



OCGG Government Section

Advice Program  
United Nations

Governance Area  
UN Security Council

# Strengthening the Legitimacy and Effectiveness of the Security Council

Advice to the UN High Level Panel  
on Threats, Challenges, and Change

edited by Anna Dimitrijevic

## MAIN POINTS

Legitimacy of the use of force requires legality under the UN Charter. The Security Council's legitimacy and effectiveness must be strengthened. New members and an EU seat should be added, but veto rights should be limited. A fact-finding commission and a UN army should be established.

## ABOUT THE EDITOR

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## ABOUT THE OCGG

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## EXECUTIVE SUMMARY

The Oxford Council on Good Governance presents the following recommendations to the United Nations High Level Panel on Threats, Challenges and Change, in order to improve collective responses to the security challenges facing Member States:

**R1 Legitimacy Requires Legality**

*The legality of the use of force should be of foremost consideration. Except for Article 51 cases of self-defence, only use of force authorized by the Security Council should be considered legitimate.*

**R2 New Members of the Security Council**

*To preserve the legitimacy and efficiency of the UN system, membership in the Security Council should be adjusted with permanent seats created for Brazil, Egypt, India, Japan and South Africa, and an EU seat replacing those held by France and the UK.*

**R3 Limiting the Veto Right**

*Individual veto rights should be reserved exclusively for the current permanent members and the EU for the foreseeable future. Their exercise should be subject to organized self-restraint.*

**R4 An Independent Fact-Finding Commission**

*To overcome potential deadlocks in the Security Council in the face of the need for urgent humanitarian intervention, an independent fact-finding commission should be created. The commission could be called into action by the Secretary-General or by a qualified majority in the Security Council. The Security Council would be obliged to decide whether to follow the commission's recommendations, with veto rights giving place to qualified majority voting solely on these exceptional occasions.*

R5 A Standing UN Army

*A stand-by UN army should be created from contributions of 5% or more of each member state's national troops and military budget to cover the costs of UN training and the maintenance of interoperable equipment.*

## INTRODUCTION

Greater effectiveness in our responses to ‘old’ and ‘new’ security challenges requires greater legitimacy of the collective use of force.

There are two main ways to strengthen the legitimacy of the use of force. First, the terms which are crucial to the language of the Charter but are hotly contested today should be clarified. Second, the legitimacy and effectiveness of the Security Council as the sole authority to govern the use of force in international affairs should be strengthened. The second option is indispensable since the use of force always will enjoy greater legitimacy when based on multilateral decisions that are fair, efficient, and capable of delivering results on the ground.

In order to strengthen the legitimacy and effectiveness of the Security Council as the sole authority to govern the use of force in international affairs, sovereignty will to a much greater extent than today have to be delegated from all the Member States of the United Nations and pooled in the Security Council.

Transferring sovereignty from the national to the global level will lead to greater global integration and stronger degree of institutionalization of the authority and capacity to govern at the global level, which is exactly what humanity needs to cope with the risks, threats, and challenges we are all facing in the 21st century.

## RECOMMENDATIONS

### RECOMMENDATION 1 LEGITIMACY REQUIRES LEGALITY

*The legality of the use of force should be of foremost consideration. Except for Article 51 cases of self-defence, only use of force authorized by the Security Council should be considered legitimate.*

Uncertainty regarding the relationship between legitimacy and legality lies at the heart of many recent controversies regarding collective use of force. Reaching consensus in this area is necessary for a substantive reform of the kind which the High Panel has been mandated to seek. The OCGG recommends that the international community affirms legality as the indispensable foundation of legitimacy.

Good governance based on the rule of law requires that legitimacy is anchored in legality. However, as the NATO intervention in Kosovo demonstrated, in practice they are often disconnected. The Kosovo case has generally been seen as technically illegal yet legitimate since it was undertaken in accordance with the fundamental principles held in common and agreed on by the members of a given community, in the spirit if not the letter of documents such as the UN Charter or the Universal Declaration of Human Rights.

However, although there may have been good reasons why legitimacy was separated from legality in a special case like Kosovo, accepting this as a general norm would undermine the international legal order and the prospect of global governance through multilateral institutions. An endorsement of use of force that is not authorized by the Security Council would open the way for states to claim the unilateral right to breach the UN Charter.

Instead, the world should seek to narrow the gap between legitimacy and legality. More specifically, the Security Council should be affirmed as the sole legitimate authority to govern the use of force in international affairs. It is only a Security Council endorsement of collective action that can confer legitimacy on the collective use of force. The transfer of sovereignty by the Member States to the United Nations involved in becoming signatory parties to the UN Charter means that it is the United Nations which is the final depository of legitimate authority when it comes to the collective use of force.

First, the UN Charter and the current arrangements of the international legal order should be reformed so as to address the shortcomings which have led to the perceived need to intervene illegally in certain cases.

Second, the UN decision-making mechanisms should be reformed so that their perception as fair and authoritative is enhanced, and their efficiency is optimized at the same time. This is particularly important given the feedback mechanism through which the evaluation of the outcome of the collective use of force reflects back on the legitimacy not only of the particular collective action but also on the United Nations itself. This seems to be an increasingly prevalent phenomenon, perhaps most visibly reflected in the tragic bombing of the UN Headquarters in Baghdad on the 19th of August, 2003, and in the targeting of UN staff, increasingly seen as agents with their own agenda instead of as neutral parties acting on the authority of the global community's collective will.

## RECOMMENDATION 2 NEW MEMBERS OF THE SECURITY COUNCIL

*To preserve the legitimacy and efficiency of the UN system, membership in the Security Council should be adjusted with permanent seats created for Brazil, Egypt, India, Japan and South Africa, and an EU seat replacing those held by France and the UK.*

The existing structure of permanent members with veto powers in the Security Council is unjust as well as inefficient. Only recently Brazil, Germany, India and Japan mounted an open challenge to the current arrangement which privileges those great powers who saw the end of the Second World War on the victorious side.

The OCGG recommends changing the composition of the Security Council so that the seats held by Britain and France give way to a European Union seat, and permanent seats are allocated to Brazil, Egypt, India, Japan and South Africa. In this way the dominant countries of all continents would be represented permanently, with two members from each continent and three from Austral-Asia (home to a quarter of the Earth's population). The inclusion of Egypt, although less frequently discussed than the other nominees, would be particularly important by bringing a Muslim country into the permanent structure of the Security Council.

### RECOMMENDATION 3 LIMITING THE VETO RIGHT

*Individual veto rights should be reserved exclusively for the current permanent members and the EU for the foreseeable future. Their exercise should be subject to organized self-restraint.*

So far as veto rights are concerned, however, it is currently unrealistic to expect any of the present members wielding veto rights to relinquish the privilege, with a possible exception in the case of creating an EU seat. Simultaneously, it would be deeply counterproductive to assign veto rights to the new permanent members as this would only multiply the likelihood of deadlocks.

The current structure of veto rights should therefore be preserved for the near future, with Britain and France relinquishing their respective rights to the EU representation in exchange for the top EU foreign affairs position being reserved for British and French nationals for another ten years to follow.

The members with veto rights should accept the principle of 'organised self-restraint' in the exercise of veto powers<sup>1</sup>. This is a formal understanding among the members who have the veto right that they would abstain from exercising this right unless directly concerned with a breach of the peace.

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<sup>1</sup> [http://www.un-globalsecurity.org/pdf/Pellet\\_legit\\_use\\_of\\_force.pdf](http://www.un-globalsecurity.org/pdf/Pellet_legit_use_of_force.pdf)

## RECOMMENDATION 4

### AN INDEPENDENT FACT-FINDING COMMISSION

*To overcome potential deadlocks in the Security Council in the face of the need for urgent humanitarian intervention, an independent fact-finding commission should be created. The commission could be called into action by the Secretary-General or by a qualified majority in the Security Council. The Security Council would be obliged to decide whether to follow the commission's recommendations, with veto rights giving place to qualified majority voting solely on these exceptional occasions.*

In the event of an impasse in the Security Council in the face of the need for urgent action, an independent fact-finding commission should be established.

#### COMPOSITION

The commission would be composed of highly able internationally respected personalities currently not holding political office, and it would be obliged to submit their findings to the Security Council in the shortest time frame possible.

#### ACTIVATION

It could be called into operation by the Secretary-General or by a qualified majority of the permanent members on the Security Council.

#### AUTHORITY

It should have full authority to call upon the collaboration of the parties concerned. It is proposed that the Security Council be obliged to pass a resolution to act upon the recommendations of the fact-finding commission within a short fixed time frame of receiving the report. Resolutions

would have to carry the support of a qualified majority, this being the sole exception from the scope of the veto rights.

#### S E C R E T A R I A T

The commission should be able to draw upon the in-house resources and expertise in the UN system. The wider UN reform process should seek to strengthen the organizational capabilities of the UN both to ensure adequate support for the fact-finding commission and to increase the efficiency of everyday operations. Communication among the UN departments and between Headquarters and field missions is in great need of reform and modernization. And while the sharing of national intelligence is one of the most sensitive issues, a framework of cooperation reserved for especially important cases should also be established.

#### F U N D I N G

To guarantee its integrity and effectiveness, the commission should be endowed with independent financial resources. A feasible way of doing this would be either the establishment of an endowment fund which the interest drawn on would cover the costs of operation, or preferably, again in the context of a wider reform, by assigning to the UN the benefits of a Tobin tax, under sea-bed resources or a similar scheme, a fraction of which could be permanently reserved for the fact-finding commission.

The above arrangements would minimize the likelihood of politically biased findings, and member states would be prevented from using this avenue to circumvent an expected unfavourable decision in the Security Council. The activity of this independent commission could also make it easier for the Security Council members to decide in line with the global interest and justify this domestically where such a decision would appear to conflict with the narrowly defined national interest.

## RECOMMENDATION 5

### A STANDING UN ARMY

*A stand-by UN army should be created from contributions of 5% or more of each member state's national troops and military budget to cover the costs of UN training and the maintenance of interoperable equipment.*

The establishment of a standing UN force would strengthen the institution and enhance its legitimacy in two ways. First, under the right conditions, such as clearly defined exit strategies, the ability to deploy such a force would greatly improve the efficiency and effectiveness of the UN's response to grave breaches of the peace and security. Second, the availability of such a force would enable rapid intervention in humanitarian crises once the Security Council, directly or following a presentation by the fact-finding commission, has established the fact of such a crisis and called for the collective deployment of force.

Articles 43-48 (Ch. VII) of the UN Charter allow for forces placed at the disposal of the Security Council for enforcement operations.

The most recent proposals for creating a UN stand-by force – as in Boutros-Ghali's 'Agenda for Peace' (1992), Kofi Annan's plans for a nucleus headquarters at the Department of Peacekeeping Operations (1996) or Denmark's initiative for the UN Standby Forces High Readiness Brigade – all suffer from shortcomings ranging from insufficient funding and questions of interoperability to relying on additional authorization by the relevant member states.

The OCGG recommends the establishment of a high-readiness UN force that is placed directly under the authority of the Security Council; and that trains together regularly to ensure the interoperability of the troops concerned. These conditions allow for either of two possibilities.

One option is direct recruitment to the UN army, with mandatory financial contributions by member states to the sum of 5% or more of their respective military budgets to cover the costs of operation.

Another option is the mandatory provision of troops of 5% or more of each state's military capacity, with similar financial provisions to allow for the maintenance of interoperable technical stock. These resources should also be used to fund UN-oriented training exercises to a uniform standard and one higher than the present levels provided in most national armies under the Charter obligations. The troops earmarked for the UN army in this manner should have a reasonably stable long-term composition to enhance the efficiency of the missions.

While the first option may enable the achievement of high standards in the UN army more easily, the OCGG believes the second alternative to be more feasible and desirable. It would facilitate the establishment of the force in the first instance if member states retained a more direct connection to the troops concerned in their military capacities, while still overcoming the pitfalls of the present system of ad hoc contributions.

Past experience has shown the vulnerability of UN peacekeeping missions to fitful delivery on earlier promises made by member states, and therefore it is also of paramount importance that the military aspects of such missions be financed from the army's own permanent budget. Ideally, this would be provided for in the context of an overhaul of the present system of financing the organization as indicated in the propositions for the establishment of a fact-finding commission.

The UN army may pursue close cooperation with affiliated forces such as the European Union's Rapid Reaction Force, in addition to potential overlap in the membership of such forces. It must be a condition of affiliation, however, that any such force should meet the standards of the UN army itself.

## CONCLUSION

It is not recommended that, as some submissions to the High Panel suggested<sup>2</sup>, alternative or fallback institutions be established in order to overcome future impasses in the Security Council. The legitimacy held by the United Nations partly derives from the fact that this body represents nearly all of the states existing today, characterized by a vast array of capabilities, resources and values. Since its membership represents the global community, its legitimate scope of action is also global. Creating other global institutions to serve similar purposes would be wasteful at best; and regional organizations could not take the place of the UN either, regardless of any claims to moral authority on the basis of the high democratic standards of its membership.

The recommendations put forward in this paper are proposed in the light of the globally recognized need for fulfilling the functions which the United Nations has been created to serve, and which it is uniquely posed to address. It is also emphasized that the currently gathering momentum behind UN reform and the recognition of new forms of security challenges – which may be likened to the impact of the Second World War on the international community’s willingness to promote peace and prosperity in such a framework – should be harnessed to make a real change, and a change for the better.

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<sup>2</sup> [http://www.un-globalsecurity.org/pdf/Krause\\_paper\\_legit\\_use\\_of\\_force.pdf](http://www.un-globalsecurity.org/pdf/Krause_paper_legit_use_of_force.pdf)

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