

REFORMING MILITARY RESOURCES AND THE AUTHORITY OF THE UNITED NATIONS SECURITY COUNCIL IN IMPLEMENTING COERCIVE MILITARY MEASURES

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Abstract

The lack of a *de facto* military component is rather significant in normative and operational terms within the UN system. The differences among the permanent members of the Security Council, which exist since its beginning, have stopped provisions from being enforced which were included in the United Nations Charter, as well as the design of credible and effective alternatives. Considering that what is at stake are coercive military measures decided by the Security Council under Chapter VII, this becomes a decisive issue, as these measures were decided *ultima ratio* to maintain or restore international peace and security. Without an operational Military Staff Committee, without armed forces and without power of authority in the *enforcement* process, the Council is limited to approving decisions and held hostage to the options of Member-States, namely its permanent members. To ignore the urgency of a reform implies perpetuating a double paradox: on the one hand, the Security Council is required to take increasingly wider responsibility, laid down in article 24 and, in this context, in art. 42, and this body still lacks adequate military instruments; on the other hand, by correlating the reinforcement of efficiency, legitimacy and enforcement of Council decisions exclusively with the reform of its composition and work methodology, we are neglecting the fact that this change requires a reform of military instruments and of its authority within the scope of the body's multidimensional reform process. This paper begins by analyzing the *enforcement* mechanism established in the Charter and then addresses the issue underlying the delegation of implementing coercive military measures. Finally, the paper discusses the reform proposals, their guidelines and puts forward possible solutions

Keywords

Reform; Security Council; Military Instruments; Chapter VII; Enforcement, Coercive Military Measures

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One of the achievements of the Charter of the United Nations was to empower the Organization to take enforcement action against those responsible for threats to the peace, breaches of the peace or acts of aggression. However, neither the Security Council nor the Secretary-General at present has the capacity to deploy, direct, command and control operations for this purpose, except perhaps on a very limited scale. I believe that it is desirable in the long term that the United Nations develop such a capacity.

Boutros-Ghali, *Supplement to an Agenda for Peace*, 1995.

1. Introduction

Discussions on the "reform" of the United Nations Security Council usually focus on its composition and eventually on its work methodology¹ so as to make it a more representative, efficient and transparent body and thus reinforce its efficacy, as well as the legitimacy and enforcement of its decisions" (*World Summit Outcome*, 2005: 32). That the power structures of the Council require reform is unquestionable. This is mainly due to the fact that its composition is anachronistic, based on art. 23 of the Charter² and the need for greater representation within current geopolitical scenario³.

¹ Member-States, namely permanent members, of the Security Council should strive for its increasing transparency and *accountability*. This is the most important in terms of reforming work methodology.

² The Security Council includes fifteen Member-States. China, France, the Soviet Union, the United Kingdom and the USA are permanent members (art. 23, n.º 1). The ten non-permanent members are elected by the General Assembly for a period of two years (art. 23, n.º 1 and n.º 2).

³ World War II winning powers have gained a privileged position in the Security Council, which should correspond to their individual political weight in international order at the time and their contribution to an effective collective security system. Whereas the United Kingdom and France have lost political and economic power since the United Nations were founded in 1945, Africa, Latin America, as well as Member-States with significant economic and political power, both at regional and at international levels, as is the case of Germany (3rd largest contributor to UN budget), Japan (2nd largest contributor), Brazil, India or South Africa are not represented in accordance with their relevance in the international system. At the same time, n.º 3 of art. 27 of the Charter assigns veto power to permanent members, which is not only a legal inequality as well as represents a deviation in terms of the principle of sovereign equality of all members of the Organization, established in art. 2, n.º 1 of the Charter. Most Member-States and the literature claim that the veto power is anachronistic and against democracy.



However, discussion on this theme should not only focus on the two above mentioned areas, as rethinking the collective security system implies rethinking the role of the Security Council (Santos, 2011).

The appeals for "a new vision of collective security" are, within the reform of this body, merely associated to a change in its composition and work methods. Assuming that a greater involvement by those Member-States which contribute more in military and diplomatic terms, of developing Member-States, and that an increase in democratic methods and accountability of Council Members in decision-making process will contribute to the Council's increased credibility, efficacy and capabilities in order to face the new threats of the 20th century⁴.

This idea of "reform" should be de-constructed, as the sought increase in "efficiency", "legitimacy" and "decision enforcement" advocated by Member-States implies a multidimensional reform, including that of its military instruments and authority.

Though the Charter places at the disposal of the Security Council military instruments needed to fulfil its responsibility in keeping international peace and security laid down in art. 24 of the Charter and the enforcement of coercive military measures, pursuant art. 42 of the Charter, there is no *de facto* military component which assures its feasibility.

This normative and operational insufficiency of the UN system has been made more manifest since the 1990s, when the inaction of the Security Council was overcome and the nature of certain conflicts required that strong military operations were put in place for peace-keeping or restoring. In fact, without an operational Military Staff Committee, without armed forces and without power of authority in the enforcement process, the Council is limited to approving decisions and held hostage to the options of Member-States, namely of its permanent members. This is visible mostly in terms of armed forces availability and at these military operations' command and control levels.

This paper begins by analyzing the *enforcement* mechanism established in the Charter and then addresses the issue underlying the delegation of implementing coercive military measures. Finally, the paper discusses the reform proposals, their guidelines and puts forward possible solutions.

2. The *Enforcement* Mechanism of the United Nations Charter

The *enforcement* mechanism at the disposal of the Security Council is an integral part of the complex and multi-layered collective, security system of the United Nations. On this Council competency, Edward Luck stated:

"it was Chapter VII and its enforcement provisions that were to give teeth to its potential. The decisions of the Council taken under Chapter VII were to be enforceable, not just legally binding" (2006: 22).

⁴ See UN Doc. A/59/565, A more secure world: Our shared responsibility, Report of the Secretary-General's High-level Panel on Threats, Challenges and Change, 2004, p. 6 and para. 245 onwards, pp. 66-69 and UN Doc. A/59/2005, In larger freedom: towards development, security and human rights for all, Report of the Secretary-General Kofi Annan, 2005, para. 77, p. 24 and paragraph 167 onwards, pp. 42-43.



It is, in fact, this competency which allows it to undertake the accountability described in art. 24 and which has made it possible for the Council to be accepted as "*law enforcer*" of the international community (Frowein; Krisch, 2002: 707).

Applying these measures implies that there is eventually a threat to peace, that peace may be broken or violence, pursuant art. 39 and that provisional measures were not or could not be effective, as laid down in art. 40.

Pursuant to art. 41, the Council may opt for different coercive non military measures and urge members of the United Nations to apply those measures⁵. This type of sanctions are placed in action at preliminary level, and are less coercive than those decided pursuant to art. 42. Their inefficacy is determining for application of art. 42. This article states:

"If the Security Council considers the measures included in article 41 are or have been proven to be inadequate, it can undertake the necessary action, whether by air, sea or land, to keep or restore peace and international security. This action may include demonstrations, blockades and other operations by air, navy or land forces of members of the United Nations".

The coercive military measures decided by the Council should be carried out by armed forces provided by the Member-States upon Council request and based on special agreements such as the one laid down in art. 43⁶. However, differences among the permanent members dating from the foundation of the Organization have not allowed for these special agreements to be put in place (Frowein; Krisch, 2002: 763) as well as another military instrument established pursuant the Charter, the Military Staff Committee to be operational (Novosseloff, 2008: 9). Nº 1 and nº 2 of art. 47 establish that the Committee, which includes the Chiefs of Staff of the permanent members, aims to guide and assist the Council in all matters concerning the military, the use and command of armed forces at its disposal, pursuant to art. 43. Nº 3 of art. 47 assigns to the Committee, under the authority of the Security Council, the responsibility for strategic planning of the armed forces carrying out the mission.

National troops would be subject to their own regulations and under national commanding officer. The officer, in turn, would be under an operational leader under the control of the Military Staff Committee. The Security Council would then fully enforce its authority and control by means of this instrument (Sarooshi, 2000: 142).

2.1. Delegating Enforcement of Military Coercive Measures

The fact that the aims of a United Nations army is not feasible based on agreements with Member-States, and therefore, of a collective security under the command and

⁵ Art. 41 establishes that the measures "may include full or partial interruption of economic relations, of means of communication (by railway, water, air, post, telegraph, radio electric or any other) and the sever diplomatic relations".

⁶ Art. 45 also states that "the members of the United Nations should maintain airborne troops, which can be immediately called on to conduct a joint international coercive action".



control of the Security Council, together with a Military Staff Committee, has led to the creation of an alternative system. In this system, the Security Council delegates the carrying out of its mandate, decided upon pursuant Chapter VII, to a State or group of States, to coalitions of States created *ad hoc*, i.e., *coalitions of the willing*. This is decentralized enforcement, in which the armed forces are not under the command and control of this body but of a Member-State belonging to the coalition.

This model was used in very different situations. In 1950, the USA led their first coalition based on resolution 83 (1950), which declared that the armed attack on South Korea by North Korea was a breaking of peace and recommended that Member-States provided the necessary help to South Korea to see off the attack and restore international peace and security in that area. The USA had led other coalitions with different scopes. Noteworthy was the operation aimed at cooperating with the government of Kuwait using "all necessary means" as result of this State having been invaded by Iraq⁷, the mission aimed at creating a secure environment for the humanitarian aid operations in an interstate conflict in Somalia⁸ and the mission whose objective was to ensure that the Haitian government, democratically elected and deposed by a coup d'etat, was able to return safely to the country⁹. The coalition led by France in Rwanda aimed at protecting displaced, refugees and civilians¹⁰, the mission led by Italy in Albania aimed at ensuring security for international humanitarian organizations and agencies¹¹ and the coalition led by Australia in East Timor supported the mission of the *United Nations Mission in East Timor* (UNAMET) as humanitarian support¹².

If, on the one hand, this system allows for operations which would otherwise not be enforceable, on the other hand, it evidences weaknesses that undermine the authority of the Security Council and of International Law.

One of those weaknesses is the difference in terms of decision and operational power, made evident at several levels.

Once a mandate is issued, the readiness of armed forces is voluntary, which can lead to Member-States expressing their unavailability or delay in availability. This may be due to the political nature of negotiations and/or the need of approval by their national parliaments. The high dependency on the availability of great powers, in particular that of the USA, caused by the evident and increasing asymmetries in military power among Member-States, may be the reason underlying both situations¹³ and have dramatic consequences, for example, in cases where human rights are seriously violated.

⁷ SC Res. 678 (1990).

⁸ SC Res. 794 (1992).

⁹ SC Res. 940 (1994).

¹⁰ SC Res. 929 (1994).

¹¹ SC Res. 1101 (1997).

¹² SC Res. 1264 (1999).

¹³ This asymmetry is made manifest in their budgets for defence: The USA have the highest budget, 711bn dollars, representing 41% of world percentage. Whereas between 2002 and 2011, the USA increased their budget in 59%, the UK, the country with the fourth highest budget - 62.7bn dollars, the budget was only increased in 18%. In the same period, France and Germany reduced their budget by 0.6% and 3.7%, and now have the 5th and 9th highest budget, respectively. Italy has the 11th, having reduced its budget in 21% between 2002 and 2011. China and Russia have the second - 143bn dollars - and third - 71.9bn dollars - highest budgets. Between 2002 and 2011, the increase in budget for defence was 170% and 79%, respectively. The Top 15 Military Spenders in 2011, *SIPRI Yearbook 2012*, Stockholm International Peace Research Institute, <<http://www.sipri.org>>.



Another weakness is visible in the insufficient control over the enforcement of military coercive measures by the Security Council. Unlike the classical peace-keeping operation model, in which Member-States are more willing to subject to the command and control of the United Nations, more specifically of their Secretary-General, in this type of operations this does not occur, particularly in the case of the USA (Kaysen; Rathjens, 2003: 93)¹⁴.

This insufficiency may lead to Member-States resorting to methods which can make the situation more serious, distort the objectives of the mandate and arbitrarily lead to additional actions based on specific national interests¹⁵. Noteworthy is the fact that States may decide to remove its troops and that is not considered illegal in terms of International Law. In 1994, the USA did that in the UNOSOM II mission in Somalia¹⁶ after several casualties among American soldiers. Later, the remaining Member-States did the same due to the rise in violence in the territory.

Moreover, the resolutions may also be differently interpreted. Though the Council, considering the recommendations of the report by the United Nations Peace Operations Panel, the so called Brahimi Report (2000: 10-12) decided in resolution 1327 (2000) that "mandates should be clear, credible and feasible", their vague and inconsistent language - resolutions refer to "all necessary measures"¹⁷ or "all necessary means"¹⁸, the lack of procedural or substantive limits, i.e., the absence of clear objectives and sometimes of a time limit or the need to present a report periodically, may allow for legal abuse by Member-States. Writing reports does not guarantee *per se* that actions in the field are unbiased and reliable. This accounts for the need of additional measures so as to overcome the several weaknesses described in this paper.

You can say that the Security Council authorizing the use of necessary measures or means implies a "free pass" for the coalitions (Dörr, 2006: 162). Besides, if a resolution does not impose a time limit, a permanent member may stop the end of military coercive measures using threat or veto right, what is called "*reversed veto*". In this case the time frame of the Council's authorization is not clearly defined. For example, the USA and the UK rejected the end of measures decided based on resolution 678 (1990), which allowed for extending military measures against Iraq (Stein; von Buttlar, 2012: 132). Important is also the fact that, even though they are not in the coalition, permanent members may delay the end of the operation so as to protect the participating allies.

Similarly, the mentioned problems, though in a smaller scale, can arise within the scope of delegating *enforcement* operations to regional organizations. The Charter includes in n.º 1 of art. 53, that regional organizations may lead this type of operations based on a Council's mandate, an instrument which the United Nations have resorted to in some situations so as to restore or keep international peace and security. In particular NATO (North Atlantic Treaty Organization) has carried out several military coercive operations, though the resolution mention chapter VII and do not explicitly

¹⁴ On this matter, see QUIGLEY, John (1996). "The "Privatization" of Security Council Enforcement Action: A Threat to Multilateralism". *Michigan Journal of International Law*. 17, nº 2: pp. 264-269.

¹⁵ See WILSON, Gary (2007). "The Legal, Military and Political Consequences of the "Coalitions of the Willing" Approach to UN Military Enforcement Action". *Journal of Conflict and Security Law*. 12, nº 12: pp. 316-327.

¹⁶ SC Res. 814 and SC Res. 837 (1993).

¹⁷ As an example of this, see SC Res. 1264 (1999), SC Res. 1848 (2003), SC Res. 1973 (2011).

¹⁸ As an example of this, see SC Res. 678 (1990), SC Res. 929 (1994).



refer to chapter VIII in all situations. For example, in Bosnia-Herzegovina¹⁹, in order to support the "blue helmets" operation in 1992 and ensure the enforcement of the Dayton peace treaties in 1995, in Afghanistan²⁰, having led the mission by *International Security Assistance Force* (ISAF) since 2003 and more recently, in 2011, in Libya so as to impose a non-fly area for the protection of the civilian population²¹.

A noteworthy issue is the use of private security companies by Member-States, namely the USA, both within State coalitions and in NATO missions with a Council mandate. Though these security companies support missions in enforcing military coercive measures, they frequently pose significant legal issues due to their non-abidance to Humanitarian International Law and to the mandate. The performance of these private security companies at the service of the USA within the ISAF mission in Afghanistan, based on resolution 1368, is an example of this. A series of incidents such as the injury and death of civilians, the support to Taliban, the subcontracting of military leaders, all harmed the coalition's image and efforts (Schwartz, 2011: 15-16), which led Major-General Nick Carter of ISAF to mention a "culture of impunity" (quoted in Schwartz, 2011 16) thus exposing the gaps in the UN system, closely linked to loopholes in International Law in this matter²².

2.2. Proposals to Reforming Military Instruments

The lack of credible and effective military instruments at the disposal of the Security Council is a controversial and recurrent issue since the United Nations were created. After the end of the Cold War, this normative and operational insufficiency was made more evident, especially when the nature of certain conflicts required robust military operations for peace keeping or restoring. In other words, missions composed by heavy military forces, deployed without the consent of parties, based on a Council mandate, which can resort to force besides the use of defense established in art. 51 of the Charter in order to impose peace treaties, enforce compliance with imposed sanctions or carrying out military operations against an invading State.

The proposals on military forces include a series of designations and connections. Within the context of *enforcement* operations, we should emphasize that referring to rapid response intervention units, *ad hoc* or permanent, composed of voluntaries recruited by the Organization - in a small scale. This is why this proposal will not be discussed in this paper but reference will be made to wide forces which could be created in the same spirit²³.

¹⁹ SC Res. 816 (1993) e SC Res. 1031 (1995).

²⁰ SC Res. 1386 (2001).

²¹ SC Res. 1973 (2011).

²² Noteworthy is the issue of immunity, which can derive from the agreement between ISAF and the Afghani interim government, See Military Technical Agreement between the International Security Assistance Force and the Interim Administration of Afghanistan, Annex A, Section 1.

²³ Carl Kaysen and George Rathjens refer to a Legion composed of volunteers to carry out operations halfway between the classical *peacekeeping* model and the *enforcement* one, still in a small scale and supported by backup forces, which could be heavily armed and would be kept under national control, trained and monitored based on common criteria and doctrine. KAYSEN, Carl; RATHJENS, George (2003). "Towards a UN Standing Army". *Daedalus*, 132, nº 1: pp. 92-100. Johansen considers that in wide crises, wide forces will be needed, beyond the creation of a "UN Emergency Service". JOHANSEN, Robert C. (ed.) (2006). *A United Nations Emergency Peace Service, To Prevent Genocide and Crimes Against Humanity*, Global Action to Prevent War, Nuclear Age Peace Foundation and World Federalist Movement, p. 32. Joseph E. Schwartzberg appeals to the creation of a wide force, composed of "globally recruited, all-



In terms of military and strategic support to the Security Council, two proposals should be mentioned: the reactivation of the Military Staff Committee and the creation of a new subsidiary body which would replace it.

2.2.1. Military Forces

In 1992,, the secretary-General, Boutros-Ghali, appealed to the enforcement of special agreements established in art. 43, not only *ad hoc* but permanently. The mission of these forces would be to respond to real or imminent aggression. The rapid availability of these forces could have a dissuading effect in cases there was a breach of the peace, as the potential aggressor would know that the Security Council would be able to respond using this mechanism. Though acknowledging that these forces may not be wide or equipped so as to respond to threat posed by a strong army, equipped with sophisticated weapons, Boutros-Ghali considers they might be useful to respond to any threat posed by a smaller military force (1992: para. 43). The former Secretary-General also defends the creation of "peace imposing units" whose main function would be to establish or keep a cease-fire. These units should be used by the Council in clearly defined circumstances and with previously specified terms of reference. These Member-States units would be voluntary, would be rapidly ready and heavily armed and would have to go through preparatory training in their national forces. The peace imposing units should be a provisional measure based on art. 40 and the Council should provide previous authorization for their use (Ibid., para 44).

The fact that the Security Council was not successful in containing genocide situations as that in Rwanda (1994), in Srebrenica (1995), in Kosovo (1999) and in Darfur (2004) made this need for a rapid response more evident. This idea was advocated by Member-States²⁴, Secretary-Generals²⁵ and work-groups within the Organization, such as the United Nations Panel on Peace Operations, in the so-called Brahimi Report and the High Level Group, as well as by literature.

The Brahimi Report from 2000 recommends defining rapid and effective deployment abilities by the United Nations, which implies its deployment after a resolution by the Security Council has been adopted. In the case on *enforcement* operations, that would mean within 90 days (2000: 14-16). The report by the 2004 High Level Group also emphasizes the need for means that allow for missions by the United Nations to be carried out, including peace imposing missions (2004: 53). Therefore, Member-States which have global or regional airborne or navy capacities should place forces at the disposal of the Organization, either without cost or based on a negotiation of reimbursement of additional costs associated with their use by the United Nations (2000: 59). This deployment capacity would allow preventing serious human rights' violations and cases of genocide (2000: 23).

volunteer, elite, highly-trained, multi-purpose UN Peace Corps". SCHWARTZBERG, Joseph E. (1997). "A New Perspective on Peacekeeping: Lessons from Bosnia and Elsewhere". *Global Governance*. 3, nº 1: p. 3.

²⁴ Canada, Denmark and the Netherlands were the main driving forces for the creation of a United Nations Emergency Peace Service after the genocide in Rwanda in 1994.

²⁵ See Kofi Annan and Ban Ki-Moon's positions, UN Doc. A/59/2005, In larger freedom: towards development, security and human rights for all, Report of the Secretary-General Kofi Annan, 2005, para. 112, p. 31 e UN Doc. A/63/677, Implementing the Responsibility to Protect, 2009, para. 64, p. 27.



In literature, several authors agree, though with differences in arguments, the creation of a rapid response unit.

Robert Johansen refers to the creation of a United Nations Emergency Peace Service, a permanent unit to protect individuals from war, genocide and crimes against humanity. This could be a military instrument, namely in implementing "responsibility to protect", when the state clearly does not fulfil its responsibility to protect the civilian population. The author considers that the measures proposed by the High Level Group would allow the UN Emergency Peace Service to run more effectively and this service would contribute to meeting the objectives defined by this panel, both in terms of civilian protection as well as an increase in rapid response capacity. This force would complement national, regional and UN efforts, providing immediate and full protection in some crises and be a peace instrument and preparing the way for subsequent additional assistance; it would allow the UN to act rapidly and without the constraints posed by national level decisions. The forces would be stationed in UN designated locations, including mobile headquarters in the field and would be able to respond immediately in emergency situations. These forces would be individually recruited among voluntaries from different countries, i.e., a faster system than the *ad hoc* system and the one in which Member-States make available their military forces. These units would be selected, trained and organized based on strict criteria so as to have the skills and equipment to carry out missions successfully. This service would include a series of competences, professionals under one command structure, prepared to carry out several functions in different operations, such as *enforcement* ones, avoiding divisions and misunderstandings between the chain of command and the functional fragmentation so as to mobilize military capacity. Though this service is not a wide force created to carry out large scale military combat, it would allow for keeping the security and stability of the population around the area of operations (2006: 23-30)²⁶.

In Alexandra Novosseloff's opinion, a permanent rapid response force could ensure functions such initial prevention, coercion, if need be, and the imposition of peace, and lists a few of the situations it could be applied to: assistance to a peacekeeping operation already in place and in difficulty, bridge the gap in terms of time from the moment the Security Council decides and the arrival of the "blue helmets", shortening the mobilizing period for peace operation, preventing a crisis from escalating or a conflict from spreading, as well as minimize hostilities as a strong prevention deployment. The author considers that the most effective as rapid instrument would be the creation of a force composed of voluntaries directly recruited by the Organization, in line with the proposal by Brian Urquhart (2003: 499-504). In 1993, this author claimed the creation of a force, a Legion or a Brigade, composed of voluntaries recruited worldwide:

"if the Security Council is to retain its credibility and relevance (...) in low-level conflicts in which it is now widely involved, it urgently needs a capacity for immediate "peace-enforcement" action" (1993: 102).

²⁶ Peter Langille considers this service "a promising proposal". LANGILLE, Peter (2012). *Preparing for a UN Emergency Peace Service*. New York: Friedrich Ebert Stiftung. p. 1.



In 2006, Brian Urquhart reiterated this idea within the proposal for the creation a UN Emergency Service, as only a professional and permanent force, especially trained and belonging to the United Nations, would be able to respond rapidly in an emergency situation. (2006: 9).

2.2.2. Reactivation of the Military Staff Committee

The end of the bipolar conflict and as a result of the conflict between Iraq and Kuwait in 1990, great expectations were laid in the collective security system, in which the Military Staff Committee would play a crucial role (Bryde; Reinisch: 775).

In his report "Agenda for Peace", Boutros-Ghali recommended that the Security Council began agreement negotiations pursuant to art. 43 with the support of the Military Staff Committee. The role of the Committee should be seen in the context of chapter VII and not be associated with planning and carrying out of peacekeeping operations²⁷.

Though in the 2005 World Summit, Member-States declared that:

"We request the Security Council to consider the composition, mandate and working methods of the Military Staff Committee" (2005: 38),

the Committee's role is yet not viewed as relevant by the United Nations²⁸.

In the literature, many authors acknowledge the importance of a military body that provides military and strategic guidance so as to improve the decision-making process and allow for a greater control of different situations and operations, including military coercive operations pursuant to art. 42.

Max Hilaire advocates a more active role by the Military Staff Committee, i.e., the need for previous approval by this body for any operation to be carried out (2005: 311). Carl Kaysen and George Rathjens argue that the Committee should be reactivated and widened, including representatives from Member-States that are important contributors to the Organization and able to fully respond whenever an operation is under way (2003: 101). Alessandra Novosseloff recognizes that reactivating a committee would be hard, since the permanent members have different views on the implications of reactivating the Committee and that this would involve, for example, a reassessment of provisional regulations and the risk for long debate. Therefore, the author appeals to the creation of a new military committee, i.e., a subsidiary body established based on art. 29 of the Charter. This body should be created through a Security Council resolution, which should also establish flexible work methods so as to allow overcoming political differences. This Committee could supply detailed opinions - issued on specific

²⁷ UN Doc. A/47/277-S/24111, An Agenda for Peace, Preventive diplomacy, peace-making and peace-keeping, 1992, para. 43 onwards.

²⁸ Noteworthy is the position of the High Level Group and of Kofi Annan, who considered art. 47 of the Charter, as well as all references to the Military Staff Committee in articles 26, 45 and 46 should be eliminated. The panel adds that the role assigned to the chiefs of staff of the five permanent members in 1945 is no longer adequate. See UN Doc. A/59/565, *A more secure world: Our shared responsibility, Report of the Secretary-General's High-level Panel on Threats, Challenges and Change*, 2004, para. 300, p. 77 and UN Doc. A/59/2005, *In larger freedom: towards development, security and human rights for all*, Report of the Secretary-General Kofi Annan, 2005, para. 219, p. 52.



situations - to the Council on the military implications of its decisions, analyzing ideas, operation plans, the rules of missions prepared and presented by the Peacekeeping Operations Department, as well as provide guidance and propose changes. This Committee should include all members of the Security Council at military counsel level as well as the participation of military and financial contributors. The later would participate in the writing of the opinions in proportion with their contribution, so as to assist in the decision-making in the beginning and at the end the process involving a military operation (2008: 83-85).

Paul Kennedy considers the reactivation of the Military Staff Committee "politically impossible", especially due to three reasons: concern of the three and usual contributors in making available their forces to the Committee, dominated by the five permanent members, concern of the G-77 States, which fear that the great powers favor their national interests and, finally, the refusal of some relevant States, such as the USA, in terms of agreements of joint forces under the command of a foreign commander and the fear the mission objectives are at risk due to the demands imposed by the allies. The author emphasizes the importance of there being a "professional military body". It would be responsible for carrying out preparatory work to contingent deployment, establishing an information system so as to understand the conditions in the field, ensuring a continuous flow of logistic supply and defining the role of the army in the field. (2009: 284-285).

2.2.3. Reflections on the proposals and needs for reform of Military Instruments and the Security Council Authority

_Considering the fairness of the proposal of recruitment of voluntaries and their specialized training by the United Nations, we proposed the creation of two types of permanent military forces assigned based on the mission's size and the degree of coerciveness required. In line of the proposals on the creation of a rapid response unit, we consider that this option may contribute to the restoring of international peace and security at the initial stage of a conflict that is limited but requires resorting to the use of force beyond the right to self-defense. Noteworthy is that due to new threats as is the case of interstate conflicts, serious human rights violation and the exodus of refugees, the Security Council has approved several decisions establishing the existence of a "peace threat" based on a wide interpretation of art. 39. The growing "responsibility to protect" of the international community, though not laid down by International Law, implies the use of military coercive measures when the State clearly does not guarantee the protection of the population. These are, thus, situations that generally demand a rapid response.

The deployment of more robust forces should be carried out when a crisis or a conflict is wider, either at its beginning or when the rapid response force is not achieving the expected results. This would therefore imply a higher degree of coerciveness. The two levels of permanent forces belonging to the United Nations should be trained by experts selected by the Organization based on the specificities and scope of their qualifications, should be positioned all over the world but so that each would have to periodically be stationed in the main headquarters for technical refreshment courses, as well as for consolidating their skills and coordination. In terms of the costs these forces would imply, we propose the creation of a specific *budget* and of agreements with a number



of Member-States based on NATO's idea of *Smart Defense*. This mechanism would allow overcoming possible unavailability to provide military sources and delay in forming a coalition of States, or even the withdrawal of troops necessary in an ongoing operation.

The creation of a subsidiary body based on art. 29, named Military Committee - so as not to be negatively linked to the current Committee - should reflect the current geopolitical status and, in case the Council undergoes reform, a renewed composition. This Committee, whose function would be to provide military and strategic support, would allow the Security Council to have more authority over control and command, both *ex ante* and throughout the *enforcement* process. If there is more control over the enforcement of military coercive measures, it would seem reasonable to assume that it would gather more support for this type of operations at international level.

Noteworthy is also the fact that NATO and the European Union, which have less responsibility than the United Nations in keeping international peace and security, as laid down in art. 1, n.º1 of the Charter, the latter being a universal organization with 193 Member-States, do have a military committee.

The reform of military instruments and Council authority which we propose in this paper should be viewed in the context of a wider reform which includes an expansion of its competences and a reform of its action, which is closely linked to the need for a new perspective on the paradigm of collective security. We proposed a renewed authority of the Security Council as a driving force and an enforcer of greater normative and operational consensus, though not holding unlimited power as that could lead to *ultra vires* actions.

In this sense, we believe that this crucial reform within the institutional framework should be simultaneous with a reinterpretation of the normative framework. We should consider that the case by case handling of situations makes it difficult to prepare standard resources as well as the training of *ad hoc*, and the risk of in-consequence and double standards. This reinterpretation should be formulated into a resolution, in which the Security Council lays down the principles on the use of collective force pursuant to Chapter VII and within the scope of the right to collective self-defense under art. 51, the legal constraints to this use in the enforcement process of military coercive measures and well as the size and type of required armed forces. In other words, standard criteria, updated regularly based on gathered experiences, including a list of conflicts requiring *enforcement* operations, would determine the concept of collective legitimate defense against current or imminent attacks. In terms of human rights, establishing a list of test criteria to assist in reaching a consensus in complex decision-making progresses in a consequential and systematic way. These criteria could constitute a platform of consensus - allowing to overcome what Brian Urquhart refers to as the main objection to the creation of a rapid response force: the fear that their operations may threaten national sovereignty (2006: 9) -, and ease the decision on military coercive measures and their carrying out. However, this process would have to be linked to previous changes in the use of the veto right for similar situations by permanent members. (Santos: 2012).

In accordance with the Brahimi report, and as long as there is a system of delegating or as a guidelines for permanent military forces, it is considered that the Council mandates should be carefully designed so as to include time limits, legal constraints,



mandatory report writing and a more precise wording so that the interpretation by Member-States be one and unequivocal. As abidance to the principle of good faith laid down in art. 2, n.º 2, may not be guaranteed, there being the risk of abuse and arbitrariness in carrying out the mission - though it is an obligation corresponding to *pacta sunt servanda* in International Law, i.e., compromises should be carried through. We also propose that safeguarding clauses be included in the resolutions, both in case the Security Council realizes there is abuse by military forces or private security companies and in the case of changes in the field that require changes in the operation, a fact which could contribute to overcome the gap Niels Blokker emphasized: "the Council does not seem to take this responsibility [do art. 24º] very seriously if it leaves member states largely free to carry out these operations and if it gives away the possibility of stepping in if things get out of hand" (2000: 551).

2.3. Conclusion

The urgency of a reform in military instruments and the authority of the Security Council has been ignored. This change, however, must be one the structuring element in a multidimensional reform process so that the Council has a wider and more intervention role in the new collective security system. Reinforcing its authority is absolutely necessary and crucial for the future of this system as well as for the future role of the Council as a guardian of international peace and security. The importance of the collective security system will depend on the degree of legitimacy, authority and credibility of the body, i.e., *ultima ratio* on the Security Council's capacity to decide military coercive measures.

In 1995, Boutros-Ghali appealed that the UN have the capacity to deploy, supervise, command and control this type of operations. After this, he acknowledged that the involvement of the United Nations in several missions would be insensible at the time (1995, para. 77). The delay in reform has perpetuated the gap, whose corollaries are the embryonic *enforcement* military instruments and a diminished authority of the Security Council in this matter and as a guarantee of abidance to International Law.

The creation of two types of permanent military forces, depending on the size of the mission and the degree of coercion required, composed by volunteers would allow for the consequences established in the decisions to be implemented in case of threat to or breach of peace or aggression pursuant to art. 39 and an inefficacy of provisional and coercive non-military measures pursuant to articles 40 and 41, respectively. On the other hand, the creation of a Military Committee and the normative determining of current scope and future trends in terms of Member-States competences and their own competences would allow for the Security Council to hold higher authority in control and command of these missions.

This reform would provide a reinforcement of the efficacy, legitimacy and enforcement of the Council's decisions, just as an adequate representation of the Member-States in the United Nations and more democracy and accountability in the decision-making process would. A process of reform which includes reforming the *enforcement* mechanism would increase the likelihood of Security Council decisions being abided to by Member-States.



The United Nations and the international system require a strong and swift Security Council, more specifically, this body should represent a new paradigm, i.e., one which includes the necessary degree of efficacy, capacity to act, representativeness, legitimacy and transparency, the paradigm approached in this paper.

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