

SEARCHING FOR CLARITY AND DISTINCTION WITHIN ‘REGIONALISED COLLECTIVE SECURITY’

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The United Kingdom’s decision to leave the European Union raises political and legal concerns regarding their future security and defence relationship. The UK’s current stance on establishing a security and defence relationship with the EU and Europe is that ‘NATO will remain the foundation of collective security in our home region of the Euro-Atlantic’.¹ The ‘[c]ollective security through NATO’ policy however,² is underscored by a fundamental legal question regarding the configuration and placement of regional arrangements and defensive alliances within the global security order.

Regional arrangements and defensive alliances invoke the language of collective security as legal grounds for military operations home and abroad. Increasingly, such arrangements and organisations exercise their inherent right to ‘individual or collective self-defence’,³ in view of enacting ‘collective measures’ without explicit Security Council authorisation,⁴ out of seemingly functional necessity. And yet, the

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¹ HMG, ‘Global Britain in a Competitive Age: The Integrated Review of Security, Defence, Development and Foreign Policy’ (March 2021) CP403, 18 [32][iii].

² *ibid.*

³ Charter of the United Nations (24 October 1945) 1 UNTS XVI art 51.

⁴ *ibid* art 1(1), art 39, art 53.

definitive character, obligations, and restrictions of these evolving security entities remains unclear.

This article uses the contemporary historical event of Brexit as entry to a legal discussion concerning the distinction between defensive alliances, regional arrangements, and collective security. This article examines the gap between the loose rhetorical treatment of NATO as a collective security institution in likeness to the UN Security Council itself, and the formal legal placement of defensive alliances in the greater collective security architecture. Brexit presents a novel opportunity to assess how the contours of international security may be understood in the current and future security landscape.

Keywords: alliances; regionalised; internationalised; collective security; obligations; universality; selectivity

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I. INTRODUCTION

In withdrawing from the European Union (EU),¹ the United Kingdom (UK) leaves not only a trading bloc, but also a nascent international security actor. Under the provisions of the Common Foreign and Security Policy (CFSP) and the incorporated Common Security and Defence Policy (CSDP),² the EU espouses obligations to advance the principles of international peace and security on the global stage.³ Although the 'dream of an EU army' is still distant,⁴ the EU advances its effort to achieve 'strategic autonomy',⁵ projecting a particular model of collective security within and beyond Europe, without the UK.

Whilst the scope of the security and defence arrangements between the UK and the EU is in a continual state of development,⁶ the most recent articulation of Britain's main strategy regarding collective security arrangements vis-à-vis Europe is that such efforts should be achieved through the North Atlantic Treaty Organisation (NATO). The UK's 2021 Integrated Review of Security, Defence, Development and Foreign Policy

¹ Treaty on European Union (amended by the Lisbon Treaty 2007, consolidated 2008, entered into force 1 December 2009) OJ C 115/13 art 50 [*hereinafter* 'TEU']; The Electoral Commission, 'EU Referendum Results: 48.1% "Remain"; 51.9% "Leave"' <electoralcommission.org.uk/find-information-by-subject/elections-and-referendums/past-elections-and-referendums/eu-referendum/electorate-and-count-information> accessed 21 March 2022.

² TEU art 21 - 46.

³ TEU art 21(1).

⁴ Fabrice Pothier, 'A European Army: Can the Dream Become a Reality?' [2019] *IISS Analysis* <iiss.org/blogs/analysis/2019/01/macron-european-army-reality> accessed 22 March 2022.

⁵ EEAS, *Shared Vision, Common Action: A Global Strategy for the European Union's Foreign and Security Policy* (European Union External Action Service 2016); European Commission, '2021 Strategic Foresight Report: The EU's Capacity and Freedom to Act' (2021).

⁶ Benjamin Martill and Monika Sus, 'Defence and Security: Why Is There No UK-EU Agreement? [Commentary]' (*UK in a Changing Europe*, 20 December 2021).

(‘Global Britain in a Competitive Age’) has affirmed a foreign and external security policy of ‘[c]ollective security through NATO’.⁷

On the surface, there is no issue with the UK opting for a policy that favours the security and defence remit of NATO over that of the EU, as the two security and defence entities are ‘complementary, coherent and mutually reinforcing’.⁸ But underneath the surface of this policy lies a more fundamental question about the legal configuration and placement of regional and non-regional security entities operating within, and arguably in contest to, the global security order.

As regional and defensive entities such as the EU and NATO expand and respond to contemporary threats, nations such as the UK make policy decisions about the scope of maintaining security within and beyond their borders. Such a phenomenon engages a question about how regional forms of collective security interact with the universalist vision underwritten by the Charter of the United Nations (UN Charter) and the centrality of the UN Security Council (UNSC).

The idea of what NATO is as a security actor, in relation to how the EU is understood as a security actor, and in further relation to the UN project of collective security, is at times treated as self-evident.

Given the integrated economic and political form under the EU Treaties,⁹ the EU may be considered a regional organisation, that fits within the categorisation of ‘regional arrangements or agencies’ that may exist under Chapter VIII of the UN Charter to deal ‘with such matters relating to the

⁷ ‘Collective security through NATO: the UK will remain the leading European Ally in NATO, working with allies to deter nuclear, conventional and hybrid threats to our security, particularly from Russia. We will continue to exceed the NATO guideline of spending 2% of gross domestic product on defence, and to declare our nuclear and offensive cyber capabilities to Allies’ defence under our Article 5 commitment’. HMG (n 1) 20 [ii].

⁸ NATO, ‘2022 Strategic Concept (Adopted at Madrid, 29 June 2022)’ (2022) [43].

⁹ TEU (5); Treaty on the Functioning of the European Union (amended by the Lisbon Treaty 2007, consolidated 2008, entered into force 1 December 2009) OJ C 115/47.

maintenance of international peace and security as are appropriate for regional action'.¹⁰ The outline of the EU's security and defence competence is prescribed by the Common Foreign and Security Policy.¹¹

Since launching its first military operation in 2003,¹² the EU has continued to enhance its international peace and security functions. Conducting 37 civilian and military missions operations in Europe, Africa and Asia,¹³ including arms embargo operations in Libya,¹⁴ and counter-piracy off the horn of Africa,¹⁵ the EU's missions and operations are essential for regional and international security maintenance.

NATO's military architecture has also played an important role for peacekeeping and enforcement action, as evidenced by the frequent delegation to manage international security matters by UN Security Council.¹⁶ Despite a certain 'treatment of NATO as somehow interchangeable with the UN' that started gaining traction at the turn of the

¹⁰ Charter of the United Nations (24 October 1945) 1 UNTS XVI art 52(1) [*hereinafter* 'UN Charter'].

¹¹ TEU art 2; art 21 - 46.

¹² CONCORDIA/FYROM (launched 31 March 2003, completed 15 December 2003) [archived 1 January 2015], passed over from NATO's *Allied Harmony* mission for the purpose of implementing the 13 August 2001 Ohrid Agreement between Northern Macedonia and Albania.

¹³ EEAS, 'Missions and Operations' (*Strategic Communications*, 6 August 2021) <eeas.europa.eu/eeas/missions-and-operations_en> accessed 7 December 2022.

¹⁴ EEAS, 'EUNAVFOR MED - IRINI (Launched 31 March 2020)' (2022) <operationirini.eu/> accessed 7 December 2022; UNSC Resolution 2292 (14 June 2016) UN Doc S/RES/2292.

¹⁵ EEAS, 'EUNAVFOR - Somalia Operation ATALANTA (Launched 8 December 2008)' (2021) <https://eunavfor.eu/mission/> accessed 7 May 2021; Council Decision 202/2188/CFSP of 22 December 2022 amending 2008/851/CFSP on EU military operation off the Somalia coast OJ L 435/74.

¹⁶ UNSC Resolution 1244 (10 June 1999) UN Doc S/RES/1244; UNSC Resolution 1973 (17 March 2011) UN Doc S/RES/1973; NATO, 'Bucharest Summit Declaration on Framework with the UN (3 April 2008)' <nato.int/cps/en/natolive/official_texts_8443.htm> accessed 25 April 2022; NATO, 'Relations with the United Nations' (2022) <nato.int/cps/en/natohq/topics_50321.htm> accessed 8 December 2022.

century,¹⁷ and NATO's own understanding of its operational character since the end of the Cold War,¹⁸ its operational mandate derives from Article 51 of the UN Charter.¹⁹ NATO is a defensive alliance.

Beyond the technical details of the UK's future relationship with its European partners, this article questions the ideal of 'collective security', examining the operational reality and legal structure of how and why regional arrangements, or defensive alliances 'are' or 'become' collective security organisations. This analysis takes particular issue with the distinction between regional arrangements and defensive alliances, acknowledging their functional role for international collective security, whilst also addressing how this functionality has led to a blurred definitive distinction between these collective security actors under international law. The article then provides a contextual explanation of how the traditional legal concepts of mutual assistance and mutual defence specifically developed into the contemporary security and defence entities of the EU and NATO. This overview is used to demonstrate the logic that underscores 'regionalised' collective security, which increasingly spills into the international dimension. This article seeks to address how defensive alliances may be formalised under international law in the future, which remains relevant to the UK's ad hoc alliance based policy decision for security and defence after Brexit.

¹⁷ Anne Orford, 'Regional Orders, Geopolitics, and the Future of International Law' (2021) 74 *Current Legal Problems* 149, 8.

¹⁸ NATO, 'Alliance Strategic Concept (Adopted at Washington, 23–24 April 1999)'; NATO, 'Strategic Concept For the Defence and Security of The Members of NATO: Active Engagement, Modern Defence (Adopted at Lisbon, 19–20 November 2010)' (2010); NATO, '2022 Strategic Concept (Adopted at Madrid, 29 June 2022)' (n 12).

¹⁹ UN Charter art 51; The North Atlantic Treaty (Washington Treaty) (concluded 4 April 1949) 34 UNTS 243.

II. THE UNSETTLED COLLECTIVE SECURITY DOCTRINE

Discourse and practice surrounding 'collective security' reveals that collective security represents a notion corresponding to a variety of integrated security and defence premises, but lacks a settled, codified understanding. As Danchin points out 'collective security is notoriously difficult to define. Like democracy, human rights and the rule of law, the term is associated with a loose set of assumptions and ideas and its continued existence rests in no small measure on it remaining an essentially contested concept'.²⁰ Thus, the term 'collective security' has meant what States and scholarship have needed (or wanted) it to mean at different times.

Historically, the generalised understanding of 'collective security' developed from the concept of 'security' evolving into 'state security'.²¹ Under a Kelsenian view of the conceptual origins of collective security, collective security encompasses both the domestic concerns of national security and the universal security of all States.²² As Kelsen elaborates, '[i]t is in both cases collective security, because it is security afforded by a social order; and a social order always constitutes a certain degree of collectivization.'²³ Entities or States associating with other actors for the purpose of common defence, traditionally juxtaposed against a defined enemy, may be described as 'regionalised collective security'. In current form, 'regionalised collective security' seems to incorporate mutual assistance arrangements, which for

²⁰ Peter G Danchin, 'Things Fall Apart: The Concept of Collective Security in International Law' in Horst Fischer and Peter G Danchin (eds), *United Nations Reform and the New Collective Security* (CUP 2010) 40.

²¹ Hans Kelsen, *Collective Security Under International Law*, vol 49 (1957); Kelsen, *Principles of International Law* (3rd edn, The Lawbook Exchange 1959); Alexander Orakhelashvili, *Collective Security* (OUP 2011); Auden Davies-Bright and Nigel D White, 'The Concept of Security in International Law' in Geiß Robin and Nils Melzer (eds), *The Oxford Handbook of the International Law of Global Security* (1st edn, OUP 2021).

²² Kelsen, *Collective Security Under International Law* (n 21).

²³ *ibid* 3.

strategic reasons, have come to be understood as ‘regional’ actors.²⁴ This conception is easily applied to the EU,²⁵ or similar organisations like the African Union (AU),²⁶ which have incorporated security and defence components based on mutual assistance.²⁷ But, at the same time, collective security also relates to a more universalised project, answerable to a centralised authority, as embodied by intergovernmental projects like the League of Nations and the United Nations.²⁸

An early twentieth-century study attempted to tackle the task of defining ‘collective security’.²⁹ The 1934 Bourquin Study emphasised that if any such internationalised system should exist, it must be based on ‘fundamental norms’, and that ‘[a]ny system of Collective Security necessarily implies a certain prohibition against resorting to violence for the purpose of justice’.³⁰ In expressing the understanding of what constituted a ‘collective security institution’, the Bourquin Study further concluded that ‘[t]he prohibition of recourse to violence, on the one hand, and the organisation of peaceful procedures, on the other, form the two corner-stones of [a collective security] institution’.³¹ The study also attempted to raise questions about the role of self-defence within the understanding of collective security,³² as well

²⁴ Nicholas Tsagourias and Nigel D White, *Collective Security: Theory, Law and Practice* (paperback, CUP 2015) 40–41; 115–137.

²⁵ TEU, TFEU (n 1).

²⁶ Charter of the Organisation of American States (30 April 1948; amended 6 October, 1993 at Managua, into force 29 January 1996) 1609 UNTS 68.

²⁷ TEU art 42(7); Protocol Relating to the Establishment of the Peace and Security Council of the AU (adopted 9 July 2002, entered into force 26 December 2003) art 2.

²⁸ Covenant of the League of Nations (adopted 28 April 1919); Charter of the United Nations (24 October 1945) 1 UNTS XVI.

²⁹ Maurice Bourquin (ed), ‘General Report on the Preparatory Memoranda Submitted to the General Study Conference of “Collective Security” (Paris, 24–26 May 1934)’, *A Record of the Seventh and Eighth International Studies Conferences* 7.

³⁰ *ibid.*

³¹ *ibid.* 9.

³² *ibid.* 8.

as the issue of regionalism vis-à-vis sovereignty.³³ Such questions highlighted that the international system of collective security had (and still has) a difficulty parsing the distinction between regional structures and defensive organisations; and reconciling these components with universalist ambitions of the internationalised system.

The interest in fixing a definition for collective security seems to have ceased with the Bourquin Study. Although left uncodified, collective security nevertheless relates to core legal principles regarding the prohibition against the use of force,³⁴ threats to peace and security,³⁵ acts of aggression,³⁶ and enforcement against breaches of the peace.³⁷ Although it may be conceded that “‘collective security’ is not a term of art”,³⁸ the concept is still supposedly ‘distinct from, and more ambitious than, systems of alliance security or collective defence, in which groups of states ally with each other, principally against possible external threats’.³⁹

This distinction would uphold the universalist understanding of collective security, as ‘all entities that form [the] international society are their stakeholders and beneficiaries’ of peace and security.⁴⁰ In theory then, it is the condition of universality that distinguishes collective security from ‘other security institutions such as regional organisations or collective self-defence arrangements’,⁴¹ which are selective, exclusive, and thus extol a ‘perspective

³³ *ibid* 11.

³⁴ UN Charter art 2(4).

³⁵ *ibid* art 39.

³⁶ *ibid*; ‘UNGA Res 3314 (XXIX) “Definition of Aggression” (14 December 1974)’.

³⁷ UN Charter art 42.

³⁸ Derek W Bowett, ‘Collective Security and Collective Self-Defence’ in Rama Montaldo (ed), *El derecho internacional* (1994) 427; Sir Michael Wood, ‘Self-Defence and Collective Security: Key Distinctions’ in Marc Weller (ed), *The Oxford Handbook of the Use of Force in International Law* (OUP 2017).

³⁹ Adam Roberts and Dominik Zaum, *Selective Security: War and the United Nations Security Council Since 1945* (Tim Huxley ed, Routledge, IISS 2008) 11.

⁴⁰ Tsagourias and White (n 24) 21.

⁴¹ *ibid*.

on peace and security' that is 'particular and localised'.⁴² Yet, whilst universalism seems an important definitive feature of collective security, it seems equally legitimate to maintain that '[r]egional organisations have a good claim to be CS institutions. Collective defence organisations do not have such a claim; further, neither has a state acting alone or in unison with its allies'.⁴³

The confusing dichotomy, or essential misunderstanding, of regional arrangements versus defensive alliances versus collective security, is precisely why scholars such as Helal feel that the UN Security Council does not reflect a collective security mechanism at all (it instead should be understood as a 'Great Power Concert'),⁴⁴ whereas NATO's structure under article 5 of its establishing treaty is an 'archetypical' example of a collective security mechanism.⁴⁵ And yet, the view that a defensive organisation like NATO is similar, or in fact akin, to the UN Security Council, crashes into both conceptual and textual problems.

Although current UK policy does not suggest that the structure of NATO should supplant the role of UN Security Council after Brexit, it does endorse a view that the architecture of NATO may at least supplant the security and defence structure of the EU.⁴⁶ Furthermore, even if the UK foreign policy-

⁴² *ibid.*

⁴³ *ibid* 52-53.

⁴⁴ Mohamed S Helal, 'Am I My Brother's Keeper? The Reality, Tragedy, and Future of Collective Security' (2015) 6 *Harvard National Security Journal* 383; Mohamed S Helal, 'The Myth of U.N. Collective Security' (2018) 32 *Emory International Law Review* 1063, 1066.

⁴⁵ Helal, 'The Myth of U.N. Collective Security' (n 44) 1071.

⁴⁶ Technical HMG documents from 2017 and 2018 under the Theresa May government detail the UK's previous involvement and understanding of the security and defence competence of the EU's CFSP and embedded CSDP. However, these efforts of negotiation were abandoned, so that the current UK position is that NATO is a sufficient architecture for 'collective security' considerations for Europe. HM Government, 'Framework for the UK-EU Security Partnership' (Department for Exiting the European Union 2018); Political Declaration setting out the framework for the future relationship

makers are uninterested in the technical classification as to whether NATO is a collective security organisation like the UNSC, or a regional arrangement like the EU, the question under international law remains.

III. DISTINGUISHING BETWEEN COLLECTIVE SECURITY AND COLLECTIVE DEFENCE

The development of the EU and NATO security and defence competences originated from defensive pacts that grew and transformed over time. The Dunkirk Treaty of Mutual Assistance (1947) between France and the UK held that if Germany committed an armed attack in the meaning of Article 51 of the UN Charter against either party, the other would be considered 'involved in [the] hostilities' and should offer all possible aid and assistance to the attacked party.⁴⁷ This Treaty of Dunkirk was thought to be the predecessor to the 1948 Treaty of Economic, Social, and Cultural Collaboration and Collective Self-Defence, the 'Brussels Treaty',⁴⁸ which established the Western Union, which eventually became the Western European Union,⁴⁹ which eventually became the European Union.⁵⁰ Such 'regionalised' collective security relates to defensive pacts and mutual assistance frameworks.

The path from the Western Union to the European Union, alongside NATO – and the evolving decisions about the function of coordinated security and defence, reveal a mapping of integration, separation, and

between the European Union and the United Kingdom (19 October 2019)(Revised); HMG (n 1).

⁴⁷ Treaty of Alliance and Mutual Assistance between UK and France (Dunkirk Treaty)(signed 4 March 1947, entered into force 8 September 1947) 9 UNTS 187 art 2.

⁴⁸ Treaty of Economic, Social and Cultural Collaboration and Collective Self-Defence (Treaty of Brussels)(signed 17 March 1948, entered into force 25 August 1948, terminated 30 June 2011).

⁴⁹ Modified Brussels Treaty (Western European Union)(Paris, signed 23 October 1954, entered into force 6 May 1955).

⁵⁰ TEU Lisbon Treaty (2009) (n 1).

reintegration which partially explains the current confusion about how these entities are placed within the international system. This complicated intertwining of security and defence components in Europe explains, to a degree, the organisational logic of these policy decisions, but it fails to illustrate how these integrated European components are formally squared against the universalist conception of collective security.

Despite the difficulty of defining collective security, an amalgamation of text, custom, and scholarship advances that collective security may be conceptually described as ‘a system, regional or global, in which each state in the system accepts that the security of one is the concern of all, and agrees to join in a collective response to threats to, and breaches of, the peace’.⁵¹ Wood maintains that collective security relates to authorised enforcement under Chapter VII of the UN Charter (articles 39 and 42),⁵² whilst collective self-defence just relates to the provisions under Article 51 of the Charter,⁵³ and as such, these are two conceptually distinct legal precepts.⁵⁴ This understanding is supported by the textual reading of the UN Charter, but this does not fully speak to the issue of understanding the differing, overlapping, or blurring categorisation of regional arrangements or defensive alliances.

⁵¹ Vaughan Lowe and others (eds), *The United Nations Security Council and War: The Evolution of Thought and Practice since 1945* (OUP 2008) 13.

⁵² The UN Security Council ‘shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security’. UN Charter art 39. The UN Security Council ‘may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security’. *Ibid* art 41. Charter of the United Nations (24 October 1945) 1 UNTS XVI art 39, 42.

⁵³ ‘Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security’. *ibid* art 51.

⁵⁴ Wood (n 38).

One issue with understanding regionalism and self-defence in juxtaposition with collective security is the make-up and character of what a collective security organisation does, and for whom (the universal community of States), versus what a regional or collective defence organisation does and for whom (a selective and exclusive group of States). A main reason that scholars such as Helal believes the UN Security is not representative of a collective security arrangement is due to the absence of a provision promoting '*unus pro omnibus, omnes pro uno*—one for all, and all for one'.⁵⁵ Functionally, this is a mutual defence clause. As such, there is a more complicated story behind the understanding of collective security, and the mutual obligations within the system and amongst members.

Yet, as Miller critiqued a few decades prior, the 'all-for-one-and-one-for-all idea of collective security' was 'dazzling in its simplicity'.⁵⁶ Miller's comment was made in the context of assessing the operations of collective self-defence organisations and the state of collective security shortly after the NATO air campaign against the Former Federal Republic of Yugoslavia.⁵⁷ In this assessment, Miller commented that 'regional arrangements' can 'easily masquerade as collective security organizations when they are in fact instruments of collective defense'.⁵⁸ Miller elaborates that regional arrangements acting in the capacity of 'collective defense' are 'designed to counter threats emanating from outside their region and outside the community that binds some sovereign actors but not others'.⁵⁹ To Miller, the distinction between collective security as an organisational framework, and regional arrangements operating under collective defence, rests on a fundamental difference between the 'source of the threat', which in turn

⁵⁵ Helal, 'The Myth of U.N. Collective Security' (n 44) 1070.

⁵⁶ Lynn H Miller, 'The Idea and the Reality of Collective Security' (1999) 5 *Global Governance* 303, 303.

⁵⁷ The Independent International Commission on Kosovo, *The Kosovo Report: Conflict, International Response, Lessons Learned* (OUP 2000).

⁵⁸ Miller (n 56) 304.

⁵⁹ *Ibid.*

alters the ‘nature and purpose of the relevant organization’.⁶⁰ Miller makes a categorical distinction between the concept of collective security and collective defence.

Unpacking that categorical distinction a step further, a collective security organisation concerns the relation between a universal (or quasi-universal as Kelsen would describe it)⁶¹ organisation managing threats from *internal* members, on behalf of the international community (whether they are members or not).⁶² Collective defence concerns the relation between a selected group and a threat *external to the members of that group*. Membership to that organisation, and agreed action within the confines of law, are at the full discretion of the organisation.⁶³ If distinguishing between the *internal* or *external* threat condition, an organisation should meet the condition of being *either* a collective security organisation *or* a collective defence organisation. But, when a collective security organisation begins to respond to threats external to that organisation (threats beyond interstate aggression), or when a collective defence organisation begins to respond on behalf of States or victims not in that group, these distinctions are corrupted.

IV. MOVING AWAY FROM UNIVERSALIST CONSTRUCTIONS, BLURRING DISTINCTIONS

Due to the inability of the UN Security Council to function as originally intended,⁶⁴ with functional limitations such as the Permanent Member veto

⁶⁰ Ibid.

⁶¹ Kelsen, *Collective Security Under International Law* (n 21) 31.

⁶² UN Charter art 11, 32, 35(2), 50.

⁶³ *The case of SS Lotus (France v Turkey) (7 September 1927)(Judgement)* PCIJ Series A no 10 [45]; *Reparation for Injuries Suffered in the Service of the United Nations* (Advisory Opinion)(1949) ICJ Rep 174, 8.

⁶⁴ ‘The United Nations was never intended to be a utopian exercise. It was meant to be a collective security system that worked’. UNGA, *A More Secure World: Our Shared Responsibility - Report of the High-Level Panel on Threats, Challenges and Change* (2004) UN Doc A/59/565, p 13.

power,⁶⁵ and lack of a centralised military force,⁶⁶ the universalist collective security model under the UN Charter still relies on groupings, arrangements, and alliances to carry out collective security aims. This is based on the delegation powers of the UN Security Council to 'take such action...as may be necessary to maintain or restore international peace and security',⁶⁷ 'by all the Members of the United Nations or by some of them, as the Security Council may determine',⁶⁸ which may also be carried out through 'the appropriate international agencies of which they are members'.⁶⁹ Examples of such delegation mandates include appointing NATO to replace the UN stabilisation mission in Bosnia and Herzegovina,⁷⁰ appointing Economic Community of West African States (ECOWAS) to quell the military junta in Sierra Leone,⁷¹ and the appointing the EU to take over the Bosnian stabilisation mission from NATO.⁷² The reliance on 'outsourced' enforcement, shifts operational control outside of the UN, ultimately testing the authority of the Security Council.⁷³

The fact that the universalist collective security model backed by the authority of the UNSC necessarily relies on delegation or outsourcing to various actors has contributed to the current tension between universalist and regional collective security models. This tension, and a lack of formal placement of regional or subregional groups, and further, defensive alliances, has been formally noted by the UN General Assembly. In 2004, a year after

⁶⁵ UN Charter art 23(1), 27(3).

⁶⁶ Ibid art 43; Repertoire of Security Council Practice: Actions with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression s D: art 42.

⁶⁷ UN Charter art 42.

⁶⁸ Ibid art 48(1).

⁶⁹ Ibid art 48(2).

⁷⁰ UNSC Resolution 743 (21 February 1992) UN Doc S/RES/743.

⁷¹ UNSC Resolution 1132 (8 October 1997) UN DOC S/RES/1132.

⁷² UNSC Resolution 743 (21 February 1992) UN Doc S/RES/743; UNSC Resolution 2658 (22 November 2022) UN Doc S/RES/2658.

⁷³ Niels Blokker, 'Outsourcing the Use of Force: Towards More Security Council Control of Authorized Operations?' in Marc Weller (ed), *The Oxford Handbook of the Use of Force in International Law* (Paperback, 2017).

the US-led coalition invaded Iraq,⁷⁴ the UN General Assembly advanced a number of recommendations for modernising the collective security system.⁷⁵ This UNGA 2004 High-Level Panel Report acknowledged the international legal trend of relying on regional groups in peacekeeping missions,⁷⁶ and noted the need to rely more on regional organisations to operationalise collective security.⁷⁷ Calling for the better utilisation of regional and subregional groups, the High-Level Panel Report also specifically stated that ‘alliances organizations’ such as NATO, ‘(which have not usually been considered regional organizations within the meaning of Chapter VIII of the Charter but have some similar characteristics) have undertaken peacekeeping operations beyond their mandated areas. We welcome this so long as these operations are authorized by and accountable to the Security Council’.⁷⁸ Although an endorsement of NATO’s role in internationalised security, the statement recognised that alliance organisations ‘have some similar characteristics’ to regional arrangements, implying the existence of some discernible differences. But this recognition by the UN General Assembly only served the purpose of acknowledging the lack of formal placement of regional arrangements and defensive alliances, rather than provide further clarity on definitive distinctions. Almost twenty years on from that 2004 High-Level Panel report, there are still further consequences that have yet to be seen in respect to regional arrangements or defensive alliances adopting multiple regional and international security and defence identities.

A two-tiered understanding of collective security—encompassing both regional and international dimensions—in part explains why the distinctions

⁷⁴ Alex J Bellamy, ‘International Law and the War Within Iraq’ (2003) 4 *Melbourne Journal of International Law* 497; Youssef Bassil, ‘The 2003 Iraq War: Operations, Causes, and Consequences’ (2012) 4 *Journal Of Humanities And Social Science (JHSS)* 29.

⁷⁵ UNGA (n 58).

⁷⁶ *Ibid* 60 [220].

⁷⁷ *Ibid* 70–71 s 16.

⁷⁸ *Ibid* 70 [273].

between regional arrangements and defensive alliances have become blurred, and why perhaps, the UK can rely on an ad hoc alliance policy that moves further away from the universalist ambitions of collective security. As the UK continues to endorse not even a regional (the EU), but defensive (NATO) model of collective security, it is difficult to believe that the international security via delegated-to-regional model will remain desired or effective.

V. CONCLUSION

As the UK disembarks from EU security and defence components, it essentially defaults to the collective security network provided by NATO. And yet, the legal coherence of this policy decision involves a more fundamental question not only about how the EU or NATO compare as organisations, but also about how regional organisations or defensive alliances assume the character of 'collective security' organisations in the first place.

To be sure, it is not the existence of regional security mechanisms, nor their right to operate within the collective security architecture that is in question. Rather, this article observes a reality of the international security landscape whereby regionalised security forms undertake increasingly globalised operations. Although such a phenomenon may have a logical and functional explanation, there is still more to be understood about how the regional and international dimensions of collective security interact.

The ideal of universalised collective security may be dated, yet the remnants of that ideal remain pertinent and live in the current legal structure. The two exceptions to the prohibition on the use of force are still UN Security Council authorisation and individual or collective self-defence.⁷⁹ It may be observed that the UN Security Council itself contains asymmetry due to the

⁷⁹ UN Charter art 39, 42, 51; Auden Davies-Bright and Nigel D White, 'The Concept of Security in International Law' in Geiß Robin and Nils Melzer (eds), *The Oxford Handbook of the International Law of Global Security* (1st edn, OUP 2021).

presence of the veto power of the permanent Members,⁸⁰ but that asymmetric power dynamic is not alleviated by transferring higher degrees of collective security authority to powerful defensive alliances.

To contend that certain regional groups might behave like the UN, but have limited and selective participation, is to accept that not all States are created equal in the international security space, and nor should they be. This element of powerful States, particularly in the North Atlantic and European region – signals other messages and beliefs about the state and function of the international order. It might stand to question further if the rules of engagement that seem to apply to NATO, apply to other alliance organisations like the Shanghai Cooperation Organisation (SCO),⁸¹ or the Collective Security Treaty Organisation (CSTO).⁸²

Brexit and the issue of the EU's security and defence identity in relation to NATO's security and defence identity is a contemporary focal point for understanding the relational difference between the regional and international dimensions of collective security, why these realms bleed into each other, and how this legal construction may change in the future. The acceptance of defensive alliances as the *de facto* arm of the regional-cum-international security structure is a practice that warrants continual review.

⁸⁰ See address of the UN Security Council permanent member veto power in Thomas M Franck, 'Collective Security and UN Reform: Between the Necessary and the Possible' (2006) 6 *Chicago Journal of International Law*; Thomas M Franck, 'Rethinking Collective Security' in Michael Schmitt and Jelena Pejic (eds), *International Law and Armed Conflict: Exploring the Faultlines* (Brill | Nijhoff 2007).

⁸¹ Members include China, Kazakhstan, Kyrgyzstan, Russia and Tajikistan. Charter of the Shanghai Cooperation Organization (entered into force 19 September 2003).

⁸² Members include Russia, Armenia, Kazakhstan, Kyrgyzstan, Tajikistan, and Uzbekistan. Collective Security Treaty (dated 15 May 1992, signed 10 December 2010, amended 23 April 2012).