

THE EXPANDED CONCEPTION OF SECURITY AND INTERNATIONAL LAW: CHALLENGES TO THE UN COLLECTIVE SECURITY SYSTEM

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Introduction

Security is an elastic and diverse concept that can be understood in different forms, depending on its objects: the perception of threats, the protected values, and the means through which these values can be protected.¹ The changing perception of security threats that already emerged in the 1980s,² and ways in which these threats are addressed, has led to comprehensive and scientific studies of security concept.³ While the multidimensionality of security is now widely acknowledged in the discourse of security, its impacts on and challenges to international law are yet to be fully examined.

International security law, at the present stage of development, is primarily found in the United Nations (UN) collective security system. This is based on the norm of non-use of armed force under Article 2(4) of the UN Charter and the institution of the UN Security Council vested with the primary responsibility for the maintenance of international peace and security under Article 24 of the Charter.⁴ Thus, collective security is a product of law, based on the delegation of power by sovereign states to a collective entity,⁵ providing the normative foundation for and means of regulating the behaviour of sovereign states and conflict among them. Collective security provides institutionalised procedures for legalising collective response, designed at least originally to address traditional, military-oriented threats to the maintenance of international peace and security. However, challenges to the sovereign-centred collective security have arisen, particularly after the end of the Cold War, due to the diversity of perceived security threats, the rise of transnational security concerns, the greater role played by non-state actors, and the alleged ineffectiveness of

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¹ See generally, D.A. Baldwin, 'The Concept of Security', *Review of International Studies* 1997-23, pp. 5-26. Cf B. Buzan, *People, States and Fear: The National Security Problems in International Relations*, Brighton: Wheatsheaf, 1983, p.6. (stating that security is an 'essentially contested concept').

² See, e.g., J.T. Mathews, 'Redefining Security', *Foreign Affairs* 1989-68(2), pp. 162-177; R.H. Ullman, 'Redefining Security', *International Security* 1983-8, pp. 129-153.

³ See generally, B. Buzan and L. Hansen, *The Evolution of International Security Studies*, Cambridge: Cambridge University Press, 2009.

⁴ M. Koskenniemi, 'The Place of Law in Collective Security', *Michigan Journal of International Law* 1996-17, p. 456.

⁵ A. Orakhenshivili, *Collective Security*, Oxford: Oxford University Press, 2011, p. 2.

existing international arrangements in responding to dynamic security challenges.⁶

This article considers the above challenges posed to the UN collective security system, with a focus on the impacts of an expanded security concept upon international law with respect to four different objects of security: national security; international security; human security; and regime security. To that end, Section I outlines three different dimensions through which the concept of security has been expanded, providing a conceptual foundation for the following analysis of its impacts upon international law. Section II examines the impacts of an expanded security concept in relation to the aforementioned four different objects of security, exploring the opportunities and challenges presented to international law. Section III then discusses the limits of collective security in effectively responding to the expanded conception of security within the existing framework of international law. Section IV revisits alternative security approaches presented in the past, evaluating their potential to complement collective security in dealing with diverse security objects and threats.

I. The Expanded Conception of Security

The traditional view of security is defined in military terms, with the primary focus on state protection from threats to national interests. Thus when Hans Kelsen published *Collective Security under International Law* in 1957, he confined the scope of his study to 'the protection of men against the use of force by other men'.⁷ It was inextricably linked to national security, meaning the protection of territory from external military threats and attacks, which was recognised as the ultimate *raison d'être* of sovereign states. However, such a traditional notion of security, as defined by reference to national survival, physical protection of state territory, and military power, has expanded its scope in the second half of the 20th century, particularly since the end of the Cold War.

First, the idea of international security, as distinct from national/state security, emerged with the development of a collective security system. The League of Nations recognised an act of aggression and an act of war that commenced in disregard of the war avoidance procedures under its Covenant as security threats for all members of the League.⁸ The establishment of the UN Security Council with the primary responsibility for the maintenance of international

⁶ See, M.-F. Cuéllar, 'Reflections on Sovereignty and Collective Security', *Stanford Journal of International Law* 2004-40, pp. 230-239.

⁷ Hans Kelsen, *Collective Security under International Law*, Washington DC: United States Government Printing Office, 1957, p. 1.

⁸ Covenant of the League of Nations, 28 June 1919, 225 CTS 188 (entered into force 10 January 1920) Articles 10 and 16. See generally, M.D. Dubin, 'Toward the Concept of Collective Security: The Bryce Group's "Proposals for the Avoidance of War" 1914-1917', *International Organisation* 1970-24, pp. 288-318; B. Williams, *State Security and the League of Nations*, Baltimore: Johns Hopkins Press, 1927; F. Kellor, *Security Against War*, New York: Macmillan, 1924.

peace and security,⁹ and its operation in practice, has gradually fostered an acceptance among states of the idea that the security of the international community, not simply the security of one state, can be undermined. This was no exception during the Cold War, when strategic balance of power rivalries and nuclear deterrence to stabilise international relations remained the dominant international security concerns.¹⁰

The notion of 'human security' has also added a new dimension to the expansion of the security concept, since the UN Development Programme (UNDP) captured it into policy discourse in its 1994 *Human Development Report*.¹¹ Human security has subsequently provided a theoretical foundation for the development of the 'responsibility to protect' concept as a policy agenda,¹² which was officially endorsed in the 2005 World Summit Outcome.¹³ One of the novel aspects of this concept is that human populations, as distinct from sovereign states and the international community, are recognised as objects to be protected from threats of genocide, war crimes, ethnic cleansing and crimes against humanity.

Second, the territorial context for security has changed. Security has traditionally been understood in relation to state sovereignty and its territorial integrity, as expressed in Article 2(4) of the UN Charter. However, as technological advancement has enabled exploration and exploitation beyond state borders, security concerns have extended geographically and spatially to different maritime zones,¹⁴ outer space,¹⁵ the Arctic,¹⁶ Antarctica,¹⁷ and even

⁹ Charter of the United Nations, 26 June 1945, 1 UNTS XVI (entered into force 24 October 1945) Article 24.

¹⁰ See, e.g., K. Waltz, *Theory of International Politics*, New York: Random House, 1979; T. Shelling, *Arms and Influence*, New Haven: Yale University Press, 1966; H. Morgenthau, *Politics Among Nations: The Struggle for Power and Peace*, New York: Aldred A. Knoff, 1950.

¹¹ UN Development Programme, *Human Development Report 1994*, New York: United Nations, 1994, p. 22

¹² For the origin of the responsibility to protect concept, see, e.g., International Commission on Intervention and State Responsibility (ICISS), *The Responsibility to Protect*, Ottawa: International Development Research Centre, 2001, p. 15; G. Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All*, Washington DC: Brookings Institution Press, 2008, pp. 34-35.

¹³ A/RES/60/1, 16 September 2005, paras 138-139.

¹⁴ See, e.g., N. Klien, *Maritime Security in International Law*, Oxford: Oxford University Press, 2011; N. Klein, J. Mossop, and D. Rothwell (eds) *Maritime Security: International Law and Policy Perspectives from Australia and New Zealand*, London: Routledge, 2010.

¹⁵ See, e.g., M. Bourbonnière and R.J. Lee, 'Legality of the Deployment of Conventional Weapons in Earth Orbit: Balancing Space Law and the Law of Armed Conflict', *European Journal of International Law* 2007-18, pp. 873-901; D. Wolter, *Common Security in Outer Space and International Law*, Geneva: United Nations Institute for Disarmament Research, 2005.

¹⁶ See, e.g., L. Heininen, 'Globalisation and Security in the Circumpolar North', in: L. Heininen and C. Southcott (eds) *Globalisation of the Circumpolar North*, Chicago: The University of Chicago Press, 2010 pp. 221-264; M.B. West, 'Arctic Warming: Environmental, Human, and Security Implications', *Vanderbilt Journal of Transnational Law* 2009-42, pp. 1081-1108.

¹⁷ See, e.g., D.R. Rothwell and H. Nasu, 'Antarctica and International Security Discourse: A Primer', *New Zealand Yearbook of International Law* 2008-6, pp. 3-24 and other collections in the same volume.

cyber space.¹⁸ Those new security frontiers are also not immune from the influence of an expanded concept of security, posing challenges to the existing legal regimes governing extra-territorial and non-territorial activities. Unlike the traditional territorial context in which sovereign states are the only objects of security concerns, it is possible to find a range of different objects which raise security concerns in these new frontiers.¹⁹ Thus, the international legal regimes that govern extra-territorial and non-territorial activities may form the subject of security inquiry in their own right.

Third, there has been a gradual move towards recognising more diverse issues as posing security threats, spawning a growth of security literature in the areas of economic security,²⁰ environmental security,²¹ energy and resource security,²² food security,²³ bio-security,²⁴ and health security.²⁵ The expansion of security issues was formally acknowledged when state leaders gathered to meet at the Security Council in 1992 and referred to a range of non-military sources of instability in the economic, social, humanitarian and ecological fields as threats to international peace and security.²⁶ The 2004 Report of the UN Secretary-General's High-Level Panel identified economic and social threats, transnational organised crime, as well as inter-state conflict, internal conflict, terrorism, and weapons of mass destruction as global security threats.²⁷ The

¹⁸ See, e.g., M. Roscini, 'World Wide Warfare – Jus ad bellum and the Use of Cyber Force', Max Planck Yearbook of United Nations Law 2010-14, pp. 85-130; M.N. Schmitt and B.T. O'Donnell (eds) *Computer Network Attack and International Law*, Newport: Naval War College, 2002.

¹⁹ One such attempt in relation to the Antarctic regime is A.D. Hemmings, D.R. Rothwell, and K.N. Scott (eds) *Antarctic Security in the Twenty-First Century: Legal and Policy Perspectives*, London: Routledge, 2011, forthcoming.

²⁰ See, e.g., V. Cable, 'What Is International Economic Security?', *International Affairs* 1995-71, pp. 305-324.

²¹ See e.g., S. Dalby, *Security and Environmental Change*, Cambridge: Polity Press, 2009, especially ch. 2; S. Dalby, *Environmental Security*, Minneapolis: University of Minnesota Press, 2002.

²² See, e.g., S. Raphael and D. Stokes, 'Energy Security', in: A. Collins (ed) *Contemporary Security Studies*, 2nd ed, Oxford: Oxford University Press, 2010, pp. 379-392.

²³ See, e.g., W. Allam, 'Food Supply Security, Sovereignty and International Peace and Security: Sovereignty as a Challenge to Food Supply Security', in: A. Mahiou and F. Snyder (eds) *Food Security and Food Safety*, Leiden: Martinus Nijhoff, 2006, pp. 325-350; M.G. Desta, 'Food Security and International Trade Law: An Appraisal of the World Trade Organisation Approach', *Journal of World Trade* 2001-35, pp. 449-468.

²⁴ See, e.g., D.P. Fidler and L.O. Gostin, *Biosecurity in the Global Age: Biological Weapons, Public Health, and the Rule of Law*, Stanford: Stanford University Press, 2008; M. Wheelis and M. Dando, 'Neurobiology: A Case Study of the Imminent Militarisation of Biology', *International Review of the Red Cross* 2005-87, pp. 553-571; D.L. Heymann, 'The Evolving Infectious Disease Threat: Implications for National and Global Security', *Journal of Human Development* 2003-4, pp. 191-207.

²⁵ See, e.g., D.P. Fidler, 'From International Sanitary Conventions to Global Health Security: The New International Health Regulations', *Chinese Journal of International Law* 2005-4, pp. 325-392; L. Chen and V. Narasimhan, 'Human Security and Global Health', *Journal of Human Development* 2003-4, pp. 181-190.

²⁶ UN Doc S/PV.3046, 31 January 1992, especially the Presidential statement issued at the end of the proceedings at p. 143.

²⁷ Secretary-General's High-Level Panel on Threats, Challenges and Change, 'A More Secure World: Our Shared Responsibility', UN Doc A/59/565, 2 December 2004, p. 23. For discussion,

former UN Secretary-General's 2005 Report, *In Larger Freedom*, adds poverty, deadly infectious disease, and environmental degradation to the list, on the grounds that these can have equally catastrophic consequences.²⁸ However, many of those 'global security concerns' are still closely linked to the national security of (often powerful) sovereign states, and those non-traditional security threats tend to become significant, as will be elaborated below in Section II.2, only to the extent that states themselves recognise the causal relationship between non-traditional security threats and potential armed conflicts – traditional international security threats.

II. The Impacts of Securitisation for International Law

Security was analytically approached as a discourse when the Copenhagen School developed their 'securitisation' theory from a speech-act perspective in language theory.²⁹ Rather than understanding security as a fixed, defined notion, the Copenhagen School attempted to understand the discourse of security as the processes of constructing a shared understanding of what is considered a threat.³⁰ In such processes, it identified 'referent objects' (which are seen to be existentially threatened) as distinguished from 'securitising actors' (who securitise issues) and 'functional actors' (who affect the dynamics of decision-making).³¹ According to their analysis, for example, the environment can be seen as a referent object in securitising environmental concerns by a certain group of people acting as the securitising actors through their interaction with polluting companies and other stakeholders as functional actors.

In the following analysis, challenges of securitisation to international law are examined in relation to four different levels of referent object: sovereign states, the international community, human beings, and international regimes. The referent object for security has traditionally been the sovereign state. Central to security studies for many years has been the survival of a sovereign state and hence national security. However, as explained above, the idea of international security evolved through the development of a collective security system particularly under UN authority. In addition, the expanded conception of security in the international arena has led to the recognition of human security and regime security as distinct referent objects of security.

see, G. Shafir, 'Legal and Institutional Responses to Contemporary Global Threats: An Introduction to the U.N. Secretary-General's High-Level Panel Report on Threats, Challenges and Change', *California Western International Law Journal* 2007-38, pp. 6-14.

²⁸ K.A. Annan, *In Larger Freedom: Towards Development, Security and Human Rights for All*, New York: United Nations, 2005, para. 78.

²⁹ The Copenhagen School is a team of researchers at the Conflict and Peace Research Institute of Copenhagen University (the Copenhagen School), represented by Barry Buzan, Ole Wæver, and Jaap de Wilde, who, among others, theorised the process of securitisation as a discursive process.

³⁰ B. Buzan, O. Wæver and J. de Wilde, *Security: A New Framework for Analysis*, Boulder: Lynne Rienner, 1998, pp. 23-26.

³¹ *Ibid.*, p. 36.

II.1 National Security

Traditionally, national security is focused upon the physical protection of a state's territory (and of their nationals by extension) from military attacks by another state. This focus is reflected in the express recognition of the "inherent right of individual or collective self-defence" in Article 51 of the UN Charter. However, national security concerns have also diversified, which reflects more contemporary, acute public concerns that pose greater threats to individuals and groups of people. The evolved conception of national security has posed challenges to the interpretation and application of existing norms and rules of international law in dealing with non-traditional security threats. Thus, for example, the shift from a law enforcement approach to a military response to transnational terrorist activities that are launched by non-state actors without a state's involvement has challenged the conventional understanding that the right of self-defence can only be exercised in the case of an armed attack by one state against another state.³²

The language of security from vaguely defined threats to national interests has the danger that it could be used to distort security discourse and justify states stepping back from their international legal obligations, particularly those which protect individuals and their human rights. Illustrative is the 'global war on terror' following the 2001 terrorist attacks in New York and Washington, which pushed the United States to cross the line in defiance of its legal obligations under the Geneva Conventions³³ in handling Al-Qaeda detainees most infamously in Guantanamo Bay.³⁴ Other states also followed suit, by taking extreme counter-terrorism measures notwithstanding human rights concerns.³⁵ The view that fundamental human rights and values should be balanced against, and reconciled with, national security has subsequently mustered some support.³⁶

³² For details, see, e.g., N. Lubell, *Extraterritorial Use of Force Against Non-State Actors*, Oxford: Oxford University Press, 2010, pp. 29-35.

³³ *Geneva Convention for the Amelioration of the Condition of Wounded and Sick in Armed Forces in the Field*, 12 August 1949, 75 UNTS 31 (entered into force 21 October 1950); *Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea*, 12 August 1949, 75 UNTS 85 (entered into force 21 October 1950); *Geneva Convention relative to the Treatment of Prisoners of War*, 12 August 1949, 75 UNTS 135 (entered into force 21 October 1950); *Geneva Convention relative to the Protection of Civilian Persons in Time of War*, 12 August 1949, 75 UNTS 287 (entered into force 21 October 1950).

³⁴ See, e.g., F. Johns, 'Guantanamo Bay and the Annihilation of the Exception', *European Journal of International Law* 2005-16, pp. 613-635; M. Sassòli, 'The Status of Persons Held in Guantánamo under International Humanitarian Law', *Journal of International Criminal Justice* 2004-2, pp. 96-106.

³⁵ See generally, D. Kostakopoulou, 'How to Do Things with Security Post 9/11', *Oxford Journal of Legal Studies* 2008-28, pp. 317-342; M. Gani and P. Matthew (eds), *Fresh Perspectives on the 'War on Terror'*, Canberra: ANU E-Press, 2008; B.J. Goold and L. Lazarus (eds) *Security and Human Rights*, Oxford/Portland: Hart Publishing, 2007.

³⁶ See, e.g., J. Waldron, 'Security and Liberty: The Image of Balance', *The Journal of Political Philosophy* 2003-11(2), pp. 191-210; S. Bronitt, 'Balancing Security and Liberty: Critical Perspectives on Terrorism Law Reform', in: Gani and Matthew 2008 (eds), *supra* note 35, pp. 65-83.

The UN collective security system did little to ensure that national security measures were in compliance with the existing rules of international law, but instead was used as a legal platform for such measures, through the Security Council's adoption of Resolution 1373 (which declares that terrorism is contrary to the purposes and principles of the UN).³⁷ Although Resolution 1373 can be seen as an internationally concerted response to "the shared perception of a common danger, not simply to individual States, but to a system of world public order",³⁸ the resolution left a large scope for states to take advantage of it in order to pursue extreme national security measures in the name of counter-terrorism.³⁹ In fact, the absence of a definition of terrorism in the resolution is considered deliberate, and has left states with a significant degree of discretion in defining terrorism and to abuse the Security Council's mandate to target particular individuals or groups.⁴⁰ The subsequent call on states to implement counter-terrorism measures in accordance with international human rights obligations has done little to change the way states implement those measures.⁴¹

Another example is tighter border control against asylum seekers, as illuminated by Australia's infamous 'Pacific Solution'.⁴² European countries have also taken advantage of immigration control as a method of dealing with migrants suspected of being associated with terrorists,⁴³ sending them back to their country of origin, despite the possibility of persecution or ill treatment. Those countries have even been upfront about their idea and desire that national security considerations should be given weight in balancing the need to ensure human rights protection of those who are suspected of being

³⁷ SC Res 1373, 28 September 2001.

³⁸ W.M. Reisman, 'In Defense of World Public Order', *American Journal of International Law* 2001-95, p. 834.

³⁹ See generally, V.V. Ramraj, M. Hor, and K. Roach (eds) *Global Anti-Terrorism Law and Policy*, Cambridge: Cambridge University Press, 2005.

⁴⁰ For details, see especially, B. Saul, *Defining Terrorism in International Law*, Oxford: Oxford University Press, 2008, pp. 48-51.

⁴¹ SC Res 1456, 20 January 2003, para. 6. For details, see, eg, E.J. Flynn, 'The Security Council's Counter-Terrorism Committee and Human Rights', *Human Rights Law Review* 2007-7, pp. 371-384; A. Marschik, 'The Security Council's Role: Problems and Prospects in the Fight against Terrorism', in: G. Nesi (ed.) *International Cooperation in Counter-Terrorism*, Aldershot: Ashgate, 2006, pp. 72-73.

⁴² The 'Pacific Solution' was introduced by the then Howard Government, which excised Australia's offshore islands from the migration zone for immigration purposes and made an arrangement with small, neighbouring countries for transfer of those who arrived by boat on offshore places for processing of their asylum applications. For details, see, M. Crock, B. Saul, and A. Dastyari, *Future Seeker II: Refugees and Irregular Migration in Australia*, Sydney: Federation Press, 2006, pp. 115-125.

⁴³ See generally, A. Edwards, 'Human Security and the Rights of Refugees: Transcending Territorial and Disciplinary Borders', *Michigan Journal of International Law* 2009-30, pp. 763-807; G. Noll, 'Securitising Sovereignty? States, Refugees and the Regionalisation of International Law' in E. Newman and J. van Selm (eds) *Refugees and Forced Displacement: International Security, Human Vulnerability, and the State*, Tokyo: UN University Press, 2003, pp. 277-305; B.S. Chimni, 'Globalisation, Humanitarianism and the Erosion of Refugee Protection', *Journal of Refugee Studies* 2000-13, pp. 243-264.

involved in terrorist activities.⁴⁴ Again, the Security Council's collective security measures, including the terms of Resolution 1373, have been rather instrumental in the adoption of extreme border control measures to prioritise national security.⁴⁵

II.2 International Security

As discussed above, the idea of international security evolved through the development of a collective security system, particularly under UN authority. The key to that development lies in the concept of a threat to the peace, a breach of the peace, and an act of aggression under Article 39 of the UN Charter. The fact that the Security Council's practice enlarged the concept of a threat to the peace is well documented.⁴⁶ One might take the view that such practice simply represents the Security Council's broader understanding of international security.

In 2000, the Security Council discussed the impact of HIV/AIDS on peace and security in Africa under the Council Presidency of US Vice-President, Al Gore.⁴⁷ This marked the first time that the Security Council dealt with a health issue as a security concern. In 2007, the UK government circulated a concept paper as the basis for an open debate in the Security Council, which explored the relationship between energy, security and climate.⁴⁸ Although no action has been taken as a result of those discussions to date, commentators have suggested that non-traditional security threats, such as public health threats, environmental degradation and climate change, should be accommodated within the purview of the Security Council through expansive reading of its mandate for the maintenance of international peace and security.⁴⁹

⁴⁴ For details, see, G. Gentili, 'European Court of Human Rights: An Absolute Ban on Deportation of Foreign Citizens to Countries Where Torture or Ill-treatment is a Genuine Risk', *International Journal of Constitutional Law* 2010-8, pp. 311-322; L. Skoglund, 'Diplomatic Assurances Against Torture – An Effective Strategy? A Review of Jurisprudence and Examination of the Arguments', *Nordic Journal of International Law* 2008-77, pp. 319-364.

⁴⁵ See, P. Mathew, 'Resolution 1373 – A Call to Pre-empt Asylum Seekers? (or "Osama, the Asylum Seeker")', in: J. McAdam (ed) *Forced Migration, Human Rights and Security*, Portland, OR: Hart, 2008, pp. 19-61.

⁴⁶ See, e.g., K. Wellens, 'The UN Security Council and New Threats to the Peace: Back to the Future', *Journal of Conflict & Security Law* 2003-8, pp. 15-70; I. Österdahl, *Threat to the Peace: The Interpretation by the Security Council of Article 39 of the UN Charter*, Uppsala: Iustus Forlag, 1998, pp. 85-88; R. Cryer, 'The Security Council and Article 39: A Threat to Coherence?', *Journal of Armed Conflict Law* 1996-1, pp. 161-195; P.H. Kooijmans, 'The Enlargement of the Concept "Threat to the Peace"', in: R.-J. Dupuy (ed) *The Development of the Role of the Security Council*, Dordrecht: Martinus Nijhoff, 1993, pp. 111-121.

⁴⁷ UN Doc S/PV.4087, 10 January 2000.

⁴⁸ Letter dated 5 April 2007 from the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the President of the Security Council, UN Doc S/2007/186, 5 April 2007.

⁴⁹ See, e.g., D.P. Fidler, 'The UN and the Responsibility to Practice Public Health', *Journal of International Law & International Relations* 2005-2, pp. 58-59; L. Elliott, 'Imaginative Adaptations: A Possible Environmental Role for the UN Security Council?', *Contemporary Security Policy* 2003-24(2), pp. 47-68; C. Tickell, 'The Inevitability of Environmental Security', in:

However, the Security Council's embrace of a broader conception of international security is not so straightforward. During the 2000 debate on the impact of HIV/AIDS on peace and security in Africa, some states expressly identified those non-traditional security issues as "virulent seeds of conflict",⁵⁰ emphasising the direct link between those issues and the mandate of the Security Council.⁵¹ The attempt to draw the Security Council's attention to non-traditional security threats met strong hostility during the 2007 debate on the relationship between energy, security and climate. Having considered climate change to be a development issue, the Group of 77, China and Russia criticised this debate as the "ever-increasing encroachment by the Security Council on the roles and responsibilities of other principal organs of the United Nations".⁵² There is a good legal reason for taking such a cautious attitude, for international institutions are required to operate within the competence defined by the provisions of their constitutive instrument.⁵³ Thus, the expansion of the concept of international security will entail one of the two consequences: (1) posing challenges to the jurisdictional limits of international institutions and organs, such as the Security Council; or as will be examined below (2) requiring a wider range of mechanisms to respond to diverse security threats than the collective security system.

II.3 Human Security

Human security is a human or people-centred and multi-sectoral approach to security, which means the protection of people from critical and pervasive threats and situations, and the empowerment of people to develop their potential, through concerted efforts to develop norms, processes and institutions that systematically address insecurities.⁵⁴ The concept remains

G. Prins (ed.) *Threats without Enemies: Facing Environmental Insecurity*, London: Earthscan, 1993, p. 23.

⁵⁰ UN Doc S/PV.4087 (Resumption 1), 10 January 2000, p. 2 (The Netherlands).

⁵¹ Exceptions include the remarks by the Argentinean delegate and the Mongolian delegate, who linked the HIV/AIDS issue to human security. UN Doc S/PV.4087, 10 January 2000, pp. 3 and 27 respectively.

⁵² UN Doc S/PV.5663, 17 April 2007, p. 24 (Pakistan). See also, *ibid.*, pp. 15-16 (South Africa), p. 17 (Russian Federation), p. 31 (Namibia); UN Doc S/PV.5663 (Resumption I), 17 April 2007, p. 4 (Egypt), p. 10 (Venezuela), pp. 11-12 (Sudan), p. 21 (India), p. 27 (Cuba). For an analysis of the debate, see, S.V. Scott, 'Securitising Climate Change: International Legal Implications and Obstacles', *Cambridge Review of International Affairs* 2008-21, pp. 614-615.

⁵³ See, *Legality of the Use by a State of Nuclear Weapons in Armed Conflict (Advisory Opinion)* [1996] ICJ Reports 66, p. 78, para. 25; *Jurisdiction of the European Commission of the Danube between Galatz and Braila (Advisory Opinion)* [1927] PCIJ Reports (Series B) No. 14, p. 64, para. 179.

⁵⁴ Commission on Human Security, 'Human Security Now', 2003, available at: <http://www.humansecurity-chs.org/finalreport/index.html> (25 June 2011). See generally, B. von Tigerstrom, *Human Security and International Law: Prospects and Problems*, Oxford/Portland: Hart Publishing, 2007, ch. 1; S. Tadjbakhsh and A.M. Chenoy, *Human Security: Concepts and Implications*, London: Routledge, 2007; S.N. MacFarlane and Y.F. Khong, *Human Security and the UN: A Critical History*, Bloomington: Indiana University Press, 2006; R.A. Falk,

controversial in many respects,⁵⁵ and its role in expanding the referent objects of security is no exception. Peter Hough, for example, understands the human security approach as both a 'widener' and 'deepener' of the traditional narrow security conception, suggesting that the referent object includes not only communities and groups but also individual persons, be they government ministers or private individuals, who can make a securitisation move.⁵⁶ Barry Buzan, on the other hand, warns against the 'reductionism' caused by human security in international security thinking, emphasising the collectivity of security enterprises as an essential element of referent objects.⁵⁷ In any event, as far as the impact of securitisation on international law is concerned, the scope for private individuals to play a role in securitisation remains minimal.⁵⁸

Despite the controversial aspects of human security, there is no doubt that the new concept has paved the way for a shift in the focus of various security issues, from the domain of national security to a much greater spectrum. The shift is significant, for example, in environmental security discourse, given that even though many of the environmental issues are global ones, the consequences of environmental degradation are usually observed and felt at the local or regional levels.⁵⁹ As Karen O'Brien notes, reframing environmental change as a human security issue does influence the questions that are asked, the research that is prioritised, and the solutions and policies that are proposed.⁶⁰ Further, the adoption of the Ottawa Treaty,⁶¹ the Rome Statute,⁶² and the Optional Protocol to the Convention on the Rights of the Child,⁶³ can be

'Pursuing the Quest for Human Security', in: M. Tehranian (ed.) *Worlds Apart: Human Security and Global Governance*, London/New York: I.B. Tauris, 1999, pp. 1-22.

⁵⁵ See, UN General Assembly Thematic Debate on Human Security, New York, 22 May 2008, available at: <http://www.un.org/ga/president/62/ThematicDebates/humansecurity.shtml> (25 June 2011). See also, G. King and C.J.L. Murray, 'Rethinking Human Security', *Political Science Quarterly* 2001-116, pp. 585-610; A. Acharya, 'Human Security: East versus West', *International Journal* 2001-56, pp. 442-460.

⁵⁶ P. Hough, *Understanding Global Security*, London: Routledge, 2004, pp. 2-21.

⁵⁷ B. Buzan, 'A Reductionist, Idealistic Notion that Adds Little Analytical Value', *Security Dialogue* 2004-35, pp. 369-370.

⁵⁸ Cf. A. Clapham, 'The Role of the Individual in International Law', *European Journal of International Law* 2010-21, pp. 25-30.

⁵⁹ J.J. Bogardi, 'Hazards, Risks and Vulnerabilities in a Changing Environment: The Unexpected Onslaught on Human Security?', *Global Environmental Change* 2004-14, p. 362. See also, S. Khagram, W.C. Clark, and D.F. Raad, 'From the Environment and Human Security to Sustainable Security and Development', *Journal of Human Development* 2003-4, pp. 289-314.

⁶⁰ K. O'Brien, 'Are We Missing the Point? Global Environmental Change as an Issue of Human Security', *Global Environmental Change* 2006-16, p. 2.

⁶¹ *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction*, 18 September 1997, 2056 UNTS 211 (entered into force 1 March 1999).

⁶² *Rome Statute of the International Criminal Court*, 17 July 1998, 2187 UNTS 90 (entered into force 1 July 2002).

⁶³ *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts*, 25 May 2000, GA Res 54/263 (entered into force 12 February 2002).

seen as legal developments motivated and facilitated by embracing human security and prioritising it over national security.⁶⁴

It is yet to be fully explored what opportunities are presented and what challenges are posed to the existing framework of international law by embracing the notion of human security.⁶⁵ International law is a system of law based on the consent of sovereign states and hence does not allow much scope for accommodating non-state entities and individuals as subjects of international law.⁶⁶ It would be too much to expect that the human security approach will have positive impacts on the debate about humanitarian intervention as a legal justification for the use of armed force,⁶⁷ due to the inherent dilemma posed by competing norms and moral imperatives, which cannot simply be resolved by embracing human security as a substitute of national security.⁶⁸ However, a human security optic may assist us in defining new security concerns or redefining the terms of debate surrounding traditional security threats.⁶⁹ Farer points to such potential of human security in the norm that requires a consideration of proportionality under international humanitarian law in such a way as to demonstrate that the legitimate military objective cannot be achieved by other means, rather than simply that civilian casualty is not disproportionate to the military objective.⁷⁰

The notion of human security has posed challenges, on the other hand, to the operation of the UN collective security mechanism. The Security Council has recently been more active in indicating its readiness to embrace human security when they refer to, for example, children in armed conflict,⁷¹ women

⁶⁴ See, R.A. Matthew, 'Human Security and the Mine Ban Movement I: Introduction', in: R.A. Matthew, et al. (eds) *Landmines and Human Security: International Politics and War's Hidden Legacy*, Albany, NY: State University of New York Press, 2004, pp. 3-19; R. McRae, 'Human Security in a Globalised World', in: R. McRae and D. Hubert (eds) *Human Security and the New Diplomacy: Protecting People, Promoting Peace*, Quebec: McGill-Queen's University Press, 2001, p. 25.

⁶⁵ Some pioneering work includes von Tigerstrom 2007, *supra* note 54; B. Saul, 'The Dangers of the United Nations' "New Security Agenda": "Human Security" in the Asia-Pacific Region', *Asian Journal of Comparative Law*, 2006-1(1), Article 10; M.C. Kettemann, 'The Conceptual Debate on Human Security and Its Relevance for the Development of International Law', *Human Security Perspectives* 2006-1(3), pp. 39-52; G. Oberleitner, 'Human Security: A Challenge to International Law?', *Global Governance* 2005-11, pp. 185-203.

⁶⁶ Cf. C. Grossman and D.D. Bradlow, 'Are We Being Propelled Towards a People-Centered Transnational Legal Order?', *American University Journal of International Law and Policy*, 1993-9, pp. 1-25.

⁶⁷ Cf. Oberleitner 2005, *supra* note 65, p. 194; M. Kaldor, *Human Security: Reflections on Globalisation and Intervention*, Cambridge: Polity Press, 2007, pp. 182-197.

⁶⁸ See especially, S. Chesterman, *Just War or Just Peace? Humanitarian Intervention and International Law*, Oxford: Oxford University Press, 2001; von Tigerstrom 2007, *supra* note 54, ch 4.

⁶⁹ von Tigerstrom 2007, *supra* note 54, pp. 211-212.

⁷⁰ T. Farer, 'Human Security: Defining the Elephant and Imagining Its Tasks', *Asian Journal of International Law* 2010-1, p. 8.

⁷¹ SC Res 1882, 4 August 2009; SC Res 1612, 26 July 2005; SC Res 1539, 22 April 2004; SC Res 1460, 30 January 2003; SC Res 1379, 20 November 2001; SC Res 1314, 11 August 2000; SC Res 1261, 25 August 1999.

and peace and security,⁷² and the protection of civilians more generally.⁷³ However, the Security Council's practice of deploying peacekeeping forces (as part of traditional collective security measures) with a mandate to protect civilians has caused normative, operational and ethical dilemmas.⁷⁴ Concerns have similarly been expressed for the Security Council's role in implementing the responsibility to protect concept (influenced by the notion of human security), particularly because of the discretion bestowed upon this collective security body, which "implies variable commitment totally different from the consistent alleviation of suffering embodied in the responsibility to protect".⁷⁵

II.4 Regime Security

The final dimension to the expansion of the security concept involves an 'upward' shift of focus from nation-states to international institutions and regimes. There has been a shift for some time towards institutional development of various international regimes as a means of advancing shared agendas among 'national oligarchies', which are not necessarily shared by their domestic constituents. Philip Allott regards this phenomenon as 'a global orchestra of all orchestras of oligarchy' behind the emergence of international aristocracy.⁷⁶ By the same token, B.S. Chimni claims that a transnational capitalist class is shaping international laws and institutions in the era of globalisation.⁷⁷ The legitimacy of international institutions has thus been called into question partly because of the lack of democratic process or input into their operation and decision-making.⁷⁸ This issue can be approached as 'regime security' from the viewpoint of those who are driving those institutional developments or in favour of pursuing particular institutional values and goals.

⁷² SC Res 1889, 5 October 2009; SC Res 1888, 30 September 2009; SC Res 1820, 19 June 2008; SC Res 1325, 31 October 2000.

⁷³ SC Res 1738, 23 December 2006; SC Res 1674, 28 April 2006, para. 4; SC Res 1296, 19 April 2000; SC Res 1291, 24 February 2000, para. 8; SC Res 1270, 22 October 1999, para. 14; SC Res 1265, 17 September 1999. See also, E. Golberg and D. Hubert, 'The Security Council and the Protection of Civilians', in: R. McRae and D. Hubert (eds) *Human Security and the New Diplomacy: Protecting People, Promoting Peace*, McGill-Queen's University Press, 2001, pp. 223-230.

⁷⁴ For the author's argument on this point, see, H. Nasu, 'Operationalising the "Responsibility to Protect" and Conflict Prevention: Dilemmas of Civilian Protection in Armed Conflict', *Journal of Conflict & Security Law* 2009-14, pp. 209-241

⁷⁵ See, e.g., 'Concept Note on the Responsibility to Protect Populations from Genocide, War Crimes, Ethnic Cleansing and Crimes against Humanity', UN Doc A/63/958, 9 September 2009, p. 4. See also, H. Nasu, 'The UN Security Council's Responsibility and the "Responsibility to Protect"', *Max Planck Yearbook of United Nations Law* 2011-15, forthcoming.

⁷⁶ P. Allott, 'The Emerging International Aristocracy', *New York University Journal of International Law and Politics* 2003-35, p. 334.

⁷⁷ B.S. Chimni, 'Prolegomena to a Class Approach to International Law', *European Journal of International Law* 2010-21, pp. 57-82.

⁷⁸ See, e.g., R. Wolfrum and V. Röben (eds), *Legitimacy in International Law*, Berlin/Heidelberg: Springer, 2008; J.H.H. Weiler, 'The Geology of International Law – Governance, Democracy and Legitimacy', *ZaöRV*, 2004-64, pp. 547-562; E. Stein, 'International Integration and Democracy: No Love at First Sight', *American Journal of International Law*, 2001-95, pp.489-534.

Within the domestic domain of a state, regime security becomes an issue when the political foundations of state institutions are weak and the governing elites need to establish effective state rule to deter violent challenges.⁷⁹ In contrast, international institutions, perhaps counter-intuitively, are less susceptible to violent challenges posed directly by domestic constituents of states. It is more likely that the security of an international regime is threatened by a measure adopted by a state pursuing a new or reinforced national security agenda.

A notable example of a regime that has been seen in light of its own security is the international economic regime. Although the nexus between security and international economy had already been discussed during the Cold War,⁸⁰ the economy became a new security issue in its own right, due to the high level of economic interdependence which exposed states to external economic events.⁸¹ Concerns grew over competition among economic superpowers such as the US, Japan, and the emerging European bloc (EEC, EC, EU) which was perceived to pose a great threat to the national economic security in each state, especially when foreign economic policy involved aggressive government support for protecting domestic producers against foreign competitors.⁸² Safeguarding structural integrity has become a common interest in ensuring the stability of the international economic system supported by multilateral economic institutions such as WTO and IMF. However, it is also arguable that greater economic security at the international level has been achieved at the expense of greater vulnerability of weak, under-developed countries to exploitation and economic pressure especially in trade negotiations.⁸³

The legal impacts of the notion of regime security specifically arose when the WTO Dispute Settlement Panel adopted a test to assess whether a measure was of a type that would threaten the security and predictability of the multilateral trading system.⁸⁴ The Panel's broad formulation of the test by reference to the WTO regime security was subsequently rejected by the Appellate Body.⁸⁵ The European Communities recognised the danger of

⁷⁹ R. Jackson, 'Regime Security', in: A. Collins (ed.) *Contemporary Security Studies*, 2nd ed., Oxford: Oxford University Press, 2010, pp. 186-87.

⁸⁰ See, e.g., K. Knorr, 'Economic Interdependence and National Security', in: K. Knorr and F.N. Trager (eds) *Economic Issues and National Security*, University Press of Kansas, 1977, pp. 1-18; W.F. Mondale, 'Beyond Détente: Toward International Economic Security', *Foreign Affairs* 1974-53(1), pp. 1-23. Cf. M. Mastanduno, 'Economics and Security in Statescraft and Scholarship', *International Organisation* 1998-52, pp. 825-854.

⁸¹ R.O. Keohane and J.S. Nye, *Power and Interdependence*, Boston: Little Brown, 1977. The international economic system can also be an entire security object in its own right. See, Buzan 1983, *supra* note 1, ch. 5.

⁸² Cable 1995, *supra* note 20, pp. 308-312.

⁸³ See, e.g., P. Drahos, 'Negotiating Intellectual Property Rights: Between Coercion and Dialogue', in: P. Drahos and R. Mayne (eds) *Global Intellectual Property Rights: Knowledge, Access and Development*, Hampshire and New York: Palgrave Macmillan, 2002, pp. 172-174.

⁸⁴ *US – Import Prohibition of Certain Shrimp and Shrimp Products (WTO Dispute Settlement Panel)*, p. 297, para. 7.44, WT/DS58/R (1998).

⁸⁵ *US – Import Prohibition of Certain Shrimp and Shrimp Products (WTO Appellate Body)*, pp. 42-43, para. 116, WT/DS58/AB/R (1998).

invoking regime security in this way when they cautioned, in their third party submission, that such an approach would make trade concerns paramount to all other concerns.⁸⁶ Thus, a cautious approach has so far prevailed when regime security is intended to be used as a basis for restricting a sovereign state's choice of measures. The regime security of the UN collective security system, by implication, would not provide a strong legal basis for compensating for the legitimacy deficit in the Security Council's expanded activities that stretch the limit of its competence in response to more diverse security concerns.

III. Challenges to Collective Security

As discussed above, the expansion of the security concept, in terms of both security objects and security threats, provides not only opportunities for legal developments but also challenges to the existing norms and rules of international law. Those legal challenges have been testing and stretching the limit of the UN collective security system in various ways. Yet, the extent to which the UN collective security system, primarily through the Security Council's practice, is capable of responding effectively to the expansion of the security concept is limited, insofar as its institutional competence is premised upon the traditional conception of international security – physical protection of sovereign states from external military attacks in the common interest of the international community. Although its institutional development has to a certain extent accommodated a greater range of security threats such as internal armed violence and transnational terrorist threats, the Security Council's role in collective security will not always provide a solution to non-traditional security concerns.

For example, when the relationship between energy, security and climate was discussed in the Security Council in 2007, there was a sharp division of views as to whether it was a proper forum to discuss and take action on climate change.⁸⁷ Even those countries in favour of the Security Council playing a role in addressing climate change stopped short of calling for forcible measures, expecting instead that the Council would “sound an alarm bell”,⁸⁸ or envisaging its role as part of conflict prevention.⁸⁹ Similar reactions were observed when the Security Council discussed the issue of HIV/AIDS in 2000. Namibia observed that the Security Council would contribute in a major way to minimising the

⁸⁶ *Idem*, p. 25, para. 71. See also, Australia's claim at *ibid.*, p. 21, para. 57.

⁸⁷ UN Doc S/PV.5663 and S/PV.5663 (Resumption 1), 17 April 2007. The countries which expressed support for the Security Council's role on climate change include: Belgium; the Congo; Panama; Peru; UK; Germany; the Netherlands; Switzerland; Papua New Guinea (on behalf of the Pacific Islands Forum); Namibia; New Zealand; Tuvalu; Marshall Islands; Norway; Singapore; and Liechtenstein. Those which opposed or expressed concern about the practice include: Qatar; China; South Africa; Russia; Pakistan; Egypt; Venezuela; Sudan; Mexico; Cuba; and Costa Rica.

⁸⁸ UN Doc S/PV.5663, 17 April 2007, p. 8 (Democratic Republic of the Congo).

⁸⁹ *Ibid.*, p. 12 (France), p. 19 (Germany); UN Doc S/PV.5663 (Presumption 1), 17 April 2007, p. 13 (Solomon Islands), p. 26 (Argentina).

impact of HIV/AIDS “[b]y effectively addressing conflict situations in Africa”.⁹⁰ Jamaica pointed to the Security Council’s role in conflict prevention to eliminate the environment that is conducive to the spread of HIV/AIDS.⁹¹

The traditional understanding of security as military-oriented and focused on national security is inevitably linked to the idea that it is by military means that security goals are achieved. Even though the concept of security has expanded with a wider variety of referent objects, the tendency to seek military solutions to non-military threats remains strong. Thus, commentators have warned against understanding climate change as a security issue, because it risks militarising a foreign policy problem.⁹² Likewise, concern has been expressed that securitising HIV/AIDS might promote military responses to the disease with the power to override the civil liberties of those infected.⁹³ There is little doubt that armed forces are incapable of meeting the challenges posed by non-traditional security threats such as climate change, which rather require policy responses such as more effective re-allocation of budgets and resources.

Likewise, collective enforcement mechanisms are inadequate as a response to non-traditional security threats and even in dealing with traditional security threats, such as physical violence, when the security concern lies with national security (as distinct from international security) or human security. The prevailing military-oriented approach has been criticised as inadequate in dealing with national security threats common throughout the world, such as those posed by transnational terrorist groups.⁹⁴ Also, as discussed above, the Security Council has faced difficult challenges in directing military enforcement and peacekeeping missions with a mandate to protect civilians,⁹⁵ which can be considered an attempt to embrace human security within the collective security mechanism.⁹⁶ The military-oriented approach to civilian protection in the Democratic Republic of the Congo, which has been reinforced through a greater strength of troop deployment and further clarification of their civilian protection mandate,⁹⁷ has reportedly hindered effective operations.⁹⁸ Critics

⁹⁰ UN Doc S/PV.4087, 10 January 2000, pp. 13-14.

⁹¹ UN Doc S/PV.4087 (Resumption 1), 10 January 2000, p. 13.

⁹² J. Barnett, ‘Security and Climate Change’, *Global Environmental Change* 2003-13, p. 14.

⁹³ S. Elbe, ‘Should HIV/AIDS Be Securitised? The Ethical Dilemmas of Linking HIV/AIDS and Security’, *International Studies Quarterly* 2006-50, pp. 119-144.

⁹⁴ E. Suvorova, ‘Military Tendencies and Global Security: Is There an Alternative?’, in: G. Frerks and B.K. Goldewijk (eds) *Human Security and International Insecurity*, Wageningen: Wageningen Academic Publishers, 2007, pp. 143-147; M. Beeson and A.J. Bellamy, ‘Globalisation, Security and International Order After 11 September’, *Australian Journal of Politics and History* 2003-49, pp. 345-353.

⁹⁵ See generally, S. Wills, *Protecting Civilians*, Oxford: Oxford University Press, 2009, ch. 1; V.K. Holt and T.C. Berkman, *The Impossible Mandate? Military Preparedness, the Responsibility to Protect and Modern Peace Operations*, Washington DC: The Henry L. Stimson Centre, 2006.

⁹⁶ MacFarlane and Khong 2006, *supra* note 54, pp. 166-181, 183-190.

⁹⁷ SC Res 1565, 1 October 2004; SC Res 1592, 30 March 2005.

⁹⁸ For details, see, Holt and Berkman 2006, *supra* note 95, pp. 175-176; J. Marks, ‘The Pitfalls of Action and Inaction: Civilian Protection in MONUC’s Peacekeeping Operations’, *African Security Review* 2007-16(3), p. 77.

have urged a more holistic, 'bottom-up' approach to civilian protection to harness the potential of human security.⁹⁹

IV. Alternatives to Collective Security

Alternative security mechanisms to complement collective security measures are not alien to the security discourse in international relations. First, alarmed by the nuclear arms race and then US President Reagan's nuclear deterrence policy, the idea of 'common security' emerged in the 1980s, to build confidence amongst states and promote disarmament.¹⁰⁰ Although the idea was originally designed to address concerns that unilateral national security measures might escalate the nuclear arms race, it may still retain its value to deter unilateral attempts to eliminate the political, economic, social, and environmental conditions that generate threats to international security in general.¹⁰¹ Such unilateral responses to non-traditional international security threats may not only involve a violation of the international legal obligations which states are bound to, but also pose a threat to human security or to the security of an international legal regime.

Second, the emphasis on non-military means of seeking security is also found in the concept of 'cooperative security', which can be traced back to the early 1990s, particularly in the context of the Conference on Security and Co-operation in Europe (now Organisation for Security and Co-operation in Europe: OSCE).¹⁰² It is based on the idea that security must be based on common institutions and norms which states are expected to comply with.¹⁰³ Unlike common security, which emphasises the common interest in maintaining international security, cooperative security acknowledges that each state has an equal right to security, and embraces rivalry and tensions as the basis for building political dialogue.¹⁰⁴

⁹⁹ M. Martinelli, 'The Protection of Civilians During Peacekeeping Operations', European Parliament, Policy Department of External Policies, 2008, pp. 14-8, 26-7, available at: http://www.isis-europe.org/pdf/2008_artrel_183_08-06-epstudy-protection-of-civilians.pdf (26 June 2011).

¹⁰⁰ Independent Commission on Disarmament and Security Issues, *Common Security: A Blueprint for Survival*, New York: Simon and Schuster, 1982; Independent Commission on Disarmament and Security Issues, *North-South: A Programme for Survival*, London: Pan Books, 1980. See also, R. Väyryen, 'Multilateral Security: Common, Cooperative or Collective?', in: M.G. Schechter (ed.) *Future Multilateralism: The Political and Social Framework*, Tokyo: United Nations University Press, 1999, pp. 55-57.

¹⁰¹ Cf. Commission on Global Governance, *Our Global Neighbourhood*, Oxford: Oxford University Press, 1995, pp. 78-85.

¹⁰² See, T. Ueta, 'The Evolution of Cooperative Security Dialogues in Europe as well as in Asia and the Pacific: CSCE, NACC, and ARF', *Helsinki Monitor* 1994-5(4), pp. 62-63.

¹⁰³ Väyryen 1999, *supra* note 100, pp. 57-59.

¹⁰⁴ However, translating those principles of cooperative security into political reality is not so straightforward. See, W. Zellner, 'Cooperative Security – Principle and Reality', *Security and Human Rights* 2010-1, pp. 64-68.

The concept of cooperative security is particularly relevant to an increased competition and tension over gaining access to energy and natural resources, for which multilateral institutions are likely to play the most effective role.¹⁰⁵ Cooperative security provides a normative foundation for facilitating integration into an institutional dialogue,¹⁰⁶ through which an agreement could be reached about how states can cooperate in responding to and reconciling competing national security issues. Illustrative examples include the creation of International Seabed Authority for the regulation of mineral exploitation in the deep seabed,¹⁰⁷ and the adoption of the Madrid Protocol to promote Antarctica as a natural reserve,¹⁰⁸ both of which can be seen as cooperative legal responses to potential threats to the security of energy, the regime, and the environment. In the deep seabed and Antarctica, where natural resources remained beyond the reach of commercial exploitation, national interest in enhancing resource security was put aside in favour of establishing an international legal regime. Such pre-emptive regulation serves its purpose of preventing fierce competition among developed states to exploit natural resources pursuant to their own national security interests. However, various external factors, such as technological development, climate change, and global energy needs, might threaten the security of those international legal regimes.¹⁰⁹

Furthermore, the 1975 Helsinki Accords,¹¹⁰ a unique product of Cold War politics, provided a formal basis for the human rights agenda in the political and security discourse with the Soviet Union. Based on this ethos, the OSCE has developed a 'comprehensive security' approach, which covers the politico-military, economic/ecological, and human dimensions.¹¹¹ More recently, the Association of Southeast Asian Nations (ASEAN) has expressly adopted the principle of comprehensive security to address non-traditional security issues.¹¹² Comprehensive security acknowledges the multidimensional nature of security and tends to focus on process rather than substance.¹¹³ As such, it can be understood as relating closely to the protection of human security and

¹⁰⁵ N. Melvin, 'The Role for Cooperative Security in Energy Conflicts', *Security and Human Rights* 2010-1, pp. 49-52.

¹⁰⁶ John Barrett, 'NATO Reform: Alliance Policy and Co-operative Security', in: I. Peters (ed.) *New Security Challenges: The Adaptation of International Institutions*, New York: St. Martin's Press, 1996, p. 127.

¹⁰⁷ *United Nations Convention on the Law of the Sea*, 10 December 1982, 1833 UNTS 397 (entered into force 14 November 1994), Part XI.

¹⁰⁸ *Protocol on Environmental Protection to the Antarctic Treaty*, 4 October 1991, 402 UNTS 71 (entered into force 14 January 1998).

¹⁰⁹ See, Rothwell and Nasu 2008, *supra* note 17, pp. 21-22; C.C. Joyner, 'Challenges to the Antarctic Treaty: Looking Back to See Ahead', *New Zealand Yearbook of International Law* 2008-6, pp. 36, 42-49.

¹¹⁰ *Final Act of the Conference on Security and Co-Operation in Europe*, 1 August 1975, 14 ILM 1292.

¹¹¹ For details, see, e.g., A. Ortiz, 'Neither Fox Nor Hedgehog: NATO's Comprehensive Approach and the OSCE's Concept of Security', *Security and Human Rights*, 2008-4, pp. 284-285.

¹¹² ASEAN Political-Security Community Blueprint, Section B, available at: <http://www.aseansec.org/22337.pdf> (8 June 2011).

¹¹³ Ortiz 2008, *supra* note 111, p. 286.

encouraging diverse approaches to addressing human security threats in a comprehensive way. However, in the ASEAN context, it is rather regarded as facilitating the mutually constituted relationship between the regime security and economic development.¹¹⁴ While it has a potential to promote human security, the ambiguity of the approach diminishes its legal value as a workable, alternative security mechanism.

All these alternative approaches to security originate from the bipolar Cold War rivalry. However, it is worthwhile revisiting these alternative approaches as a conceptual and normative foundation for complimenting collective security to address non-traditional security threats, from the perspective of different security referent objects. These alternative security approaches can be explored without challenging or interfering with the Security Council's authority and role in collective security, which may indeed benefit from more focused deployment of its resources. Currently, only a few institutionalised forums such as OSCE and ASEAN embrace and implement alternative security approaches. These alternative security approaches are still at a primitive stage of development, but have the potential of further development in a wider range of institutional forms, as, unlike collective security mechanisms, they involve more de-centralised, dynamic processes of decision-making. Further development of those alternative security approaches in various institutional practices can arguably address various security threats without a need to stretch the limit of the UN collective security system.

The development of institutional practices to embrace these alternative security approaches must have due regard to, and be informed by, Third World anxieties driven by centuries of western imperialist colonisation and a strong scepticism against any western sponsored enterprise that promotes western values.¹¹⁵ Even the concept of human security, despite its attempt to shift the focus from sovereign states to human beings, is suspected in the Third World of having a 'donor driven agenda' – an agenda that is concerned about achieving the donor's political and economic aims rather than what developing countries truly value and require.¹¹⁶ Such anxieties were also reflected in the UN General Assembly's interactive thematic dialogue on the Responsibility to Protect in July 2009.¹¹⁷

¹¹⁴ M. Caballero-Anthony, 'Non-Traditional Security in Asia: The Many Faces of Securitisation', in: A.F. Cooper, C.W. Hughes, and P. de Lombaerde (eds) *Regionalisation and Global Governance*, London: Routledge, 2008, p. 193.

¹¹⁵ See generally, A. Anghie, *Imperialism, Sovereignty and the Making of International Law*, Cambridge: Cambridge University Press, 2005; B. Rajagopal, *International Law from Below*, Cambridge: Cambridge University Press, 2003.

¹¹⁶ See, P. Upadhyaya, 'Human Security, Humanitarian Intervention, and Third World Concerns', *Denver Journal of International Law and Policy* 2004-33, pp. 86-89.

¹¹⁷ UN GAOR, 63rd session, 97th-101st meetings, UN Doc A/63/PV.97-101, 23-28 July 2009. See also, R. Thakur, *The Responsibility to Protect: Norms, Laws and the Use of Force in International Politics*, London: Routledge, 2011, pp. 156-157.

Conclusion

The concept of security has expanded, particularly after the end of the Cold War, in terms of both security objects and security threats. For example, climate change, technological development, demand for resources, growing environmental concern, and the growth of overlapping legal regimes and regulations, are all factors that potentially give rise to security concerns of various states and other actors. While the expansion of the security concept can be seen as a policy response to accommodate those new challenges, its analytical framework is yet to be fully examined in the discipline of international law, which would guide us on how we should conceive those new security threats and address them internationally.

The UN collective security mechanism, installed at the end of World War II, provides an institutionalised process of legalising collective decisions to adopt extreme security measures against the traditional, military-oriented threats to the sovereignty and territorial integrity of states, in the common interest of the international community. Unlike traditional international security threats, this article has argued that the diversity of security threats perceived by different security referent objects will not be adequately reflected or addressed within the UN collective security framework. The cracks in the attempts to stretch the limit of collective security to address these non-traditional security issues have already appeared, posing various challenges to the existing norms and rules of international law. Whereas international law may adapt to new, non-traditional security challenges in the long term, military-oriented, extra-legal measures to protect national security in the short term may threaten the security of other referent objects, including existing international legal regimes and groups of people. More regulated ways of resorting to and addressing security concerns are thus required to address non-traditional security challenges comprehensively, without diminishing legal obligations and restrictions or reaching outside the international legal framework.

To that end, revisiting the alternative approaches to the maintenance of security that originated during the Cold War rivalry would be a worthy attempt. The idea of common security, cooperative security, and comprehensive security may have the potential to provide a conceptual and normative foundation for complementing collective security in addressing non-traditional security threats from the perspective of different security referent objects. However, any universal move to institutionalise those alternative security approaches will need to take due account of, and be informed by, Third World anxieties and scepticism against any western-sponsored enterprise that promotes western values.