THE REFORM OF THE MILITARY INSTRUMENTS AND AUTHORITY OF THE UNITED NATIONS SECURITY COUNCIL IN THE IMPLEMENTATION OF MILITARY ENFORCEMENT MEASURES

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Abstract
The lack of a de facto military component represents a considerable normative and operational shortcoming of the UN system. The existing differences among permanent members of the Security Council, which date back to the early days of the Organisation, prevented the implementation of the provisions of the United Nations Charter and the creation of credible and effective alternatives. When it comes to implementing military enforcement measures decided by the Security Council under Chapter VII, this issue becomes crucial, given that these are measures of ultima ratio to maintain or restore international peace and security. Without a working Military Staff Committee, without permanent armed forces and the power to exercise its full authority in the enforcement process, the Council is limited to the mere approval of decisions and is left hostage to the choices of the Member States, its permanent members in particular. Ignoring the urgent need for reform in this area implies perpetuating a dual paradox, while it is strongly demanded that the Security Council assumes its primary responsibility, with an increasing scope, enshrined in art. 24 and, within this context, art. 42, this body continues devoid of appropriate military instruments, on the other hand, correlating the desired improvement in effectiveness, legitimacy and implementation of the Council’s decisions solely with the reform of its composition and working methods means neglecting the fact that this transformation requires a reform of the military instruments and authority within a multidimensional reforming process of this body. This article commences with an analysis of the enforcement mechanism under the Charter, to thereafter address the problem underlying the delegation of the implementation of military enforcement measures. Finally, the article reflects on the existing reform proposals, stating the main features and indicating possible solutions.

Keywords:
Reform; Security Council; Military instruments; Chapter VII; Enforcement; Military Enforcement Measures

How to cite this article

Article received on 15 January 2013 and accepted for publication on 19 March 2013
THE REFORM OF THE MILITARY INSTRUMENTS AND AUTHORITY OF THE UNITED NATIONS SECURITY COUNCIL IN THE IMPLEMENTATION OF MILITARY ENFORCEMENT 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

The reference to the subject of “reform” of the United Nations Security Council generally falls within the sphere of its composition and, to a lesser degree, its working methods¹, with the aim of making this body “more broadly representative, efficient and transparent and thus to further enhance its effectiveness and the legitimacy and implementation of its decisions” (World Summit Outcome, 2005: 32). There can be no doubt that the power structures of the Council need to be reformed. This is related to the anachronism of its composition established on the basis of art. 23 of the Charter² and to the requirement for greater representativeness of the current geopolitical constellation.³ However, reflection on this issue should not be exhausted on the two spheres mentioned above, since the essential rethinking of the collective security system requires a rethink of the Security Council’s role (Santos, 2011).

1 Increased transparency and accountability of the Member States of the Security Council, particularly that of the permanent members, are the determinant aspects within the scope of reforming working methods.
2 The Security Council consists of fifteen Member States. China, France, Russia, United Kingdom and the USA are permanent members (art. 23(1)). The ten non-permanent members are elected by the General Assembly for a period of two years (art. 23(1) and (2)).
3 The victorious powers of World War II acquired a privileged position in the Security Council, which should correspond to their unique political weight in the international order and their contribution to an effective collective security system. While the United Kingdom and France lost political and economic power since the creation of the United Nations in 1945, the African continent, Latin America as well as Member States with significant economic and political influence at a regional and international level, such as Germany (3rd greatest contributor to the UN budget), Japan (2nd greatest contributor), Brazil, India or South Africa are not represented in accordance with their standing in the international system. At the same time, art. 27 (3) of the Charter enshrines the veto rights of the permanent members, which not only represents a legal inequality but also constitutes a deviation from the principle of sovereign equality of all members of the organisation referred to in art. 2(1) of the Charter. Most Member States and the literature argue that the veto right is anachronistic and anti-democratic.
The calls for a "new vision of collective security," are, within the context of the reform of this body, only associated with a change in the composition and the working methods – assuming that a greater involvement of the Member States which contribute more financially, militarily and diplomatically, of the developing Member States and that an increased democratisation and accountability of Council members in the decision-making process will contribute to greater credibility, efficiency and propensity of the Council to act against the new threats of the twenty-first century.4

This perception of "reform" must be deconstructed, given that the desired reinforcement of the "effectiveness", "legitimacy" and "implementation of the decisions" of this body defended by the Member States requires a multidimensional reforming process, in which the reform of the military instruments and authority should be one of its structural elements.

Whilst the Charter places instruments at the disposal of the Security Council in order to fulfil its primary responsibility in the maintenance of international peace and security enshrined in art. 24 of the Charter and the implementation of military measures adopted in accordance with art. 42 of the Charter, there is no de facto military component to ensure its practicability.

This normative and operational shortcoming of the UN system has become more evident since the early nineties of the twentieth century, when the Security Council's paralysis was overcome and the nature of certain conflicts required the implementation of robust military operations for the maintenance or restoration of peace. Indeed, without a working Military Staff Committee, without permanent armed forces and without being able to exercise its full authority in the process of implementing measures, the Security Council’s role is limited to the mere approval of decisions, thus holding it hostage to choices of the Member States, its permanent members in particular. This is especially visible in terms of the provision of armed forces and of the command and control of military operations.

This article commences with an analysis of the enforcement mechanism under the Charter, to thereafter address the problem underlying the delegation of the implementation of military enforcement measures. Finally, the article reflects on the existing reform proposals, systematising the main features and indicating possible solutions.

2. The Enforcement Mechanism of the United Nations Charter

The enforcement mechanism that has been placed at the disposal of the Security Council is an integral part of the collective security system of the United Nations and of a complex and multilevel nature. Regarding this power of the Council, Edward Luck stated:

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“It was Chapter VII and its enforcement provisions that were to give teeth to its potential. Decisions of the Council taken under Chapter VII were to be enforceable, not just legally binding” (2006: 22).

It is, in fact, this power that enables it to categorically assume its responsibility established in art. 24 and enabled it to gradually become the "law enforcer" of the international community (Frowein; Krisch, 2002: 707).

The application of measures of this nature requires the determination of a threat to peace, breach of peace or act of aggression in accordance with art. 39 and that provisional measures in accordance with art. 40 have not proved effective.

As set forth in art. 41, the Council may decide on different non-military measures and call upon the members of the United Nations to apply such measures. This type of sanctions constitutes a lower level of enforcement relative to the measures adopted in accordance with art. 42. Its ineffectiveness constitutes the crucial premise for art. 42 to be applicable. This article states the following:

"Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations."

Military enforcement measures decided by the Council should be carried out by armed forces provided by the respective Member States at the request of this body, based on special agreements as prescribed in art. 43. However, the existing differences among the permanent members, which date back to the early days of the Organisation, have prevented the conclusion of special agreements. (Frowein; Krisch, 2002: 763) and the functioning of another military instrument established in accordance with the Charter, the Military Staff Committee (Novosseloff, 2008: 9). Article 47(2) establishes the aim of the Committee, composed of the Chiefs of Staff of the permanent members (art. 47 (1)): to advise and assist the Council on all questions relating to military requirements, the employment and command of the armed forces placed at its disposal, in accordance with art. 43. Article 47 (3) confers on the Committee the responsibility, under the authority of the Security Council, for the strategic direction of the armed forces that carry out the mission.

The national troops would be subject to their own regulations and respective national Commander. The latter would, in turn, fall under the command of an operational leader.
under the control of the Military Staff Committee. The Security Council would therefore exercise its full authority and control through this instrument (Sarooshi, 2000: 142).

2.1. The Delegation of the Implementation of Military Enforcement Measures

The unenforceability of the ambitions of a United Nations army based on agreements negotiated with Member States and, consequently, of a collective security under the command and control of the Security Council, assisted by a Military Staff Committee, led to the design of an alternative system. In this system, the Security Council delegates the implementation of the mandate decided under Chapter VII to a State or a group of States, i.e. to coalitions of States created ad hoc (coalitions of the willing). This is a decentralised implementation in which the armed forces are not under the command and control of that body, but of a Member State belonging to the coalition.

This model was used in situations of a distinct nature. The USA led coalitions of different magnitudes. Worthy of note are, the operation with the objective of cooperating with the Government of Kuwait using "all necessary means" following the invasion of this State by Iraq, the mission aimed at creating a secure environment for humanitarian relief operations in an interstate conflict in Somalia and the mission with a view to ensuring the return of the democratically elected Government, deposed by a military coup in Haiti. In turn, the coalition led by France in Rwanda was aimed at the protection of displaced persons, refugees and civilians, the mission led by Italy in Albania aimed at ensuring the security and movement of organisations and international agencies of a humanitarian nature and the coalition led by Australia in East Timor supported the mission of the United Nations Mission in East Timor (UNAMET) and humanitarian aid.

If, on the one hand, this system enables the execution of operations that otherwise could not be implemented, on the other hand, several weaknesses are revealed that undermine the authority of the Security Council and international law.

One such weakness concerns the existing disparity between the decision-making dimension and the operational dimension, which is perceptible at various levels.

Once a mandate has been given, the voluntary nature of the provision of armed forces can result in an unwillingness by Member States to do so or a delay in reacting, justified by the political nature of the negotiations and/or the need for approval by the respective national parliaments. The strong dependency on the great powers, especially the USA, which lies in the marked and growing military asymmetries between Member States, may underlie both situations and have dramatic consequences, for example, in the case of serious violations of human rights.

9 SC Res. 940 (1994).
12 SC Res. 1264 (1999).
13 This asymmetry is visible through the respective defence budgets: the USA has the largest budget, 711 billion dollars, which represents 41% of the world share. Whereas between 2002 and 2011, the USA experienced an increase of 59%, the United Kingdom, the country with the fourth largest budget - 62.7 billion dollars, only experienced an increase of 18%. In the same period, France and Germany reduced
Another weakness is manifested in the insufficient degree of control exercised by the Security Council in the process of implementation of military enforcement measures. Unlike the classic peacekeeping operations model, in which the Member States are more willing to submit to the command and control of the United Nations, the Secretary-General in particular, in operations of this type, this is not the case mainly with the USA (Kaysen; Rathjens, 2003: 93). Note that the States may decide to withdraw their troops without this decision being unlawful under international law, as in the case of USA in 1994 - after the other Member States due to the escalation of violence - in the UNOSOM II mission in Somalia after there were several casualties amongst American soldiers.

Added to this is the possibility of divergent interpretations of the resolutions. Although the Council has, following the recommendations of the report of the Panel on United Nations Peace Operations (the so-called Brahimi Report (2000: 10-12)) decided in resolution 1327 (2000) on the development of "clear, credible and achievable mandates", the vague and inconsistent language resolutions make reference to "all necessary measures" or "all necessary means", the lack of procedural and substantial limits, i.e. the absence of determination of concrete objectives and, sometimes, of a time limit or the obligation to submit a periodic report may encourage the abuse of the law by the Member States. It should be noted that the preparation of reports does not per se guarantee impartiality or reliability of the actions conducted on the ground, which justifies the need for additional action, i.e., at various levels to overcome the different weaknesses outlined in this article.

It can be said that through the authorisation of the Security Council for the use of all measures or means necessary, coalitions of States receive "a blank cheque" (Dörr, 2006: 162). In addition, if a resolution does not impose a time limit, a permanent member can prevent the termination of military enforcement measures through the threat or exercise of the veto right, which is known as "reversed veto". In this case, the period of validity of the authorisation of the Council is not clear. For example, the USA and the UK rejected the end of measures decided based on resolution 678 (1990), which enabled them to extend military action against Iraq (Stein, von Buttlar 2012: 132). It should be noted that even without being involved in the coalition, the permanent members can prevent the termination of the operation with the purpose of protecting allies who participate in the coalition.

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18 cf. for example, SC Res. 678 (1990), SC Res. 929 (1994).
Similarly, the mentioned problems, albeit on a smaller scale, can arise in the delegation of enforcement operations to regional organisations. The Charter foresees in art. 53 (1) the possibility of regional organisations conducting these operations under a mandate of the Council, an instrument to which the United Nations have resorted in some situations in order to maintain or restore international peace and security. Especially the North Atlantic Treaty Organization (NATO) has conducted several military enforcement operations, even though the resolutions mention Chapter VII and do not refer explicitly in all situations to Chapter VIII. For example, in Bosnia-Herzegovina\(^\text{19}\), with the purpose of supporting the operation of the "Blue Helmets" in 1993 and ensure the implementation of the Dayton peace accords in 1995, in Afghanistan\(^\text{20}\), leading the Mission of the International Security Assistance Force (ISAF) since 2003 and, more recently, in 2011, in Libya for the purpose of imposing a no-fly zone to protect the civilian population\(^\text{21}\).

An issue that is important to point out here is the hiring of private security companies by the Member States, in particular the USA be it in the sphere of the coalition of States or NATO missions with a mandate from the Council. Whilst these security companies support the missions, often they pose considerable legal problems due to non-observance of international humanitarian law and the mandate issued by the Security Council. The performance of these private security companies working for the USA in the ISAF mission in Afghanistan, based on Resolution 1368, is an example of this. They are said to be responsible for a series of incidents, such as the injury and death of civilians, aiding the Taliban, subcontracting of military leaders, damaging coalition's image and efforts (Schwartz, 2011: 15-16), which led Major-General Nick Carter of the ISAF to speak of a "culture of impunity" (cit. in Schwartz, 2011: 16) revealing, therefore, the gaps in the UN system, which are closely linked to the deficiencies of international law on this matter\(^\text{22}\).

### 2.2. Proposals for Reform of Military Instruments

The lack of credible and effective military instruments available to the Security Council is a controversial issue and has been recurring since the creation of the United Nations. After the end of the Cold War, this normative and operational shortcoming became more evident, especially when the nature of certain conflicts required the implementation of robust military operations for the maintenance or restoration of peace. In other words, missions composed of heavily militarised forces, deployed without the consent of the parties, based on a mandate of the Council and which may resort to use of force beyond the exercise of the right of self-defence provided for in art. 51 of the Charter with the aim, for example, of imposing peace agreements, enforcing respect for imposed sanctions and conducting military operations against a rogue State.

The proposals concerning military forces include a multiplicity of designations and concessions. The proposal for rapid reaction military units, *ad hoc* or permanent,

\(^{22}\) It is worth stressing, here, the immunity issue, which may emanate from the agreement of ISAF with the interim government of Afghanistan, cf. Military Technical Agreement between the International Security Assistance Force and the Interim Administration of Afghanistan, Annex A, Section 1.
composed of volunteers recruited by the Organisation should be noted in the context of enforcement operations – in a reduced size and detail and, for this reason, will not be the object of analysis in this article as well as large forces that could be created in the same way.\(^{23}\)

With regard to military and strategic support for the Security Council two proposals are mentioned: the reactivation of the Military Staff Committee and the creation of a new subsidiary body in its place.

2.2.1. Military Forces

In 1992, the Secretary-General, Boutros-Ghali, called for the implementation of the special arrangements provided for in art. 43 not only on an ad hoc basis, but also permanent. The mission of these forces would be to respond to a current or imminent aggression. The rapid availability of forces could serve as a deterrent to ruptures of peace, since the potential attacker would know that the Security Council could react on the basis of this mechanism. While recognizing that these forces could not be broad or may not be equipped to deal with a threat posed by an imposing and equipped army with sophisticated weapons, Boutros-Ghali considers that it could be useful to deal with any threat posed by a smaller military force (1992: paragraph 43). The former Secretary-General defends the creation of "peace-enforcement units" whose primary function would be to restore or maintain a ceasefire and that should be used by the Council in clearly defined circumstances and with their terms of reference specified in advance. Such units of the Member States would be voluntary, in readiness, heavily armed and would have to go through an extensive preparatory training within their national forces. These peace enforcement units should constitute an interim measure on the basis of art. 40 and obtain prior approval from the Council (ibid., para 44).

The failure of the Security Council to contain situations of genocide as happened in Rwanda (1994), in Srebrenica (1995), in Kosovo (1999) and in Darfur (2004) reinforced the idea of the need for a rapid reaction capacity. This conception was defended by Member States\(^{24}\), Secretaries-General\(^{25}\) and working groups within the Organisation, as the Panel on United Nations Peace Operations, in the so-called Brahimi Report and the High-level Panel, as well as in the literature.

The 2000 Brahimi report recommends the definition of rapid and effective deployment capabilities by the United Nations, which would mean its deployment after the adoption

\(^{23}\) Carl Kaysen and George Rathjens allude to a Legion composed of volunteers to perform operations between the model of classic peacekeeping and enforcement that would not have a large dimension and should be supported by large forces ("backup forces") that could be strongly armed and remain under national control, trained and oriented on the basis of common criteria and doctrines. Kaysen, Carl; Rathjens, George (2003). “Towards a UN Standing Army”. Daedalus, 132, no. 1: pp. 92-100. Johansen believes that in large crises there will be the need for large forces beyond the establishment 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 calls for the creation of a large force composed by "globally recruited, all-volunteer, elite, highly-trained, multipurpose UN Peace Corps". Schwartzberg, Joseph E. (1997). “A New Perspective on Peacekeeping: Lessons from Bosnia and Elsewhere”. Global Governance. 3, no. 1, p. 4.

\(^{24}\) Canada, Denmark and the Netherlands were the main drivers of the creation of a "United Nations Emergency Peace Service" following the Rwandan genocide in 1994.

of a resolution of the Security Council with regard to enforcement operations within 90 days (2000: 14-16). The 2004 High-level Panel report also stresses the need for capabilities to carry out the missions decided by the United Nations including peace enforcement (2004: 53). In this sense, Member States that have global or regional air or sea transport capabilities should place at the disposal of the Organisation, free of charge or based on a negotiated framework hinging on an amount paid for the reimbursement of additional costs associated with the use of these capabilities by the United Nations (2000: 59). This deployment capability would enable the prevention of serious human rights violations and cases of genocide (2000: 23).

In literature, many authors argue, albeit on distinct aspects, for the creation of a rapid reaction force.

Robert Johansen alludes to the creation of an "Emergency Peace Service" of the United Nations, a permanent force that would protect individuals from wars, genocide and crimes against humanity. It could be a military instrument, in particular in the implementation of the conception "responsibility to protect", when the state clearly does not fulfil the responsibility to protect its civilians. The author considers that the measures proposed by the high-level panel would make it possible for the "UN Emergency Peace Service" to work more effectively while this, in turn, would contribute to the achievement of the goals set by this Panel both in terms of the protection of civilians (genocide), and of an increased capacity for rapid reaction. This force would complement national and regional efforts and those of the UN, providing immediate and total protection in some crises and serving as an instrument of peace and paving the way for subsequent additional aid; it would enable the United Nations to act quickly without the decision being obstructed by decisions at a national level. The forces would concentrate on sites designated by the United Nations, including mobile headquarters on the ground and they would be able to act immediately in emergency situations. These forces would be recruited individually from amongst volunteers from different countries, which would avoid the slowness of an ad hoc system or the reluctance of Member States to provide their military forces. The forces would be selected, trained and organised, based on strict criteria in order to provide the expertise and equipment for the success of the mission. This service would enclose a wide range of professional skills within a single command structure, prepared to conduct multiple functions in various operations, such as enforcement, avoiding divisions, confusions between the chain of command or functional fragmentation in order to mobilise the military capacity. Although this service is not a large force designed to conduct large-scale military combat, it would maintain the security and stability of the population located in the operating area (2006: 23-30)

For Alexandra Novosseloff, a permanent rapid reaction force could carry out initial prevention functions, of enforcement, if the situation so requires, and the imposition of peace. The author points out a few cases where this might be applicable: assistance to an existing peacekeeping operation and which finds itself in difficulties on the ground, bridge the period of time that elapses from the decision of the Security Council to the arrival of "Blue Helmets" by improving the mobilization time of a peacekeeping operation, to prevent the escalation of a crisis or a conflict from spreading and reduce hostilities as a "muscular"preventive deployment. According to the author, the most

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effective and fastest instrument would be to create a force composed of volunteers recruited directly by the Organization in line with the proposal made by Brian Urquhart (2003: 499-504). This author argued, in 1993, for the creation of a force, a legion or a brigade, composed of worldwide recruited volunteers:

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

In 2006, Brian Urquhart reiterated this idea in the proposal for creating a “UN Emergency Service”, as only a professional and permanent force, with specialized training, belonging to the United Nations, could respond quickly in an emergency. (2006: 9).

2.2.2. Reactivation of the Military Staff Committee?

With the end of the bipolar conflict and following the conflict between Iraq and Kuwait in 1990, great hopes were placed in the collective security system, in which the Military Staff Committee would play a key role (Bryde; Reinisch: 775).

In his report “Agenda for Peace”, Boutros-Ghali recommended that the Security Council should open negotiations in accordance with art. 43 with the support of the Military Staff Committee. The Committee’s role should be seen in the context of Chapter VII and should not be associated with the planning and carrying out of peacekeeping operations.27

Although at the 2005 World Summit, Member States declared:

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

the Committee’s significant role is still not recognised by the United Nations28.

In the literature, several authors recognize the importance of a military body that provides military and strategic guidance with the aim of improving decision making and greater control under different situations and operations, including military enforcement measures in accordance with art. 42.

27 UN Doc. A/47/277-S/24111, An Agenda for Peace, Preventive diplomacy, peacemaking and peacekeeping, 1992, paragraph. 43 and s.
28 To mention the position of the High Level Panel. reiterated by Kofi Annan, which considered that art. 47 of the Charter, as well as all references to the Member States in arts. 26, 45 and 46 should be suppressed. The Panel adds that the role assigned to the Chiefs of Staff of the five permanent members in 1945 is no longer appropriate. Cfr. 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.
Max Hilaire defends a more active role for the Military Staff Committee so that the execution of the operations entails prior approval of this body (2005: 311). Carl Kaysen and George Rathjens argue that the Committee should be reactivated and expanded, including the representatives of the Member States that are important contributors to the Organization and able to act full time whenever an operation is developing (2003: 101). Alessandra Novosseloff acknowledges that the reactivation of a Committee would be difficult to achieve, since the permanent members have different understandings about what it means to reactivate the Committee and that this would involve, for example, a re-examination of the provisional regulations and the risk of long debates. The author appeals, therefore, 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 on the basis of a Security Council resolution, which should also establish flexible working methods in order to allow the overcoming of political divisions. This Committee could provide the Council with detailed opinions on the military implications of the decisions taken by it - issued to address specific real situations - analyze the ideas, operation plans and the rules of the mission prepared and presented by the Department of Peacekeeping Operations, provide guidelines and propose amendments. Its composition should include all members of the Security Council at the level of military advisers with the participation of the contributors of troops and finance. The latter would participate in the elaboration of opinions in proportion to their contribution in order to help the decision at the beginning and end of the process involving a military operation (2008: 83-85).

Paul Kennedy considers the reactivation of the Military Staff Committee "politically impossible", mainly due to three reasons: apprehension of the main and regular contributors to making its forces available to the Committee, dominated by the five permanent members, concern of the G-77 states, who fear that the major powers will act in order to favour their national interests and, finally, the refusal of some major states like the USA regarding agreements for joint forces, under the command of a foreign commander and the fear that the mission objectives are put at risk due to demands made by the allies. This author points out the importance of a "professional military body." The latter would be responsible for preparatory work prior to sending the troops, the establishment of an information system in order to perceive the local conditions, the creation of efficient chains of command ensuring the continuous flow of logistical supplies and the definition of the role of the army on the ground. (2009: 284-285).

2.2.3. Reflections on the proposals and the need for a reform of the Military Instruments and authority of the Security Council

Based on the proposal concerning the recruitment of volunteers and their respective specialized training by the United Nations, this article proposes the creation of two types of permanent military forces, deployed on the basis of the size of the mission and the level of enforcement required. In line with the proposals for the creation of a rapid reaction force, it is considered that this option could contribute to the restoration of international peace and security at an early stage of a conflict with limited dimensions, but that requires the resort to the use of force in situations other than the right to self-
defence. It should be noted that due to new threats, such as intra-State conflicts, serious human rights violations and refugee exodus, the Security Council has approved a number of decisions determining the existence of a "threat to peace" on the basis of an extensive interpretation of art. 39. The increasing "responsibility to protect" of the international community, even though it has not yet been established as a norm of international law, implies the use of military enforcement action when a state clearly does not guarantee the protection of its population. These are, therefore, situations which generally require fast action.

The deployment of more robust forces should be made when a crisis or conflict has a larger dimension, either from the beginning or when the rapid reaction force is not having the expected results, requiring, therefore, a greater degree of enforcement. The two levels of permanent forces belonging to the United Nations should be trained by experts selected by the Organisation based on the features and scope of their qualifications, they should be located in bases in various parts of the world, but on a rotation system under which they would go to a military headquarters where they would receive updated technical knowledge, consolidate their expertise and coordination. With regard to the costs that such forces would involve, the creation of a specific budget and of agreements with certain Member States based on a design along the lines of NATO’s "Smart Defence" are proposed. This mechanism would eliminate the possible unavailability of immediate forces or the slowness of the process of forming a coalition of states or even the withdrawal of troops needed for an ongoing operation.

The creation of a new subsidiary body on the basis of art. 29, called Military Staff Commission – to avoid any negative connotation with the current Committee - should reflect the current geopolitical realities and, in the case of reform of the Council, the renewed composition. This Commission, with a strategic and military support function, would enable the Security Council to hold a higher authority with regard to command and control, ex ante and throughout the enforcement process. If there were a greater control on the implementation of military enforcement action, it would seem reasonable to assume that a greater international support for such operations would be met.

It should be noted that NATO and the European Union, which have the responsibility for maintaining peace and international security at a lower level than that assigned to the United Nations in art. 1(1) of the Charter and that it is a universal Organisation with 193 Member States, have a military committee.

The reform of military instruments and authority of the Council proposed in this article must be seen in the context of a wider reform process which takes into account the expansion of its competence and the reform of its mode of action, which is closely linked to the need for a new understanding of the collective security paradigm. A renewed Security Council authority is proposed as booster and implementer of a greater normative and operational consensus, however not with an unlimited power, as ultra vires actions may arise from it.

In this sense, it is considered that this essential reform of the institutional framework should occur concomitantly with a reinterpretation of the normative framework. A case-by-case analysis and decision hampers the preparation of standardized resources as well as the formation of ad hoc forces, involving the risk of inconsistencies and double standards. This reinterpretation should be reflected in a resolution in which the Security Council prescribes the principles for the resort to the use of force under Chapter VII.
and in the context of the right of self-defence under article 51, legal limits to the use of force in the process of enforcing military measures as well as the dimension and typology of the armed forces required. In other words, catalogued criteria which would be updated regularly based on experiences gathered, including an attached list of conflicts that required enforcement operations, determining also the understanding of collective self-defence in regards to actual or imminent attacks and in respect to the protection of human rights, the establishment of a list of test criteria in order to help reach a consensus in complex decision-making procedures ideally in a consistent and systematic manner. These criteria could form a consensus platform allowing the surpassing of what Brian Urquhart referred to as the main objection to the creation of a rapid reaction force: the fear that their operations might jeopardize national sovereignty (2006: 9) –, facilitating the decision of military enforcement measures and their subsequent execution. However, this process would have to be combined with previous changes in the use of the right of veto concerning similar situations by the permanent members. (Santos: 2012).

In synchrony with Brahimi’s report, and while this system of delegation persists or as guidance for the permanent military forces, it is considered in this article that the mandates of the Council would have to be carefully delineated in order to include temporary limits, establish legal limits, obligate the elaboration of periodic reports and more precise formulations, in order for the interpretation of the Member States to be more uniform and unequivocal, given that the respect for the principle of good faith consecrated in art. 2(2) may not be guaranteed if there is a risk of abuse of law and arbitrariness in fulfilling the mission - although it is an obligation that corresponds to the principle of international law *pacta sunt servanda*, that is, agreements must be honoured. It is also proposed that safeguard clauses be included in the resolutions be it in the case of the Security Council finding that there is abuse of law by military forces or private security firms, or in the case of changes on the ground that require changes in the operation, a fact that could contribute to close the gap pertinently highlighted by Niels Blokker: "the Council does not seem to take this responsibility [from art. 24] 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 urgent need for a reform of military instruments and authority of the Security Council has been ignored. This transformation, however, must be one of the fundamental elements of a multidimensional reforming process aiming at a broader role and intervention of the Council in a new vision of the collective security system. The increased authority becomes absolutely necessary and will determine the future of this system as well as the future significance of the Council as guardian of international peace and security. The importance of the collective security system will depend on the degree of legitimacy, authority and credibility of this body, since it is based on the capacity of the Security Council *ultima ratio* to decide on military enforcement measures.

The appeal of Boutros-Ghali in 1995, to the creation of a capacity to deploy, direct, command and control operations of this type was followed by the recognition that, due to lack of resources and difficulty in assuming its responsibilities in the less demanding
ongoing missions of different nature, it would be a “folly” attempt at the time (1995, paragraph 77). From the continuous postponement of this rethinking results the perpetuation of this shortcoming, whose corollaries are military enforcement instruments in an embryonic state and minimal Security Council authority in this regard, as the guarantor of the observance of international law.

The creation of two types of permanent military forces, depending on the size of the mission and the degree of enforcement required, composed of volunteers would enable the implementation of the consequences mentioned in the Council’s decisions when the existence of a threat to the peace, a breach of the peace or an act of aggression is determined under art. 39 or the ineffectiveness of provisional and non-military enforcement measures in accordance with articles 40 and 41 respectively is verified. Furthermore, the conception of a Military Staff Commission and the normative determination of the current scope and future trends of the competences of the Member States and its own competences would enable the Security Council to hold higher authority in the monitoring and control of these missions.

This reform would allow for improved efficacy, legitimacy and the implementation of the Council’s decisions, just as an adequate representation of the Member States of the United Nations and greater democracy and accountability in the decision-making process would. A process of reform including the reform of the enforcement mechanism will increase the likelihood of compliance in the decisions of the Security Council by the Member States.

The United Nations and the international system require a strong and agile Security Council, more specifically, a new paradigm of what this body should be, that is, a paradigm that includes in its essence the necessary degree of effectiveness, capacity for action, representativeness, legitimacy and transparency, and within which the issue addressed in this article falls.

References


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