

SUB Hamburg



A/561742

COLLECTIVE SECURITY

ALEXANDER ORAKHELASHVILI

OXFORD
UNIVERSITY PRESS

Table of Contents

<i>Table of Cases</i>	xii
<i>Table of Treaties and Resolutions</i>	xv
<i>List of Abbreviations</i>	xxi
Introduction	1
1. Essence and Definition of Collective Security	4
1. State Security and Collective Security	4
2. Validity and Feasibility of the Idea of Collective Security	6
3. Categories and Definitions	11
4. Collective Security and Legal Constraints	16
2. Collective Security Institutions	22
1. The United Nations System in General	22
2. The Nature and Primary Responsibility of the UN Security Council	22
3. Powers of the Security Council under Chapter VI	26
4. Decisions of the Security Council	32
a) General Nature and Types	32
b) Binding Force	33
c) Interpretation of Security Council Resolutions	39
d) The Consequences of Breaches of Resolutions	45
5. The General Assembly	46
a) The Nature of the Assembly's Powers	46
b) The Types of Assembly Decisions	49
6. Powers of Principal Organs and Interpretation of the Charter	50
a) General Aspects	50
b) Legal Bases for the Powers of Principal Organs	51
c) The Interpretation of the Charter and Parallel Competences	52
d) The Security Council and the International Court of Justice	55
7. Legal Limits on Powers of United Nations Organs	56
8. The Charter and the Extra-Charter Basis for Collective Security Action	58
9. The Establishment and Operation of Subsidiary Organs	61
10. Regional Collective Security Institutions	64
a) The African Union	64
b) The Economic Community of West African States (ECOWAS)	66

c) The Southern African Development Community (SADC)	70
d) The Inter-Governmental Authority on Development (IGAD)	71
e) The Economic Community of Central African States (ECCAS)	72
f) The League of Arab States	73
g) The Organization of Islamic Conference (OIC)	74
h) The Organization of American States (OAS)	75
i) The Association of Southeast Asian Nations (ASEAN)	77
j) The Pacific Island Forum	78
k) The North Atlantic Treaty Organization (NATO)	79
l) The Western European Union (WEU)	81
m) The European Union (EU)	82
n) The Organization of Eastern Caribbean States (OECS)	86
o) CIS, CSTO, and SCO	87
3. The Regime of Competence Allocation	89
1. General Aspects	89
2. The Essence of 'Regional Arrangements'	92
3. Policy Arguments about Competence Allocation	97
4. Principles of Competence	106
a) General Aspects	106
b) Complementarity	109
c) Complementarity and the Concept of 'Primary Responsibility'	117
d) The Essence and Applications of Subsidiarity	120
e) Subsidiarity and Jurisdictional Clauses under Constituent Instruments	130
5. Subsidiarity and Regional Attitudes	139
6. Claims of Regional Autonomy, Primacy, and Subordination	141
7. Conclusion	147
4. The Identification of a Threat	149
1. General Aspects	149
2. Determination of a 'Threat to Peace' by the UN Security Council	149
a) The Essence of Determination	149
b) The Scope of Discretion under Article 39	151
c) The Requirement of Genuineness for Article 39 Determinations	155
d) The Tools for Identifying the Genuineness of a Threat	163
e) Subsidiarity and the Genuineness of a Threat	164
f) The Substantive Content of Threats to Peace	166
g) The Use of Article 39 and Violations of International Law	170
h) Evaluation	175
3. Threat Perception by Regional Organizations	175
a) The European Union	175
b) ECOWAS	177
c) SADC	178

d) The African Union	178
e) The Organization of American States	180
f) NATO	185
5. Responses to Threats	188
1. The Chapter VII Competence of the Security Council	188
a) The General Essence of Non-Forcible Measures under Chapter VII	188
b) The Requirements of Necessity and Proportionality	190
2. Chapter VII and the Security Council's Subsidiary Role	192
3. Specific Sanctions Regimes	194
a) Air Embargo against Libya	194
b) Arms Embargoes	196
c) The Use of Chapter VII in relation to the Iranian Nuclear Enrichment Issue	201
d) The Process of Consensual Upgrading of the Sanctions Regime against the FRY	202
e) The Ways of Assessing the Necessity and Proportionality of Sanctions: Liberia and Afghanistan Sanctions Regimes	203
f) Comprehensive Economic Sanctions against Iraq, FRY, and Haiti	204
g) Problems with Necessity and Proportionality of Sanctions against the FRY and North Korea	210
h) Targeted Sanctions against Individuals and Entities Suspected of Involvement in Terrorism	211
4. The 'Legislative' Measures	220
5. 'Intrusive' Measures: The Case of Territorial Administration	222
6. Authorization of the Use of Force under Article 42	223
a) The Nature and Effect of Authorizations	223
b) The Requirements of Necessity and Proportionality	226
c) Authorization of the Use of Force to Effect Maritime Interdiction	227
d) Authorization of the Use of Force to Secure the Council's Humanitarian Objectives	233
e) Authorizations to Use Force to Repel an Armed Attack: Korea	238
f) The Uses and Non-Uses of Article 42 in the Case of Iraq	239
g) The Use of Force under Chapter VII and the Humanitarian Crisis in Somalia	251
h) The Use of Article 42 in relation to Afghanistan	255
i) External Limits of Article 42 Authorizations Tested: the Case of Côte d'Ivoire	257
7. Enforcement Action by Regional Organizations	259
a) The Essence of Authorization under Article 53 of the UN Charter	259
b) The EU Sanctions Regimes	264
c) Sanctions Adopted by ECOWAS and AU	268

d) The AU and ECOWAS Legal Frameworks Relating to the Use of Force	269
e) Enforcement Action by the WEU in Support of the UN Security Council's Chapter VII Measures	271
f) Enforcement Action by OAS	273
g) The OECS-authorized Intervention in Grenada	276
6. Self-Defence and Collective Security	277
1. General Aspects	277
2. Individual Self-Defence under Article 51	277
3. The Security Council's Interference with the Exercise of Self-Defence	278
4. Collective Self-Defence	280
5. Self-Defence and Regional Organizations	282
7. Peace Operations	288
1. Nature and Definitions	288
2. Legal Basis for Peace Operations	289
3. Peace Keeping and the Subsidiary Role of the UN Security Council	294
a) MISAB in the Central African Republic	294
b) ECOMOG in Liberia	294
c) ECOMOG in Sierra Leone	298
d) ECOMOG in Côte d'Ivoire	300
e) AU and UN Peace Keeping in Sudan	301
f) AU and UN Peace Keeping in Burundi	304
g) AU and UN Peace Keeping in Somalia	305
4. Peace-Keeping Operations by NATO	306
5. Peace-Keeping Operations by the EU	308
a) Operation <i>Concordia</i> in Macedonia	308
b) Operation <i>Artemis</i> in the Congo	309
c) EU Peace Keeping in Bosnia	310
d) EUFOR RD Congo	312
6. The Inter-American Peace Force	312
7. The Arab Deterrent Force	314
8. The Issue of Consent	314
9. The Mandate of Peace Operations	317
10. Command and Control	321
11. Use of Force by Peace-Keeping Forces	331

8. Legal Consequences of Illegal Collective Security Acts and Decisions	336
1. Excess of Competence	336
2. Refusal by States to Implement Ultra Vires Decisions	343
3. Judicial Review	347
a) Arrangements and Options within the UN System and Beyond	347
b) Judicial Review and the International Court's Provisional Measures Proceedings	350
c) Judicial Review and the International Court's Jurisdictional Proceedings	353
d) The Actual Implications of the Court's 1998 Judgment on Preliminary Objections	355
4. Collective Security Decisions and Responsibility of the Entities Involved	357
Conclusion	365
<i>Bibliography</i>	367
<i>Index</i>	377

