

Consent and Caution: Re-Examination of Indivisible Security in Public Law

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How to cite this paper: Wang, P., Nodir, B., & Aitlaadam, J. (2023). Consent and Caution: Re-Examination of Indivisible Security in Public Law. *Beijing Law Review*, 14, 1725-1734.

<https://doi.org/10.4236/blr.2023.144095>

Received: September 21, 2023

Accepted: November 17, 2023

Published: November 20, 2023

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Abstract

This article endorses the idea of indivisible security as the principle in international law. To that end, first it reviews the legacy of the balance of power and collective security in Europe as they have been taken as the institutions in public law for embracing common interests and the concert of Europe in a self-help system. Then it argues that since the term of indivisible security was written into the multi-formal treaties since 1975, the signatory states should abide by it as one of the recognized rules of law for ensuring a common and agreed security space in Europe. Given the self-help nature of inter-state system, there exist the obstacles to implement indivisible security as the rule of law. Nonetheless, the international society appeals to rebuilding jointly a balanced and effective security architecture to warrant the legitimate and reasonable security concerns of all countries.

Keywords

Indivisible Security, Balance of Power, Collective Security, Law, International Society

1. Introduction

Over the past years, China has formally endorsed the concept of “indivisible security” as a principle applied to the international community. (Xinhua, 2022) Since sovereign states act with each other in terms of *realpolitik* more than international law and norms, China has proposed rebuilding a balanced, effective and sustainable security architecture to assure the legitimate and reasonable security concerns of all countries in the globalized world. According to the Global

Security Initiative (GSI) issued in February 2023, China urged that “the purposes and principles of the UN Charter must be observed while the legitimate security concerns of all parties should be seriously addressed.” (Speech by H.E. Qin Gang, 2023; Wang, 2023) It is plain that general security should be the prerequisite for global development due to the uneven growth and unfair status between the Global North and Global South.

Logically, the idea of indivisible security can be traced to modern European state system for centuries. It was held that a system of independent states could maintain the liberty of each without undermining the ideal of an international society due to the key principles of the balance of power and collective security, which aimed to serve general common interests of states by the means of multi-lateral diplomacy. Yet, today since the United States is obsessed with unilateral world order based on its primacy, it has played down the significance of indivisible security in international relations. After the full-scale conflict broke out in Ukraine, it has led to the seminal impacts on the global geopolitical scenario, energy crisis and food shortage. To hold Russia accountable for the ongoing war in Ukraine, the U.S. has made efforts to dismiss the indivisibility of security as Russia’s idea which aims to undermine the rules-based world order. Meanwhile, Washington and its allies have aggressively pushed for the prior unilateralism in the world.

In fact, the Helsinki Accord, also known as Conference on Security and Cooperation in Europe Final Act in 1975, was concluded by 33 countries of Europe joined by the United States and Canada “to recognize the indivisibility of security in Europe as well as their common interest in the development of cooperation throughout Europe and among selves and expressing their intention to pursue efforts accordingly.” (The Helsinki Accord, 1975) Given the Cold War scenario of the day, the Helsinki Accord was hailed as the vehicle for East-West dialogue and it gradually undermined Soviet control in Central and East Europe. (Dinan, 2004) Then, the 1990s witnessed three more substantial treaties—the Charter of Paris for a New Europe (1990), the Founding Act between NATO and Russia (Founding Act, 1997) and The Charter for European Security (1999)—were signed between the expanding European Union (NATO as well) and shrinking Russia in the post-Soviet era. The legal documents reiterated the concept of indivisible security in line with the Helsinki Accord that “Security is indivisible and the security of every participating State is inseparably linked to that of all the other in Europe.” (The Charter of Paris, 1990)

2. Rationales behind International System and International Law

In international system where sovereign states recognize no supranational authority above their own governments, how would the rules of international treaties be recognized and then observed by the countries involved? To answer this question, the article opines that although the role of international law in interna-

tional relations should not be exaggerated, it is a set of well-defined rights and rules that govern or at least influence the interplays among states. Since international law rests upon the consent of states, “if one state violates international obligation, it is responsible for the wrongful act towards the injured state, or under certain circumstances, to the whole international community.” (Malanczuk, 1997: p. 3) It posits that although states usually act with each other in terms of *realpolitik* more than the rules of law, it is fair to say that the function of law in structuring the international system has been enhanced for the reason of the self-help states seeking to regulate their intercourse in the rational ways and also due to the growing global interdependence. Thus, international law is not only a profession of legal studies but also an approach to international relations. It is thus necessary to explore what exactly is their understanding of international system and the relation of international law to it.

This article first examines the European legacies in international law in general terms, and then uses theoretical approach to dissect the principle of indivisible security which has gone beyond the politico-legal matter. Due to this, the concept of indivisible security likely leads to a disillusionment with the previously liberal acceptance of the doctrine of sovereignty that has seen indivisible security only as one moral and legal obligation to an attack from other entities in international system. There is no question that international law, as consensual commitment, can be part of ongoing inter-states system only if the relations among states selves are effectively preserved. (Carty, 1986)

What follows is to justify indivisible security as the principle to enhance the common interest and minimize security concerns of all countries in the international community. Yet, it is a tough work perceived by geopolitical scholars as they are suspicious of the role of international agreements in resolving the security crisis then. For example, John Mearsheimer argues that if NATO has kept its promise made previously that security of indivisibility must be observed as it was well written into the treaties, the war in Ukraine might have been avoided for the reasons of collective security. (Mearsheimer, 2023) Thus, an inquiry into the legitimacy of indivisible security is necessary because it allows us to recognize the dimensions of the efforts to advance the role of international law in rebuilding a peaceful and prosperous world.

3. From Balance of Power and Collective Security to Indivisible Security

Wilhelm Grewe, who was a senior diplomat and noted public jurist, opined that “modern international law, and its evolution in the following centuries, depend upon the structure of the modern States system in Europe and the changing political groupings which have developed within that system”. (Grewe, 2000) In Europe, states are bound together by the respective interest and common security concerns into a single society. Whenever they take big decision beyond their own realm, have to take account of each other’ interests and include them in its own calculations. As the 18th century jurist Vattel once put it, historically, mem-

bers of Europe—each independent, but all bound together by a common interest—unite for the maintenance of order and preservation of liberty. This is what has given rise to the well-known principle of the balance of power, by which “No state should be in a position to have absolute mastery and dominate over the others.” (Berridge, 2008)

For centuries, the balance of power has been one of the most used and also controversial concepts in international relations and international law as well. Some scholars argue that in the world of multiple sovereignties, the balance-of-power system seem to have brought stability into international system. As Oppenheim opined that “the existence of the balance of power is a condition of the flourishing of authoritative international law.” (Oppenheim, 1905: pp. 519-524) Historically, the balance of power has acted to restore a pattern of relations among states which through shifting alliances and the use of deft diplomacy tends to limit the ambitions of the main actors, to preserve an equilibrium among them, and to assure relative security of each member of the system. It is true that what international law reflects are the main issues of international relations generally and the rules of law express the policies of the major powers particularly.

The paradox remains that while the existence of the balance of power is an essential condition of the operation of international law, the steps necessary to maintain the balance often involve using force or open violation of the injunctions of international law. Given this, the most basic of the rules of international law—those dealing with sovereignty, non-intervention, security, diplomatic immunity, and the like—depend for their efficiency on the principle of “*reciprocity*”, where states are assumed to have mutual and lasting interests in the observance of rules and norms of international law. Simply put, European states system defines that all entities have the rights mutually and responsibility to favor one other although they are obligated to adhere to only those laws to which they gave their consent in the structure of the world.

Like the balance of power, collective security is additional most far-reaching attempt to overcome the deficiencies of a highly decentralized system of law enforcement. First, a logical development from the balance of power theory is that in a horizontal order of independent units, collective security was and is backed up by the international consensus though it falls far short of the ideal, such as in the cases of Article 16 of Covenant of the League of Nations and Chapter VII of the Charter of the United Nations. (Morgenthau, 1985) Second, although international law is usually seen as “positive international morality”, it affects the rational decisions made by statesmen holding the moral obligation to legitimate common interests and cooperation of all states for the creed of collective security.

According to *realpolitik*, either balance of power or collective security represents a systemic security outlook since it requires states to take action against the common menaces, even when their own interests or territories are not directly or immediately attacked. Yet, they are assumed in a rational way

only if the following three requirements are met: 1) security-i.e., dealing with the problem of conflict by assuring the survival and safety of all the members concerned; 2) satisfaction-i.e., dealing with the case of disputes through obtaining mutual constraint or general consent; 3) flexibility-i.e., dealing with the issue of uncertainty or change (which is crucial since assent is never definitive or total), by establishing reliable procedures capable of absorbing shocks and of channeling grievances. (Hoffmann, 1961)

Yet, one more vexing and frequent concern is that “whether the aggrandizement of a neighboring state, in consequence of which a nation fears that it will one day be oppressed, is a sufficient ground for making war upon it.” (Berridge, 2008) It was first raised by Vattel in 1758 and then by many other scholars of international relations and public law. Although it has presented no difficulties to the majority of statesmen, it is truly more perplexing for those who seek at all times to unite justice with prudence. On the one hand, state holds that as long as it increases its power by all efforts of a benign government, it would wrong no one simply because it acts on its right. On the other hand, however, history tells us too well that predominant states rarely fail to trespass the legitimate interests and security concerns of their neighbors and beyond, when they have an opportunity of doing so with impunity. (Berridge, 2008) This query incurs the central question whether the rules of international law are observed to a sufficient degree by the member states of international system?

First, it is fair to say that in theory since treaties are the main source of international law, if they are signed by the states, treaties are of binding force to make it observed. States usually obey international law due to three reasons or concerns: first obedience is seen necessary or obligatory; second, obedience may result from coercion, or the threat of force, by some superior power bent on enforcing the agreement or consensus; third, obedience may come from the interest a state perceives in reciprocal action by other states. (Bull, 2007) Yet, the obedience of international law does not fully rest on the willingness of states to abide by its principles to detriment of their interests, but in reverse they only judge their rights and obligations to conform to it. As a result, diplomacy and law are indispensable to the states of Europe and beyond because of the inability of any one of them to obtain what it wants by force in a long run.

4. The Principle of Indivisible Security and the Challenges It Faces

Since Europe is home to modern international system and international law, the legacies of diplomacy, law and international society can be detected in Europe even during the Cold War which was resulted from the two hostile camps in Europe in terms of geopolitics and ideology. But the states of Europe, either the West or the East, were equally motivated by the political will to contribute to peace, security and cooperation from time to time. By 1975, Conference on Security and Cooperation in Europe was participated by 33 states, followed by the conclusion of The Helsinki Final Act reaffirming their objective of promoting

better relations among peoples and ensuring conditions for lasting peace. It was the first time that European countries recognized “the indivisibility of security among their interplays and common interest in the development of cooperation throughout Europe and among selves and expressing their intention to pursue efforts accordingly; and also to recognize the close link between peace and security in Europe and in the world as a whole.” (*The Helsinki, 1975*)

Yet, during the years from 1989 to 1991, Europe witnessed the historic sea-changes, in which the former Soviet Union came to the end. In the aftermath of its loss of the reign over its allies in Europe, a collection of mostly medium-sized and minor independent states were reborn in Eastern Europe and Central Asia. Meanwhile, American President George Bush spoke of a “new world order” in which U.S. pretentiously acted the solo superpower dictating “a new world order based on a rules-based and moral community.” (*Kissinger, 2014*) Later, three more treaties were signed respectively involving the terms of indivisible security and the legitimacy of the rights and obligations of all states in Europe.

First, in November 1990, the leaders of the States participating the Helsinki Conference in 1975 assembled in Paris again. In the context of the reunification of Germany and dissolution of the Soviet Union, Europe hailed liberating itself from the legacy of the past. It was a time for fulfilling the hopes and expectations of the participating states of the Conference on Security and Co-operation in Europe in 1975, now they reiterated the principles of the Helsinki Final Act and vowed to carry on the Ten Principles of the Final Act towards the bright future for a new Europe would arise as great civilian power in accordance with their aspirations. The Charter of Paris for a New Europe echoed the line that “Security is indivisible and the security of every participating State is inseparably linked to that of all the others.” (*The Charter of Paris, 1990*)

Second, in 1997, the treaty on a new Europe-rebuilding was concluded after NATO, the largest military alliance in the world, and Russia held a series of the talks at the high-level to discuss the possibility of working together for a lasting and inclusive peace in the Euro-Atlantic area. As the Founding Act specified that “Proceeding from the principle that the security of all states in the Euro-Atlantic community is indivisible, NATO and Russia would work together to contribute to the establishment in Europe of common and comprehensive security based on the allegiance to shared values, commitments and norms of behavior in the interests of all states.” (*Founding Act, 1997*) It is noteworthy that the contracting parties championed the concepts such as “common and comprehensive security”, “shared commitment and norms of behavior, common interest related to security and stability in the Euro-Atlantic area” in the treaty.

Third, in 1999, the member states of the Organization of Security and Cooperation in Europe signed The Charter for European Security that reaffirmed the joint commitment to the “formation of a common and indivisible security space.” It adhered to the Charter of the United Nations, and to the Helsinki Final Act, the Charter of Paris and all other OSCE documents to which they had con-

sented. It is significant that the Charter appealed to OSCE's cooperative and inclusive approach to common and indivisible security, and defined the term of indivisible security more formally than other documents, such as "to make further efforts in order to jointly address common security concerns of participating States and to pursue the OSCE's concept of comprehensive and indivisible security; and to jointly address common security concerns of participating States and to pursue the OSCE's concept of comprehensive and indivisible security so far as the politico-military dimension is concerned." (*The Charter, 1999*) It is plain that The Charter 1999 tried to use collectively agreed term of indivisible security to establish true legally binding obligations.

It must be said that the consensus on indivisible security in Europe was formally written into four treaties. Though using the various terms like charter or act, they should be defined as the law-making treaties with the bonding-force in terms of the specifications of legal documents. First, they were signed by the numerous heads of the signatory states or the high representatives of respective government. That is sufficient to justify the legitimacy of the treaties. Second, the texts of the treaties belong to the law-making treaties as they imposed the obligations on all the parties to the treaties and seek to regulate the parties' behavior over a long period of time. (*Malanczuk, 1997: pp. 37-38*) Considering the rules of law for laying down the rights and duties of states in relations to each other, they have built an imposing edifice, e.g. consisting of thousands of treaties, hundreds of decisions of international tribunals, and innumerable resolutions which have been in most instances scrupulously observed.

It needs to say that during the 1970s and the 1990s, Europe and NATO signed the treaties first with the former Soviet Union and then Russia with a view to admitting the term of indivisible security as a general principle to guard mutual relations. Then both parties met what was defined as the three requirements: it must be made to assure common interests and security concerns; it should seek to resolve the vexing issues in line with mutual respect and reciprocity; and it appeals to talking to each other with the long-term cooperation through the geopolitics of empathy. (*Walt, 2021*) Yet, to conclude treaties is not tantamount to recognition that law is as effective as in regulating and restraining the struggle for power on the world stage. The decentralized nature of international law often leads to the inevitable result of the fragile assurance. In the case of indivisible security, the Western leaders' assurances turned out to be lip-service, and they violated the highest level official OSCE commitments "not to strengthen their own security at the expense of the security of others and to prevent the politico-military domination of any country, group or organization in Europe." (*Lavrov, 2023*)

Recently, Mearsheimer who is well-noted scholar of international geopolitics asserted that during the years that followed the breakup of the Soviet Union, the West has used all means to minimize Russia's power and prestige. Some policy-making elite in the West are anxious to knock Russia out of the ranks of the great powers, if not trigger Russia to break apart like the former Soviet Union

did in 1991. (Mearsheimer, 2023) To that end, the U.S.-run NATO has made no secret of its goal of inflicting “strategic defeat” on Russia. As a part of the hybrid war against Russia since last February, the U.S. and its global allies have dismissed the legitimacy of indivisible security even though it was well-written into the treaties between NATO/EU and Russia, and has been admitted by many countries of the Global South.

Here is still too rash to argue that the United States has flagrantly violated the treaties involved. From Oppenheim to Morgenthau, they have provided various and relevant theories for the question of the legally binding force in treaties. First, it is the subjects of international law themselves that are the supreme authority to interpret and apply the provisions of international law in light of their particular and divergent conceptions of the national interests. Accordingly, states, whether major or minor ones, will easily marshal the provisions in treaties to the support of their foreign policies as well as the geopolitical strategies. (Oppenheim, 1905: p. 73) Second, for the reasons of formality and necessity, international legal papers, from the UN Charter to the Charter for a New Europe or the Charter for European Security, are vague and ambiguous in their discourses. In a technical term, it is sensible to find a common basis on which all those different national interests can meet in harmony. Due to this, rules of law written in general treaties must often be vague and ambiguous, so that “allowing all the signatories to read the recognition of their own national interests into the legal text agreed upon.” (Morgenthau, 1985) But the real reason behind is that when the Helsinki Final Act was signed in 1975, it lacked legally binding qualities as defined new rules of international law.

Another controversy is that The Charter for European Security in fact reads that “Each participating State has an equal right to security; ... Each and every participating State is free to choose or change its security arrangements, including treaties of alliance, as they evolve. Each participating State will respect the rights of all others in these regards. They will not strengthen their security at the expense of the security of other States.” (The Charter, 1999) Yet, NATO and Russia have clear opposite interpretations of this clause as each side tries to maximize its interests and security space. Because of this, the U.S. and its allies have not only accused Russia of launching military operation against Ukraine which is a recognized sovereign state, but also taken the clauses to rebuke Russia’s claim, e.g. “an essential complement to the duty of States to refrain from the threat or use of force is the peaceful settlement of disputes, ... for the maintenance and consolidation of international peace and security, ... and in conformity with international law, appropriate mechanisms for the peaceful resolution of any disputes which may arise.” (The Charter, 1999)

5. Conclusion: Consent and Caution

According to Vattel, Oppenheim and many other jurists of the globalized era, the function of international law is to organize the coexistence of the various

units (mainly sovereign states): this presupposes that their existence is assured. After the previous discourses of the balance of power and collective security, it is plain that indivisible security as the principle first existed in European states-system and then expanded into the globalized world community amid a new Cold War in which both Russia and China are formally seen as the geopolitical rivals.

Given this, in international relations where sovereign states interact in terms of *realpolitik* more than the norms and rules of law, the principle of indivisible security is challenged by the clash between the states' drive to increase its power, security and profits as much as possible by all means in hands, and the dependence on others for those very purposes. If we read the principal source of law—treaties, we will easily see that such agreements suffer from three deficiencies as follows: first is the ambiguity of interpretation of the provisions in treaties; second is the fragility of the binding force of international law; and third is the classical doctrine of sovereignty that state is subject to no other state while having full and exclusive rights within its jurisdiction without prejudice to the limits set by applicable law. The scenario has changed evidently in one way or another, but will continue into the future.

More serious is that the United States is the typical superpower which has inherently ignored the interests and security concerns of other states of the international community. As the dominant power of the world today and also due to its perfidious acts in foreign affairs, the United States has willfully interpreted the term of indivisible security and trespassed the general consensus recognized by the international community. In effect, general consensus refers to “legitimacy” in foreign affairs, as it implies the acceptance of the framework of the international order by all major powers, at least to the extent that no one is dissatisfied with the workable agreement. (Kissinger, 1994) In Europe, since the 1975 Helsinki Accords codified the human rights, security concerns and relevant obligations of European states, three more treaties further defined and specified the term of indivisible security of all parties concerned. If the history of European state formation and union is seen as a guide, a genuine multilateralism and a new consciousness of collective security are urgently needed.

In 2022, China first proposed the Global Security Initiative (GSI) appealing to the concept of indivisible security in the world affairs. As security involves traditional and non-traditional concerns, China has urged that the purposes and principles of the UN Charter must be observed while the legitimate security concerns of all countries should be also addressed. Whether or not the concepts and principles of the GSI are the mainstay of China's foreign policy since the 1950s, it is seminal that the GSI proposes to all countries to uphold the principle of indivisible security and rebuilding of a balanced, effective, and sustainable security architecture. It means that any country while pursuing its own security interests, should take into account the reasonable security concerns of others.

In sum, the GSI not only represents China's consistent stance on the indivisibility of the global security, but also reflects the wisdom of ancient China's statecraft.

Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

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