

A Parliamentary Perspective on Peace-Support Operations

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This paper contains the analysis of model law of the Commonwealth of Independent States on peacekeeping operations from a viewpoint of modern developments in the realm of peace-support operations.

Modern peace-keeping and the situation in Iraq

Discussing the tendencies of modern peace-keeping it is impossible to avoid mentioning horrendous attacks on the UN representation in Baghdad. Nothing will ever be the same in international affairs and in peace-support operations. The war in Iraq and the two successive bombings of the UN premisses have marked a dramatic turning point.

The situation in Iraq has posed the following questions before the international community:

- How to address the deep blow inflicted on the international system by unilateral action and by deliberate and arrogant disregard for all principles of international law?
- How to face and curb the aspiration of some states to impose security and order — their security, their order — when total security and order is pure myth, and a dangerous one, that has led in the past, and is currently leading to policies and action that eventually prompt exactly what they claim they aim at avoiding?
- How to prevent that the values of democracy and human rights are not violently rejected simply because they are been used (and abused) to disguise selfish economic and strategic interests?
- In other words, how to make sure that peace support operations do not serve the interests quite foreign to their stated objectives,

and that national engagement in such missions is based both on respect for international law and on values and approaches that are consistent with the UN Charter, in addition to being consistent with the national Constitution?

Modern security issues

With all States exposed to terrorism or to the consequences of the armed conflicts as well as to the social and economic difficulties the concept of security has acquired a different and larger meaning than before. It transcends the traditional idea of security, which was essentially military, and has been substituted by the concept of human security. This concept encompasses a wide range of concerns. In international jargon, it covers both «freedom from fear» and «freedom from needs».

At the same time, security within national boundaries, while remaining any state's priority concern and objective, is henceforth perceived as only a part of human security, like one piece of a larger puzzle. The responsibility of any state to secure its internal stability and security is seen as a responsibility not just towards its citizens but towards the entire world since internal problems may eventually turn into a threat for neighboring but also distant states and even into a world concern.

Increasingly though, ensuring security has become a complex challenge. In the last couple of decades the following tendencies have developed:

- new forms and modalities of conflict have emerged;
- new kinds of combatants appeared (including thousands of teenagers);
- new security actors have emerged or become stronger;
- the civilian population have turned into deliberate target of belligerent action or been used as shields or negotiation chips;
- trafficking of arms and lethal substances has become more sophisticated, complex and difficult to trace;
- cyber-crime, especially in relation to financial assets, has expanded;
- a wide range of new military and non-military technologies have been developed that can be applied not only by the military, the

- para-military and the intelligence services but also by guerrilla and opposition groups;
- the role of the media in the context of conflict has evolved dramatically, with some media being directly associated to military action as we witnessed in Iraq.

That list could be expanded by noticing that in today's conflicts humanitarian actors are no longer at safety: increasingly, the military tend to blur the difference between them and humanitarian organizations with the result that these organizations become the direct targets for conflicting sides. This is a situation that weakens them and weakens at the same time the protection they can offer to those exposed to the conflict. This process is especially dangerous when UN personnel becomes a military target. Surely, the UN need to be drastically reformed, but there is no other alternative to supporting a world organization providing collectively agreed responses to security challenges.

Peace support missions

Traditionally peace support operations have form part of such a response. While envisaged in the UN Charter from the very early days of the United Nations, peace support operations, and more especially peacekeeping and peace enforcement operations, have rather been an exception until the early eighties. Yet, in recent years, they have become not only more numerous but also far more complex, more costly and risky. The emergence of a more global world and increased awareness that a breach of human rights or bad governance — wherever they occur — could endanger world peace and security, have turned peace support activities into a central concern and a central task for military and other security forces as well as for civil administrations around the world. No State can any longer afford to ignore that dimension in its legislation as well as in the training and career of its security forces and in its security budget.

This clearly forces Parliaments and their members to face a series of political, institutional, legal and practical challenges. Developing comprehensive legal tools with regard to peace sup-

port operations has become an urgent task for legislators. Without denying national specificities, the CIS draft Model Law attempts to lay down key elements and guidelines which ought to be taken into account for a sound and consistent management of peace support operations on the national level. The draft is already quite solid and covers a lot of ground. Nevertheless it can be reinforced from the point of view of parliamentary control and also from a perspective of human rights and humanitarian law.

Terminology

Draft CIS Model Law should include a section on terminology. It is important to take in account in this law specific United Nations definitions of peacemaking, peacekeeping, peace enforcement and peace-building which, together with missions of a purely humanitarian relief character, constitute different types and degrees of international efforts towards peace to which any state may be called upon to contribute. Such consistency between the vocabulary used in the Model Law and the UN language would help to keep the mainstream of CIS efforts towards peace within the framework of UN endeavors.

Parliament's role: host or contributor

A clear distinction should be made in the final text between situations in which a CIS member State is a recipient of a peace mission and situations in which it takes part in international peace efforts abroad. These two scenarios are quite different and, as far as Parliaments and their members are concerned, they call for different responses, especially as they have very different impacts on societies. Addressing them in one single section may in fact blur these differences and generate some legal and practical problems.

Furthermore, in elaborating about the two types of scenarios, it would be important to refer to the role of the Parliament and its members. Such role, while only complementary to that of the Government and the security forces, is crucial. It involves evaluating the political and other rationale for a mission and includes a contribution to the decision-making process with regard to defin-

ing the specific terms of reference of the mission, the rules of engagement and the line of command, the human, material and financial resources to be mobilized for the mission, the operation phases and general *modus operandi*, and finally the assessment of the mission's outcome and impact.

To achieve its objectives, Parliament has at its disposal a series of institutional tools which are not always as useful as members would like them to be but that may be applied to the best: debates, committee work, public hearings and inquiries, oral and written questions to the Government, possible visits to the troops forming part of a peace mission, etc.

Key principles

All CIS member States form part of the United Nations and, as such, they are bound by the eight indivisible and equally important following principles which could also be more thoroughly and explicitly referred to in the Model Law:

- Principle I. Refraining from the threat or use of force;
- Principle II. Peaceful settlement of international disputes;
- Principle III. Inviolability of frontiers and territorial integrity of States;
- Principle IV. Right of peoples to self-determination and to life in peace on their own territories within internationally recognized and guaranteed frontiers;
- Principle V. Sovereign equality of States and non-intervention in internal affairs;
- Principle VI. Respect for human rights;
- Principle VII. Co-operation between States;
- Principle VIII. Fulfilment in good faith of obligations assumed under international law.

These principles include the obligation for all CIS member States to contribute to international peace efforts which may be aimed at inter-State conflicts but also, and increasingly so, intra-State conflicts and civil wars.

Grounds for getting involved in a peace mission

Surely, it is the security forces that have the technical competence to advise the Government about the expediency and feasibility of either getting involved in a peace mission abroad or hosting such a mission at home. Yet, Parliament and its members are the legitimate representatives of the people and of national collective values. As such they should not be marginal in the political decision-making process and in assessing the financial and other consequences as well as the popular support enjoyed by the potential operation.

It is thus quite proper that, in its Article 8, the draft Model Law should state that the final decision on any military involvement «shall be made by Parliament». Indeed, this provision could also concern para-military personnel and more especially the police which is often asked to take part in peace missions. In addition, a similar provision could be included in Article 9 with regard to the involvement of civil personnel as there is no reason why Parliament should be consulted on military or para-military involvement but not on civil involvement. Its opinion and decision is equally important in all cases.

From a good governance perspective, it is also crucial to make it explicit in the Model Law that the decision by the people's representatives shall be taken not post factum but, on the contrary, a priori. It is true that — due to institutional, procedural and of course political constraints — Parliament may be slow in taking its final decision and that this may cause a problem, especially where an emergency is involved, but, on the other hand, the decision will gain in legitimacy and popular support, a point that may be crucial in raising the necessary funds or even in enrolling public support for pursuing the efforts despite any casualties or difficulties suffered by the national force.

In addition, Parliament ought to receive all available elements of information so as to enable its members to make a sound and informed decision. As stated in draft Article 5.2, a lack of proper grounds or a poorly documented proposal should detract the State to become involved in a mission, and it would be good link

to make a between that provision and Article 8, so as to refer to Parliament in that connection.

It is further crucial that the Model Law clarify that Parliament's role shall not be confined to debating the issue but that, as stated in Article 8, it shall be responsible for taking by law all necessary provisions regarding the involvement of national forces in any peace mission abroad. The law should also define in principle the reasons, conditions and modalities for withdrawal of peacekeepers.

Budget, reporting on the peace support mission and lessons learned

Critical areas through which Parliament may exert a real influence on both military issues and peace-support operations are the approval of the budget and later the study of the outcome of the national audit of accounts. In a democratic environment, it is quite proper that Parliament may be presented with budgetary estimates prior to making a final decision on engaging in a peace support mission. Wherever Parliament has to approve funds post factum, its position and margin for manoeuvre, while still strong, will be more restricted. And clearly, Parliament should avoid any situation whereby the Executive engages a mission on the basis of reserved funds, without relevant information being provided to Parliament.

The CIS draft law envisages an annual report to a Parliament. The report should concern the rationale, the terms of reference, the rules of engagement, the human material and financial resources made available, the actual conduct of the operation in its different phases, the outcome and finally the impact of and possible follow-up to any peace support mission. An explicit reference to the audit of the budgetary provisions would be proper here too.

Finally, it would be good if common guidelines for reporting were developed so as to enable CIS States to develop a consistent approach and to draw lessons from past experience. This would be useful in planning for further missions. It could further help developing a collective peacekeeping «culture» by CIS member States that have contributed to peace support missions and allow for exchange of experience.