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**Collective Security and Self-Defence:
*The Challenge to the United Nations***

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Abstract

This paper, derived from the Centre’s Symposium in August 2023 on ‘*Nuclear Deterrence and Disarmament: Conflicting perspectives in an age of tension*’, explores the contemporary challenges to international law, in an age where nuclear deterrence theory and traditional alliance diplomacy stand witness to the emergence of a global normative world order.

The paper first reviews the foundations of the contemporary world order, since 1945. It then analyses what, it contends, are the conceptual and institutional weaknesses of the current order, with particular focus on the two central concepts underpinning global peace and security – the use of force, and the control of armaments. It draws conclusions from this analysis, and recommends particular attention to two very recent initiatives that are relevant to easing the age of strategic tension.

It is intended that a separate but related paper will be produced, pursuant to the Symposium, on the relevance of nuclear weapon-free zones to the contemporary global security order.

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1. Introduction

The subject of the Symposium – ‘*Nuclear Deterrence and Disarmament: Conflicting perspectives in an age of tension*’ goes to the heart of the underlying geo-strategic basis of the current decade. Gaining an overall perspective requires a review of the contemporary era that commenced in 1945. While the legal texture preceding 1945 provided the foundation for the contemporary world order, and while some of its texts remain in force, the current era rests on the primacy and superiority of the United Nations Charter. The critical challenge for the global community in the 21st century, therefore, is to assess the efficacy, and even the relevance, of the provisions of that central document.

2. Review: Foundations of the Contemporary World Order

Over the past seven decades, the international legal order has evolved at slow pace but in linear direction, while global political relationships that constitute its contextual landscape have fluctuated in spasmodic and unplanned manner.

- The first four decades were paralysed with bipolar rivalry and confrontation.
- The fifth decade exhibited an optimistic potential for a ‘new world order’ of peace and cooperation.
- The sixth reflected uncertainty over a unipolar or multipolar system, with the added complication of private mercenary and terrorist action.
- The seventh decade witnessed the rise of new power centres, in Africa, Asia and South America, and rising strategic tension among the largest military powers.
- The current decade is exhibiting a deepening of the traditional problem of geo-strategic rivalry, just as unprecedented existential threats confront the global community.

In modern historical terms (Treaties of Westphalia 1648 to the League of Nations Covenant 1920), the use of force was governed by the principles of national sovereignty and the legal right to declare ‘war’. During the 19th century, following the Congress of Vienna (and Treaties of Paris), war in Europe was averted, or at least constrained, through deliberate planning for a ‘balance of power’.

Such untrammelled freedom was first constrained in the early contemporary era (1920 -1945) in which the League Covenant introduced the concept of global collective security, with a Council as an institutional mechanism to apply it.¹ National sovereignty was preserved, however, through the requirement of Council unanimity (with the exception of any party to a dispute), failure of which freed a Member to ‘resort to war’ after a three-month period, taking ‘any action it deems necessary’ for the maintenance of right and justice.² This qualitative, historic step forward contained obvious flaws, however, and proved inadequate to attaining the goal of universal peace and security.

The modern contemporary era (UN Charter; 1945 to the present) has modestly strengthened global collective security, through tightening the unanimity threshold for non-procedural matters (i.e. enforcement action) to the five permanent members of the Security Council.³ But the retention of the veto, and the relic of its permanent membership structure, renders the United Nations increasingly ineffective, at least in terms of its central objective of the maintenance of global peace and security.

We thus stand at what has been described as an ‘inflection-point’ in history.

¹ League of Nations Covenant: Arts. 4, 10, 11

² LON Covenant: Art. 12, 15

³ United Nations Charter: Art. 27

3. Analysis: Conceptual and Institutional Weaknesses

The contemporary world order thus contains a number of subtle, yet profound, weaknesses that continually undermine the effectiveness of the UN Charter and its associated concepts and institutions. Much of this was incorporated in the legal wording of the Charter itself, through compromise or imprecision; some of it has been developed through the art of political theatre. This section considers the two central aspects of the weaknesses: conceptual and institutional.

(a) Concepts: Lack of clarity between collective security and collective defence

The central objective of the United Nations, above all others, is the goal of international peace and security. This goal rests on two inter-related provisions: the lawful use of force, and the control of armaments. Each is considered below.

(i) Use of force

Security Concepts: Collective security and self-defence

The UN Charter contains two weaknesses in its security provisions, namely:

- Global collective security⁴ is combined with the concept of regional collective security⁵ for the enforcement of military action. While the ‘regional arrangements or agencies’ are required to ensure that their enforcement actions are consistent with the UN Charter, under the authority of the UN Security Council, and conveyed to the Council ‘at all times’, there is no clear definition of a regional agency or arrangement.
- Global collective security is undermined by the concept of ‘collective self-defence’ which, unlike individual self-defence which is an inherent right in international law, was a political provision inserted into the UN Charter near the end of the negotiations.⁶ The situation is complex and sensitive, but one prospective view of future reform has been offered recently.⁷

Collective security: Global and regional

Collective security, the central concept of international organization now for a century, is not explicitly defined in the Charter. For clarification, then, the following definitional descriptions of the two levels of collective security are advanced in this paper:

- Global collective security is an arrangement whereby the international community of states establishes a single mechanism for peace and security (including institutional, decision-making and implementation arrangements).
- Regional collective security is an arrangement whereby the member states of a defined geographical region establish a similar mechanism, for its own region.

Self-defence: Individual and collective

Collective self-defence is an arrangement whereby regional states, or states across one or more regions, establish a common alliance for their self-defence, against aggression from one of their own or an external aggressor. With the UN Security Council hamstrung over global enforcement and reduced mainly to voluntary peacekeeping, the resort to collective self-

⁴ UNC: Art. 2 (paras. 4,5) and Arts. 39, 42, 45, 48

⁵ UNC: Arts. 52, 53, 54

⁶ See, for an historical recall of the San Francisco Conference negotiations over the issue: *Act of Creation: The founding of the United Nations*, S.C. Schlesinger (Westview Press, 2003), Ch. 11, pp. 175-192. Also:

- A penetrating critique of the shortcomings of the wording of Article 51, and the ‘almost illusory’ concept of collective self-defence is given in *The Law of the United Nations: A Critical Analysis of Its Fundamental Problems*, Hans Kelsen (Praeger, NY: 8th Ed. 2009), pp. 913-926
- A view that the inherent right of self-defence, individual and collective, is established by Art. 51 of the Charter, is advanced in *The Charter of the United Nations: A Commentary*, B. Simma *et al* (OUP; 1995), pp. 666-678
- An overview is given in *International Law*, M.D. Evans Ed. (OUP; 2006), p. 604: “*Opinion is divided as to whether collective self-defence is a valuable safeguard for small States or a dangerous doctrine justifying intervention by distant and powerful States in remote conflicts*”.
- Also: *Towards World Constitutionalism: Issues in the Legal Ordering of the World Community*, R. Macdonald & D. Johnston Eds. (Martinus Nijhoff; 2005), p. 449: ... “[T]here have been increasingly expansive claims by some powerful states to utilize and extend the right of self-defence accord under Article 51. ... But many questions remain regarding the exact contours of the Charter based right to self-defence.”

⁷ *Global Governance and the Emergence of Global Institutions for the 21st Century*, A Lopez-Claros *et al* Eds. (CUP; 2020), p. 193: “*A reformed international judicial system with compulsory jurisdiction including over the international crime of aggression ... will largely cure any ambiguity in a definition of self-defence, an ambiguity which indeed may be deployed cynically – or in an over-broad way, by various actors.*”

defence, resulting in military alliances reliant upon nuclear weapons, has become the default strategic policy among the major powers and their smaller allies. In essence, the 19th century policy of balance of power has continued, through the 20th century, if not the 21st.

(ii) *Control of armaments*

The Charter empowers the General Assembly to consider the general principles of cooperation in the maintenance of international peace and disarmament, including the principles governing disarmament and the regulation of armaments. The Assembly may make recommendations on such principles to the Security Council and/or all Member States.⁸

The Council is meant to be advised and assisted by a Military Staff Committee concerning, *inter alia*, ‘the regulation of armaments and possible disarmament’.⁹ The MSC, however, never functioned effectively and since 1981 has simply rotated a monthly chairmanship among the P-5 with no substantive agenda.¹⁰ For its part, the Conference on Disarmament, a body that is strictly separate from the UN, labours ineffectually from one decade to the next.

Despite this dereliction, the General Assembly, constituting the totality of the UN membership, has adopted numerous aspirational resolutions on ‘possible disarmament’, commencing with Res. 1(1) of January 1946 that established a Commission for the elimination from national armaments of atomic weapons and all other major weapons adaptable to mass destruction. The period of early strategic tension (1948-90) resulted in a nuclear arms race between the USA and USSR, with UK, France and China (PRC) also acquiring nuclear weapons. Despite some bilateral and multilateral agreements covering the ‘vertical proliferation’ of nuclear weapons, ‘horizontal proliferation’ (their spread to other UN Member States) was assessed to be the greater risk. Non-proliferation became the central focus of political-legal effort, subordinating nuclear disarmament to a declaratory goal, and resulting in a legal text – the Non-Proliferation Treaty (1968) which has reflected and underpinned the geo-strategic reality of the UN era, to date.

The NPT requires the 190 non-nuclear-weapon states Parties (NNWS)¹¹ not to possess nuclear weapons, on the corresponding understanding that all Parties including the five NWS, will pursue negotiations in good faith on effective measures ‘relating to the nuclear arms race at an early date and to nuclear disarmament’.¹² It was the failure of the P-5 States Parties to meet this Art. VI obligation that spawned the negotiations for regional nuclear-weapon-free zones, as an attempt to ensure nuclear disarmament by zonal States, with negative security assurances from the P-5 towards them in return.

The NWF zones, subsequent to the NPT and entering into force from 1969 to 2009, have acted as a temporary bridge between nuclear non-proliferation and disarmament. The recent Treaty for the Prohibition of Nuclear Weapons (TPNW, 2018), is the ultimate international legal instrument for global nuclear disarmament, envisaged by the ICJ in its 1996 advisory opinion.¹³

Whereas the NPT simply requires NW non-possession by non-nuclear States Parties, the regional NWF zones require both non-possession and non-deployment. The question arises whether the contemporary security and armaments provisions are adequate to an age of heightened, perhaps unprecedented, strategic tension – an ‘inflexion point in history’, as captured by the UN Secretary-General and the US President in 2021.¹⁴ There is also concern over the mutation from a bipolar to

⁸ UNC: Art. 11

⁹ UNC: Art. 47

¹⁰ The most recent reference within the UN website is dated 2020, and the most recent relevant document is MS/2130 of 16 July 1981. See: https://www.un.org/securitycouncil/subsidiary/msc/committee_format

¹¹ There are 191 States Parties if the DPRK is included, which both the official bodies (UN and IAEA) do. In contrast, the US-based Arms Control Association acknowledges North Korea’s withdrawal from the NPT, and concludes accordingly that there are 190 States Parties. See:

<https://treaties.unoda.org/t/npt>

<https://www.iaea.org/topics/non-proliferation-treaty>

<https://www.armscontrol.org/factsheets/NPT-Timeline>

¹² NPT: Art. VI

¹³ In its written Opinion, the Court concluded that the NPT nuclear weapon powers (the P-5) had an “*obligation to pursue in good faith and bring to a conclusion, negotiations leading to nuclear disarmament in all its aspects under strict and effective international control*”. The Court noted an increasing concern in the international community with these weapons, and associated existing treaties, which was seen as “*foreshadowing a future general prohibition of the use of such weapons*”. ICJ Advisory Opinion, <https://www.icj-cij.org/case/95> paras 62, 98

¹⁴ UN Secretary-General: “*Global decision-making is fixed on immediate gain, ignoring the long-term consequences of decisions — or indecision. Multilateral institutions have proven too weak and fragmented for today’s global challenges and risks. As a result, we risk a future of*

tripolar nuclear superpower global state – the postulated ‘three-body problem’ that emanates from theoretical insight from the physical sciences.¹⁵

(b) Institutions: Lack of clarity between global and regional organizations

The problem that has arisen within the United Nations is that the structure that has developed for ‘regional arrangements and agencies’ is distinctly loose, with no effective distinction made between regional collective security and regional or cross-regional collective self-defence.¹⁶ This is explored below.

The international system has established institutions to manage the above security concepts in the name of international peace and security.

(i) *Collective security institutions*

The primary organ for global collective security is the UN Security Council. The central organs for regional collective security are the AU for Africa, OAS for America, ASEAN for Southeast Asia, and OSCE for Europe. There are multiple sub-regional agencies within most regions, many of which also carry a collective security responsibility varying in size from West Africa (ECOWAS) to the Eastern Caribbean (OECS).

(ii) *Collective self-defence institutions*

There is, definitionally, no ‘global self-defence’ (only global collective security). The regional collective self-defence agencies established in the early UN era reflected a bipolar division between the P-5 – on the one side, NATO for North America-Western Europe, CENTO for the Middle East, and SEATO for Southeast Asia, and on the other side, the Warsaw Pact for USSR and Eastern Europe. Of these, only NATO currently survives, through a process of political metamorphosis, as described below.

Additionally, the US has had a trilateral self-defence agreement with Australia and New Zealand (since 1986 bilateral with Australia only) and bilateral agreements with Japan and South Korea. China has a counterpart bilateral agreement with North Korea,¹⁷ and Russia and Belarus have a Supranational Union Treaty.

There are some 30 ‘regional organizations’ that have a (strong or weak) security component to their structure recognised by the UN and which participate in the UN’s ‘partnership meetings’ with ‘regional organizations’:¹⁸

Regional & sub-regional (20):	Africa	AU, ECOWAS, IGAD, ECCAS, SADC, LAS, AMU, GCC
	Europe	COE, NC, WEU, EU, SEECP,
	Eurasia-Pacific	ARF, CIS, ASEAN, PIF
	America	OAS, NORAD, OECS,
Cross-regional (4):	Eurasia	OSCE, NATO, SCO, CSTO
Trans-national (4)		IOF, OIC, CPLP, Commonwealth

The regard among global policy-makers over what constitutes a region has thus been casual, to a point of fault. The only geographical areas that accurately reflect a region are Africa and America. Eurasia (Europe and Asia) are conjoined, with

serious instability and climate chaos. ... There was broad recognition that we are at a pivotal moment. Business as usual could result in breakdown of the global order, into a world of perpetual crisis and winner-takes-all. Or we could decide to change course, heralding a breakthrough to a greener, better, safer future for all.” SG/SM/20891, 10 Sept. 2021

“As a global community, we’re challenged by urgent and looming crises wherein lie enormous opportunities if — if — we can summon the will and resolve to seize these opportunities. Simply put: We stand, in my view, at an inflection point in history.”

<https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/09/21/remarks-by-president-biden-before-the-76th-session-of-the-united-nations-general-assembly/#:~:text=We%20must%20choose%20to%20do,ensuring%20a%20future%20where%20technologies>

¹⁵ See: *The Terror of Three: A cosmic portent of chaos*, William Broad, New York Times, July 5, 2023, p. 14

¹⁶ For an analysis of the subject, see *Regional Security and Global Governance*, K Graham and T Felício (VUB Brussels University Press; 2006), esp. chapters 1-4

¹⁷ Sino-North Korean Treaty of Friendship, Cooperation and Mutual Assistance (1961). Art. 2 contains the bilateral self-defence provision.

¹⁸ It should be noted that the UNN Charter makes no explicit reference to ‘regional organization’; rather to agencies or arrangements. The reference to ‘organizations’ has been developed to encompass both.

historically strategic tension. Asia is exceptionally large, and indeed the term can credibly be seen as a political fiction. The ‘Middle East’ reflects colonial attitudes of a pre-UN era, yet the term persists in common parlance.

The distinction between regional or cross-regional collective security and collective self-defence has been developed, to some extent deliberately, with a lack of clarity. The North Atlantic Treaty, the primary example, has a clear and explicit collective self-defence clause pertinent to Chapter VII of the UN Charter.¹⁹ Yet NATO contends, in the contemporary era, that it has a Chapter VIII role as well.²⁰ In similar vein, ANZUS which claims to cover the entire ‘Pacific Area’ makes explicit reference to both regional collective self-defence²¹ and regional collective security.²²

For the goal of global collective security, the problem of collective self-defence and its agencies is that it identifies, explicitly or implicitly, a potential aggressor external to the collective group. As such, it is simply a 20th / 21st c. version, within the UN era, of the 19th c. concept of ‘balance of power’. This, together with P-5 unanimity, effectively thwarts the contemporary vision of a genuine global peace and security system.

4. Conclusions and Recommendations

From the foregoing analysis, the following conclusions and recommendations can be drawn.

(a) Conclusions

(i) *Selective bipolar logic over nuclear deterrence theory*

The contemporary debate over nuclear deterrence theory reflects a half-century of bipolar logic:

- The ‘reliance theory’ rests on the premise that, because a nuclear war can never be won and must never be fought, NW possession and first-use policy will successfully deter major power aggression, and nuclear collective self-defence is therefore a valid policy, indefinitely – and logically, forever.
- The ‘rejection theory’ rests on the premise that, notwithstanding the ‘reliance logic’, the risk of accidental or deliberate use of nuclear weapons is sufficiently significant that the stakes justify, indeed demand, verifiable nuclear disarmament within a credible time-frame – such as one decade from a legal agreement (i.e. universality of the TPNW).

(ii) *Need for clarity over definitions within the United Nations*

There is a strong and urgent need for greater clarity within the United Nations of what constitutes a ‘regional collective security agency’ and a ‘regional collective self-defence agency’, with different roles recognised for each, and separate meetings for the two difference types of institutions convened by the Security Council.

¹⁹ The North Atlantic Treaty (1949), Art. 5

²⁰ “Although the Alliance does not consider itself formally a regional organization under Chapter VIII of the UN Charter, NATO’s transition from a purely collective self-defence manager in a broad sense has enabled it to act in the same spirit”. NATO Statement to UN Security Council, 20 July 2004. (in Graham & Felício, p. 199)

²¹ Security Treaty between Australia New Zealand and the United States of America (ANZUS):

- “Desiring to declare publicly and formally their sense of unity, so that no potential aggressor could be under the illusion that any of them stand alone in the Pacific Area, and Desiring further to coordinate their efforts for collective defense for the preservation of peace and security pending the development of a more comprehensive system of regional security in the Pacific Area”; preamble; and
- Each Party recognizes that an armed attack in the Pacific Area on any of the Parties would be dangerous to its own peace and safety and declares that it would act to meet the common danger in accordance with its constitutional processes. Any such armed attack and all measures taken as a result thereof shall be immediately reported to the Security Council of the United Nations. Such measures shall be terminated when the Security Council has taken the measures necessary to restore and maintain international peace and security”. ANZUS Art. IV; and
- For the purpose of Article IV, an armed attack on any of the Parties is deemed to include an armed attack on the metropolitan territory of any of the Parties, or on the island territories under its jurisdiction in the Pacific or on its armed forces, public vessels or aircraft in the Pacific”. ANZUS Art V

²² “Pending the development of a more comprehensive system of regional security in the Pacific Area and the development by the United Nations of more effective means to maintain international peace and security, the Council, established by Article VII, is authorised to maintain a consultative relationship with States, Regional Organizations, Associations of State or other authorities in the Pacific Area in a position to further the purposes of this Treaty and to contribute to the security of that Area”. ANZUS, Art. VIII

(b) Recommendations

Recommendations for UN reform has characterised international politics since the 1950s. The Charter makes provision for a review, which must be held at any time in the event of a two-thirds vote of the General Assembly and a vote of ‘any nine members’ of the Security Council. Much effort has gone into reform of the UN, especially over the past three decades.

The current effort rests on the report of the Secretary-General’s High-Level Board on Effective Multilateralism,²³ and the forthcoming UN Summit for the Future (September 2024). Considerable multi-thematic effort has been invested in the current report at ensuring that the UN, essentially a conglomeration of sovereign nation-states, answers to the needs of the global community of peoples, with the stated intention of having the Summit agree upon a ‘*Pact for the Future*’.

What is not being seriously considered, in the current age of strategic tension, are the weaknesses, both conceptual and institutional, that are identified above, deriving largely from the legal imprecision bequeathed to us in 1945. Other papers in this symposium explore this point, as well.

There is therefore a continuing need for new initiatives. The final recommendation of this paper is that attention be given to two recent such initiatives both in July 2023: the first on nuclear weapons; the second on institutional reform of the United Nations, viz:

- The Elders, who have published a new report on the ‘existential threat posed by nuclear weapons’;²⁴
- The Global Governance Forum, which has launched a Call for UN Reform.²⁵

²³ ‘Breakthrough for People and Planet: Effective and Inclusive Global Governance for Today and the Future’, <https://highleveladvisoryboard.org/new-blueprint-calls-for-reinvigorated-global-governance/>

²⁴ <https://theelders.org/news/elders-publish-new-policy-paper-nuclear-weapons>

²⁵ <https://globalgovernanceforum.org/global-issues/un-reform/>. This latest call is based on a book published in 2020, viz. *Global Governance and the Emergence of Global Institutions for the 21st Century*, A. Lopez-Claros et al, Eds. (Cambridge UP; 2020)