Introduction

The quest for the prevention of war and the preservation of peace has pervaded political and legal thinking for several centuries past. Many ideas and projects notwithstanding, the first genuine collective security institution was the League of Nations, established in 1919 in recognition of the fact that the international system at that time, based on an equilibrium between and concert of European great powers, had broken down. A distinctively new multilateral arrangement was needed that would deal with problems of war and peace in a formalized context—it would be based on a written international agreement and operate through regularly scheduled sessions, public discussion, and officially adopted documents. The procedure specified in the League Covenant would define the cause of action and standing to raise it, as well as the measures to be implemented in response to an outstanding threat to peace and security. The simple but cardinal difference these arrangements made to existing patterns of informal concerts and secret diplomacy was that the problem of international peace and security became a matter of law.

Ever since, legal arrangements have come to be viewed as the principal tool for enhancing and upgrading the effectiveness of collective security arrangements. The breakdown of the League system in the 1930s was followed by lengthy negotiations in 1944 and 1945 at the Dumbarton Oaks and San Francisco conferences to establish collective security arrangements suitable for the post-Second World War environment, culminating in the adoption of the United Nations Charter.

However, ever since its establishment, the UN has been viewed as insufficient, given that its action is contingent on the unanimity of five permanent members in the Security Council. Hence, multiple regional arrangements have been established to compensate for the insufficiency of the UN by providing a regional capability to deal with regional crises. This process of multiplying institutions has raised the question how and in what manner these institutions are supposed to cohabit within the same international legal system.

Despite the abundance of writings on these matters, so far there has been no comprehensive study of collective security that covers all the pertinent institutions and arrangements. Collective security is a complex and multifaceted process and can be approached in a variety of ways. To illustrate, in the Cold War period, the issues attracting heaviest attention in doctrine and practice were the scope of domestic jurisdiction under Article 2(7) of the UN Charter, and the competence
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of the UN General Assembly to authorize the use of force under the ‘Uniting for Peace’ resolution. The period since the Cold War has witnessed an increasing attention to proposals for reform of the UN Security Council, and a growing emphasis on human security and the ‘responsibility to protect’. Obviously a study that examines collective security in a comprehensive manner has to be premised on such delimitation of its scope as will ensure the proper focus on its principal underlying themes.

Two principal themes underlie this monograph. In the first place, collective security is a product of law: the powers of collective security organs exist because, and to the extent that, they are delegated to these organs by states party to their constituent instruments. Therefore the ultimate measure of collective security decisions and operations lies with a consensual imperative as the structural principle of the international legal system. Collective security action has to fit within the consensual limits of delegation. It is the consensual positivist approach that holds the key to identifying the extent of the potential of jurisdictional and operational capabilities vested in institutions. This is usefully, and inevitably, complemented by the process of interpreting constituent instruments and decisions adopted pursuant to them, to identify the content of particular decisions, the intention behind them, and their impact on the ground.

The second principal theme of this monograph refers to the process by which collective security institutions multiply. The primacy of the United Nations, as provided for in its Charter (notably Article 103), obviously requires collective security to be viewed as a single comprehensive system covering the United Nations together with regional and sub-regional organizations. Chapter VIII of the UN Charter is the constitutional basis for this comprehensive system, and defines the criteria for the valid existence and activities of regional arrangements in various contexts. However, as regional institutions develop, increasingly they assert their own policies regarding the collective security process, and at times contradict policy choices made by UN organs, above all the Security Council. Sometimes this affects the outcomes on the ground, thus constraining the real impact that Security Council decisions can have.

The entire system of collective security is multilevel and multidimensional, and has to be examined from a bottom-up perspective that is free of any blanket preconception that a particular level of collective security should inherently enjoy primacy over others. The answer to this problem is rather more nuanced, and focuses on the legal frameworks of specific collective security institutions, and policies adopted by those institutions. Given that this process develops within the context of a consensual legal system, the only permissible solutions can be those that enjoy a sufficient degree of international consensus.

This inevitably requires identifying underlying principles by which competence is allocated, based on which institutions can arrange for a sustainable division of labour between one another, and claim legitimacy for their actions and policies. The principles widely recognized and practised include ‘complementarity’ and ‘subsidiarity’; those that are repeatedly articulated in various contexts but remain contested, falling short of commanding a general acceptance, include
‘primacy’, ‘non-subordination’, and ‘autonomy’. The focus on these principles is at the core of this study. The principal focus on competence allocation is concentrated in Chapter 3, although subsidiarity and complementarity are considered in other chapters to the extent necessary to examine particular aspects of collective security.