimacy would still be challenged for the reason that it has protected some people’s lives but not others. Worse still, the very system of collective security might also be questioned due to the biased protection of human rights. In order to avoid such issues, the Security Council should recognize that the use of force as a means *can* be incompatible with the goal of impartial protection of human rights. China’s contribution in this regard will be significant.

3. Libya

At the 6498th meeting of the Security Council on 17 March 2011, China abstained from the voting on resolution 1973 (2011) on the authorization of use of force in Libya. Whereas China supported the Security Council’s adoption of appropriate and necessary action to stabilize the situation in Libya as soon as possible and to halt acts of violence against civilians, it argued against the use of force in international relations, and believed the above-mentioned aims should be achieved by peaceful means.¹⁷

The Libyan case and China’s response thereto demonstrates, once again, that military means may not be compatible with humanitarian purposes. The frustration of humanitarian purposes is undeniable: the former US president Barack Obama in an interview expressed that the worst mistake of his presidency was “failing to plan for the day after what I think was the right thing to do in intervening in Libya”.¹⁸ It is prudent to caution that “a right to use force on humanitarian grounds can only exist if, in that particular context, there is a military option that can improve the humanitarian situation. Where there is no such option, there is no right”.¹⁹ That is to say, an aggravated humanitarian situation alone cannot justify a right to use force; this right is justifiable only when the humanitarian crisis will be alleviated by the use of force. In this sense, those arguing for military intervention are obliged to show proof that the humanitarian situation can be improved by the use of force, in order to convince others arguing against a humanitarian intervention. Unfortunately, proponents of the use of force in the Libya case failed to prove it in a satisfactory manner: necessary details regarding the use of force, such as how the no-fly zone would be enforced, what the rules of engagement would be, what limits on the use of force there would be, and who would participate and with what assets, were

¹⁴ ICJ, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgement, 27 June 1986, p. 134, para. 268 (<http://www.legal-tools.org/doc/046698/>).

¹⁵ The Independent International Commission on Kosovo, *The Kosovo Report*, Oxford University Press, 2000, p. 4.

¹⁶ *Ibid.*, p. 298.

¹⁷ UN Security Council, Sixty-sixth year, 6498th meeting, 17 March 2011, S/PV.6498.

¹⁸ Allie Malloy and Catherine Treyz, “Obama admits worst mistake of his presidency”, 10 April 2016 (<http://www.legal-tools.org/doc/8a5049/>).

¹⁹ Guglielmo Verdirame, “The Law and Strategy of Humanitarian Intervention”, in *EJIL Talk!*, 30 August 2013.

¹¹ *Ibid.*

¹² Abdallah Baali, Permanent Representative of Algeria, Statement to the Informal Thematic Consultations of the General Assembly, to Discuss the Four Clusters Contained in the Secretary-General’s Report *In Larger Freedom, Cluster III: Freedom to Live in Dignity*, 19 April 2005.

¹³ Implementing the responsibility to protect, Report of the Secretary-General, A/63/677.

not clarified. There was no serious consideration of what should be done if the military means failed to achieve the intended aim.

In view of the foregoing, China could indeed have contributed to making the system of collective security more effective in this case, when it required States eager to use force to prove with necessary details that the humanitarian situation could really be improved by the use of force. China should have questioned how these States intended to assume the responsibility if the military means failed to achieve the intended aim and gave rise to additional problems. That is to say, when confronted with the oversimplified authorization of use of force, it was insufficient for China to state that she had serious difficulty with this authorization²⁰ but nevertheless allow this problematic authorization to be put into practice. As a permanent member of the Security Council and a responsible major country, China is supposed to be more cautious to increase the reasonableness and soundness of a decision made within the system of collective security, thus rendering this system more trustworthy. After all, the intervention in Libya will not only be considered as a mistake of the intervening States, but also a wrong decision made by the Security Council as a whole. It will not contribute to an impression that the system of collective security works effectively. It is therefore meaningful for a responsible permanent member of the Security Council to do something to prevent the Council from making oversimplified and questionable decisions on the use of force.

As explained above in section 1, the Security Council's authorization of the use of force originating from resolution 678 has been criticized by States. It would help to make the authorization more concrete, rendering the use of force more clearly regulated, such as including necessary details on the use of force and further clarifying the nexus between military means and the intended humanitarian purposes. When the authorization for the use of force becomes more concrete, it will not only help to convince others to accept it, but also help to judge whether the implementation has gone beyond the authorization which is part of the critique in the Libya case.²¹ That authorization was so general that the exact scope was open to discussion. When the authorization becomes more concrete, it would be easier to confirm the exact scope and possible transgression. Unfortunately, China failed to make the Libya authorization more concrete in the Libya case.

The World Bank has established an Inspection Panel enabling groups of individuals to complain about failure on the part of the Bank to follow its own policies and procedures in projects.²² If a similar Inspection Panel could be established to enable groups of individuals to complain about suffering caused by the use of force authorized by the Security Council, it could help to improve the implementation as concrete problems become rather explicit in this circumstance. As a matter of fact, Chapter VII does not ignore the likely problems caused by the implementation of decisions made by the Security Council. Article 50 provides that "if preventive or enforcement measures against any state are taken by the Security Council, any other state, whether a Member of the United Nations or not, which finds itself confronted with special economic problems arising from the carrying out of those measures shall have the right to consult the Security Council with regard to a solution of those problems". In this

spirit, human rights violations arising from the implementation of the authorization for the use of force should be handled with no less care. In order to relieve harm caused by States eager to use force, China could make the establishment of such an Inspection Panel a precondition to the non-objection to authorization of use of force.

4. Syria

The Syrian case is somewhat different. Unlike the cases of Kosovo and Libya, it did not concern the use of force but non-military sanctions. Nevertheless, it would be erroneous to overlook the nexus between non-military sanctions and the use of force: according to Article 42, when non-military sanctions provided in Article 41 have proved inadequate, the Security Council can resort to the use of force to maintain or restore international peace and security.

What if those non-military sanctions *contribute* to the undermining of international peace and security, thus paving the way to the use of force? This is what China had in mind when it repeatedly vetoed Security Council draft resolutions that focused on imposing sanctions against the Syrian authorities. At the 6627th meeting of the Security Council on 4 October 2011, China voted against draft resolution S/2011/612, arguing that sanctions would do a disservice to the easing of tension in Syria:

Whether the Security Council takes further action on the question of Syria should depend upon whether it would facilitate the easing of tension in Syria, help to defuse differences through political dialogue and contribute to the maintenance of peace and stability in the Middle East [...] China believes that, under the current circumstances, sanctions or the threat thereof does not help to resolve the question of Syria and, instead, may further complicate the situation. Regrettably and disappointingly, this major and legitimate concern did not receive due attention from the sponsors. As it now stands, the draft resolution focuses solely on exerting pressure on Syria, even threatening to impose sanctions. It does not help to facilitate the easing of the situation in Syria.²³

How should this position be understood? China believed that constructive participation of the international community in the Syria crisis was associated with the contribution to the maintenance of peace and stability in the Middle East. To this end, it was of utmost importance to facilitate the easing of tension in Syria. Nevertheless, sanctions imposed on Syria could further complicate the situation. China therefore deemed sanctions destructive and took the stance that the Security Council should avoid participating destructively in the Syria issue. Unlike those attributing the tension in Syria solely to the Syrian authorities, China realized that the tension was created by both the government and the rebels. Pressuring one side might encourage the other side. Under such circumstances, the tension could actually escalate.

It is argued that this judgment was reasonable, given the lesson learned from the Kosovo crisis: "NATO did not take feasible measures to restrain the KLA as it stepped up the pressure on Belgrade at the end of 1998. This failure is the key reason why the October cease-fire broke down in January, a crucial turning point on the path to war two months later".²⁴ If the Security Council

²⁰ UN Security Council, Sixty-sixth year, 6498th meeting, 17 March 2011, S/PV.6498.

²¹ *Ibid.*, p. 11.

²² Jan Klabbers, *An Introduction to International Institutional Law*, 2nd edition, Cambridge University Press, 2009, p. 292.

²³ UN Security Council, Sixty-sixth year, 6627th meeting, 4 October 2011, S/PV.6627.

²⁴ Timothy W. Crawford, "Pivotal Deterrence and the Kosovo War: Why the Holbrooke Agreement Failed", in *Political Science Quarterly*, Winter 2001-2002, vol. 116, issue no. 4, p. 501.

failed to take feasible measures to restrain the rebels while stepping up the pressure on the Syrian authorities, the tension could escalate, thus paving the way for the use of force provided for in Article 42 of the UN Charter. To avoid this, it was rather meaningful to object to a draft resolution focusing solely on exerting pressure on the Syrian government.

It is noteworthy that the responsibility of the rebels, who have also created threats to peace and security, was somehow overlooked by those supporting pressuring the Syrian government. China, however, called on “the various parties in Syria to exercise restraint and to avoid more bloodshed and all forms of violence”.²⁵ There is no reason to ignore the responsibility of the rebels: this is not only out of the need to ease tension, but also to protect human rights. The rebels have committed war crimes, including murder, executions without due process, torture, hostage-taking and pillage, and they continue to endanger the civilian population by positioning military objectives in civilian areas.²⁶ Human rights violations should not be condoned, no matter they are committed by the government or the rebels. Only pressuring one side without restraining the other was problematic as it could create a more favourable environment for the rebels. Making them more reckless would not bode well for defenceless civilians. In other words, the international community should not forget the responsibility to protect civilians under rebel threat. From this perspective, it is clear that the easing of tension is closely connected with the responsibility to protect human rights: any action against the former cannot really contribute to the latter. Although the proposed sanctions against the Syrian government are available under Chapter VII, it has been ill-advised to apply them in disregard of likely detrimental effects on human rights.

Moreover, just like in the Libya case, those arguing for imposing sanctions against the Syrian government did not prove that sanctions would be helpful for realizing human rights claims. In reality the real outcome of sanctions was rather unpredictable: if sanctions were too light, the intended aim of deterring the Syrian government could not be achieved; if they were too heavy, unintended consequence would be inevitable, including collateral damage to the civilian population and escalation of tension. Neither outcome would create the impression that the system of collective security is effective. Worse still, if non-military sanctions failed, they could have become a good reason to use force, as discussed above. Once again, the trust in the system of collective security could be harmed. In order to avoid this downward spiral, it was a reasonable decision to reject sanctions in the first place. It is therefore argued that, between the two draft resolutions before the Security Council, it was well-advised to support the one advocating “respect for the sovereignty of Syria and re-

solving the crisis there through political dialogue”.²⁷

5. Conclusion

The discussion above shows that implementation of UN Security Council resolutions under Chapter VII of the Charter by a small number of like-minded States might actually lead to escalation of tension. It can outright harm the reputation of the system of collective security. Resisting such unilateral implementation through UN Security Council authorization may contribute to strengthening the system of collective security. After all, the effectiveness of the system is largely dependent on the outcome of the action, that is, whether the tension threatening peace and security is eased by the UN-authorized action. If the action makes the situation worse, support for the system will weaken. China should therefore contribute to avoiding counterproductive action pursuant to UN Security Council authorization.

Meanwhile, it is also necessary for China to rectify a popular but incorrect conception: avoiding counterproductive UN authorization does not mean doing nothing to relieve humanitarian crisis. In general, the avoidance of counterproductive UN authorization is combined with the active pursuit of peaceful settlement such as political dialogue in accordance with Chapter VI of the UN Charter. In other words, in order to avoid an abuse of Chapter VII and damage to the reputation of the system of collective security, one should make better use of Chapter VI. China should actively pursue the full potential of pacific settlement of disputes. And, perhaps more importantly, China should help the international community revisit the full potential of Chapter VII for effective, united authorization and implementation of combined international enforcement action when that is the only way to restore and maintain international peace and security. The time may now have come for such an initiative.

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²⁵ UN Security Council, Sixty-sixth year, 6627th meeting, 4 October 2011, S/PV.6627.

²⁶ Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, Summary, A/HRC/23/58.

²⁷ *Ibid.*