
International Law and Protection of Small Caricom States[§]



Introduction

“Must the right to sovereignty and territorial integrity depend exclusively on the capacity of a state, however small, to defend itself, to assert its nationhood by superior arms? Must its survival be contingent on its capacity to repel predators?... Or is it not, indeed, a premise of independence under the Charter that the international community has obligations to help to sustain those whom it has helped to bring to freedom – and to do so not only by resolutions after the event, but by the machinery of collective security and the will to use it?” **S.S. Ramphal.**

1. The security of small States is probably one of the most intractable problems engaging the attention of the international community today in a globalised, liberalized environment, and is high on the regional agenda of the Caribbean Community whose composition is entirely of small States despite the geographical expanse of these on the South American continent, namely, Guyana, Suriname and Belize. The collapse of empires in the post-war era (post 1945), especially those of Britain and France, signalled the emergence of a plethora of small States lacking for the most part the required capabilities, both human and material, to survive on their own as viable independent economic and political entities and beleaguered in

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some cases by unfounded irredentist, juridically impermissible claims as the cases of Guyana and Belize in relation to Venezuela and Guatemala demonstrate. The strategic importance of several of these small States particularly the Caribbean, the Indian Ocean and the Pacific, enhance their attractiveness for aggressive, self-serving initiatives by powerful actors in the international community willing to employ their enhanced capabilities to make such States unwitting pawns in the international struggle for power and influence. The Caribbean Community consists for the greater part of a collectivity of small states as illustrated by their geographical expanse and population. Antigua, Barbuda and Redondo – an archipelagic state has a land area of 171 sq miles and a population of 76,500 persons as at 2002; Bahamas a land area of 5,382.59 miles and a population of 312,000 as at 2002; Barbados a land area of 166 sq. miles and a population of 270,800 as at 2002; Belize a land area of 8,867 sq. miles and a population of 265,200 as at 2002; Dominica a land area of 290 sq miles and a population of 71,079 as at 2002; Grenada a land area of 133 sq miles and a population of 102,638 as at 2002; Guyana a land area of 83000 sq miles and a population of 774,800 as at 2002; Jamaica a land area of 4,244 sq. miles and a population of 2,647,400; Haiti a land area of 10,710 sq miles and a population of 8,357,000 as at 2000; Montserrat a land area of 40 sq. miles and a population of 4,500 as at 2002; St. Kitts & Nevis , a land area of 104 sq miles and a population of 46,710 as at 2002; Saint Lucia a land area of 238 sq. files and a population of 159,133 as at 2002; St. Vincent and the Grenadines a land area of 150 sq. miles and a population of 109,164 as at 2002; Suriname a land area of 63,251 miles and a population of 441,356 a at 2002 and Trinidad and Tobago, a land area of 1,980 sq. miles and a population of 1,276,000 as at 2002. Given the foregoing, the prospect for sustainable economic and social development of the small states of the Caribbean are likely to be impaired, on the one hand, by internally –generated instability issuing from egocentric competing claims of political rivals and, on the other hand, by unwarranted external interference motivated by territorial aggrandizement as the claim of Iraq in the case of Kuwait illustrates. Guyana and Belize are the subjects of unwarranted territorial claims by Venezuela and Guatemala. In both situations small Caricom States are constrained to rely heavily for their national security on an appeal to the applicable rules of international law as a means of safeguarding their existence as sovereign states in the absence of capabilities to ensure their political independence and territorial integrity. But the problems of small Caricom States are, in the ultimate analysis, less a function of small size than that of their inadequacies in responding effectively and decisively to internal challenges

political and economic which have been aggravated by drug traffickers or external threats in the international community motivated in large measures by unwarranted territorial claims, except where those inadequacies are themselves conditioned by small size.

2. Despite the system of collective security embodied in the Charter of the United Nations as a response to the various acts of aggression perpetrated by the axis powers before and during the Second World War, the small States of Caricom are entitled to enter reservations about the plausibility of an assurance that the applicable rules of international law may be relied on, in the last resort, to guarantee their national sovereignty, territorial integrity and political independence. For, in the present submission, international law, when stripped to its barest essentials, may aspire to little more than a status of organised violence, legitimately employed by the most powerful international actors possessing the relevant capabilities, to secure compliance with norms of conduct generally agreed to be politically acceptable by the international community. And where such capabilities are inadequate at the national plane or the will to deploy them legitimately by international actors in order to sanction non-compliance is lacking, international law as a standard of conduct loses much of its coercive force and even its normative relevance. At the level of interpersonal interaction within the State, relevant norms of conduct are definitively and legitimately determined by the political sovereign, which normally is the legislature or other empowered institution, as the case may be, authoritatively interpreted and applied by central judicial institutions enjoying compulsory jurisdiction, and peremptorily enforced by competent executive instrumentalities authorized to employ coercion as a means of ensuing compliance in the ultimate resort. However, at the level of State interaction in the international community, no such structured system of normative behaviour exists. Sources of law are disparate, indeterminate and sometimes difficult to establish; competent institutions for authoritative interpretation and application of relevant norms of conduct are decentralized and lacking in compulsory jurisdiction, and no unified central executive authority is identifiable for enforcing compliance in the event of opportunistic deviant political or social conduct. Despite the somewhat dubious status of law in the unorganised international community, due in large measure to the absence of central institutions to sanction non-compliance with applicable norms, there is a corpus of rules of conduct generally accepted by the most powerful actors in the international community as engaging voluntary compliance by States, including, in particular

norms of *ius cogens*, that is, norms from which no derogations are permitted. And although there is a tendency to dramatise or sensationalise instances of politically deviant conduct in the international community, particularly where the impermissible employment of force is involved, the general condition in the international community is one of voluntary compliance with rules which comprehend a wide gamut of transactions, but which tends to go unnoticed because of a lack of appeal to an international media harbouring a distasteful penchant for sensationalism. The sanctioning process of prescription for such rules is the principle of reciprocity even though this principle is most effective in its application among equals. Proportionality as a standard of conduct in the international community where many small Caricom States are required to interact with powerful transnational actors, both political and economic needs to be accorded a high normative profile.

The Phenomenon of Small States

3. By way of prefacing my submissions on this subject, an attempt will be made to arrive at a workable definition of a small State. In terms of status, a State is territory recognized as such by other subjects of international law. Sovereignty, an indispensable attribute of statehood, is here perceived as the totality of rights international law accords a state in respect of an ascertainable body of territory, be it on land or in the marine environment. And whether the act of recognition is constitutive or merely declaratory in international law need not detain us here, since, for present purposes, what is important is the fact of statehood and the international legal incidence of such a status. Recognition of a State is not conditional on any requirements regarding absolute size of population, territory or natural resource endowments, much less definitiveness in terms of territorial or national boundaries or capabilities in terms of guaranteeing internal political stability with a reasonable degree of permanence or even safeguarding the territory from external aggression, be it military, political, economic, cultural or otherwise. And since the objective requirements of statehood in international law are ordinarily accepted to be no more than a determinable settled territory with a permanent population and stable government enjoying effective control accompanied by the capacity to enjoy international rights and assume international obligations at the material time, a large number of micro States have emerged on the international scene, particularly during the decolonizing period following

the Second World War. These States vary in size from 166 square miles in the case of Barbados in the Caribbean, with populations sometimes less than 10,000; in the case of Nauru the population is that of (7,000) and Tuvalu that of (7,500), both of which are located in the Pacific. Montserrat, a dependent State of Caricom has a land area of 40 sq. miles and a population of 4,500. Other small states are Andorra, Bhutan, Vanuatu, Liechtenstein, Monaco, San Marino and Nauru. The contemporary reality is that neither, size, resource endowments nor the capability to deploy advanced technologies of violence in defence of one's sovereign rights is perceived as a necessary condition of statehood. Recognition of a coastal State's competence on its continental shelf, namely, sovereign rights of exploitation, and in the exclusive economic zone adjacent to its territorial sea, namely, jurisdictional rights, has had the effect of significantly augmenting the sovereign rights and territorial jurisdictions of many small States, in extensive maritime areas, especially those in the Caribbean and Pacific, compounding thereby the problem of inadequate capabilities to ensure State security from internal dissension and external threats to political independence and territorial integrity.

4. The three decades following the end of the Second World War witnessed an exponential enlargement of independent states in the international community, when 1,250,000,000 colonial peoples inhabiting approximately 14 million square miles of colonial or dependent territories were transformed into 90 independent political entities. Since that time, the membership of the United Nations has attained 192 states, the majority being small states of varying populations, gross national products and territorial expanse. Despite this development, the international community has so far failed to arrive at a generally acceptable definition of **“small States”**. For, ultimately, the issue to be resolved is: small for what purpose? Consider in this context political entities such as Singapore, Kuwait or Oman! The gross national products of these states are among the highest in the world. In international trade analysis, for example, small is defined by reference to economies which cannot, individually influence the price at which commodities are bought and sold in world markets. On the other hand, intergovernmental organizations like the World Bank and the International Monetary Fund tend to employ national income as the basis of classification, while the United Nations employs the Human Development Index (HDI), which incorporates living standards and social indicators, like longevity and knowledge, as additional criteria. Whatever the basis of classification, however, an element of

arbitrariness is bound to intrude itself in the criteria employed. For the purpose of this Paper, a small State will be defined as an independent political entity with a settled population of less than one million inhabitants irrespective of gross national income (Brunei) or territorial expanse (Guyana), and possessing the required attributes in international law. On the basis of these criteria all Caricom States except Haiti, Jamaica and Trinidad & Tobago would fall into this category.

5. In the context of the immediately foregoing, the questions posed by the former Commonwealth Secretary-General and appearing at the beginning of this paper assume particular significance. Postulated in other terms, the Secretary-General was making a passionate plea for the conduct of international relations based on law and not on power. And for present purposes, power is perceived as the capability to produce intended effects. His plea was for an international community governed by generally accepted international norms, at the centre of which would be a credible system of collective security which would be viable and effective enough to guarantee the smallest member of the international community a plausible assurance about the integrity of its national sovereignty, territorial endowments and political independence.

6. The reality, however, is that the rights of small States are frequently ignored when the interests of the more powerful members of the international community so prescribe. For example, the territory of the Maldives consists of 1200 coral islands which extend some 500 miles from north to south and are spread over an area of 90,000.00 square kilometers of open seas. The navies of the superpowers in times past were wont to disregard the rights of the Maldives in respect of its territorial waters and the USSR's Indian Ocean fleet was one of the principal offenders. Similarly, Bahamas lacks the capabilities to effectively monitor and defend its territory consisting of 700 islands and cays spread over an extensive maritime area. The invasion of Grenada, even though evoking mixed political reactions among the States of the English-speaking Caribbean at the material time, was soundly condemned by the British Prime Minister as an infringement of that country's territorial integrity. But given the reality of power differentials in the international community, President Regan could not be denied his fancy nor his way. Violations of national sovereignty and territorial integrity were also recorded in respect

of The Bahamas, Belize and Guyana by more powerful States of the international community or renegade groups sponsored by them or acting on their instigation. In several instances, however, unwarranted incursions in the territories of small States have been induced by external perceptions of instability occasioned by seemingly intransigent economic and social under-development. Today, the political independence of several small Caricom states is under threat by international drug traffickers whose material resources dwarf those of small states and allow them to suborn public officials, including members of the judiciary, with negative implications for good governance and state responsibility in international relations.

7. To the extent, therefore, that governments of small Caricom States contribute to economic under-development by misconceived, uninformed policies or systemic corruption, or both, to that extent the attendant internal instability or external interference in their domestic affairs are a function of their own conduct. Where, however, economic under-development and political instability are a function of the asymmetrical economic relationships existing between the developed countries of the North and developing countries of the South, and which in turn are conditioned by the complex and extensive system of multilateral regimes established just before the termination of, and after, the second World War, to that extent beneficial modification of the relevant international normative framework with a view to achieving an equitable distribution of material values generated in the international community is a necessary condition for the preservation of the national sovereignty and political independence of small States.

8. In relying on international law to support their claims for national sovereignty, territorial integrity and political independence, small Caricom States are constrained to look to the international system as fashioned by the applicable norms developed largely by the older sovereignties in the postwar period. In this context, most small States tend to regard the United Nations as means of establishing and maintaining, within a multilateral framework, relations with states in the wider international community as a viable alternative to a multiplicity of bilateral relations likely to exert unacceptable demands on their meager human and financial resources. Membership of the United Nations and its specialized agencies afforded small States some plausible expectation of security from internal instability through access to much needed economic and technical developmental assistance, on the one hand, and from external aggression

on the other, by affording such States direct access to the Security Council where threats to the peace and outright acts of aggression were addressed with a view to corrective action where the national interests of the permanent members converged. For example, Guyana lodged a complaint with the Security Council in 1971 when Venezuela, in an unwarranted and unprovoked act of aggression, occupied Guyana's half of the island of Ankoko in the Essequibo river and which, incidentally, still remains under hostile occupation. Similarly, the Security Council authorised the military expulsion of Iraq from Kuwait following the latter's invasion and military occupation by the aggressor. In the absence of such convergence of interests of permanent members of the Security Council, the normal expectation was gridlock and masterly inactivity, punctuated by much disingenuous political rhetoric. Security Council Resolution 242 regarding the evacuation of territory occupied by Israel after the six days' war is an excellent case in point.

9. The United Nations apart, other multilateral forums offering small Caricom States some measure of psychological comfort are the Non-Aligned Movement, the Group of 77 and the Commonwealth. Although the untimely collapse of the USSR appeared to have deprived the Non-Aligned Movement of its essential rationale for existence, many small States prior to 1989 attracted much political support in the Non-Aligned Movement in respect of territorial claims of more powerful entities in the international community. Outstanding cases in point are Belize and Guyana, whose profile in the Non-Aligned Movement was particularly high despite that country's small size. Guyana's considerable influence in this political grouping was perceived to have played an important part in constraining and compromising the unwarranted territorial ambitions of Venezuela. Similarly, Belize enjoyed much political support from the Non-Aligned Movement in resisting the unwarranted claims of Guatemala to its entire territory. Membership of the Commonwealth also afforded both Guyana and Belize access to an influential multilateral forum whose membership encompassed all the continents and cut across the North-South divide of developed and developing countries. In point of fact, until recently the aspirants to territorial aggrandizement in both Central and South America were able to employ their influence in the hemispheric organisation, the OAS, to exclude Belize and Guyana from its Councils. And on the subregional level, both Guyana and Belize received unqualified support from CARICOM States in resisting the irredentist claims of Venezuela and Guatemala. In all the instances mentioned

above, both Belize and Guyana, as small States, based their claims to territorial integrity and political independence on international law, employing the multilateral forums identified as creatures, formal and informal, of international law to vindicate their rights. For, in the final analysis, generally accepted norms of political rectitude in the international community do operate as a moderating influence on the exaggerated expectations of states.

10. Outside the western hemisphere many small States are found as members of the organization of African Unity (OAU), established in 1963 and now superseded by the African Union, based on the principles of sovereignty, non-interference in internal affairs of Member States, respect for territorial integrity, condemnation of subversion, support for self-determination of dependent territories and the peaceful resolution of conflicts. Among the small States of this grouping are Cape Verde, Sao Tomé and Guinea Bissau. In the Middle East, the Arab League boasts several small wealthy States including Bahrain, Qatar, Oman and Djibouti. Like the States of the Caribbean where the Organization of Eastern Caribbean States (OECS) exists as a subregional grouping, several African and Arab States have their own sub-groupings, e.g., the Economic Community of West African States (ECOWAS) in the African Union and the United Arab Emirates (UAE) in the Arab League. In the Pacific region the Association of South-East Nations (ASEAN) was established in 1967. But the micro-States of the South Pacific, which, like so many other island coastal States, are not even capable of protecting their fisheries resources in their exclusive economic zones (EEZs), are grouped in the South Pacific Forum. Many of these Groupings are not military nor security arrangements in the strict sense, and economic objectives bulk large in their constituent instruments. Nevertheless, they do afford small States some psychological measure of security from aggression, especially where the potential aggressors are part of the groupings concerned and, as such, are subjected to a variety of informal pressures to moderate their egocentric claims and resort to pacific disputes settlement.

Small States and International Law

11. Even a very cursory examination of some of the responsibilities devolving on small States by virtue of their status as sovereignties in the international arena would readily

confirm the inadequacies of these entities in terms of acquiring, controlling and managing the required capabilities to safeguard their national interests. As a territorial sovereign, the small State is required not only to ensure stability, peace and good order for the protection, economic and social advancement of its peoples, but also to afford reasonable protection for citizens of other States, as well as entities having their nationality, legitimately engaged in economic and other lawful pursuits in the jurisdiction of the small State with its consent. Such protection invariably entails provision of laws reflecting the international minimum standard, a system of courts to interpret and apply such laws and credible, efficient means of law enforcement. In modern times, however, the ability of the small States to provide the required capabilities in adequate supply is eroded by the illegal activities of drug traffickers, gun runners, people smugglers, traders in the white slave traffic, and similar intrepid entrepreneurs whose financial and other resources dwarf the national exchequers of small States. At present, those purveyors of social deviancy and moral turpitude have vindicated a propensity to suborn public officials, subvert governments and usurp the State apparatus in furtherance of their nefarious activities.

12. More importantly, the responsibilities of small States have been considerably enlarged by the adoption and entry into force of the United Nations Convention on the Law of the Sea (1982). The very adoption of this Convention in Kingston, Jamaica, a small CARICOM State, must be seen as a tribute to the contribution of small states like Jamaica, Guyana and Trinidad and Tobago to the final configuration of this historic international instrument. The representatives of these small States, including the author of this paper, played a crucial role in elaborating and promoting the concept of the exclusive economic zone (EEZ) and in securing international legitimacy for the concept enunciated by Ambassador Arvid Pardo of Malta, itself a small State, that ocean space beyond the limits of national jurisdiction constituted the common heritage of mankind. As a result of the designation of the EEZ as a territorial boundary in international law, the jurisdiction of coastal States, many of which are small island States, has been extended to two hundred nautical miles from the baselines from which the breadth of the territorial sea is measured. According to the applicable provisions of the Law of the Sea Convention, coastal States enjoy in this area sovereign rights for the purpose of exploring and exploiting, conserving and managing the living and non-living resources of the waters superjacent to the se-bed as well as the resources of the sea-bed and its sub-soil. Such sovereign

rights include economic exploitation of the area for the production of energy from ocean currents and other properties of the water, for example, through ocean thermal energy conversion technology (OTEC). In the EEZ, the coastal State also has jurisdiction over its living resources, the use and establishment of artificial islands, installations and other structures, marine scientific research as well as the protection and preservation of the marine environment and the conservation of its living resources.

13. The rights accorded to coastal States in the EEZ engage considerable corresponding obligations and problems for them, particularly small archipelagic states like St. Vincent and the Grenadines, Antigua & Barbuda and The Bahamas, consisting of over 700 islands and cays and comprehending in its archipelagic waters a significant expanse of ocean space. Protection, conservation and management of the fisheries resources of this area of ocean space require the acquisition and deployment of capabilities well beyond the known human and material resources of The Bahamas. And the same is true for most small island States with an enlarged scope of competences in ocean space. Similar considerations in relation to a deficit in management capabilities arise in connection with the continental shelf, consisting of the seabed and subsoil of marine areas adjacent to the territorial sea and, for all practical purposes, coextensive with the exclusive economic zone, except where the geological continental shelf extends beyond the outer limit of the EEZ measuring two hundred nautical miles from the baselines of the territorial sea. On the continental shelf as well, the coastal States have exclusive rights of exploration and exploitation of its resources. It is important to note, however, that whereas in customary international law, coastal states automatically enjoy sovereign rights over their continental shelves, the rights of the coastal States in relation to the EEZ are contingent on the declaration of such a zone by the coastal State. The outer limit of this zone may not extend for more than 200 nautical miles from the baselines which the territorial sea is measured. In the absence of such a declaration, any State may, technically, exploit the living resources of the state beyond its territorial waters.

14. If, as it is now generally accepted, the enlarged competences of the coastal State in adjacent ocean space constitute a formidable challenge to the relevant capabilities of even major actors in the international arena, then it should be the subject of a compelling inference

that small coastal States must look to voluntary compliance by States with their international obligations as the only plausible guarantee of the enjoyment of their newly-won rights in marine areas beyond the territorial sea. And this is where international law might be expected to play a critical role in protecting the interests of small Caricom States. In this connection, however, it is important to enter a caveat in respect of unprincipled and opportunistic reliance on international law, especially where disputes arise in relation to the exercise of sovereign competences, be it in ocean space or on territory inland therefrom. For, in the ultimate analysis, all that is required for a dispute to arise in international law is a claim and a counterclaim by subjects of international law. Establishment of a legitimate interest is not a legal requirement as the Guyana and Belize experiences confirm, and to which the recent experiences of several OECS Countries may attest in relation to claims espoused by Venezuela to an area of ocean space by reference to Avis Island (Bird Island) which, according to the relevant provisions of the United Nations Convention on the Law of the Sea, has no status greater than that of a rock incapable of sustaining human life unaided, and, as such, disentitled to claim no more than a territorial sea of twelve miles much less an exclusive economic zone or continental shelf. And, here again, it is only by a principled appeal to international law and, in particular, the applicable rules of the Convention on the Law of the Sea (1982) which, incidentally, the Government of the Republic of Venezuela has so far refused to sign, that the OECS States could have their interest in ocean space vindicated and protected.

15. It is not to be assumed from the immediately foregoing, however, that international law, *per se* provides an unassailable rampart behind which small Caricom States may secure protection from the politically deviant behaviour of expansionist State entities or others disposed to lawless conduct in the international community by virtue of their overweening power and influence. International law both determines and is determined by the conduct of subjects of international law, the most powerful of which are State entities. The fundamental principles of this normative regime address, and derive their legitimacy from, the well-known prerogatives and attributes of statehood – the principles of sovereign independence, sovereign equality (interpreted to mean formal legal equality in popular parlance), territorial integrity and non-interference in the domestic affairs of States. But the contemporary wisdom of automatically according almost any entity so inclined recognition as a State with the presumed

prerogatives and attributes identified above, despite persuasive objectively verifiable evidence to the contrary, has encouraged the proliferation of small States, aggravated the problems associated with the deviant conduct of States in the international arena, and, as an ineluctable consequence, the management of international relations by reference to international law.

16. The emergence of many micro States in the international community with inadequate capabilities – human, economic and financial – to survive as viable independent entities underscores their vulnerability and makes them prime targets for intervention by powerful entities. With the development of international law, particularly in the areas of human rights, the traditional doctrine of non-interference in the domestic jurisdiction of States enshrined in Article 2(7) of the United Nations Charter has been open to serious challenge as exemplified in the activities of various intergovernmental organizations like the United Nations and its Commission on Human Rights, itself a subordinate organ of ECOSOC, the European Court of Human Rights and the International Labour Organisation, to mention a few. The wide range of instruments and determinations spawned by these and other organizations operating in the western hemisphere has altered the traditional corpus of international norms by legitimizing interventions by third States in matters which would normally be considered as falling within the domestic jurisdiction of States within the meaning of Article 2(7) of the Charter. Outstanding examples of such instruments are the International Covenant on Civil and Political (ICCPR) Rights and Optional Protocol 1966; the International Covenant on the Elimination of All Forms of Racial Discrimination 1965; The European Convention on Human Rights 1950; the American Convention on Human Rights 1969, and the African Charter on Human and Peoples' Rights 1981.

17. In the present submission, there may be a strong argument in favor of construing the Charter of the United Nations as a whole, particularly as it relates to Article 2(7). In this context, it must be borne in mind that the Charter was in large measure the studied institutional response to the state System existing between the wars and many of the atrocities committed by governments against their civilian populations, particularly Jews, before and during war. Viewed in this context, the provisions of Article 2(7) should never be construed as an absolute prohibition against interference in the domestic affairs of State. In any event, the principle of

non-intervention is qualified by the proviso regarding the application of enforcement measures under Chapter VII of the Charter. And article 39 empowers the Security of Council to determine, among other things, “any threat to the peace” and the measures to be adopted in accordance with Articles 41 and 42. And it is not inconceivable that the abuse of State power in relation to matters falling within the domestic jurisdiction of States may give rise to a determination that a threat to the peace exists justifying the application of enforcement measures within the meaning of Chapter VII of the United Nations Charter.** Moreover, given the principle of self-determination in emerging international law, it is now generally accepted that States may intervene in the domestic affairs of colonial powers to assist peoples asserting their inherent right to self-determination. Consider in this context Resolution 1516 of the General Assembly of the United Nations. From the perspective of small independent States of the international community, however, it is cold comfort to accept that international law is in a continuing state of flux requiring normative adjustments to reflect an ever changing reality. For, given their vulnerability, which is a function of their inadequate capabilities and, consequently, the low threshold of intervention in matters pertaining to their domestic jurisdiction, their interests would always be extremely amenable to compromise should applicable norms of international law governing non-intervention be relaxed.

18. Despite the foregoing submissions, small Caricom States may find some solace from the inference that so long as they conduct their affairs, domestic and otherwise, in accordance with the prescriptions of the Charter, they run little risk of engaging their international responsibility and of inviting application of Chapter VII measures. In this context, it is pertinent to point out that the provisions of Article 2(4) of the Charter appear to have acquired the status of grundnorm or a norm of *jus cogens* admitting of no derogation therefrom. This provision enjoins all members of the United Nation to “refrain in their international relations from the threat of use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations”. The only exception to this fundamental rule is to be found in Article 51 which recognizes the inherent right of a country to self-defence. But when does the action of a State pursuant to Article 51

** Consider the situation in Darfur where refugees can create problems for states, or ethnically related people may take up arms in support of abused neighbours.

come within the contemplation of that provision and when it does not? Is the customary rule of anticipatory self-defence preserved by Article 51 or must a State wait to be attacked before responding? Many of these issues are in fact academic for the small Caricom State, which can neither initiate nor respond to aggression, and the applicable norms of international law offer no firm guidance.

19. Since in the informed submission of Sir Shirdath Ramphal, former Commonwealth Secretary General, the United Nations played a critical role in the creation and recognition of most of the small States existing at present in the international community, it is not unusual for many, if not all of these entities to rely on the collective security system of this world organization to ensure their continued survival as independent entities free from threats to their national sovereignty, political independence and territorial integrity. In this connection, many small Caricom States look to Article 33 of the Charter which requires “parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, (to) first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice”, and empowers the Security Council to request the parties to employ one of these means. Further, some consolation may be secured from Article 99 of the Charter which authorizes the Secretary-General to bring to the attention of the Security Council any matter which, in his opinion, constitutes a threat to international peace and security.

20. Central to the collective security system of the United Nations is Chapter VII provisions of the Charter, which, in Article 39, not only requires the Security Council “to determine the existence of any threat to the peace, breach of the peace or act of aggression”, but also to decide on measures to maintain or restore international peace and security, including economic and military intervention as the situation justifies. To date, the collective security system of the United Nations has been a qualified success due to a variety of conditionalities which were never observed in good faith. These included the conclusion of agreements by Member States to make armed forces and military facilities available to the Security Council (Article 43); the obligation of Member States “to hold immediately available national air-force contingents for combined international enforcement action” at the disposal of the United

National (Article 45), and the establishment of an effective Military Staff Committee “to advise and assist the Security Council on all questions relating to the Security Council’s military requirements for the maintenance of international peace and security, the employment and command of forces placed at its disposal, the regulation of armaments, and possible disarmament”. But, perhaps the most debilitating aspect of this system of collective security was the requirement of all the permanent members of the Security Council to cast an affirmative vote in the Security Council on substantive issues before the applicable provisions of the Charter could be operationalised (Article 27(3)). Such convergence of views among the permanent members proved impossible of achievement in the post-war period due to deep-seated ideological cleavages. The outstanding exception to great power co-operation that proved the rule was the Security Council’s sanctioning of allied intervention in Kuwait to expel Iraq, which had committed an unwarranted and unprovoked act of aggression against its neighbour, a small State.

21. Although the system of collective security enshrined in the Charter would appear to afford small Caricom States no absolute guarantee of protection against aggression by more powerful State entities, other than the permanent members or their closest allies, the Gulf War and the role of the Security Council in that sad episode provides enough lessons to operate as a disincentive to prospective aggressors. For, even though it is quite clear that allied military intervention was informed by perceptions of important national interests being endangered, it is open to no one in the international community to discern with precision what constitutes an important national interest of any State or what considerations would advise the employment of force for the protection of such an interest. The earlier invasion of Grenada and the recent invasion of Iraq are excellent cases in point. In any event, the applicable norms of international law do not preclude any State from seeking military assistance from friendly States where the national interest so prescribes, irrespective of the ability of the Security Council to act pursuant to the relevant provisions of the Charter. United States intervention in Grenada to expel Cubans and restore constitutional government eminently illustrates this point

22. In the context of the Caribbean Community which, as indicated above, is a grouping of small States for the purposes of this Paper, initiatives have been taken with some

degree of prompting from the United States and Canada, to establish a Regional Security Scheme (RSS) encompassing the OECS States and Barbados, whose governments are extremely vulnerable to internal subversion as the experience of Grenada demonstrated. The RSS is a regional collective security arrangement intended to put at the disposal of participating governments the means, military and otherwise, to deal with attempts at violent overthrow of such governments. More recently, as the CARICOM countries have become important transit points for illegal drugs originating in South America and intended for the North American markets, the United States have been concluding shiprider agreements with most CARICOM States to search and interdict vessels in their territorial waters and EEZs. And herein is to be found another instance of international law allowing small States, as an attribute of sovereign competence, to rely on the capabilities of more power State entities to protect territories within their jurisdiction from the incursions of lawless elements in the international community.

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