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Collective Security and the Use of Force under the United Nations Charter: A Study of the Ezulwini Consensus

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ABSTRACT

The paper critically analyses the consensus that reflects the common African position on the *United Nations Charter.* It explains the four elements of the *Charter* - the responsibility to protect and the legality of force. It also analyses peace enforcement, peace-keeping post-conflict peace-building and the African common position on these issues. *The import of the revised version of collective security empowers the Charter to deal decisively with threats to international peace and security. Instead of economic sanctions that were automatic in theory but discretionary in practice, the Charter gave the Security Council the right to impose non-military sanctions, with all members obligated to accept and carry out the decisions of the Council. Against the background of these time-honoured practices, African leaders acting under the purview of Article 13 of the United Nations Charter and Article 41 of the AU Act and joining issues with the recommendations of The High-Level Panel of the Secretary General of the United Nations of 2003, revisited the concept of Collective Security and on March 8, 2005, under the aegis of the African Union jointly took a common African position on Collective Security and the use of force, what is known today as the "Ezulwini Consensus". In its submission, the paper argues that though the consensus is a well-thought-out idea, its implementation calls for consensus, commitment and central decision-making machinery merged in a coherent and practicable Collective Security system backed up by a political will.*

Keywords: United Nations Charter, Ezulwini Consensus, African Union, collective security

INTRODUCTION

The failure of the League of Nations to meet its collective security obligations did not discourage the Statesmen of the post second world war from giving the concept another try. Inspired by the pact of Paris of 1928 that outlawed war as an instrument of national policy, Winston Churchill, Franklin Roosevelt and other political leaders, under the aegis of the United Nations commits member States to refrain from the threat of use of force against the territorial integrity and political independence of any state. However, that declaration has four exceptions as provided in the United Nations

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Charter - self-defence, whether individual or collective (Article 51), action against the 'enemy' states of the Second World War (Germany, Italy and Japan) (Article 107), joint action by the members of the security council on behalf of the United Nations (Article 106), and other use of force authorized by the security council, including enforcement by regional organizations (Article 53). The import of the revised version of collective security empowers the Charter to deal decisively with threats to international peace and security. Instead of economic sanctions that were automatic in theory but discretionary in practice, the Charter gives the Security Council the right to impose non-military sanctions, with all members obligated to accept and carry out the decisions of the Council. Against the background of these time-honoured practices, African leaders acting under the purview of Article 13 of the United Nations Charter and Article 41 of the AU Act and joining issues with the recommendations of The High-Level Panel of the Secretary General of the United Nations of 2003, revisited the concept of Collective Security and on March 8, 2005, under the aegis of the African Union jointly took a common African position on Collective Security and the use of force, what is known today as the "Ezulwini Consensus".

The task of creating a substitute for the balance of power was undertaken by major Statesmen of the world in the Paris Peace Treaty Plan in 1919, under the prodding of President Woodrow Wilson of the United States, to provide a security system. The historical precedents for this concept were not promising – conquest, political Federation, integration and military alliance (Ziring, Riggs and Plano, 2005). Another 19th Century precedent was the concert of Europe, a loose-knit system of consultation among world powers spawned by the Napoleonic wars.

Based on these precedents, the Paris Peace-makers innovate. They were forced to take the ideal of a Universal Security system from the domain of political dreamers and fused it with an international organization – The League of Nations. In so doing, the Statesmen used their ingenuity to forge the compromises between ideals and realities. This measure produced the Treaty of Versailles that birthed the League of Nations – the World's first experiment with Collective Security (Ayoob, 2004).

Collective Security is applied to almost any arrangement in the international system that involves joint military action. However, in its specialized meaning, Collective Security can be defined as an arrangement among states by which all are committed and any state threatened with armed attack by any other state. The basic aim is to deter aggression by confronting a potential aggressor with the power of an overwhelming coalition, and should war occur, to bring the aggressor quickly to heel (Bowett, 2002). Collective Security was intended to be worldwide in scope and the basic elements – consensus, commitment and organization. Central decision-making machinery must be practicable for effective results. At the level of consensus, states

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must agree that peace is indivisible and those threats to peace anywhere are the concern of all.

Secondly, states are bound to combine their forces to meet any threat to the security of one or a global community. They are also committed to refraining from the unilateral use of force for national objectives, a commitment that should be binding and widely embraced by all. Without this commitment, consensus remains a meaningless abstraction. Also, commitment may fail in times of crisis if there is no organization to make it effective. According to Claude (1999), an effective Collective Security system requires a central decision-making organ that is empowered to say how and when collective use of force is to be applied, with adequate military forces available on call to carry out that decision. For practical purposes, power should be widely dispersed so that no state can challenge all the others. The efficacy of the system depends on its capacity to deter potential violators and to defeat an actual aggressor in short order (Dwich and Blechman, 2002).

Unfortunately, the League of Nations did not satisfy any condition for effective Collective Security. This informed why Manchuria, Ethiopia and other member States fell victim to state aggression without a shot being fired in their defence in the name of the League without any state being obligated by the League Covenant to fire such a shot. With the demise of the League of Nations and the emergence of the United Nations in 1945, the statesmen of the world were not willing to abandon the collective security system, they recognized the need for some compromise with the ideal and hope that a new but improved international institution and a new agency to corporate would succeed where the League had failed. All said, the United Nations Charter seemed a reasonable approach to Collective Security, subject to limitation of veto. According to Ziring, Riggs and Plano (2005), it is because the charter had broad consensus and peace is invisible and that any threat to international peace and security is the concern of all.

Since 1945, the Collective Security system has passed through the thick and thin of the extant international system with some modifications and adjustments to reflect the power politics of the global system. Experiments of the Collective Security system under the UN system can be seen in two major cases, the Korean War of the 1950s and the war in the Gulf in the 1990s, though these are the other less spectacular cases. Inspired by the good cases exemplified and prompted by the need to give sharper teeth to the provisions of Article 4 of the Constitutive Act of the African Union and the recommendations of The High-Level Panel set up by Koffi Annan, Secretary General of the United Nations, African leaders under the auspices of African Union (AU) met in the Swaziland town of Ezulwini on March 8, 2005, and adopted a common African position now referred to as "Ezulwini Consensus". One of the elements of the consensus is on Collective Security and the use of force in interstate

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relations. This paper is an attempt to analyze this second element of the consensus. The AU consensus has four objectives that constitute the fulcrum of the African position.

Secretary General High Level Panel Report on the Collective Security and the use of Force

This part examines the elements of Collective Security and the use of force as espoused by the Secretary General's High-Level Panel on security threats, specifically on the case of responsibility to protect and the question of legality.

The framers of the UN Charter recognized that force may be necessary for the prevention and removal of threats to the peace and suppression of acts of aggression on the other breaches of the peace. When military force is legally and properly applied, that forms a vital component of a workable system of collective security, whether defined in a traditional or broader sense. World peace and security depend on understanding and accepting what constitutes a threat to international peace and security and when the application of force is legal and legitimate. Without satisfying the two elements will weaken the international legal order and put States and human security at greater risk (Goodrich and Simons (2005).

Internal Threat and the Responsibility to Protect: The Charter of the United Nations is not stated as expected when it comes to saving lives within states in situations of mass atrocity. The charter reaffirms facts in fundamental human rights but does not do much to protect them. Article 2, paragraph 7 of the charter prohibits interventions in matters that are essentially within the jurisdiction of any state. Scholars are divided on their views between the right to intervene in man-made catastrophes and the Security Council authorizing any coercive action against any sovereign state for whatever happens within its borders.

Under the Convention on the Prevention and Punishment of Crimes of Genocide, States have agreed that genocide whether committed in times of peace or in times of war, is a crime under international law that they undertake to prevent and punish. Since then, genocide anywhere has been a threat to the security of all and never tolerated. The principle of non-intervention in internal affairs cannot protect against genocidal acts or atrocities such as large-scale violations of international humanitarian law or large-scale ethnic cleansing, which can properly be considered as a threat to cross-border security and may provoke action by the Security Council (Finkelstein M. and Finkelstein L. 1991).

The successive humanitarian disasters in Somalia, Bosnia and Herzegovina, Rwanda and Kosovo, Darfur and Sudan have attracted attention not to the immunities of

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sovereign governments but to their responsibilities, both to their people and the wider international communities. There is a growing recognition that the issue is not the "right to intervene" of any state but the "responsibility to protect" of every state when it comes to the people suffering from avoidable catastrophe – mass murder and rape, ethnic cleansing by forcible expulsion and terror and deliberate starvation and exposure to diseases. There is a growing acceptance that while sovereign states have the primary responsibility to protect their citizens from such catastrophes when they are unable and unwilling to do so, that responsibility should be taken up by the wider community – with it spanning a continuum involving prevention, response to violence, if necessary, and rebuilding shattered societies. The primary focus should be assisting the cessation of violence through mediation and the protection of people through such measures as the dispatch of humanitarian, human rights and police missions. Force may be deployed as a last resort (Hampson and Malone, 2002).

The Security Council has neither been very consistent nor effective in dealing with these cases, often acting belatedly, hesitantly or not. But step by step, the Council and the international community have come to accept that under Chapter VII and in pursuit of the emerging norms of collective international responsibility to protect, it can authorize military action to redress internal wrongs if it is prepared to declare that the situation is a threat to peace and security.

According to White (2006), the High-Level Panel endorsed the emerging norm that there is a collective international responsibility to protect, exercisable by the Security Council authorizing military intervention as a last resort, in the event of genocide and other large-scale killing, ethnic cleansing or serious violation of international humanitarian law which sovereign states have proved powerless or unwilling to prevent.

The Question of Legality and Legitimacy: Article 2, paragraph 4 of the UN Charter expressly prohibits Member States from using or threatening force against each other, allowing only two exceptions – self-defence (Article 51) and military measures authorized by the Security Council (Chapter VII) in response to any threat to peace, breach of the peace or act of aggression. Between 1945 and 1989, the UN member States have violated these rules and used military force with a paralyzed security council passing few resolutions. Since the end of the Cold War, the yearning for an international system governed by the rule of law has grown.

However, in seeking to apply the provisions of the Charter, three questions arise – one, when a state claims the right to strike preventively, in self-defence and in response to a threat which is not imminent; two, when a state appears to be posing an external threat, actual or potential, to other states or people outside its borders and lastly, where the menace is primarily internal to a State national (Murphy, 2002).

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In response to these practical questions, The High-Level Panel argued that the language of Article 51 of the UN Charter is restrictive (Stanley, 2004):

> *"Nothing in the present Charter shall impair the inherent rights of individual or collective defence if an armed attack occurs against a member of the United Nations until the Security Council has taken measures to maintain international peace and security."*

However, a threatened State can take military action if the attack is imminent; no other means would deflect it when the action is proportionate. The problem arises where the threat in question is not imminent but still claimed to be real, for example, the acquisition, with allegedly hostile intent, of nuclear weapons-making capability.

In this circumstance, can a State claim the right to act in anticipatory self-defence, not preemptively but preventively, without going to the Security Council? According to Stanley (2004), those who answered affirmatively assert that the potential harm from some threats as terrorists armed with nuclear weapons is so great that one cannot risk waiting until they become imminent and that less harm may be done (for example, avoiding a nuclear exchange or radioactive fallout from reactor destruction) by acting earlier.

In the wisdom of the Panel, it asserted that if there are good arguments for preventive military action, with good evidence to support them, the Security Council can authorize such action if it chooses to. If it does not so choose, there will be, by definition, time to pursue other strategies, including persuasion, negotiation, deterrence and containment, and to visit against the military action. However, for those not comfortable with such a response, the option must be that in a world of perceived potential threats, the risk to the global order and the norm of non-intervention on which it continues to be based is higher for the legality of unilateral preventive action, to be accepted. Allowing one to act is to allow all (United Nations 2005).

In addressing the second question - the case of a State posing a threat to other States, people outside its borders or to international order the language of Chapter VII is inherently broad enough. It has been interpreted broadly to allow the Security Council to approve any coercive action, including military action against a State when it deems this necessary to maintain or restore international order. That is the case, whether the threat occurs now, in the imminent future or distant future, whether it involves the State's actions or those of non-state actors it harbours or supports, or whether it takes the form of an act or omission, an actual or potential act of violence or simply a challenge to the Council's Authority.

The Council argues that the concerns about the legality of the preventive use of military force in the case of self-defence under Article 51 are not applicable in the case of collective action authorized under Chapter VII. In the 21st century, the

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international community does have to be concerned about nightmare scenarios, combining terrorists, weapons of mass destruction and irresponsible states, which may justify the use of force, not reactively but preventively and before a latent threat becomes imminent. The question is not whether such action can be taken as it can be taken by the Security Council as the international community's collective security voice, at any time it deems that there is a threat to national peace and security. The Council may need to be prepared to be much more proactive on these issues, taking more decisive action earlier than in the past (United Nations, 2005).

Apart from the question of legality, the Panel examined the issues of prudence or legitimacy about whether such preventive action should be taken. Vital among such matters is whether there is credible evidence of the reality of the threat in question (taking into account capability and intent) and whether the military response is the only reasonable one in the circumstances. In response to this question, the Panel argues that some states will always feel that they have an obligation to their citizens, and the capacity, to do whatever they need to do, unburdened by the constraints of the Collective Security process. However, that approach has been in the Cold War years when the UN was manifestly not operating as an effective Collective Security system, the world has now changed and expectations about legal compliance are higher.

One of the reasons why states may want to bypass the Security Council is a lack of confidence in the quality and objectivity of its decision-making. The Council's decisions have been inconsistent, less persuasive and not responsive to the real needs of states and human security. However, this is not to reduce the council to impotence and irrelevance, it is to work from within to reform it, including the ways and means recommended by the High-Level Panel. The Panel submitted that the Security Council is fully empowered under Chapter VII of the UN Charter to address the full range of security threats with which states are concerned. The task according to this submission is not to find alternatives to the Security Council as a source of authority but to make the Council work better than it has (African Union 2005).

On the question of legitimacy, the High-Level Panel opined that the effectiveness of the global Collective Security system, as with any other legal order, depends ultimately not only on the legality of decisions but also on the common perception of their legitimacy – their being made on solid evidentiary grounds and for the right reasons, morally as well as legally. They argue that if the Security Council is to win the respect, it must be the primary body in the Collective Security system, it is critical that its most important and influential decisions, with those large – scale life and death impacts, be better made, better substantiated and better communicated.
Specifically, in deciding whether or not to authorize the use of force, the Council should adopt and address a set of agreed guidelines, going directly not to whether force can legally be used but whether, as a matter of good conscience and good sense,

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it should be. The guidelines proposed by the Panel will not produce agreed conclusions with push–button predictability. The point of adopting them is not to guarantee that the best outcome will always prevail. It is rather to maximize the possibility of achieving Security Council consensus around when it is appropriate or not to use coercive action, including armed force, to maximize international support for whatever the Security Council decides, and to maximize the possibility of individual member States by passing the Security Council (African Union 2005).

In considering whether to authorize or endorse the use of military force, the Panel recommended that the Security Council should always address its minds to the following four basic criteria of legitimacy:

i. **Seriousness of Threat:** Is threatened harm to the State, or human security of a kind sufficiently clear and serious, to justify *prema facie* the use of military force? In the case of internal threat, does it involve genocide or other large-scale killings, ethnic cleansing or serious violations of international humanitarian law, actually or imminently apprehended?

ii. **Proper Purpose:** Is it clear that the primary purpose of the proposed military action is to halt or avert the threat in question, whatever other purposes or motives may be involved?

iii. **Last Resort:** Has every non-military option for meeting the threat in question been explored, with reasonable grounds for believing that other measures will not succeed?

iv. **Proportional Means:** Are the scale, duration and intensity of the proposed military action the minimum necessary to meet the threat in question?

v. **Balance of Consequences:** Is there a reasonable chance of the military action being successful in meeting the threat in question, with the consequences of action not likely to be worse than the consequences of inaction?

The panel submitted that the above guidelines for authorizing the use of force should be embodied in declaratory resolutions of the Security Council and General Assembly. The Panel believed that it would be valuable if individual member States, whether they are members of the Security Council or not, to subscribe to these guidelines (Ezulwini Consensus 2005).

Peace Enforcement, Peace Keeping and Post Conflict Peace Building:

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When the United Nations Security Council decides on the force, the issue that comes to mind is the capacity at its disposal to implement that decision. Experience has shown that the implementation of such decisions remained with multinational forces, courtesy of member States. The real challenge in the deployment of these multinational forces is to ensure that they have an appropriate, clear and well-understood mandate applicable to all the changing circumstances that might be envisaged and the necessary resources to implement that mandate to its logical conclusions.

The demand for personnel for peace enforcement and peace-keeping missions is always higher than the troops supplied. In December 2004, there were more than 60,000 peacekeepers deployed in 16 missions around the globe. If international efforts continue to be on track to end several crises, the number of peacekeepers will substantially increase. Prompt and effective response to today's security challenges requires a dependable capability and rapid deployment of men and materials for peace-keeping and law enforcement. Member States with global or regional air or sea lift capacities should make these facilities available for the UN either free or at a negotiated fee. To ensure the maximum result, Member States must, as a matter of commitment, support the effort of the UN Department of Peace-keeping Operations to improve its use of strategic deployment stockpiles, standby arrangements, trust funds and other mechanisms to meet the deadlines necessary for prompt deployment (Ezulwini Consensus 2005).

The Panel opined that it is unlikely that the demand for rapid action will be met through the United Nations mechanism alone. In this light, the Panelist welcomed the European Union's decision to establish standby high-readiness, self-sufficient battalions to reinforce United Nations Peace-Keeping missions. Stanley (2004) argues that other Member States of the UN with advanced military capabilities should be encouraged to develop similar capacities up to the brigade level and to place them at the disposal of the United Nations.

On post-conflict peace-building, the High-Level Panel asserted that it is often necessary to build confidence among former enemies and provide security to the critical masses trying to rebuild their lives and communities after an era of conflict. The mediation and implementation of a peace agreement offer hope for breaking long-standing cycles of violence that haunt many war-torn states. Resources spent on the implementation of peace agreements and peace-building remain one of the best investments that can be made for conflict prevention (Ezulwini Consensus 2005).

Africa's Common Position on Collective Security and the Use of Force – The Ezulwini Consensus:

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The African Union, having brainstormed at length on these reports, specifically on collective security and the use of force jointly took the following decisions as the Africa's common position, now known as the Ezulwini Consensus. On the responsibility to protect, the African Union decided that the authorization for the use of force by the Security Council should be in line with the conditions and criteria proposed by the Panel, but this condition should not undermine the responsibility of the international community to protect. They agreed that since the General Assembly and the Security Council are often far from the scenes of conflict and may not be in a position to undertake a proper appreciation of the nature and development of conflict situations, it is imperative that regional organizations, in areas of proximity to conflicts, are empowered to take actions in this regard. The African Union further agreed with the Panel that the intervention of regional organizations should be with the approval of the Security Council, although in certain circumstances, such approval could be granted "after the fact" in circumstances requiring urgent action. In such cases, the UN should assume responsibility for financing such missions. The Ezulwini Consensus (2005) reiterates the obligations of states to protect their citizens but this should not be used as a pretext to undermine the sovereignty, independence and territorial integrity of states.

On the question of legality, the African Union agreed that it is important to comply with the spirit and letters of Article 51 of the UN Charter, which authorize the use of force only in cases of legitimate self-defense. In addition, the Union relied on the provisions of Article 4 (iv) of its Constitutive Act which authorizes intervention in grave circumstances such as genocide, war crimes and crimes against humanity. Consequently, any recourse to force outside the framework of Article 51 of the UN Charter and Article 4 (iv) of the AU Constitutive Act, should be outlawed (Ezulwini Consensus 2005).

The African Union also considered issues bothering on peace enforcement and peace building capacity. The Union agreed that the extinct rules of the UN relating to the peace keeping budget should be amended in order to give the UN the latitude to finance operations carried out by regional organizations on the basis of contributions to be recovered. The Union further agreed that it is necessary to maintain sustained interaction between the UN and regional organizations in order to build particularly the operational capacities of the organizations. Against this background, the UN states in the global North and other regional groupings, should continue to give logistic and financial support to the speeding up of the establishment of an African standby force for it to become operational as soon as possible not later than 2010. Any other initiative to build regional peace keeping capacities should supplement the African standby force (Ezulwini Consensus 2005).

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On post conflict peace building, the AU agreed that it is important to speed up the proposed establishment of a peace building commission, to consider its mandate and structure, The Union posited that the commission should not be placed under the authority of the Security Council, as it is important for it benefit from the contributions of all the major organs of the UN. In this wise, a Trust Fund should be established to ensure its sustainability. The focus on peace building must also stress the element of conflict prevention. For the AU, there is need to promote closer cooperation and coordination between the General Assembly, the Security Council, ECOSOC, the major funds and programmes, the UN specialized Agencies, the Bretton Wood Institutions, the member states and regional organizations throughout the period of the conflict. This would guarantee an enormous transition from conflict management to long term reconstruction until the danger of instability or the threat of resumption of the conflict has diminished. As part of the support of the international community to peace building in post conflict states in Africa, there is need for the Bretton wood institutions to show sensitivity in demanding macro-economic reforms to have a potential for social upheaval. This underlines the necessity for the Bretton institutions which are part of the United Nations system, to become more accountable, democratic and transparent in their structure so that their operations will enjoy the full confidence of the international community.

Finally, the AU stressed the need to lay down rules for the deployment of UN peace keeping operations to avoid arbitrary use of the right of veto that may delay or obstruct such deployment when the need for deploying peace keeping forces arises (Ezulwini Consensus 2005).

CONCLUSION

On November 4, 2003, the then UN Secretary General Koffi Annan announced the creation of the High Level Panel on Threats, Challenges and Change: to examine the main threats to international peace and security in the 21st century, as well as to recommend changes necessary to ensure that the United Nations remains a key tool for collective action after many decades of its formation. The Panel consisted of 16 eminent international personalities. The Panel met between 13th and 15th January 2004 at the Arden Conference centre in Harriman, New York, USA, examined a plethora of issues and finally submitted its reports to the UN Secretary. The Panel's report was presented and adopted by the UN General Assembly thereby making it a working document for the United Nations. In March 2005, the African leaders under the auspices of African Union met at Ezulwini tour of Swaziland, in an extraordinary session deliberated on the Panel's report and took far-reaching decisions reflecting a

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common African decision on the issues – what is known today as the "Ezulwini Consensus".

This paper has analyzed one of the Panel's reports: collective security and the use of force and the African common position on the matters arising from the report. In its submission, this paper argues that the efforts to reshape the United Nations to handle the threats to international peace and security in the 21st century are plagued with many political obstacles. Considering the Panel's recommendations, the realities of the extinct international system, the envisaged changes may be slow. The Panel's recommendations should be seen as building blocs for the reforms that will take a process. Also, the paper is of the opinion that there is need for a paradigm shift from the outdated Cold War notions of security to the holistic concept of states and human security reflecting the realities of the 21st century.

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