

# **The African Union Peace and Security Council**

A five-year appraisal

Edited by Tim Murithi and Hallelujah Lulie



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*Tim Murithi*



# Foreword

The African Union (AU) Peace and Security Council (PSC) was operationalised in March 2004 and celebrated its fifth anniversary in 2009. The Protocol Relating to the Establishment of the Peace and Security Council of the African Union (PSC Protocol) assigned a mandate that since its inception the PSC has sought to implement in letter and spirit. The PSC is the sole organ within the AU that is responsible for decision making on all issues relating to the promotion of peace, security and stability in Africa.

By December 2009, the PSC had convened more than 200 meetings and had authorised preventive diplomacy, peacemaking and post-conflict reconstruction efforts in a number of countries on the continent, including Somalia, Sudan, Côte d'Ivoire, Niger and Burundi. The PSC also deployed efforts towards the resolution of issues of unconstitutional change of government, in addition to reflecting deeply on how to prevent the recurrence of this phenomenon.

This monograph provides an appraisal of the first five years of the functioning of the PSC, following its operationalisation. It is an appropriate time to assess the extent to which the PSC has upheld its mandate, as well as address the challenges that it has faced in fulfilling its functions.

In March 2010, on the anniversary of the establishment of the PSC, a broad range of policy makers, AU officials, government representatives, academics, security experts and civil society practitioners participated in an Expert Roundtable entitled 'The AU Peace and Security Council: A Five-Year Appraisal'. This meeting was organised by the Institute for Security Studies' PSC Report Programme and African Conflict Prevention Programme in Addis Ababa, Ethiopia. In attendance were the Permanent Representatives to the AU and members of the PSC, as well as senior diplomats and officials from other PSC member states and from the AU Department of Peace and Security.

The chapters in this monograph are based on the presentations given at the expert roundtable, which focused exclusively on the PSC's activities and achievements, as well as the challenges it faced. The topics included conceptual reflections on the establishment of the Council and its role within the African Peace and Security Architecture – the holistic framework of values and institutions guiding the PSC in its work. Participants also discussed how the PSC had collaborated with other peace and security institutions of the AU. In addition, the deliberations assessed case studies of interventions undertaken by the Council, including the authorisation of peace operations and the utilisation of a range of interventions to address situations in which there was an unconstitutional change of government and election-related violence.

Exchanges at the roundtable focused on the PSC's interaction with its international partners, including the United Nations and the European Union. Besides critically debating issues that the PSC was confronted with during its first five years of being operational, the roundtable challenged itself to come up with relevant and practical policy recommendations for further strengthening the work of the PSC. The papers presented at the expert roundtable have been complemented by additional research and analysis in the chapters of this monograph.

This monograph is a welcome addition to the existing literature on Africa's continental peace and security organisation. It is the first substantive study on the PSC and will undoubtedly establish a platform for future reflections, deliberations and analysis of the work of this important institution. The editors and authors are to be commended for their pioneering work, as evidenced by the quality, depth and insights offered by the chapters of this monograph. It will serve as a landmark publication and an important reference for those interested in the AU's peace and security initiatives.

***Dr Admore Mupoki Kambudzi***

*Secretary of the Peace and Security Council of the African Union*

*Addis Ababa, Ethiopia*

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# Acronyms

ACCORD	African Centre for the Constructive Resolution of Disputes
AFRICOM	Africa Command (US)
AHSG	Assembly of Heads of State and Governments
AMIB	African Mission in Burundi
AMIS	African Union Mission in Sudan
AMM	Africa Media Monitor
AMISOM	African Union Mission in Somalia
AMU	Arab Maghreb Union
APSA	African Peace and Security Architecture
ASF	African Standby Force
AU	African Union
AUC	African Union Commission
AUPD	African Union Panel on Darfur
AUHIP	African Union High Level Implementation Panel on Sudan
CEO	Chief Executive Officer
CFSP	Common Foreign and Security Policy
CJTF-HOA	Combined Joint Force–Horn of Africa (US)
CMC	Conflict Management Centre
CMD	Conflict Management Division
CMI	Crisis Management Initiative
CPA	Comprehensive Peace Agreement (Sudan)
CPMR	Central Organ for Conflict Prevention, Management and Resolution
CEWS	Continental Early Warning System
COMESA	Common Market for Eastern and Southern Africa
COPS	European Union Political and Security Committee
CSSDCA	Conference on Security, Stability, Development and Co-operation in Africa

DDR	disarmament, demobilisation and reintegration
DITF	African Union Darfur Integrated Task Force
DPA	Darfur Peace Agreement
DRC	Democratic Republic of the Congo
EAC	East African Community
EACTI	East Africa Counterterrorism Initiative (US)
ECCAS	Economic Community of Central African States
ESDP	European Security and Defence Policy
EUMC	European Union Military Committee
EUTM	European Union Training Mission
ECOMOG	ECOWAS Ceasefire Monitoring Group
ECOWAS	Economic Community of West African States
EU	European Union
GIVAS	Global Impact and Vulnerability Alert System
GoS	Government of Sudan
GWOT	Global War on Terror
HCFA	Humanitarian Ceasefire Agreement (Sudan)
HEWS	UN Humanitarian Early Warning System
ICC	International Criminal Court
ICISS	International Commission on Intervention and State Sovereignty
ICGs	international contact groups
ICG-M	International Contact Group on Madagascar
IDPs	internally displaced persons
IGAD	Intergovernmental Authority for Development
ISS	Institute for Security Studies
JAES	Joint Africa-European Union-Strategy
JEM	Justice and Equality Movement (Sudan)
KAIPTC	Kofi Annan International Peacekeeping Training Centre
LRA	Lord's Resistance Army (Uganda)
MILOBS	military observers
MMM	Mauritian Militant Party
MoU	Memorandum of Understanding
MSC	Military Staff Committee
NATO	North Atlantic Treaty Organisation
OAU	Organisation of African Unity
ODM	Orange Democratic Party (Kenya)

OSCE	Organisation for Security and Co-operation in Europe
OIC	Organisation of the Islamic Conference
PAP	Pan-African Parliament
PCRD	post-conflict reconstruction and development
PILOT	Partnership for Integrated Logistics Operations and Tactics (US and Canada)
PNU	Party of National Unity (Kenya)
PSD	Department of Peace and Security
PSC	Peace and Security Council
PSO	Peace Support Operation
PSOD	Peace Support Operation Division
RECs	regional economic communities
RMs	regional mechanisms
R2P	responsibility to protect
SCA	Strategic Conflict Assessment
SADC	Southern African Development Community
SLA	Sudan Liberation Army
SSR	security sector reform
SRCC	Special Representative of the Chairperson of the Commission
TCCs	troop-contributing countries
TSCTI	Trans-Sahara Counterterrorism Initiative (US)
UCGs	unconstitutional changes of government
UN	United Nations
UNSC	United Nations Security Council
UNAMID	United Nations/African Union Hybrid Mission in Darfur
UNOMIL	United Nations Observer Mission for Liberia
UPEACE	United Nations University for Peace
US	United States
WANEP	West African Network for Peace-building

# Contributors

- **AHMED IDRIS** is currently a Fulbright Fellow and Masters of Law and Diplomacy candidate at the Fletcher School of Law and Diplomacy in the US. His research interests are in transitional justice and international diplomacy. He has experience as a legal researcher in the Office of the Prosecutor at the International Criminal Tribunal for Rwanda.
- **ALEMAYEHU BEHABTU** is an independent consultant and currently works with the AU Mediation Support Capacity Project, a joint undertaking between the African Union's Conflict Management Division (CMD), the Crisis Management Initiative (CMI) and the African Centre for the Constructive Resolution of Disputes (ACCORD). He has served as a situation room officer at the Peace and Security Department of the AU, and as a researcher at the Institute for Security Studies (ISS) in its Peace and Security Council (PSC) Report Programme. He holds an MA in Peace and Security Studies from the UN University for Peace (UPEACE) Africa Programme, and a BA in Political Science and International Relations from Addis Ababa University. Mr Behabtu's consulting and research interests include conflict mediation, early warning, international terrorism, and human migration and displacement.
- **DELPHINE LECOUTRE** is a doctoral candidate in Political Science at the University of Paris I Panthéon Sorbonne (France). She is researching the PSC of the African Union and is a researcher attached to the Institute for Ethiopian Studies (IES) at the Addis Ababa University and to the French Centre of Ethiopian Studies (CFEE), based in Addis Ababa, Ethiopia. She holds a Maîtrise in International and European Law, as well as a Diplôme d'études approfondies (DEA) in International Relations from the University of Paris I Panthéon Sorbonne. She also holds a DEA in African Studies and diplomas in Amharic

and Swahili from the Institut National des Langues et Civilisations Orientales (INALCO), based in Paris. She has published several articles on the African Peace and Security Architecture, the mediation processes and the institutional transformations of the African Union.

- **ECOMA ALAGA** specialises in gender, peace and security issues. She is a co-founder of the Women Peace and Security Network Africa (WIPSEN-Africa) and served as its first Director of Programmes. She has worked for the Council for the Development of Social Science Research in Africa (CODESRIA) as programme manager; and for the West Africa Network for Peacebuilding (WANEP) as regional coordinator of its Women in Peacebuilding Programme and coordinator of its West Africa Peacebuilding Institute (WAPI). She is a trainer and facilitator in the area of conflict resolution, peace building, security sector reform, and gender; and currently consults for the University of Birmingham and the Libra Advisory Group as a core faculty member for the HMG Security and Justice Programme.
- **EMMA BIRIKORANG** is currently a research fellow at the Kofi Annan International Peacekeeping Training Centre (KAIPTC), a position she has held since 2008, and is responsible for initiating and conducting policy-based desk and field research and for publishing scholarly papers in refereed journals. Prior to joining the KAIPTC, Ms Birikorang worked as a senior programme assistant with African Security Dialogue and Research, Ghana between 2002 and 2005. She joined the KAIPTC in April 2005 as a programme coordinator/course director and among her other duties was responsible for coordinating administrative, research and training activities for the research department.
- **HALLELUJAH LULIE** is a researcher with the Peace and Security Council Report Programme (PRP) at the ISS. Before joining the ISS, Hallelujah covered the AU and political and security dynamics in the Horn of Africa for newspapers like *The Reporter*, *The Sub-Saharan Informer* and *Capital*, freelanced for the Chinese international news agency *Xinhu* and worked for the German international broadcaster *Deutsche Welle* in Bonn, Germany. He has a BA in English and Law and two MAs in Journalism and Communication and Peace and Security Studies from Addis Ababa University and UPEACE/IPSS respectively. He has written extensively on the African Peace and Security Architecture

(APSA), security sector reform (SSR) in Ethiopia, and on media and democracy in Africa.

- **ISSAKA K. SOUARÉ** is a senior researcher with the African Conflict Prevention Programme at the ISS Tshwane (Pretoria) office. Before joining the ISS in August 2007, he lectured at the Université du Québec à Montréal (Canada), where he also obtained a PhD in Political Science. Dr Souaré is the author of a number of publications relating to Africa, including *Africa in the United Nations System, 1945–2005* (London: A&A, 2006); *Civil Wars and Coups d’État in West Africa* (Lanham: Univ. Press of America, 2006 – also in French, L’Harmattan, 2007); the novel, *Samassi* (2004); and, as co-editor, *Somalia at the Crossroads* (London: A&A, 2007).
- **JACK MANGALA** is an associate professor of Political Science and African Studies at Grand Valley State University, MI, US, where he also serves both as Director of the African and African American Studies Program and Director of the Area Studies Center. A former NATO/EAPC fellow, Dr Mangala specialises in Africa’s external relations, with a particular emphasis on peace and security matters. He is the co-author of *Assessing George W. Bush’s Policies toward Africa: Proposals for the New U.S. President and African Leaders* (Universe Press, 2009) and editor of *Africa and the New World Era: From Humanitarianism to a Strategic View* (Palgrave Macmillan, 2010) and *New Security Threats and Crises in Africa* (Palgrave Macmillan, 2010).
- **JAMILA EL ABDELLAOUI** is an independent consultant and researcher based in South Africa. She previously worked for the ISS as a senior researcher with the African Conflict Prevention Programme at the Institute’s office in Addis Ababa, Ethiopia. Prior to joining the ISS Ms El Abdellaoui worked for the African Centre for the Constructive Resolution of Disputes (ACCORD) as a senior department officer and programme officer at ACCORD’s offices in South Africa and Burundi respectively. Her work concentrates on conflict dynamics in the Great Lakes Region and the Horn of Africa as well as on general mediation and conflict prevention issues in Africa.
- **JIMAM T. LAR** is an assistant lecturer in the Department of History and International Studies, University of Jos, Nigeria. He attended the University



of Jos in Nigeria from 1997 to 2001, graduating with a BA (Hons) in History and an MA from the same institution in March 2007. He was a merit beneficiary of the ECOWAS/CSDG MA Fellowship from King's College London from September 2007 to March 2009. As part of the Fellowship he was a research fellow at the Kofi Annan International Peacekeeping Training Centre (KAIPTC) in Accra, Ghana. His research interest is intergroup relations in post-colonial central Nigeria and security sector reform in West Africa, with a particular interest in the activities of non-state security actors, democratic governance and conflict prevention.

- **KWESI ANING** is Head of the Conflict Prevention Management and Resolution Department (CPMRD) of the Kofi Annan International Peacekeeping Training Centre (KAIPTC) in Accra, Ghana. Prior to taking up this position in January 2007, he served as the African Union's first expert on counterterrorism, defence and security, with responsibility for implementing the continental counterterrorism strategy and for oversight of the African Centre for the Study and Research on Terrorism (ACSRT) in Algiers, Algeria. He has taught at several universities in Europe and Africa and was recently awarded an adjunct professorship during the 34th External Session of the Hague Academy of International Law.
- **KWESI SANSULOTTE-GREENIDGE** is a senior researcher at the African Centre for the Constructive Resolution of Disputes (ACCORD). His research areas include conflict and security in the Horn of Africa and the Caribbean Sea Basin. He has previously worked as a research fellow in the Peace Studies Department of the University of Bradford. Additionally he has worked in Chad and Darfur as a consultant for various non-governmental organisations and has published on topics that include displacement, conflict management and economic growth.
- **LUI CHITIMA** works as a research officer at the Ministry of Foreign Affairs of the Republic of Zimbabwe. Mr Chitima has a strong interest in peace and security issues on the continent, particularly the activities of the African Union and its organs. Research papers include: *The OAU/AU: Opportunities and Challenges* and *The African Union Peace and Security Council: Opportunities and Challenges in the 21<sup>st</sup> Century*.

- **OBIJIOFOR AGINAM** is currently Head of International Cooperation and Development at the Institute for Sustainability and Peace, United Nations University headquarters, Tokyo, and also Adjunct Professor of Law at Carleton University, Ottawa, Canada. He was formerly a Global Health Leadership officer at the World Health Organisation in Geneva, and a fellow of the Social Science Research Council (SSRC) of New York on Global Security and Cooperation. He has been a visiting professor of international law/global governance/human rights at the University for Peace, Costa Rica, and at universities in Italy, South Africa, Japan and Nigeria. He is the author of *Global Health Governance: International Law and Public Health in a Divided World* (University of Toronto Press, 2005) and many other academic publications focusing on international law and global governance issues.
  
- **PAUL D. WILLIAMS** is an associate professor in the Elliott School of International Affairs at the George Washington University, US. His books include *War and Conflict in Africa* (Polity, forthcoming 2011); *British Foreign Policy under New Labour, 1997–2005* (Palgrave-Macmillan, 2005); (with Alex J. Bellamy) *Understanding Peacekeeping* (Polity, 2<sup>nd</sup> edition, 2010); and (with David R. Black) *The International Politics of Mass Atrocities: The Case of Darfur* (Routledge, 2010).
  
- **SOLOMON A. DERSSO** is a senior researcher with the PSC Report Programme at the Addis Ababa Office of the ISS. An assistant professor of Human Rights Law at Addis Ababa University and member of the International Association of Constitutional law, Solomon received an LLB (School of Law, Addis Ababa University); an LLM in Human Rights and Democratisation in Africa (Centre for Human Rights, University of Pretoria); and a PhD in Constitutional and International Law (School of Law, University of the Witwatersrand). His research and teaching interests include human rights, with a focus on the African human rights system and minorities in Africa; constitutional law, including constitutional design in divided societies particularly relating to federalism and multicultural democracy; and the emerging African Peace and Security Architecture, with emphasis on its PSC. His recent publications include *Perspectives on the Rights of Minorities and Indigenous Peoples* (Pretoria: Pretoria University Law Press, 2010).

- **THOMAS JAYE** is Head of Office of the Liberia Program of the International Center for Transitional Justice (ICTJ). He was formerly deputy head of the Research Department at the Kofi Annan International Peacekeeping Training Centre (KAIPTC). He is the author of *Issues of sovereignty, strategy and security in the ECOWAS intervention in the Liberian Civil War*; and has written on broader regional security issues, including ECOWAS and its security culture and security sector governance and transformation. He has research interests in peace building, post-war reconstruction, international security, governance and democracy.
  
- **THOMAS MUEHLMANN** is currently Chief of Staff of EULEX Kosovo, former Advisor at the European Union (EU) Delegation to the African Union, and has been a member of the Austrian diplomatic service since 1996. Previous assignments include Head of Unit for the Austrian candidature for a non-permanent seat in the UN Security Council, deputy Austrian representative in the Political and Security Committee of the EU, Head of the Political Section of the EU Police Mission in Bosnia-Herzegovina, and Head of the Austrian Office in Pristina.
  
- **TIM MURITHI** is Head of the Transitional Justice in Africa Programme at the Institute for Justice and Reconciliation, in Cape Town, South Africa. Previously he was Head of the PSC Report Programme at the ISS, in Addis Ababa, Ethiopia. Between 2008 and 2009 he was a senior research fellow at the Department of Peace Studies, University of Bradford, in the United Kingdom; from 2005 to 2007 he was a senior researcher at the Centre for Conflict Resolution, University of Cape Town, in South Africa; and from 1999 to 2005 he was a programme officer at the Programme in Peacemaking and Preventive Diplomacy, in the United Nations Institute for Training and Research (UNITAR) in Geneva, Switzerland. From 1995 to 1998 he taught at the Department for International Relations, Keele University in England, where he also obtained his PhD in International Relations. He is a visiting professor of International Relations at the Department of Political Science and International Relations, Addis Ababa University and has served as a consultant on peace and security to the African Union in Addis Ababa; the UNDP in Sierra Leone; the University for Peace in Addis Ababa; the Centre for Humanitarian Dialogue in Geneva; and World Vision in Nairobi. He is

the author of over 70 publications, including two books: *The African Union: Pan-Africanism, Peacebuilding and Development*, published by Ashgate in 2005; and *The Ethics of Peacebuilding*, published by Edinburgh University Press in 2009. He is the editor of a book entitled *Towards a Union Government of Africa: Challenges and Opportunities*, published by the ISS in Pretoria in 2007, and co-editor of *The African Union and its Institutions*, published by Jacana in Johannesburg in 2008.

- **UMBERTO TAVOLATO** is currently working as Political Adviser to the EU Delegation to the African Union, following crisis and conflict situations on the continent. From 2004 to 2008 he worked as Political Adviser to the EU Special Representative for Sudan, based in Khartoum.

# Introduction

*Tim Murithi*

The African Union (AU) Peace and Security Council (PSC) is a key institution within the African Peace and Security Architecture (APSA). The PSC has made numerous pronouncements and has authorised targeted interventions in a number of AU member states and made numerous pronouncements on crisis situations across the continent. This collection of chapters is one of the first attempts to systematically analyse the work of the PSC during the first five years of its operation from 2004 to 2009.

## CHAPTER OUTLINE

In chapter 1, the academic Paul Williams proposes a framework to evaluate the PSC's performance based on four inter-related categories, namely relevance, productivity, efficiency and appropriateness. Williams focuses on three main dimensions of the PSC's work, including its collective interventions; the content of its official statements and communiqués; and its working methods. This chapter notes that the PSC has served as a central pillar of APSA, and it can be described as a politically relevant, productive and generally efficient and appropriate institution. However, Williams argues that African governments need to demonstrate

the political will to provide the PSC and APSA with the necessary resources to implement decisions and see through interventions in an effective manner.

Chapter 2, authored by the Ghanaian scholar and practitioner Kwesi Aning, seeks to understand the institutional dynamics and decision-making processes of the PSC. Aning attempts to unravel the undocumented processes and institutional nuances within the PSC, which are often not available to scrutiny by the public domain. He applies a conceptual framework informed by new institutionalism to assess the PSC's institutional dynamics and working culture. Aning also analyses the extent to which the PSC has applied its principles, norms, values and powers in its decision-making processes. Aning concludes by stating that the PSC needs to assert its autonomy to function effectively as a central pillar of the APSA, as this will enable the Council to play a more effective role in anticipating, managing and resolving Africa's persistent disputes.

The analysis of some of the other key institutions of APSA begins with the Ethiopian analyst, Alemayehu Behabtu, who discusses the relationship between the PSC and the AU Continental Early Warning System (CEWS) in chapter 3. Behabtu discusses the operationalisation of CEWS as a necessary innovation to enhance the ability of the AU to generate early warning information. However, he notes that the CEWS has been hampered by the slow pace of operationalisation, which exposes some of the internal and external challenges that continue to afflict the AU. In chapter 4, Moroccan peace practitioner and analyst Jamila El Abdellaoui further develops the discussion around the PSC and the AU Panel of the Wise, which was established in 2007. El Abdellaoui discusses some of the limited interventions that the Panel has undertaken. She concludes with some recommendations on how the Panel should increase its coordination with regional economic communities (RECs), civil society and the media. The French scholar, Delphine Lecoutre, analyses the misunderstood and under-researched AU Military Staff Committee (MSC) in chapter 5. She assesses the functions that the Committee was intended to fulfil and examines the disconnect between what it was designed to do and what it currently does. Lecoutre argues for the revitalisation of the MSC through the establishment of its own secretariat to convene meetings that feed into the work of the PSC.

In chapter 6, Kenyan scholar and practitioner Tim Murithi discusses the relationship between the PSC and African civil society. Murithi assesses the PSC's willingness to engage civil society representatives. He argues that this commitment to civil society, at least on paper, is embodied in the AU Livingstone Formula,

which outlines the context and conditions under which CSOs can engage directly with the PSC. Murithi argues that despite these provisions, CSOs still struggle to effectively engage with the PSC and the wider AU system, due to the legacies of the past in terms of the perception of civil society. He concludes that a progressive partnership needs to be forged between the PSC and civil society in order to build bridges for more effective peacebuilding across the continent. In chapter 7, a Ghana-based team of peace practitioners and analysts, Ecoma Alaga, Emma Birikorang and Thomas Jaye, assess how the PSC has engaged with the issue of gender, based on its continuing recognition of the unequal impact of conflict on women. They argue that there are gender gaps in the PSC's policy development and implementation that need to be addressed. They conclude with a gendered critique of the PSC and call for a committed implementation of the policy instruments that have been articulated to mainstream the gender agenda within the AU.

In chapter 8, Guyanese scholar and practitioner Kwesi Sansculotte-Greenidge contributes to the first of the country and thematic studies with an assessment of the PSC's record of intervention in the Darfur region of Sudan. He analyses the record of the African Union Mission in Sudan (AMIS) and concludes with the recommendation for a more effective strategy in terms of the political engagement with Sudan and for adequately equipped and staffed AU peace operations. In chapter 9, the Nigerian scholar Jimam Lar assesses the interaction between the Economic Community of West African States (ECOWAS) and the PSC. Lar discusses the collaborative intervention between the PSC and ECOWAS in Guinea-Bissau and Guinea-Conakry, and argues for consolidating and strengthening similar partnerships to address crisis situations across the African continent. In chapter 10, the African Union analyst, Issaka Souare, discusses how the PSC has addressed the issue of unconstitutional changes of government in Africa. He assesses some of the interventions that have been undertaken by the PSC under this mandate and concludes that more effective enforcement is required to effectuate the genuine rejection of coups.

In chapter 11, Kenyan jurist and scholar Ahmed Idris analyses the emerging challenges that the PSC is facing with regards to the administration of international criminal justice. Idris argues that the standoff between the AU and the International Criminal Court (ICC) with regards to the arrest warrant issues over Omar Al-Bashir raises the dilemma of pursuing peace and justice in parallel. He rightly anticipates an escalation of tensions between the AU and the ICC, and

recommends that the PSC play a central role in mediating this relationship. In chapter 12, the Zimbabwean practitioner, Lui Chitima, assesses how the PSC has struggled with balancing the demands of the doctrine of the responsibility to protect (R2P) with its historical preference for non-interference in Africa. Chitima argues for the more effective utilisation of structures such as the Panel of the Wise and CEWS in order to uphold the interventionist objectives of R2P. In chapter 13, the Ethiopian scholar and analyst, Solomon Dersso, assesses the PSC's mandate with respect to the international human rights regime. Dersso argues that while the PSC's mandate is replete with a commitment to human rights, this theme is not systematically addressed in the work of the PSC. He argues for the integration of the human rights doctrine into the implementation of the PSC's work in preventing, managing and resolving conflicts in Africa.

The final three chapters assess the PSC's international partnerships. In chapter 14, Nigerian scholar and international civil servant Obijiofor Aginam examines the turbulent relationship between the PSC and the United Nations Security Council (UNSC). Aginam notes that even though the Constitutive Act recognises the primacy of the UNSC in maintaining international peace and security, it reserves the right of the AU to intervene in grave crisis situations. In chapter 15, European Union (EU) diplomats Thomas Muehlmann and Umberto Tavolato discuss the relationship between the PSC and the EU's Political and Security Committee (COPS). They assess the historical link between the PSC and COPS in developing a strategic relationship between the AU and the EU. The United States-based Congolese scholar Jack Mangala discusses the PSC's relationship with the US Africa Command (AFRICOM). Mangala assesses some of the partnerships that have developed between AFRICOM and the AU, and concludes that the Union should assess areas where it might be able to strategically leverage its partnership with AFRICOM to advance its own agenda of strengthening the APSA.

## CONCLUSION

This broad range of chapters relating to the work of the AU PSC constitutes the first volume to focus exclusively on the work of the Council. APSA is still in its nascent phase and a number of key institutions are yet to be fully operationalised. The important fact is that African governments have articulated a plan to achieve a more peaceful and stable continent through a collective security



regime with the PSC at the heart of the architecture. There are a number of institutions of APSA that require further and additional research and analysis. This monograph is therefore the opening salvo in a discourse on the work of the AU PSC as well as other institutions of APSA, and it is anticipated that it will inspire further research on these institutions.



# 1 The Peace and Security Council of the African Union

## A framework for evaluation

*Paul D Williams*

### INTRODUCTION

Evaluating the performance of any international security institution is an essential but notoriously difficult exercise. This is certainly true for the African Union's (AU) Peace and Security Council (PSC) – a relatively new institution that has been tasked with playing a critical role in ensuring peace and security in one of the world's most conflict-ridden continents. One of the reasons that it is so difficult to assess such institutions is that they are simultaneously both a collective actor and a political arena in which their member states, their officials and a wide range of other actors interact.<sup>1</sup> But it is also difficult – and controversial – because there is no consensus over which standard should be used to judge success and failure. Should we judge the PSC solely on how far it has achieved the objectives set out in its own statements and communiqués? Or should we assess the Council on whether it has managed to implement the AU's founding principles and objectives, such as democracy and the rule of law or protecting civilians caught in 'grave circumstances'?<sup>2</sup> Or should we evaluate the PSC on whether it has ended Africa's armed conflicts? Or is the key question whether it has prevented new conflicts from erupting in the first place? Should we use all four criteria?

In part, the answer depends on whose voices we consider most important in arriving at such judgements and what we want to assess. This chapter focuses on three main dimensions of the PSC's activities: its collective actions; the content of its official statements and communiqués; and its working methods. This allows us to evaluate the Council as both an actor and a political arena. Specifically, I offer a short sketch of a framework to assess the PSC's performance in these three dimensions organised around the interrelated categories of *relevance*, *productivity*, *efficiency* and *appropriateness*. An institution's relevance can be assessed by analysing its political status and the resources it attracts from its members as well as other actors. Judging the Council's productivity involves asking whether its agenda encompasses an appropriate number and type of issues and whether they are dealt with effectively. The PSC's efficiency can be evaluated by analysing the extent to which its objectives are coherent and whether it pursues them in a cost-effective manner. Finally, appropriateness involves placing the institution in its wider geopolitical context and assessing how well it has built effective partnerships and divisions of labour with other actors and institutions. Taken together, an analysis of these issues should permit us to arrive at a reasonably fair, if not completely comprehensive, verdict on the PSC's first five years.

It should be noted, however, that this chapter provides only a short sketch of this framework with some empirical illustrations. Its author is a curious outsider – an academic – without privileged access to the internal workings of the PSC, except those which have been gained through the usual scholarly channels.

## RELEVANCE

Judging the PSC's political relevance is a difficult, complex and inexact science, not least because different audiences will hold different views about the Council's relevance and those views may change over time. But, at its core, assessing the Council's relevance requires an analysis of its status and ability to attract resources. As far as resources are concerned, we need to know whether it elicits substantial and sustainable commitments from its members (and other actors) to support the implementation of its decisions. Here the signs have not been very encouraging: the AU members have not yet provided the Council with adequate resources in terms of finance, personnel or peacekeeping capabilities. This is a problem with the entire AU system, not just the Council. It is not helped by the fact that since 1 January 2006, 75 per cent of the AU's funds have come from

just five states (Algeria, Egypt, Libya, Nigeria and South Africa), each of which contributes 15 per cent of the Union's regular budget.<sup>3</sup> Another problem is that the AU's Strategic Plan (2009–2012) called for US\$144 million out of a projected required budget of US\$784 million to be allocated to Peace and Security (Pillar 1). This would appear to be a severely conservative estimate. If willingness to spend money is an important indicator of seriousness, then the Union's budget suggests that most African states have not taken the AU and its peace and security tasks particularly seriously.

With regard to broader conceptions of political status, we need to assess several things: How important are the Council's deliberations? Are its members and other actors keen to participate in PSC deliberations and do they send their top diplomatic talent to do so? Similarly, do relevant actors care about the content of the PSC's pronouncements, and do African leaders look to the Council 'for more than photo-ops and political grandstanding'?<sup>4</sup>

Evidence from the PSC's first five years suggests that African states are certainly interested in participating in its deliberations and in influencing its decisions, but it is not entirely clear that the Council is always accorded a high political status. On the one hand, states have been keen to compete for its elected positions – as of April 2010, 35 of the 53 AU members have served on the PSC (see Table 1). There is also evident interest in participating in the Council's deliberations, with meetings on important issues regularly attracting some 90 participants (75 representatives of PSC members and 15 Commission staff). As one member of the secretariat put it, 'there is virtually never an empty seat at Council meetings'.<sup>5</sup> This represents a significant improvement over the old Organisation of African Unity (OAU). Moreover, non-members, particularly African governments involved in conflict or crisis situations or who are the subjects of PSC activities, have also been keen to participate in and influence the PSC's activities. The same is true for non-African entities such as the UN and the EU, as well as the continent's sub-regional economic communities (RECs) and other regional mechanisms. These entities will usually receive invitations to participate in the public sessions of PSC meetings. On the other hand, however, particularly in the first few years of the PSC's operations, it remained fair to say that few African governments consistently sent their 'top diplomatic talent' to the AU or that a posting in Addis Ababa was always a fast track to success in diplomatic career terms. Nor did all the PSC members invest the resources necessary to keep their delegations up to speed with the key issues. But it does appear that this has begun to change,

with more and more member states providing their Addis embassies with greater resources and personnel to address PSC issues.

**Table 1 Membership of the Peace and Security Council of the African Union, 2004–2012**

Region	2004 (years elected)	2006 (years elected)	2007 (years elected)	2008 (years elected)	2010 (years elected)
North	<i>Algeria</i> (3)		<i>Algeria</i> (3)		<i>Libya</i> (3)
North	<b>Libya</b> (2)	<b>Egypt</b> (2)		<b>Tunisia</b> (2)	<b>Mauritania</b> (2)
West	<i>Nigeria</i> (3)		<i>Nigeria</i> (3)		<i>Nigeria</i> (3)
West	<b>Togo</b> (2)	Burkina Faso (2)		Burkina Faso (2)	<b>Côte d'Ivoire</b> (2)
West	Ghana (2)	Ghana (2)		Benin (2)	Benin (2)
West	Senegal (2)	<i>Senegal</i> (2)		Mali (2)	Mali (2)
Central	<b>Gabon</b> (3)		Gabon (3)		<b>Equatorial Guinea</b> (3)
Central	Congo (2)	Congo (2)		<b>Chad</b> (2)	<b>Chad</b> (2)
Central	<b>Cameroon</b> (2)	<b>Cameroon</b> (2)		<i>Burundi</i> (2)	Burundi (2)
East	<i>Ethiopia</i> (3)		<i>Ethiopia</i> (3)		Kenya (3)
East	Kenya (2)	<b>Rwanda</b> (2)		<b>Rwanda</b> (2)	<b>Rwanda</b> (2)
East	<b>Sudan</b> (2)	Uganda (2)		Uganda (2)	Djibouti (2)
Southern	South Africa (3)		<b>Angola</b> (3)		<b>Zimbabwe</b> (3)
Southern	Lesotho (2)	Botswana (2)		<b>Swaziland</b> (2)	Namibia (2)
Southern	Mozambique (2)	Malawi (2)		Zambia (2)	South Africa (2)

*Italicised*: States experiencing a 'severe crisis' or 'war' according to the *Heidelberg Conflict Barometer*, 2004, 2006, 2007, 2008, 2009 available at <http://hiik.de/en/konfliktbarometer/index.html>

**Bold**: States declared 'not free' by Freedom House, *Freedom in the World 2004, 2006, 2007, 2008, 2010*, available at <http://www.freedomhouse.org> The survey measures freedom – the opportunity to act spontaneously in a variety of fields outside the control of the government and other centres of potential domination – according to two broad categories: political rights and civil liberties.

Despite some resource problems, the political status of the PSC's official statements has generally been high. This is partly because the PSC's emphasis on consensus – there has never been a formal vote at the Council – has presented individual members with few opportunities to use the Council as a platform for grandstanding. Indeed, the closed nature of the substantive deliberations makes it very difficult to pinpoint the origins of the Council's positions or the political fault lines generated by them. The PSC can thus be said to have operated with a significant degree of collective responsibility, with any rifts among its members generally kept hidden from public view. In addition, PSC communiqués and reports are consistently subjected to significant scrutiny both in the process of compiling them and subsequently. They are the subject of debate over their substantive content as well as to ensure the overall consistency of the Council's messages across various issues and sectors.<sup>6</sup> Coherence and consistency are important because official statements are assembled with an eye to multiple audiences, most of whom have different agendas and priorities and look to the Council for different things.<sup>7</sup> All of these activities indicate that the Council's members and an array of external actors care about the content of its statements.

## PRODUCTIVITY

In order to evaluate the PSC's productivity we need to assess whether its agenda has encompassed an appropriate number and type of peace and security issues. To its credit, the Council has addressed a wide range of issues since it began operating on 16 March 2004. This is not surprising given its broad mandate to prevent, manage and resolve armed conflict on the continent. In addition, the Council has clearly become more productive over time. Measured by the number of meetings and communiqués, the PSC's workload expanded considerably between 2004 and 2008 (see Table 2).

**Table 2** Number of Peace and Security Council meetings<sup>8</sup>

2004	2005	2006	2007	2008
21	23	24	37	66

The PSC's mandate – as set out in the Protocol Relating to the Establishment of the Peace and Security Council of the African Union (hereafter PSC Protocol)<sup>9</sup> – grants

it free rein to address any issues it considers significant for peace and security on the continent. The Council's provisional agenda is determined by the rotating chairperson but with input from the Chairperson of the AU Commission (via the PSC Secretariat). Importantly, the wider AU membership cannot stop the inclusion of any item on the provisional agenda. Some analysts have suggested that, particularly in its first few years, the AU Commission 'acquired unlimited and overwhelming power' and played the leading role in 'setting the PSC timetable, proposing its agenda, preparing its draft reports, and drafting communiqués, which are usually provided only minutes before the meeting for consideration and adoption'.<sup>10</sup>

In substantive terms the PSC has addressed a variety of issues, including various forms of armed conflict (of which those in Sudan and Somalia have featured most commonly on its agenda);<sup>11</sup> unconstitutional changes of government; a wide variety of peace-building activities; as well as issues of criminality such as terrorism and the illicit trade in small arms and light weapons.

The PSC has also played a part in the ongoing efforts to ratify various African treaties and conventions. Recent successes in this regard were the entry into force of the AU's Non-Aggression and Common Defence Pact (on 3 September 2009) and the Pelindaba Treaty on the African Nuclear-Weapon-Free Zone (on 15 July 2009, 14 years after it was adopted). Hopefully, the recently adopted Kampala Convention (October 2009) on Africa's internally displaced persons will not take as long to achieve the necessary number of ratifications.

Another area of significant, albeit slow, progress is the PSC's creation of several advisory institutions, most notably the Panel of the Wise, the Committee on Sanctions and the Military Staff Committee (MSC). Officially inaugurated in December 2007, the Panel of the Wise is tasked with using its expert knowledge and moral authority to persuade various actors to resolve their conflicts peacefully. Although it has undertaken a range of initiatives in conflict-affected territories and is supposed to advise the Council, the first formal meeting between members of the Panel and the full PSC membership did not occur until March 2009. More regular meetings between the PSC and the Panel would surely produce a better working relationship. It has also been noted that for the Panel to function optimally, it needs a well-resourced mediation support unit, perhaps housed within the AU Commission's Peace and Security Department.<sup>12</sup> The Sanctions Committee was established in March 2009 in light of article 8(5) of the PSC Protocol. It comprises five members, one from each of the continent's regions, and has already been engaged in several prominent cases.<sup>13</sup> The MSC



was established under article 13 of the PSC Protocol to advise the Council on the military dimensions of its initiatives. In practice, however, it has not functioned effectively and has met only infrequently, in large part because member states have not sent delegates to the Committee. If the PSC intends to authorise more peacekeeping operations along the lines of its missions in Sudan (AMIS) and Somalia (AMISOM), it will need to ensure that the MSC functions more effectively.

While this is a long list of activities, it must also be noted that the Council's agenda has inevitably been constrained by political and other more technical considerations. There has, for instance, been relatively little sign of preventive actions taken by the PSC or attempts to grapple substantively with the environmental dimensions of peace and security in Africa. In terms of politics closing down the agenda, probably the most egregious example is the lack of a PSC communiqué addressing the long-running conflict in the Niger Delta. As one of Africa's most powerful states and the only country to have sat consistently on the Council since 2004, Nigeria has succeeded in keeping this conflict off the PSC agenda. A similar point could be made about the persistent examples of large-scale mob violence in the northern parts of Nigeria that have killed thousands of civilians, Muslim and Christian. Between 1999 and 2006 alone, for example, Human Rights Watch estimated that well over 11 000 people died in ethnic, political and religious violence.<sup>14</sup> Although it has been deeply engaged with the conflict in Somalia, the PSC has not made any obvious progress on the issue of Somaliland's application to join the AU, which was submitted in December 2005. This is in spite of the fact that some dialogue has taken place between the AU Commission and the Somaliland authorities and that an AU fact-finding mission concluded that Somaliland had a uniquely persuasive case for membership of the continental organisation.<sup>15</sup>

Overall, it would seem fair to conclude that, although there is certainly room for more issues to be placed on the PSC's agenda, the Council has been rather productive. We should also recall that it is on an upward trajectory in this regard and that these have been its first five years of existence – a difficult period for any institution. Compared to its predecessor, there really has been a marked improvement in the institution's productivity.

## EFFICIENCY

To ascertain whether the PSC has been efficient we need to assess whether it has pursued a coherent agenda and carried out its operational activities competently

and in a cost-effective manner. In one sense, the PSC's activities have been very cost effective for the AU's member states inasmuch as the majority of the continent's recent peace and security-related activities have been funded by external actors, particularly states within the EU and the North Atlantic Treaty Organisation (NATO).<sup>16</sup> However, as the Prodi Panel made abundantly clear, this situation is neither optimal nor sustainable.<sup>17</sup>

A second dimension of efficiency concerns the extent to which the PSC has pursued a coherent agenda or whether there are contradictions and tensions within it. Here the track record is mixed. On most issues the PSC does seem to have adopted a coherent approach, but there are some outstanding issues that need clarification.

First of all, it is not clear that a humanitarian intervention – the use of military force without host government consent for human protection purposes<sup>18</sup> – conducted by the AU under article 4(h) of its Constitutive Act would be legal under international law. The key point seems to be whether such action would breach article 53 of the UN Charter, which prohibits regional arrangements engaging in enforcement action without the UN Security Council's prior authorisation.<sup>19</sup> It is fair to say that there is no one word or simple answer to the question of whether humanitarian intervention is permissible under current international law without prior UN Security Council authorisation.<sup>20</sup> Furthermore, some analysts have argued that the AU does indeed have the legal right to authorise military interventions for humanitarian protection purposes.<sup>21</sup> Nevertheless, the weight of international legal opinion clearly suggests that humanitarian intervention not authorised by the UN Security Council is illegal.<sup>22</sup> Another potential concern related to the notion of humanitarian intervention defined in article 4(h) of the AU Constitutive Act is the need to clarify that it would not fall under the definition of aggression as set out in article 1(c) of the AU's Non-Aggression and Common Defence Pact (which entered into force on 3 September 2009).<sup>23</sup>

A second area of tension is that the AU's repeated calls for greater degrees of African autonomy are contradicted by the unwillingness of many African states to commit significant amounts of their own resources to building the new African Peace and Security Architecture (APSA). This has meant that in practice, as noted above, the PSC continues to rely on external sources of funding, most notably from the UN and members of the EU and NATO. It is often argued that this is because Africa's authoritarian states are concerned that a stronger AU may encroach upon their sovereignty under the guise of the new norm of

'non-indifference'. But it is worth recalling that four of the AU's biggest financial contributors – Algeria, Egypt, Libya, and Nigeria – are hardly paragons of democracy. It would therefore seem that part of the problem stems from the unwillingness of many African states to prioritise international conflict management over their domestic priorities.

A third contradiction concerns the status of democracy in the PSC's activities. On paper, the APSA is founded on the idea that there is a positive relationship between democratic forms of governance and peace and security on the continent. Yet the persistent election of autocratic regimes onto the PSC has cast doubt on the depth of commitment to democratic principles (see Table 1). As one analysis put it, to date, 'the criteria for PSC membership are essentially aspirational'. In addition, 'a preponderance of such [autocratic] countries ... will have implications for the continental legitimacy of the PSC, particularly when it has to pronounce on issues relating to peace, security, governance and human rights'.<sup>24</sup>

This contradiction has been reflected in the PSCs reluctance to address the full spectrum of 'unconstitutional changes of government'. For most of its first five years the PSC approached the concept of unconstitutional changes of government as if it was synonymous with military coups. Behind the scenes, however, since at least 2005 a debate has been taking place within the PSC over whether it should broaden its focus 'to cover all forms of manipulations which either culminate in a coup d'état or in a democratically elected government re-forging the constitution without popular consent as genuinely expressed by the people, with a view to prolonging stay in office'.<sup>25</sup> This debate was given added urgency when the AU Assembly adopted the African Charter on Democracy, Elections and Governance in January 2007. In December 2009, however, the Ezulwini framework document adopted a wider view of unconstitutional changes of government to incorporate issues of electoral fraud and manipulation of the constitution.<sup>26</sup>

The Council's preference for making its decisions by consensus, which can be held hostage by its more autocratic members, has made it harder for the PSC to deal with cases where African governments have cynically manipulated their own constitutions to benefit the incumbent regime. To put this into historical context, between 1990 and 2005, 18 African presidents reached the two-term limit imposed on their presidency by their state's constitution.<sup>27</sup> Of these 18, nine left the presidency and nine tried to change the constitution in order to extend their terms in office, of which three failed and six succeeded.<sup>28</sup> Three more recent cases can now be added: President Mamadou Tandja's manipulation of Niger's

constitution (2009); the Cameroonian National Assembly's vote to remove the two-term limit for presidents, which allowed Paul Biya to run for re-election in 2011 (2008); and the constitutional amendment in Algeria which permitted President Abdelaziz Bouteflika to seek re-election yet again (2008). Analysts at the ISS were therefore correct to conclude that '[t]he PSC's response to constitutional manipulation has not been as vocal as its condemnation of unconstitutional changes of government'. Nor has the Council clarified 'its sanctions regime to respond to member states which fail to comply with their own constitutions'.<sup>29</sup>

In sum, while the first five years of the PSC's agenda has been carried out at relatively little financial cost to many African states, this approach is neither optimal (because of the political signals it sends and the constraints it places on the scope for autonomous African action) nor sustainable (because external donors may not continue to fund such projects indefinitely). Moreover, there remain several points of tension within the APSA that will need to be clarified or rectified if the PSC is to conduct its business more efficiently.

## APPROPRIATENESS

Although the PSC is Africa's most important conflict management institution, it cannot be expected to do everything. We therefore need to situate the Council's activities within their regional and wider global context. This can be achieved by assessing whether the PSC has built appropriate divisions of labour and developed effective partnerships with other actors and institutions. The central institutions in this regard are the UN, Africa's RECs, the EU, NATO, the Pan-African Parliament (PAP) and groups within civil society.

*United Nations:* The UN Security Council has primary responsibility for maintaining international peace and security across the entire globe. Between 2004 and 2009 the UN was, by far, the most important organisation in relation to conflict management and peacekeeping in Africa. At times, however, the AU has played significant complementary roles, notably in Burundi, Sudan and the Comoros.<sup>30</sup> These initiatives have helped forge a reasonable working relationship between the UN and Africa's various regional arrangements in the peace and security sector.<sup>31</sup> At the bureaucratic level, personnel from the UN Security Council and the PSC have also made good progress in sharing best practices on how to manage such a wide-ranging institution. But there have also been tensions. The most obvious examples of UN-AU friction came over the PSC's decision to launch

a peacekeeping mission in Somalia (AMISOM) in early 2007 and in discussions about the role of the International Criminal Court in relation to the conflict in Darfur.<sup>32</sup> More generally, some powerful members of the UN Security Council have warned that the interactions must not encourage the perception that the two institutions are equal partners in either form or substance.<sup>33</sup>

*Regional Economic Communities:* The AU recognises eight RECs as well as two mechanisms for coordinating the African Standby Force (the East Africa Standby Brigade Coordination Mechanism and the North Africa Regional Capability). The details of the working relationship between the AU and the RECs are set out in the Memorandum of Understanding signed in Algiers in June 2008.<sup>34</sup> In summary, the relationship is supposed to be a hierarchical one wherein the AU harmonises and coordinates the activities of the RECs in the peace and security realm. This is managed via liaison officers from the RECs serving within the AU Commission in Addis Ababa. In relation to the PSC the RECs have played important indirect roles in two main senses. First, member states from Africa's different sub-regions often coordinate their positions on particular issues with other REC members. Second, these same regional clusters of states will often take the leading role in formulating the PSC's response to issues within their sub-region. Arguably the most unclear but potentially significant issues have revolved around the process of authorising and mandating missions for the various component parts of the African Standby Force (ASF): Do the PSC and the AU have supreme authority to utilise the ASF? Do the RECs share this function? Can the RECs deploy the ASF regional brigades independently of the PSC? Should the PSC deal directly with the RECs or the individual member states comprising the regional brigades? And, can the regional brigades deploy to different regions?<sup>35</sup>

*European Union:* Since 2003 the EU has played a more significant role in conflict management activities on the African continent and has developed a good working relationship with the PSC. The terms of the EU-AU relationship have been clearly set out in a series of declarations and strategic plans.<sup>36</sup> These underscore the EU's critical role in supporting the APSA through financial assistance, training and the conducting of its own peace operations (most notably in the DRC, Chad, the Central African Republic and Guinea-Bissau).

*North Atlantic Treaty Organisation:* Over its first five years the PSC has also developed a strong relationship with NATO, which has provided the Council with vital logistical and training support. Specifically, NATO has deployed approximately 25 000 AU peacekeepers into various theatres of operation and has trained some

200 AU officers. In addition, NATO has been part of the international counter-piracy effort off the coast of Somalia.<sup>37</sup> Given that it is unlikely that the AU will acquire significant strategic lift capabilities or such sophisticated logistics any time soon, this relationship will remain crucial for ensuring AU peacekeepers are deployed to, and sustained in, the field.

*Pan-African Parliament:* Under the PAP Protocol the Parliament is required to liaise with the PSC. Although some dialogue has begun, the details of this relationship still need to be worked out and the level of interaction needs to be increased. Arguably the central area of interest is the PAP's role in issues related to the smooth running of elections and the peaceful resolution of disputes over election results. Given the frequent connection between elections and outbreaks of violence in Africa, and the AU's sometimes-controversial input,<sup>38</sup> this relationship should be strengthened as a matter of urgency.

*Civil society:* Although the APSA recognises the significant role(s) that organisations within civil society can play in bringing peace and security to the continent, and the 'Livingstone formula' notes that such organisations may provide technical support and analysis to the PSC, in practice there remains considerable scope to enhance the Council's relationship with civil society actors. Of course, the generic problem of deciding which civic groups to engage with remains, but these relationships are still in their formative stages and need to be nurtured.

Overall, the PSC has developed good working relationships with a range of relevant institutions. Nevertheless, there is certainly scope for these to be enhanced and some important details remain work-in-progress. These relationships will also continue to evolve as the AU develops more of its own capabilities. This will help balance the currently rather lopsided relations with the UN, EU and NATO.

## CONCLUSION

Over its first five years the PSC has been a central player in developing the APSA, which, on paper at least, has made substantial progress in addressing many of Africa's central peace and security challenges. As discussed above, and compared to the OAU before it, the PSC can reasonably be described as a politically relevant, productive, generally efficient and appropriate institution, although there is clearly room for significant improvement in each area. Moving forward, the most urgent practical test is to get African governments to commit greater levels of political will and material resources to these institutions so that the PSC

is able not only to take decisions but to implement them effectively. The failure to generate such commitment has been the most fundamental source of many of the PSC's problems.

## NOTES

- 1 See Alastair Iain Johnston, Treating international institutions as social environments, *International Studies Quarterly* 45(4) (2001), 487–515.
- 2 Article 4(h) of the AU Constitutive Act initially defined 'grave circumstances' as war crimes, genocide and crimes against humanity.
- 3 AU Assembly, Decision on the scale of assessment (Doc.EX.CL/192 (VII)), Fifth Ordinary Summit, 4–5 July 2005, Sirte, Libya.
- 4 See Edward C Luck, *UN Security Council: practice and promise*, London: Routledge, 2006.
- 5 Interview with PSC official, Addis Ababa, May 2007.
- 6 The Council's reports on particular conflict or crisis situations originate within the PSC secretariat and are passed around the relevant Commission staff for input, comment and revision. This process produces a draft report, which is then passed from the technical staff to the Commissioners. While the established facts of the situation are rarely altered, a great deal of attention goes into drafting the precise language used in the report. The final draft report is then passed to the PSC members who may call for further revisions in light of their deliberations. For example, the initial drafts of the reports produced by the AU staff in Darfur were considered particularly frank and were usually subjected to several rounds of revision by the Council. By early 2008, the PSC had only rejected one draft report outright, dealing with Western Sahara. A similar process occurs when the PSC issues its communiqués. These are based on recommendations in the submitted Commission Report but the precise text will usually be redrafted several times to reflect the deliberations in the Council meeting. Interview with PSC official, Addis Ababa, May 2007.
- 7 The main audiences for PSC statements are AU member states, the parties to the conflict or crisis in question, the Commission (as a key player in the implementation of decisions), the larger international society, and affected populations, as well as the media.
- 8 Institute for Security Studies (ISS), *Peace and Security Council Report 2* (September 2009), 18.
- 9 The PSC Protocol was adopted in Durban on 9 July 2002. It entered into force on 26 December 2003 (after ratification by 27 of the 53 AU members).
- 10 Samuel M Makinda and F Wafula Okumu, *The African Union*, London: Routledge, 2008, 50–51. See also 120.
- 11 Between March 2004 and March 2009, the PSC released statements relating to conflicts within 15 states (Burundi, Central African Republic, Chad, the Comoros, Côte d'Ivoire, the Democratic

Republic of Congo (DRC), Guinea-Bissau, Kenya, Liberia, Madagascar, Mauritania, Rwanda, Somalia, Sudan, and Togo) as well as conflicts between Chad-Sudan, DRC-Rwanda, Djibouti-Eritrea, Eritrea-Ethiopia and Eritrea-Sudan.

- 12 A suggestion made in ISS, *Peace and Security Council Report 5* (December 2009), 13.
- 13 Under article 23 of the AU Constitutive Act, the PSC has imposed sanctions regimes on several member states, including Togo (2005), Mauritania (2005), the Comoros (2007), Guinea (2008 and 2009), Madagascar (2009), Eritrea (2009) and Niger (2009).
- 14 Human Rights Watch, *Criminal politics: violence, 'godfathers' and corruption in Nigeria*, *Human Rights Watch* 19(16)(A) (October 2007), 18.
- 15 AU Commission, *AU Fact-Finding Mission to Somaliland (30 April to 4 May 2005)* (AU Commission, unpublished report, 2005). Copy in author's possession.
- 16 For an incisive analysis see *Report of the African Union-United Nations panel on modalities for support to African Union peacekeeping operations* (UN doc. A/63/666-S/2008/813), 31 December 2008.
- 17 *Ibid.*
- 18 Adam Roberts, The so-called right of humanitarian intervention, *Yearbook of International Humanitarian Law*, 3 (Summer 2001), 5.
- 19 The preparatory materials for the OAU Charter indicate that the organisation was intended to be one of the 'regional arrangements' referred to in Chapter VIII of the UN Charter. Alan Henrikson, The growth of regional organizations and the role of the United Nations, in Louise Fawcett and Andrew Hurrell (eds), *Regionalism in world politics*, Oxford: Oxford University Press, 1995, 130ff.
- 20 Roberts, The so-called right of humanitarian intervention.
- 21 Jeremy I Levitt, The Peace and Security Council of the African Union: the known unknowns, *Transnational Law and Contemporary Problems* 13 (Spring 2003), 126–32.
- 22 See the special section: Kosovo crisis inquiry: international law aspects, *International and Comparative Law Quarterly* 49(4) (2000), 876–943.
- 23 The Pact defines aggression as 'the use, intentionally and knowingly, of armed force or any other hostile act by a State, a group of States, an organization of States or non-State actor(s) or by any foreign or external entity, against the sovereignty, political independence, territorial integrity and human security of the population of a State Party to this Pact, which are incompatible with the Charter of the United Nations or the Constitutive Act of the African Union'.
- 24 ISS, *Peace and Security Council Report 5* (December 2009), 17.
- 25 AU, *Draft background paper on the Review of the Methods of Work of the Peace and Security Council of the African Union*, (AU document Interoffice memorandum, 27 April 2007), 20.
- 26 See PSC 213<sup>th</sup> Meeting, Addis Ababa, 27 January 2010, AU document, PSC/PR/2(CCXIII).



- 27 See Daniel N Posner and Daniel J Young, The institutionalization of political power in Africa, *Journal of Democracy* 18(3) (2007), 126–40.
- 28 The nine presidents that left office were Kérékou of Benin, Monteiro of Cape Verde, Rawlings of Ghana, Moi of Kenya, Konaré of Mali, Chissano of Mozambique, Trovoada of São Tomé and Príncipe, René of Seychelles, Mkapa of Tanzania. The three that tried to stay but failed were Muluzi of Malawi, Obasanjo of Nigeria, and Chiluba of Zambia. The six that succeeded in staying were Déby of Chad, Bongo of Gabon, Conté of Guinea, Nujoma of Namibia, Eyadéma of Togo, and Museveni of Uganda.
- 29 ISS, *Peace and Security Council Report* 4 (November 2009), 6.
- 30 For an overview, see Paul D. Williams, The African Union's peace operations: a comparative analysis, *African Security* 2(2–3) (2009), 97–118.
- 31 See *Report of the AU-UN panel on modalities for support to AU peacekeeping operations*.
- 32 On the former see Paul D Williams, Into the Mogadishu maelstrom: the African Union Mission in Somalia, *International Peacekeeping* 16(4) (2009), 514–30.
- 33 ISS, *Peace and Security Council Report* 2 (September 2009), 5.
- 34 By late 2009, the Arab Maghreb Union had still not signed the Memorandum.
- 35 ISS, *Peace and Security Council Report* 2 (September 2009), 9.
- 36 Details can be found at <http://www.africa-eu-partnership.org/>
- 37 ISS, *Peace and Security Council Report* 6 (January 2010), 9.
- 38 In May 2005, for instance, the AU's Deputy Chairperson endorsed Ethiopia's elections as 'free and fair' despite the fact that his organisation had not acted as an official observer. Shortly afterwards demonstrations took place in Addis Ababa that resulted in security forces killing approximately 200 people.



# 2 Understanding the institutional dynamics and decision-making processes of the PSC<sup>1</sup>

*Kwesi Aning*

## INTRODUCTION

The transformation of the Organisation of African Unity (OAU) into the African Union (AU) generated expectations that Africa's premier international institution would have the strength and capacity to deal with the peace and security challenges facing the continent.<sup>2</sup> While the OAU had achieved its stated objectives of decolonisation, eradication of apartheid and maintenance of the colonially inherited boundaries at independence, the proxy wars in which Africa became entangled during the period of the Cold War resulted in the diversion of attention from the core economic and security challenges that the continent faced. By 1993, there was political recognition that economic development could not be achieved if the conflicts that afflicted the continent were not decisively dealt with. Therefore, 1993 became the decisive year in which the shift to the recognition of the need for structured security architecture started to occur. A decade later, in 2000, the Constitutive Act defined the objectives, principles and structure of an emergent AU. In 2002, the Protocol establishing the Peace and Security Council (the PSC Protocol) of the AU was promulgated and eventually ratified by a sufficient number of member states to make it operational. At its

launch in May 2004, the PSC was characterised as ‘marking a historic watershed in Africa’s progress towards resolving its conflicts and building a durable peace and security order’.<sup>3</sup>

This chapter analyses the single most important institutional framework of the AU, its Peace and Security Council (PSC). It explores what is a theoretically positive and operationally innovative structure with its complex functioning modalities. While one aspect of this analysis is a discussion of the factual ability of the PSC to fulfil its functions, there is also the need to analyse the insights that enlighten what can be described as the ‘public unknowns’, which are undocumented processes and institutional nuances that are usually not available to or manifested in the public domain, but which also have critical impacts on the policy-making process. To this end, the chapter discusses some of the inner institutional dynamics, workings and processes of the PSC, and its emerging working culture. In this discussion, the chapter seeks to develop and provide a far more enhanced knowledge of who the key decision makers are and how such decisions are made. Such an analysis also seeks to understand which set of actors wields the most critical influence in the workings of the PSC and the African Commission and how such ‘powerbrokers’ within the AU exercise their influence. This chapter also explores the manner in which the PSC has applied its principles, norms, values, powers and functioning modalities to explain its decision-making processes during real-time conflicts. Such an analysis facilitates a discussion and assessment of the relationship between the PSC and other ancillary institutions, namely the Military Staff Committee (MSC) and the Panel of the Wise, and, more crucially, the nebulous and uneasy relationship between the PSC and the Commission as a whole, but equally importantly two of the divisions within the Peace and Security Directorate (PSD), namely the Conflict Management Division (CMD) and the Secretariat to the PSC. These complex institutional and non-bureaucratic relationships manifest themselves, especially, in the quest for influence and a wider space for manoeuvrability and power within which all these groups and individuals perform their duties and shape decisions. Finally, this chapter assesses the PSC’s efficiency and performance through its decision-making process, showing its strengths and shortcomings.

The main argument is that although the AU has inherited some of the OAU’s institutional and organisational norms, it is still a young organisation trying to define its own niche in terms of several concurrent processes. In particular,

this chapter assesses the AU's stature as an international institution trying to influence state behaviour and the challenges of how to deal with norm breakers on the one hand and the internal squabbles among the AU's institutions and how they relate to the PSC on the other. The chapter's main conclusions are that the effective functioning of the PSC in terms of its decision-making and implementation challenges can best be dealt with if the 'secrecy' surrounding its work is opened to more objective and critical assessments. What appears to be a divergence of intention between the PSD agenda and the attempt by the PSC to broaden its remit is mainly a reflection of an institutional culture that is not yet fully formed.

## CONTEXTUALISING THE AU INSTITUTIONAL STRUCTURES

To appreciate the complexity of the challenges facing the PSC, it is necessary to apply some of the conceptual tools of new institutionalism to provide an explanatory framework. Part of the argument is that a combination of the AU's Constitutive Act and the PSC Protocol and their constitutive principles sought to establish a security framework for the AU and to provide specific blueprints and limitations for state action. The main argument is that these two AU documents form a sub-system within the wider international system and have an explicit aim of ensuring and securing regional stability. They, therefore, comprise a regime with rules, norms and principles that member states should adhere to. Non-compliance with such rules, norms and principles or perceived threats to accepted rules, norms and principles by member states can lead either to coercive or to diplomatic responses by the AU or its member states under the explicit authority and guidance of the AU. It must be emphasised, however, that in practice some of these norms are in tension with one another, which leads to questions of prioritisation, and that not all norm-breaking activities will meet with an official response.

The AU's constitutive principles and rules are enshrined in the PSC Protocol and the Constitutive Act. The AU and its institutional frameworks and mechanisms provide the formal organisational framework through which its security regime finds institutional expression. The rules and decision-making procedures provide for bi-annual intergovernmental meetings introduced in September 2001. In crisis situations, extraordinary and ad hoc meetings can be summoned.

## THE PSC'S RESPONSES TO NORM BREAKING

This chapter assesses not only the AU's institutionalisation of collective defence promotion and the implicit indication to signatory states of support in periods of crisis, but also the institution's factual and actual ability to extend such expected support to states in crisis such as Darfur in Sudan, Burundi, the Comoros, Somalia, Togo, Zimbabwe, Guinea, Guinea-Bissau, Côte d'Ivoire and Mauritania when the need arises.<sup>4</sup> The argument is that the security protocols represent a sub-system with a view to enhancing regional stability. Although it is distinct in its functional scope, geographical domain, membership and organisational structure, the AU's security regime seeks to provide a framework of cooperation among its member states in order to accomplish a distinctive set of policy goals, which are expected to be governed by African norms and values.<sup>5</sup> Non-compliance with regime rules or perceived threats to conventional precepts can lead to coercive or diplomatic responses by the regime or individual regime members. Apart from providing rules and procedures for state behaviour, the AU's security regime seeks to:

- Distinguish and concentrate on specific problems
- Engender and advance reliable exchange of information and knowledge
- Intensify confidence- and security-building measures and understanding among states
- Facilitate negotiation and issue-linkage among states
- Enforce, monitor and verify rules and guidelines underpinning cooperative ventures<sup>6</sup>

Despite the generally perceived dominance of South Africa, Algeria, Libya, Egypt and Nigeria, the processes towards strengthening and deepening institutional norms and rules have not been imposed from above. Rather, the African Peace and Security Architecture (APSA) exists because of a convergence of interests shared by most AU member states in pursuing common interests and in avoiding certain common outcomes relative to the AU's specific security preoccupations. This is because the regional economic communities (RECs) are seen as the pillars of the AU. Because the RECs are part of the PSC's conflict management process, the PSC relies heavily on the initial actions undertaken by the RECs.

Thus, what is critical here is the extent to which member state compliance with institutional expectations of the AU can be ensured. In other words, this relates to how mechanisms that monitor and secure compliance are instituted, although so far these mechanisms have not been instituted within the AU. So far, some of the most critical states that have resisted subjecting themselves to Council decisions and compliance are Sudan, Eritrea, Mauritania, Zimbabwe and Somalia. This is where the RECs need to play a far more activist role in ensuring member states' compliance. It of course implies that RECs need to align themselves with the AU's decision-making process.<sup>7</sup> In addition, the AU needs to assert its leadership role more prominently. Such an expression of leadership is possible if there is an improvement in communication between the PSC and regional peace and security decision-making bodies. Non-compliance arises partially because these states place their 'national' interests before the wider interests of the AU. But more disturbing is the Council's inability to enforce any binding rules or sanctions or to punish such recalcitrant states. While eliciting compliance is difficult under any circumstance for international organisations, the AU's capacity to reconcile these states through trade-off instruments, even through the RECs, is also limited. It is important that one looks for situations in which states would have behaved differently had they not been members of such international institutions.

There are several explanatory options regarding the PSC's varying ability to elicit member states' compliance. Furthermore, norm non-compliance can arise for various other reasons as well.<sup>8</sup> First is that for several of the AU's member states decision makers change over time and institutional memory fades, especially where institutionalisation processes are weak. Thus, new public officers come to the table without any idea of a state's previous level of engagement or interests. Second, maintaining levels of institutional momentum in terms of decision makers adapting to new rules and institutional processes can be difficult. While some states adapt quickly, others take considerable periods of time to adapt and this has a critical impact on 'unknown and unwritten' institutional cultures. Third, there are different levels of understanding, especially for the more powerful states. Fourth are the levels of competence of countries that become members of the PSC. These are not consistent over time and can be exemplified in the present Council in terms of the changes in the representatives from the states of Ghana, Senegal and Uganda.

It can be argued that it is only when compliance is inconvenient (that is, when institutional rules conflict and are incompatible with states' perceptions of what their self-interest would be were there no such institutions) that the impact of such intergovernmental regimes is tested. During instances of such inconvenient commitments, one should expect that if institutions were unimportant their rules would be violated, and that in so far as rules are complied with it is then possible to deduce that institutions have had an impact. So far, it can be argued that Sudan, Somalia, Comoros, and Rwanda's roles in the Democratic Republic of Congo, Zimbabwe and Mauritania have flouted these rules without the AU being able to elicit compliance with its rules. However, Togo, because of its size, was coerced into compliance. Analysing the AU's security regime involves examining the processes of decision making, the role played by regime principles and the norms regarding the manner in which decision makers frame regime action. As a prerequisite for examining cases of state compliance with the AU's decisions, it can be assumed there had to be controversy regarding whether regime compliance was in the best interest of individual states.

## THE AFRICAN PEACE AND SECURITY ARCHITECTURE

The above discussions concerning some of the challenges with eliciting state compliance seek to provide conceptual explanations for some of the operational challenges faced by the PSC; for example, in explaining the impact of an international institution on state behaviour, why and how norm breakers are sanctioned. In practice, the PSC serves as the main organ of the new architecture for peace, security and stability in Africa. Interestingly enough, this organ has been endowed with principles,<sup>9</sup> functions and powers of execution in its Protocol.<sup>10</sup> This new mechanism is expected to become the institutional, political and operational expression of the rhetoric of 'African solutions to African problems'. While this Council gives more weight to the imperatives of attaining peace, security and stability in Africa, this mechanism is manifesting itself as the institutional expression that could enable the continent to become the master of its own destiny.<sup>11</sup>

The AU's new architecture for peace, security and stability is predicated on collective and human security issues to be operationalised by several institutional processes, namely the Continental Early Warning System (CEWS), African



Standby Force (ASF), Panel of the Wise, MSC and Peace Fund.<sup>12</sup> The powers of the PSC are extensive, dealing not only with 'hard' peace and security issues but also with 'soft' security or any aspects that influence human security, and enabling the PSC to monitor elections and address issues of food security, natural disasters, and human rights violations.<sup>13</sup>

The critical peace and security decision-making institutions include the Assembly of Heads of State and Governments (AHSG) of the AU, the AU's Executive Council, the PSC and the Commission of the AU. Although the AHSG makes the final decisions on important peace and security issues such as intervention in the affairs of member states of the AU, the PSC, which meets at least twice a month at permanent representative level, is empowered to take most decisions on security issues on behalf of the AHSG.

## COMPOSITION, PRINCIPLES AND MANDATE OF THE PSC

The PSC is composed of 15 members and the formula used for the distribution of seats is: four to West Africa; three to Central Africa; three to Eastern Africa; three to Southern Africa; and two to Northern Africa, without any right of veto powers for any member state.<sup>14</sup>

Several criteria were agreed upon for membership:

- Commitment to uphold the principles of the Union
- Ratification of the PSC Protocol
- Not subject to AU sanctions
- Contribution to initiatives related to the settlement of conflicts, and to the peace and security support operations, as well as their consolidation at the sub-regional and continental levels
- Contribution to the Peace Fund and/or Special Fund created for specific purposes
- Respect for constitutional governance as well as the rule of law and human rights
- Having sufficiently staffed and equipped permanent missions at the headquarters of the AU and the UN, the ability to shoulder the responsibilities which go with the membership
- Commitment to honour financial obligations to the Union

One significant aspect of the mandate given to the PSC is its autonomy to develop its own internal working methods. There have been discussions about how best to improve the working methods of the PSC. During PSC retreats held in South Africa and Senegal and subsequent meetings between 2004 and 2007, the exchange of views emphasised that the incoming chairperson of the PSC should draw up a programme for the month, which should be submitted to the Commission and subsequently discussed informally among the PSC members for adoption.<sup>15</sup> It is the responsibility of PSC members to draft and negotiate their own resolutions, communiqués and press statements. However, in practice the Commission plays a significant role in shaping the PSC's agenda. In addition, the PSC needs to undertake an increasing number of field missions to conflict zones in order to acquire firsthand experience of the disputes under its consideration. This will contribute to improving the principle of 'inclusiveness' and transparency that should guide the working methods of the PSC.<sup>16</sup> Furthermore, it is possible for the PSC to improve on the quality of its decisions by developing more frequent communications with the regional peace and security mechanisms, and even with the institutionalisation of regular meetings with these regional bodies. While such communications can inform and improve the quality of decisions, they must, however, not allow the process to be slower.

## **BETWEEN RHETORIC AND REALITY – FROM NON-INTERFERENCE TO NON-INDIFFERENCE**

Under the leadership of the first chairperson of the AU Commission, Alpha Oumar Konare, there was an attempt to introduce a policy shift from 'non-interference to non-indifference'. This double negative aphorism was supposed to provide the new and definitively different PSC with guidance in its work. The rules governing the work of the PSC are, on the one hand, characterised by the re-articulation of principles inherited from the OAU Charter. However, new concepts and ideas, such as the responsibility to adopt a stance of non-indifference, have permeated the PSC's rules. Legally, this responsibility is not framed as an obligation but as a permissive legal right.<sup>17</sup> It has been argued that this principle currently defines the PSC's actions, which are more often the result of a compromise and of a deliberate constructive ambiguity. This ambiguity enables African states to negotiate and build consensus between two contradictory approaches, both of which are

expressed in the Protocol: the classical principle of non-interference in member states' affairs and the new right of the AU to intervene in the affairs of member states.<sup>18</sup> The critical question is the extent to which there has been a real as compared to a rhetorical shift in the political will to elicit compliance with its own rules and regulations from member states. The evidence suggests that there has been an institutional shift, although this transition may not necessarily have led to practices that complement the rhetoric.

## THE RELATIONSHIP BETWEEN THE PSC AND THE AU COMMISSION BETWEEN 2004 AND 2009

The effectiveness of the PSC has constantly been called into doubt and critical questions raised about its ability to perform beyond the parameters which the AU Commission essentially contributes towards defining.<sup>19</sup> The most powerful body within the AU is the PSC, in terms of its ability to project the will of the Union. The PSC represents the 'Board of Directors' of the AU, with specific reference to its collective security apparatus. Using this metaphor the chairperson of the AU Commission serves as the chief executive officer (CEO). The CEO is responsible for the execution of the decisions by the PSC and cannot overrule them. The PSC can, of course, involve the AU Commission in providing it with the relevant advice.<sup>20</sup> This should essentially be the framework through which the PSC makes its decisions. It is also within this framework that the PSC can design trade-offs and utilise specific instruments to elicit compliance with its decisions. The PSC also has a raft of non-violent coercive powers such as sanctions to elicit this compliance.

In the period of its first five years of operation, 2004 to 2009, one historical dimension of the PSC's framework of operation was its relationship with the AU Commission and more specifically with the PSD.<sup>21</sup> In this section, the analysis seeks to clarify the textual ambiguities and interpretations of official texts that historically enabled the Commission to assert itself in the affairs of the Council and the Panel of the Wise, beyond what was originally envisaged by the framers of the PSC Protocol.<sup>22</sup> Finally, it is necessary to explore the extent to which the PSC has developed an autonomous decision-making culture.

The decision-making process of the PSC was initiated when there was an issue relating to peace and security on the continent. More often than not, a particular security issue that came to the attention of the Council and its members came in

the form of a request from a PSC member state that had been sent to the PSD's staff or desk officers and analysts who draft the initial reports. The draft report was then discussed with the senior management of the AU Commission, particularly the Director for Peace and Security and the Head of the CMD, who subsequently briefed the Commissioner for Peace and Security. This provided the AU Commission and especially the PSD with the opportunity to influence the content of the documents that ultimately reached the PSC for discussion. According to a precise reading of the PSC Protocol, this was not the intention of the framers of the PSC Protocol. The Commission's role should be to provide and administer the PSC Secretariat, but only in cases where it has been specifically tasked by the PSC to do this. The Secretariat in theory is also not required to report on a daily basis to the Commission on the workings of the PSC. According to the PSC Protocol, it is not the prerogative of the chairperson of the AU Commission to 'approve' the decisions of the PSC; on the contrary, the chairperson's functions are to execute such decisions. However, there should be an effective system of communication between the PSC and the AU Commission to ensure that there is coordination in the interventions of these two bodies.

In terms of the process, according to interviews conducted with AU desk officers, prior to the report going to the Commissioner, there was an exchange of views with different stakeholders to ensure that the report was factually correct. When necessary, and if needed, the AU's in-country liaison officers were contacted to make inputs, and sometimes the draft report was forwarded to these offices to ensure that there was a common understanding between the AU headquarters in Addis Ababa and its field offices. Subsequently, the report was assessed by the Commissioner for Peace and Security and again relevant amendments were made. Then the report was sent to the chairperson where it was discussed and amended prior to endorsement by the chairperson of the Commission. The reports were then translated into each of the working languages, Arabic, English, French, Portuguese and Swahili, when the facilities were available. This usually took place after the documents had been laid before the Commissioner for Peace and Security, and discussed with both the political officers of the PSD and the officers of the Secretariat to the PSC. There were, however, instances where these draft texts were rejected or amendments suggested either by the senior management of the PSD or by the Commissioner. This could happen for several reasons, among them when officers had not taken into consideration the political context within which a particular problem was to be debated, or had not been cognisant

of earlier decisions taken by the Council. Basically, these reports were intended to be factual and accurate representations of situations, with recommendations and options to enable Council members to make their choices. Such reports were meant to guide the PSC in terms of the civilian, police and military options available to it if it decided to intervene in a crisis.

In terms of the process for drafting such reports, the Commission, and in this case the PSD, had a certain degree of leeway in framing the contents of the report before it went to the Council. The idea was that with the vantage position that the PSD had, such reports could contribute to more 'unbiased' and nuanced decisions by the Council. The point here is that the PSD and its divisions were more strategically placed to get such information, and collate, analyse, design and present it to Council to serve as inputs to the decision-making process.

Therefore, when the revised text was 'accepted' it was then forwarded to Council members prior to the meeting. However, this was where problems with the timing and delivery of the report could be encountered. According to several desk officers, because of the speed and changing dynamics of the issue-areas that they dealt with, there were instances where revisions were made to the texts until just about 24 hours before a meeting was to be held. Sometimes, these reports were sent to Council members on the day of the meetings. If the quality of decisions made by Council depended on the quality of background material available to Council members, then it was fair to deduce that PSC members would not have had the time to prepare properly if the documentation had only reached them at such a late stage. This time pressure factor should gradually decrease when the CEWS becomes fully operational with the necessary staff complement. An operational CEWS will enable Council members to be continuously briefed about developments, which should in turn enhance their decision-making processes.

On occasion there were disagreements between the PSD and the Secretariat of the Council. This was because the PSD's 'priorities were different from that of the Secretariat'.<sup>23</sup> These priorities related to the depth and quality of analysis in the document and the political sensitivity of member states, which dictated how much detail these reports could contain. There was also the issue of the capacity of PSC members to prepare themselves adequately for a Council meeting on their own. PSC member countries often did not have the necessary staff complement to undertake independent analysis of situations under consideration. This issue is beyond the remit of the AU Commission and is one which these countries need to address on their own in the future.

With regard to the process, after a report had been accepted, and forwarded to Council members, the rotational Chair of the month led proceedings in terms of discussing the agenda that had been produced jointly by the Chair and the Commission. This process of 'informing' the Council created a situation in which the PSC was not independently undertaking its own analysis. This was because the information flow to the PSC members was channelled in a manner that removed the PSC from such preparations prior to Council discussions.

There were several outputs emanating from such meetings. These included: a press release concerning the issue that had been discussed; a note which had been written to parties in a conflict; or a PSC communiqué. In all these communiqués, if the discussion was a follow-on one, there was a reiteration of earlier communiqués and the operative sections were repeated, with a commitment by the Council to 'remain seized of the matter'.<sup>24</sup> After these communiqués and press statements were completed, they were then forwarded to the communication section of the Commission, where they were translated into the appropriate languages and placed on the AU website. They basically became public documents that were accessible to all. Most of the decisions taken by the PSC had both legally and non-legally binding provisions. More often than not, these communiqués drafted by the PSD staff recalled earlier decisions, and only one or two paragraphs articulated something 'new' in terms of demands for particular parties to a problem to comply. While moral suasion was the preferred outcome with respect to delicate national politics, the PSC had very few instruments at its disposal to elicit compliance from recalcitrant member states.

The difficulties faced in the Council's decision-making processes were exemplified in both the Togo coup d'état in February 2005 and the subsequent Mauritania coup in 2006. The decisions of Council concerning these two cases exemplify an emerging duality to the decision-making processes of the PSC. According to Delphine Lecoutre, fundamental legal decisions (for instance, the condemnation of coups d'état in accordance with the declarations of Heads of State and Government at the Algiers (1999) and Lomé (2000) summits, or the principles of the Constitutive Act relating to unconstitutional changes of government) have a declaratory impact on the authorities of the countries concerned and demonstrate to the African public that the organisation is facing up to its responsibilities. Information gathering and observation missions show that

the decisions taken at PSC meetings are implemented in practice. Yet, there is growing concern from external observers about the ability of the PSC and its Secretariat to follow through with implementation.<sup>25</sup> Such concerns are justified because, after 155 meetings of the Council, there is still no practice of following up or identifying which implicated states are complying with the Council's decisions. Furthermore, there are no regular evaluations and feedback mechanisms in place that allow Council members, the Secretariat or Commission to scrutinise the implementation of their decisions. If there are any processes at all, they are primarily ad hoc in nature; therefore, it is necessary for Council members to institute processes of following up on their own decisions.

The institutional dynamics between the PSC and the Commission illustrate and suggest a way for organisations to attempt to assert their right to intervene in the affairs of their members, against a culture of international relations that still prioritises sovereignty and territorial integrity. A result is that to some external observers the PSC members give the impression of being 'invited' into what ought to be their own 'domain' by the AU Commission. This is because most of the functions of the Secretariat of the PSC are in effect undertaken, for the time being, by staff of the PSD. In particular, the Secretariat of the PSC should undertake the following tasks:

- Setting the meeting timetables
- Proposing the agenda
- Preparing draft reports
- Presenting draft communiqués for member states for their consideration and adoption

While there have been concerns about the PSC's institutional and professional effectiveness, the functioning modalities of the PSC have led to the formation of different sub-committees of experts to facilitate its work. On the basis of the analysis above it is also clear that there is a need to enhance the human resource capacity of the PSC to undertake the tasks that are currently being performed by staff of the AU Commission. The institutional dynamics described above are not unique to the AU and replicate themselves in other intergovernmental organisations. Specifically, this issue also manifests itself in the UN system and the ability of its Security Council to elicit regular compliance with its resolutions among the body's member states.

## THE RHETORIC AND REALITY OF THE COUNCIL'S SECRETARIAT

By May 2005, there was no PSC Secretariat to support the work of the PSC. At that time there were shortages in the human resource capacity of the organisation. Individuals were undertaking several tasks simultaneously.<sup>26</sup> The PSC's Secretariat was eventually established in July 2005, albeit still with a limited capacity. At that time the Commission had very inadequate means for effectively supporting the work of the PSC. The Secretariat was thus established within the framework of the PSD 'for servicing and providing support to the Peace and Security Council'.<sup>27</sup> In effect, the Secretariat is supposed to be a secretarial and administrative body at the service of the PSC.

According to the modalities guiding the work of the PSC, the stated functions of the new Secretariat include the following:

- Drawing the attention of, or informally alerting, the Chairperson of the PSC, the Chair of the AU, the members of the Council and the Chairperson of the AU Commission – the only authorities empowered to convene a meeting – to specific issues considered urgent and appropriate<sup>28</sup>
- Providing logistical support for preparing PSC meetings; that is, forwarding invitations to member states, preparing the items for the provisional agenda and drafting basic documents (reports, announcements and briefing papers)
- Verifying the process of implementing the provisions of the Protocol and the rules of procedure
- Attending the discussions and preparing the minutes of the proceedings
- Preserving the Council's institutional memory: the Secretariat jointly acts not only with the system of departments and divisions of the AU Commission – in particular the CMD whose human as well as material potential allows it to analyse all sorts of conflict situations throughout the entire continent – but also with the RECs
- Serving as a link for maintaining relations between the Commission and diplomatic missions in Addis Ababa regarding issues related to conflict management
- Supporting the PSC in its efforts to work out an efficient conflict response. The PSC Secretariat can exchange information with the secretariats of other sub-regional and international organisations. According to the PSC's rules of



procedure, it can exchange information with regional mechanisms, international organisations and civil society organisations<sup>29</sup>

There are other functions that the Secretariat has learnt as it has gained more experience. According to several of the Secretariat's staff, they perceive their roles as helping the PSC to make informed decisions. There are also more mundane administrative tasks such as coordinating with the AU's Conference Services and the Protocol Division to ensure that the practical props and logistics are ready for a meeting to take place. Finally, they also pair with political officers from the CMD to ensure that reports are prepared for Council meetings.

The functions and institutional practices that the PSC Secretariat performs have to a large extent arisen out of 'learning on the job'. This means that to a certain extent roles that it should have been forming are being undertaken by the PSD. This requires a realignment of responsibilities going forward to ensure the effectiveness of both organisations.

## THE RELATIONSHIP BETWEEN THE PSC AND ITS INSTITUTIONS

### PSC and the Panel of the Wise

This is one of the least understood and most ambiguous of institutional relations within the APSA, partially because of its relative novelty. The institutional support provided to the Panel of the Wise was also minimal at the outset. As a result the PSD effectively became the Secretariat of the Panel of the Wise.<sup>30</sup> According to the PSC Protocol, the Panel of the Wise is supposed to be an independent entity within the APSA and should essentially have an independent administrative and support structure. The Panel of the Wise's current situation within the PSD means that it also faces similar challenges to those confronted by the PSC and its Secretariat, described above.<sup>31</sup> The UN Secretary-General, reporting to the Security Council, proposed providing institutional support to the AU under the UN-AU ten-year capacity-building project and the Memorandum of Understanding signed between the AU and UN to this effect was duly signed on 14 November 2006.<sup>32</sup> One recommendation was for the UN to help establish a secretariat in Addis Ababa attached to the PSD to support the Panel of the Wise. This recommendation has since been adopted and in 2011 the Panel of the Wise

began its second term of three years. The Panel of the Wise Secretariat is still situated within the PSD, and is subject to its decision-making procedures, even though the PSC Protocol states that the Panel only reports directly to the PSC with regard to its interventions.<sup>33</sup>

## The PSC and MSC

One area that has brought some degree of international respectability to the AU is in the area of helping to secure international peace and security. To achieve this, under the whole umbrella of the APSA the MSC is the one institution that is critical in the decision-making process towards authorising a military intervention. Basically, its function is to 'advise and assist the PSC in all questions relating to military and security requirements for the promotion and maintenance of peace and security in Africa'.<sup>34</sup> Although this is clearly stated, not all African countries have fully fledged defence attaches (DAs) accredited to their embassies in Ethiopia. Although the MSC is expected to be composed of 'senior military officers', it rarely meets and its members are often not armed with the necessary analysis to fulfil its mandate to 'discuss questions relating to the military and security requirements for maintenance and promotion of peace and security in Africa'.<sup>35</sup>

The MSC is tasked with supporting the work of the PSC by providing deployment options, troop composition, logistics, civilian components, strategy, and costing options, which would then inform the deliberations of the Council. In the case of the Comoros intervention, there was no consultation with the MSC, which would have brought a different perspective on the most appropriate way to approach the incursion. This raises the critical question of the functional utility of the MSC if the Council can undertake such an important, operationally technical and difficult mission without expert military advice.<sup>36</sup>

Herein lies one of the major institutional dilemmas for the PSC. In all the decisions that it has taken to intervene militarily in an African conflict, it has done so without the professional-technical advice of its own military professionals. Thus, interventions in Somalia, Comoros and Darfur were decided upon on the basis of the political calculations of the PSC member states and then subjected to military realities later. While it is accepted operationally that there should always be a civilian/political lead during these interventions, operational decisions should always be undertaken in consultation with the military leadership about what is feasible.

The most significant challenge confronting the MSC is the fact that the number of DAs in Addis Ababa does not always form a quorum to be able to take appropriate military decisions. Furthermore, some of the senior military officers serving as attachés to Addis are also not necessarily operations experts and their advice is not based on firsthand expertise. The limited role and capacity of the MSC is symptomatic of the absence of adequate support mechanisms for the permanent representatives who constitute the PSC. Generally, larger countries have begun the practice of appropriately staffing their embassies, particularly when they have a term on the PSC. This trend needs to continue so that there is the necessary technical backup in Addis Ababa to help facilitate the work of the PSC.

The reality of the challenges faced by the PSC is how to create synergies between itself and its supporting institutional structures, such as the Secretariat to the Council, the PSD, the Panel of the Wise, and the MSC. This is because the quality of PSC decisions is dependent on the systematic flow of information and analysis.

## CONCLUSION

The PSC has certainly acquired important insights, lessons learnt and experiences that should guide its work into the future. The Council's inability to enforce and elicit compliance from its recalcitrant members is still an issue that needs to be addressed. The PSC essentially needs to explore independent sources of information in order to deepen the knowledge of its members prior to taking decisions. The danger is that by issuing communiqués with legally binding operative sections that are non-enforceable, the PSC and its utterances can be rendered ineffectual, which can increasingly undermine the reputation of the Council itself. A possible option is to improve the early involvement of PSC members in the analysis of a conflict situation, and improve its collaboration with the AU Commission on an equal footing. This should increase prospects for better informed and more implementable decisions. The challenges faced by the PSC have led to it being viewed as 'a repository for insoluble problems'.<sup>37</sup>

This chapter has sought to provide a fair picture of the reality of the institutional dynamics, particularly with regard to its relationship with the AU Commission over the period of 2004 to 2009. The PSC is arguably one of the AU's effective bodies, and it appears to be open to insights that can improve its modalities of work. There is substantial scope for improvement of the Council's

supporting mechanisms, working methods and reporting mechanisms, in particular by formalising and increasing the frequency of the meetings of the military advisory body of the PSC, the MSC.

More recently, the PSC's chairs of the month have started becoming more engaged as they are beginning to establish their own agendas and consult member states on them. PSC chairs are also beginning to inform the Secretariat in advance of how many meetings they are going to convene and are demanding the PSC Secretariat's report from the Commission at least two weeks before the meeting so that they spend enough time consulting their capitals for advice. Furthermore, sessions dedicated to an evaluation of the Council's work are being held regularly, probably once a month.

Intensifying consultations between delegations of PSC member states, based on preparatory technical work carried out by the Commission and before the Council deals officially with a crisis situation, could certainly bring about better results. Informal meetings of the PSC at different levels should be established. Member states should take the lead in the preparation process of the text of the Council's decisions or communiqués. The text of communiqués should be examined by the member states during the meetings. In a word, a more balanced collaboration is possible between the PSC members and its Secretariat located in the AU Commission. This collaboration will probably depend both on the will of the PSC members and on the willingness of the Commission to cede some of its functions to an autonomous Secretariat of the Council.

Theoretically, as in any international organisation, the AU Commission should be the conduit for carrying out the will of the member states of this organisation. However, the Commission assumed an influential role in directing the work of the PSC during the period between 2004 and 2009. The Commission has a vital role to play as the repository of the AU documents, procedures and regulations; however, it is necessary for it to grant the PSC the necessary autonomy to undertake its function as the central pillar of the APSA, so that the Council can play a more effective role in anticipating, managing and resolving the disputes that still afflict the African continent.

## NOTES

- 1 I am grateful to my colleague, Emma Birikorang from the KAIPTC, and Naval Captain Johan Potgieter and Professor Paul Williams for comments on earlier versions of this chapter. My

deepest gratitude goes to my former colleagues at the Peace and Security Directorate of the African Union, who kindly gave me time and explained to me the complexities of the 'new' Commission and the Commissioners who took office in May 2008. Fieldwork for this chapter was undertaken in November 2008.

- 2 On 25 May 2004 (Africa Day) the PSC was officially inaugurated to replace the 'Mechanism on Conflict Prevention, Management and Resolution', which had been established in June 1993 in Cairo (Egypt), under the umbrella of the Organisation of African Unity (OAU).
- 3 AU doc. PSC/AHG/ST(X), para. 1, 25 May 2005.
- 4 The AU's ability to manage its missions remains a challenge. While the rhetoric has consistently been about 'capacity and capabilities', it is clear that the real albatross around the AU's neck is its lack of political will and a politicised institutional culture that does not engage with recalcitrant regimes. See Kwesi Aning and Samuel Atuobi, Responsibility to protect in Africa: an analysis of the African Union's peace and security architecture, *Journal of the Global Responsibility to Protect* 1(1) (2009), 2011.
- 5 Paul D Williams, From non-intervention to non-interference: the origins and development of the African Union's security culture, *African Affairs* 106(423) (2007). ECOWAS, Memorandum on the ECOWAS Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security. Meeting of Ministers of Foreign Affairs, Abuja, 26–27 October 1998. This document's paragraph 19 states that, 'Using African traditional practice as a guide, it was proposed that eminent personalities should be constituted into a Council of Elders who would use their good offices and competence on behalf of ECOWAS, to play the role of mediator, conciliator and arbiter.'
- 6 Some of these guidelines deal with unconstitutional changes in government, genocide, ethnic cleansing and crimes against humanity.
- 7 See Ademola Abass, *The African Peace and Security Architecture: the African Union and regional economic communities*, Mimeo, 2009; also see the Memorandum of Understanding on Cooperation in the Area of Peace and Security between the AU, the RECs and Standby Brigades.
- 8 Williams, From non-intervention to non-interference, 269–277; Aning and Atuobi, Responsibility to protect.
- 9 Protocol Establishing the PSC (PSC Protocol), Article 6.
- 10 *Ibid.*, Article 7.
- 11 *Ibid.*, Article 2(1).
- 12 For a detailed analysis of these institutions, see Emmanuel Kwesi Aning, The UN and the African Union's security architecture: defining an emerging relationship? *Critical Currents* 5 (October 2008), 9–25.
- 13 See PSC Protocol, Articles 3, 4 and 7.

- 14 See Article 5 (1a & b) of the PSC Protocol.
- 15 See, for example, African Union, *Background paper on the review of the working methods of the Peace and Security Council of the African Union*, Retreat of the Peace and Security Council, 5–6 July, Dakar, Senegal, 2007.
- 16 AU, *Report of the third brainstorming retreat of African ambassadors in Addis Ababa on the African Union peace and security agenda*, 1–4 May 2004, Cape Town (South Africa), 5–7.
- 17 See the Constitutive Act, Article 4(h).
- 18 These grave circumstances (genocide, war atrocities and crimes against humanity) are cited in Article 4(j) of the PSC Protocol and Article 4(h) of the Constitutive Act.
- 19 Interview with several ambassadors at Addis Ababa, Ethiopia, 2–4 November 2008.
- 20 The 2007 to 2008 Council is the third set of Council members since the establishment of the PSC. The membership is made up of Algeria, Angola, Benin, Burkina Faso, Burundi, Chad, Ethiopia, Gabon, Mali, Nigeria, Rwanda, Swaziland, Tunisia, Uganda and Zambia.
- 21 As of 2009, there were 11 desk officers at the CMD dealing with different issues about which it reports to the PSC. These are the Ethio-Eritrea and Somalia conflicts, Darfur/Sudan, Northern Uganda and Zimbabwe, Comoros, and Central African Republic; Burundi, DRC, and IC-Great Lakes Region; Côte d'Ivoire, Guinea Bissau and Mauritania; Liberia; Western Sahara; Early Warning System and Panel of the Wise; AU Border Programme; and funding of AU-led support operations.
- 22 See Barnett and Finnemore's discussion of autonomous power of international organisations, especially their book *Rules for the world* (Cornell UP, 2004).
- 23 Interview, AU Commission, Addis Ababa, 3 November 2008.
- 24 Interview, AU Commission, 2 November 2008.
- 25 Interview with several development partners in Addis Ababa, 1–5 November 2008. For a different view, see Williams, *From non-intervention to non-interference*.
- 26 These divisions are: Conflict Management; Peace Support Operations; Defence and Security; Darfur Integrated Task Force; and the Secretariat to the PSC.
- 27 Article 10(4) of the PSC Protocol.
- 28 Article 4 of the Rules of Procedure of the PSC.
- 29 Aning, *The UN and the African Union's security architecture*, 22–25, and several interviews with staff of the PSD.
- 30 See PSC Protocol, Article 11.
- 31 Diverse interviews at the African Union headquarters with members of staff.
- 32 See the UN Secretary-General's report, *The relationship between the UN and regional organisations, particularly the African Union, in maintaining peace and security*. Furthermore, see the ten-year

capacity-building support programme, which is part of the 2005 World Summit outcome document, also the AU-UN Memorandum of Understanding, 14 November 2006.

- 33 Interview with senior official of AU, 3 November 2008.
- 34 PSC Protocol, Article 13(8).
- 35 Participant observation.
- 36 Interview, Addis Ababa, 4 November 2007.
- 37 Abdul Mohammed, Don't blame the AU, *The Guardian*, 5 June 2007.





# 3 The PSC and the Continental Early Warning System

## Challenges of operationalisation

*Alemayehu Behabtu*

### INTRODUCTION

The Constitutive Act of the African Union (AU) and the Protocol Relating to the Establishment of the Peace and Security Council (PSC Protocol) of the AU identify the Continental Early Warning System (CEWS) as a key component of the African Peace and Security Architecture (APSA). The CEWS is also referenced in the Memorandum of Understanding (MoU) on Cooperation in the Area of Peace and Security between the AU and the Regional Mechanisms for Conflict Prevention, Management and Resolution. This chapter assesses the challenges confronting the operationalisation of the CEWS. In particular, it highlights the current status of the operationalisation of the CEWS and reflects on its future prospects. The chapter concludes with the recognition that the CEWS illustrates the AU's stated commitment to conflict prevention. However, the slow pace of its operationalisation exposes some of the internal and external challenges that confront the AU. These challenges need to be addressed if the CEWS is to serve as a vehicle for preventing future conflicts.

## THE PSC'S CENTRALITY TO THE PEACE AND SECURITY ARCHITECTURE

In July 2003, the AU Summit of Heads of State and Government, convened in Maputo, Mozambique, mandated the AU Commission to take steps to establish organs that might be necessary to fulfil its objectives. In March 2004, the PSC was launched and African leaders and analysts applauded the Council's potential significance, claiming that its establishment 'marks an historic watershed in Africa's progress towards resolving its conflicts and the building of a durable peace and security order'.<sup>1</sup> The PSC was launched with an overarching objective of providing the AU with a more effective institutional framework for addressing the scourge of conflicts across the continent. Indeed, since the entry into force of the PSC Protocol, considerable progress has been observed in the operationalisation of the APSA. The Council is now fully functional, and addresses the majority of the conflict and crisis situations afflicting the continent. In addition, in January 2008 the MoU between the AU and the regional economic communities (RECs) and regional mechanisms (RMs) was signed, and to date REC/RM liaison officials have been sent to the AU to facilitate coordination and collaboration.<sup>2</sup> The PSC, being a central decision-making organ and vital to the functionality of the APSA, has substantially strengthened the powers of the AU in matters of conflict prevention and resolution. However, the slow process in the full implementation of the other components of the architecture still undermines its impact on the promotion of security in Africa.

## THE CEWS AND ITS ROLE WITHIN THE APSA

Since the 2003 Maputo summit, the AU Commission has placed particular emphasis on the issue of conflict prevention and the anticipation of conflicts at an early stage. To this effect, Article 12(1) of the PSC Protocol specifically states that a 'Continental Early Warning System to be known as the Early Warning System [CEWS] shall be established'.<sup>3</sup> Accordingly, the CEWS was intended to play a complementary role to the other pillars of the APSA as well as the various organs of the Commission, through the provision of analysis and timely reports to inform policy making and interventions. In this regard, the Protocol introduced the concept of early warning and mechanisms of early response, attaching high importance to the need for early detection of conflict.<sup>4</sup>

The CEWS consists of:

- An Observation and Monitoring Centre located at the AU headquarters, also known as ‘The Situation Room’.
- The observation and monitoring units of the RECs and RMs, which are linked directly through a range of communication systems to the AU Situation Room. The function of these regional units is to collect and process data at the regional level and transmit it to the AU Situation Room.

Since the entry into force of the PSC Protocol, it has taken several years to operationalise the CEWS. Thus, one can justifiably question whether the enabling institutional conditions exist for implementing the CEWS on a continent-wide basis. Prior to responding to this question, however, it is worthwhile contextualising the concept of early warning.

## EARLY WARNING – CONCEPT, EVOLUTION AND PRACTICE

‘Early warning’ refers to a variety of activities and systems to warn against impending disasters that are either natural or man-made. In the context of peace and security, the discourse of early warning situates itself in the evolving ideas related to the notion of ‘human security’. The purpose of early warning in this context is viewed as ‘the formulation of strategic options directed at taking preventive action’.<sup>5</sup> Alternately, conflict early warning could be depicted as a system developed to ‘help warn for civil war, state failure and inter-state conflict’.<sup>6</sup> The West African Network for Peace-building (WANEP), which has developed its own system of alert, characterises early warning as a phase-by-phase action which:

- Assesses the likelihood of violent conflict
- Looks into the possibility of a resurgence or escalation of violence
- Identifies the windows of opportunities for promoting lasting peace<sup>7</sup>

The Intergovernmental Authority for Development (IGAD) also identifies early warning as an activity consisting of three key elements:

- Information

- Analysis and interpretation
- Early action<sup>8</sup>

The AU has developed a composite definition that draws from the above definitions and views early warning as the systematic collection and analysis of information on potential crises with the aim of developing strategic responses to relevant actors.<sup>9</sup> Early warning is essentially, therefore, a set of activities relating to the gathering and analysis of information that provides insight into an evolving conflict situation with the goal of allowing for effective responses to stop further escalation in violence.

The ideas relating to the concept and practice of early warning are not new. Early warning systems were utilised during the Cold War in the 1950s and have since been deployed by the intelligence and military to anticipate situations. Subsequently, early warning systems were applied for broader humanitarian purposes. For example, the UN Humanitarian Early Warning System (HEWS) was the first early warning system to implement a theoretical model in practice with a specific focus on the potential outbreak of drought and famine.<sup>10</sup> The system gradually improved with the advent of information technology (IT), which enhanced the task of collecting and processing data. This in turn popularised the concept and practice of early warning. With reference to Africa, specifically,

Early warning and response systems were first developed in Africa in the 1970s to deal with drought and to ensure food supplies to avoid humanitarian disasters. In the 1990s, accelerated by the Rwandan genocide, early warning efforts expanded beyond natural disasters to include food security and refugees. More recently, early warning efforts have been used to address the prevention, management and resolution of violent conflicts.<sup>11</sup>

Consequently, over the last two decades there has been an institutional emphasis on early warning at the continental and sub-regional levels. At the continental level this manifested in the establishment, in 1993, of the OAU's Central Organ for Conflict Prevention, Management and Resolution (CPMR).<sup>12</sup> The OAU subsequently established the Conflict Management Centre (CMC), in 1998, which currently is still a component of the AU Department of Peace and Security (PSD) under the name Conflict Management Division (CMD), and comprising various

other components. The emergence of the CEWS was therefore informed by this history of early warning ideas and systems.

## THE STATUS OF OPERATIONALISATION OF THE CEWS

Since the 2003 Maputo summit, the AU has put considerable effort into operationalising the CEWS. The most important developments include the following:

- In December 2006, a framework for the operationalisation of the CEWS was adopted. The framework consists of three major components: data collection and analysis; engagement with decision makers; and coordination and collaboration with the RECs and RMs, and was endorsed by the AU Executive Council of Ministers in a meeting convened in January 2007.
- A Strategic Conflict Assessment (SCA) methodology handbook has been developed. The handbook serves as the main source of guidance to analysts engaged in monitoring and analysing, and to those recommending possible response options to potential conflict situations.
- Various software applications have been developed in order to enhance the process of data collection, information gathering and analysis capacity. These software applications include IT-based infrastructure such as the *Africa Media Monitor (AMM)*, the *CEWS Portal*, the *Indicators and Profiles Modules*, the *Africa Reporter* and an *Africa Prospectus*.
- In January 2008, an MoU on Peace and Security was signed between the AU and RECs/RMs, in Algiers, Algeria. The objective of the MoU is to enhance cooperation between the CEWS and the regional early warning mechanisms in a number of fields, including through coordination, regular reporting, and division of labour as well as undertaking joint activities.
- Between May 2008 and end of 2010, seven quarterly technical meetings were convened between the AU and RECs, with the objective of enhancing coordination and collaboration and to facilitate the establishment and operationalisation of the EW systems of the RECs through training, expert sharing and technical support. These meetings also serve as the main forum for promoting an institutional partnership, exchanging lessons learned as well as harmonising the functionality of methodology, and interoperability of data-collection systems.

- The IT infrastructure within the Situation Room has been upgraded. This facilitates the sharing of information in an efficient and timely manner. The connectivity between the AU Situation Room and the RECs/RMs will be enhanced by the use of the AU e-governance VSAT Network.
- The staff component of the CMD, specifically that of the early warning officers/analysts as well as Situation Room personnel, has been enhanced. As a result the various tools and methodologies have been put into practice since early 2009 and currently such staff continue to play 'a lead role and develop the highest level of ownership'.<sup>13</sup>

Although the developments listed above are an encouraging indication that the CEWS is on the path to full operationalisation, there is still much to be achieved. Currently, the issues of staff recruitment; the deployment of the necessary tools for data collection and analysis; and the establishment of long-term and institutionalised relations between the AU and RECs as well as other stakeholders still need to be addressed. For this reason the CEWS is not yet functioning as a fully operational pillar of the APSA. In particular, it still has to achieve a degree of consistency in terms of producing early warning reports in a regular and timely manner.

## INSTITUTIONAL CHALLENGES TO THE CEWS

Lack of provision of adequate resources, both human and material, is generally a problem that faces many of the AU divisions and departments. The CEWS cannot be an exception in this and the absence of adequate human resources in terms of the requisite staff affects the system's ability to undertake monitoring, analysis and reporting. While CMD personnel have acquired considerable experience over the years, the skills required for CEWS staff call for trained individuals with a capacity to ensure effective data mining, analysis and reporting. These tasks require that CEWS staff possess a sound methodological understanding of early warning as well as an ability to communicate effectively to policy- and decision makers within the AU system about the need for and urgency of an early response when it is required. The inadequacies afflicting the CEWS require additional analytically trained staff and the CMD/PSD also need an increase in their personnel so that the dedicated CEWS staff are not regularly drawn in to undertake other departmental tasks. A total of 15 staff is recommended for the

operationalisation of the CEWS; this number has not yet been achieved. Given the overall instability within the continent and the other daily demands imposed by PSD activities, the few CMD staff members who are currently undertaking the role of CEWS staff often find themselves over-stretched. This makes it difficult for CEWS staff to monitor even the most urgent cases that warrant continuous and comprehensive early warning.

Institutionally, the CEWS also faces a number of technical challenges. As with contemporary early warning systems, the CEWS depends heavily on the utilisation of IT, including an information database and a software-based format for data collection, reporting and analysis. This requires a dedicated and well-trained technical support team as well as reliable IT connectivity, and clear procedures and protocol with regard to data collection and exchange. The technical support teams within the CMD that are dedicated to the CEWS therefore need to be strengthened.

Meanwhile, the CEWS envisages that its analysts should obtain timely, reliable and relevant information from a variety of sources, including from the RECs/RMs. This requires the creation of an institutionalised linkage between the Situation Room within the CMD and the complementary structures within the RECs/RMs. This is where coordination and harmonisation become crucial. Although the MoU between the AU and the RECs/RMs is being partially implemented through the quarterly meetings, the process of deepening institutional linkages has been lacklustre and slow. In part, the challenges of unequal development of linkages are related to infrastructure problems, a poor telecommunications system and the absence of the necessary equipment, particularly with reference to establishing the links between the AU and RECs/RMs via the AU-VSAT. There is also a difference in the theoretical and methodological across the RECs/RMs and this requires an effort to promote a harmonisation of perspectives. There are also disparities in terms of the stages of development and implementation of the REC/RM early warning systems.

The prospect of securing adequate and reliable funding is yet another institutional challenge that could impede the CEWS long-term sustainability and effectiveness. The delay in the operationalisation of the CEWS to a large extent is hampered by the lack of adequate financial resources. The record of AU member states in respecting their financial commitments reflects this lack of sustained funding. The CEWS to a large extent relies on the continued funding from external partners.<sup>14</sup> Normally, these funds are unpredictable and at times lack of

honouring pledges could still pose a problem. But even when the funds are made available, the resources needed may not be made available in time owing to administrative bottlenecks, or they may come with conditions, which might diverge from the interests and objectives of the AU.

Another institutional challenge that confronts the CEWS implementation is the tension between the AU's mandate and its responsibilities. This relates to what has been described as the principal-agent dilemma faced by the AU.<sup>15</sup> As a continental organisation, the AU is often caught between political considerations and the norms it espouses. As an intergovernmental organisation, the AU is primarily responsible to its member states, or the principals, while at the same time it struggles to achieve its norms within the framework of its missions and objectives, as an agent of change. Arguably, when compared to its predecessor, the OAU, which perpetuated the primacy of sovereignty over the necessity to address civil wars and human rights violations within its member states, the AU has a more robust mandate to intervene in the affairs of its members, which is a significant qualitative difference. The fact that conflict early warning appears, at least theoretically and as perceived by state authorities, as an intrusive activity means it is likely to be met with suspicion by member states. In such situations, the AU might find itself predisposed to put the interests of its member states, or principals, before its early warning and early response tasks. This could, in the long term, negatively impact on the CEWS, which ultimately cannot function effectively without the cooperation of member states, particularly with regard to information collection and data sharing.

Yet again in the list of institutional challenges confronting the CEWS' effectiveness is the issue of bureaucracy. The slow and complicated bureaucratic structure within a given organisation is a natural impediment to clear communication and timely decision making. The current CEWS reporting and decision-making procedures are very hierarchical. The process begins with analysis that contains recommendations for action from analysts. These analyses and recommendations are submitted to the head of the CMD, who then forwards the report to the director of the PSD or requests more information. From the director, the report is then submitted to the Commissioner for Peace and Security, who will try to define the level of action either to request the Chairperson of the Commission to act or to perform the action himself in consultation with the PSC.<sup>16</sup> Such a hierarchical communication structure regrettably undermines rapid decision making. A more structural concern is that even after the early warning reports



have been navigated through the system, there is the occasional chance that officials who receive the warnings at the various levels of decision making may be less enthusiastic about the reports. That could happen for a variety of reasons. First, considering the sophistication and data manipulation involved in developing the alerts, the officials might consider them overly qualitative and academically oriented and, hence, far removed from the need for concrete information to guide the decision-making processes. Second, the alerts could cause pressure in their demands for the allocation of limited resources. Third, organisational resistance to new working methodologies and adopting new ways of working culture can undermine the need for professionalism and efficiency within the AU's early warning system, the challenge to act on early warning situations as compared to full-blown conflicts.

## CONCLUSION AND RECOMMENDATIONS

The AU is an intergovernmental organisation whose success largely depends on what individual member states collectively want it to achieve. For the APSA and its individual emerging pillars like the CEWS, this presents a serious challenge even before the mechanisms have had a chance to demonstrate their usefulness. What is more critical, however, is the fact that, in the absence of committed and proactive intervention, the problem of violent conflict in Africa could continue to persist or even become worse. Undoubtedly, the invention of a continent-wide early warning system and efforts to operationalise the mechanism are critically important and timely given the crises confronting the continent. Despite the rhetoric and the value of its envisioned achievement, however, the CEWS currently faces several political, technical and administrative challenges. Some of these challenges are symptomatic of the AU system. As discussed above, they vary from inadequate human and financial resources to technical issues and the AU's institutional mandate. In reality, although these problems are neither exhaustive nor permanent, the failure to address them could significantly constrain the effectiveness of the CEWS.

In order to enable the CEWS to play a modest role in mitigating violent conflict, the AU could adopt a number of measures. First, it should invest in people to improve the analytical capacity of existing staff through periodic training programmes as well as through recruiting additional professionals in the field of conflict prevention. Second, even though the CEWS faces a range of

challenges, it should use the minimum resources available, and start functioning to demonstrate its usefulness to the wider AU system. In its effort to become operational, the CEWS can also draw upon and exploit the capacities that are available outside of the AU structure, including those within African civil society groups, and research and academic institutions. Third, the institutional purpose of the CEWS should focus on addressing the needs of victims of conflict at grassroots level. In other words, the CEWS should not remain at a bureaucratically continental organisation level aloof from where the practical tasks of conflict early warning and responses are urgently required. Fourth, the CEWS' current heavy reliance on external finance and its technical dependency could negatively impact on the perception of its independence and Africa focus. Thus, the system should be sustained by the AU by depending exclusively on African analysts and resources. Eventually, the measure of the CEWS' success as a new conflict-prevention mechanism should be gauged not only by the regular and quality reporting that it produces but also by the timely responses it causes the AU organs concerned to generate.

## NOTES

- 1 Statement of commitment to peace and security in Africa, issued by the Heads of State and Government of the member states of the Peace and Security Council of the African Union (AU doc. PSC/AHG/ST.(X), 25 May 2004), para. 1.
- 2 See PSC retrospective – *the PSC and regional economic communities*. Peace and Security Council Report, 3, October 2009. Institute for Security Studies.
- 3 African Union (AU). *Protocol relating to the establishment of the Peace and Security Council of the African Union*. Durban, 9 July 2002.
- 4 The PSC Protocol refers to the phrase 'Early Warning' about 19 times.
- 5 J Cilliers, *Towards continental early warning system for Africa*, ISS Occasional Paper 102, April 2005, Pretoria, <http://www.iss.co.za/pubs/papers/102/Paper102.pdf> (accessed 24 July 2009).
- 6 S Campbell and P Meier, *Deciding to prevent violent conflict: early warning and decision-making within the United Nations*, International Studies Association, conference paper, Chicago, 2007, <http://conflict-reduction.org/meier/Decision%20Making.pdf> (accessed 17 June 2009).
- 7 West Africa Network for Peace-building (WANEP), *Preventive peace-building in West Africa*, Training Module, 1<sup>st</sup> ed, Accra: WANEP, October 2000.
- 8 CEWAR/IGAD/GTZ/INWENT, *Conflict early warning training manual on conflict prevention, management and response (CPMR)*, Addis Ababa: CEWARN/GTZ, (nd).

- 9 *Continental Early Warning System: The CEWS handbook*, Addis Ababa: African Union, May 2008.
- 10 Campbell and Meier, *Deciding to prevent violent conflict*.
- 11 CEWARN, *Strategy for 2007–2011*, Addis Ababa, 2006, <http://www.gtz.de/de/dokumente/en-CEWARN-Strategy-2006.pdf> (accessed 12 July 2009).
- 12 The CPMR was later replaced by the Conflict Management Division (CMD) in 1998, which currently is also integrated into the APSA. See details about the establishment of the CPMR in the OAU Assembly Declaration issued at the Cairo Summit (28–30 June 1993).
- 13 El Ghassim Wane et al, *The Continental Early Warning System: methodology and approach*, in U Engel and JG Porto (eds), *Africa's new peace and security architecture: promoting norms, institutionalizing solutions*, Surrey: Ashgate, 2010, 91–110.
- 14 The 2008 AU Audit Report revealed that as of November 2007, for instance, 21 out of 53 member states were in arrears of one year and above, some asking for rescheduling, others for special waiver (see details in AU Audit Report, 2008, 30).
- 15 For an elaborate discussion of the theory of *Principal-Agent Dilemma* see Campbell and Meier, *Deciding to prevent violent conflict*, 18–19.
- 16 AU, *Meeting the challenge of conflict prevention in Africa: towards the operationalisation of the continental early warning system*, Issue Paper 1, 2008, 20.



# 4 The PSC and the Panel of the Wise

*Jamila El Abdellaoui*

## INTRODUCTION

In recognition of the African Union's Peace and Security Council's (PSC) weighty mandate, the drafters of the organ's protocol designed various structures to support the PSC in achieving its objectives. Besides the office of the Chairperson of the Commission (Chairperson), the Continental Early Warning System (CEWS), the African Standby Force (ASF) and the Special Peace Fund, the PSC can call upon the assistance of the Panel of the Wise (Panel). The Panel, which was operationalised towards the end of 2007, follows the example of various other structures that are composed of high-profile personalities whose wealth of experience in preventive diplomacy and peace making is made available to relevant decision makers in international and regional organisations concerned with, among other things, peace and security issues.

This chapter provides a succinct discussion of the Panel in the context of a review of the PSC's first five years of operation since its inauguration in 2004. Commencing with some background to the establishment of the Panel, as well as information on the structure's basic workings, the chapter discusses the anticipated modalities of the working relationship between the PSC and the Panel.

Following a concise overview of the Panel's activities until mid-2010, the chapter discusses the PSC's collaboration with the Panel thus far and makes some observations and preliminary recommendations for the way forward. It should be noted that, in view of the short lifespan of the Panel and because a great deal of information regarding its activities thus far has not (yet) been made public, this chapter makes only preliminary remarks on the structure and its relationship with the PSC.

## ESTABLISHMENT OF THE PANEL

Article 11(1) of the PSC Protocol states that 'in order to support the efforts of the PSC and those of the Chairperson of the Commission, particularly in the area of conflict prevention, a Panel of the Wise shall be established'. With regard to its membership, Article 11(2) of the PSC Protocol states:

The Panel of the Wise shall be composed of five highly respected African personalities from various segments of society who have made [an] outstanding contribution to the cause of peace, security and development on the continent. They shall be selected by the Chairperson of the Commission after consultation with the Member States concerned, on the basis of regional representation and appointed by the Assembly to serve for a period of three years.

However, it was not until January 2007 that the Chairperson recommended five African personalities (Brigalia Bam,<sup>1</sup> Ahmed Ben Bella,<sup>2</sup> Elisabeth Pognon,<sup>3</sup> Miguel Trovoadá<sup>4</sup> and Salim A. Salim<sup>5</sup>) to serve on the Panel.<sup>6</sup> The Assembly confirmed the appointment of the five members at its eighth ordinary session, which was held in Addis Ababa on 29–30 January 2007.<sup>7</sup> The PSC subsequently adopted a set of detailed modalities for the functioning of the Panel (modalities) at its 100th meeting on 12 November 2007, which notes that the document shall be revised following the operationalisation of the Panel and on a regular basis thereafter.<sup>8</sup> The Panel was officially inaugurated in Addis Ababa on 18 December 2007<sup>9</sup> and held its inaugural meeting in Addis Ababa on 20 February 2008, during which it adopted its first annual programme of work.<sup>10</sup>

It should be noted that there has been a significant delay between the adoption of the PSC Protocol and the establishment and operationalisation of the Panel, especially if one compares it with the advanced stages of

operationalisation of the other structures of the PSC. The explanation that was given for this is that relevant decision makers chose to delay setting up this pillar because the Commission was initially not able to provide the Panel with the required support structures. Thus, rather than undertaking activities towards setting up the Panel, which would have been in vain at the time, efforts were focused on operationalising those structures for which resources had already been secured.<sup>11</sup>

## WORKINGS OF THE PANEL

### Mandate

In accordance with the responsibilities of the Panel outlined in Article 11 of the PSC Protocol, the modalities (sections II(1), (2) and (3)) specify the following as the mandate of the Panel:

- 'The Panel shall advise the Council and the Chairperson of the Commission on all issues pertaining to the promotion and maintenance of peace, security and stability in Africa
- 'The Panel shall undertake all such actions deemed appropriate to support the efforts of the Council and those of the Chairperson of the Commission for the prevention of conflicts
- 'The Panel may, as and when necessary and in the form it considers most appropriate, pronounce itself on any issue relating to the promotion and maintenance of peace, security and stability in Africa'

It is important to emphasise that 'in carrying out its mandate ... the Panel may act either at the request of the Council or the Chairperson of the Commission, or at its own initiative'.<sup>12</sup> This clause is crucial as it allows the Panel a degree of independence, bearing in mind that it nevertheless operates within the larger framework of the African Peace and Security Architecture.

### Modalities of action

The modalities further detail how the Panel may carry out its mandate. Section II(1) states that the Panel may undertake various activities 'in coordination with

the Council and the Chairperson of the Commission, and in support of, and complement to, their efforts, including through the Special Envoys/Representatives and other emissaries'. These activities include, among others, advising the PSC as well as the Chairperson regarding peace and security issues, facilitating channels of communication between the PSC or the Chairperson and parties involved in conflict, undertaking fact-finding missions as an instrument of conflict prevention, assisting and advising mediation teams, and so on.<sup>13</sup> These examples clearly demonstrate the wide range of activities that the Panel may undertake, although it is logically required to ensure that any of its activities 'facilitate appropriate action by the PSC and/or Chairperson of the Commission within their respective competences as provided for by the PSC Protocol'.<sup>14</sup>

## Membership

The modalities (section I(5)) confirm that the members are elected for a period of three years and that members may be reappointed for one more term. A chairperson, elected on a rotating basis for a term of one year but not more than once during a three-year period, presides over the Panel.<sup>15</sup> No mention is made of a required gender balance with regard to the Panel's composition.

Most importantly, however, the modalities (section I(3)) specify that the five members may not hold active political office while serving on the Panel. This provides the comparative advantage of the Panel over the PSC and the Chairperson (as well as his Commissioners) that both have their own mandates in terms of conflict prevention, management and resolution. Article 3(b) of the PSC Protocol states that one of the objectives of the PSC is to 'anticipate and prevent conflicts. In circumstances where conflicts have occurred, the [PSC] shall have the responsibility to undertake peace-making and peace-building functions for the resolution of these conflicts.' Furthermore, the PSC Protocol indicates that the Chairperson 'may, at his/her own initiative or when so requested by the Peace and Security Council, use his/her good offices, either personally or through Special Envoys, Special Representatives, the Panel of the Wise or the Regional Mechanisms, to prevent potential conflicts, resolve actual conflicts and promote peace-building and post-conflict reconstruction'.<sup>16</sup>

However, it should be noted that the PSC is composed of representatives from member states, who are arguably constrained by the foreign policy of their country. At the same time, the Chairperson is responsible for implementing



decisions made at the various levels at the AU and therefore obviously has limited independence. Furthermore, the PSC, and indirectly the Chairperson, have so-called enforcement powers in that they are able to institute sanctions against member states.<sup>17</sup> It could be argued that this further limits the ability of the PSC and Chairperson to undertake conflict prevention or peace-making activities since it has been noted that ‘enforcement and mediation functions should be performed by different actors’.<sup>18</sup> Without questioning the usefulness of sanctions in certain instances, it should be noted that if a mediator has enforcement functions he or she can hardly be regarded as being non-partisan, a crucial prerequisite for successful mediation efforts.<sup>19</sup> Not having these constraints, the Panel members can be bolder in their approach to certain situations and are free to interact with whomever they wish.

## MODALITIES OF PSC AND PANEL COLLABORATION

In order to guide the Panel further in the undertaking of its mandate, the modalities specify how it should relate to the PSC as well as to the Chairperson. Firstly, the modalities note that the PSC or the Chairperson may request the Panel to meet at any time.<sup>20</sup> Furthermore, Article 11(5) of the PSC Protocol states that the Panel ‘shall report to the PSC and, through the PSC, to the Assembly’. The modalities further elaborate on the issue and state:

The Panel shall, without prejudice to its independence, maintain regular contact with the [PSC] and Chairperson of the Commission, as well as with the Chairperson of the AU, and keep them fully informed of its activities for the purpose of ensuring close coordination and harmonisation.<sup>21</sup>

The modalities emphasise that, especially before a field mission by the Panel, it is important that both the PSC and the Chairperson of the Commission be informed, again for coordination and harmonisation purposes.<sup>22</sup> Possibly with the aim of further ensuring coordination of efforts of the various structures, the provisional agenda of a meeting of the Panel is determined by its chairperson in consultation with the Chairperson of the PSC, as well as the Chairperson of the Commission.<sup>23</sup>

Furthermore, the Panel is required to provide the PSC with regular reports on its activities and through the PSC it is also required to submit bi-annual reports

to the Assembly.<sup>24</sup> The programme of work for 2008 specifies that the Panel must hold at least one joint meeting with the PSC per year as well as regular consultations with relevant structures of the Commission.<sup>25</sup> Where deemed appropriate by the Panel, it may submit its views and recommendations on issues of relevance to the PSC and the Chairperson of the Commission.<sup>26</sup>

The Chairperson of the Panel may also be invited by the Assembly, PSC, Chairperson or any other relevant organ of the AU to address them on any relevant issues.<sup>27</sup> In turn, the Panel may, after consultations with the PSC and the Chairperson of the Commission, request to address the Assembly or any other organ of the AU on issues under its purview.<sup>28</sup>

## OVERVIEW OF THE PANEL'S ACTIVITIES TO DATE

The Panel's programme of work for 2008, which was its first, listed the types of activities the Panel would undertake in order to achieve its objectives: deliberations among the Panel members, including formal meetings and informal consultations; engagement in countries and regions affected by conflicts; consideration of key thematic issues related to conflict prevention and peace building in Africa; and, finally, collaboration and consultation with the relevant organs of the AU, including the PSC and the Chairperson of the Commission. In the brief discussion that follows on the work of the Panel the activities undertaken by the Panel until mid-2010 are discussed accordingly.

### Deliberations among the Panel members

Since its first meeting in February 2008 in Addis Ababa, the Panel has formally met on seven occasions.<sup>29</sup> Meetings between the Panel members generally aim at discussing the state of affairs on the continent, issues in line with its annual thematic reflection (see below) and specific conflict situations on the continent, such as Somalia, Madagascar and so on.<sup>30</sup>

### Collaboration and consultation with relevant organs of the AU

There are no further public records of the various interactions for collaboration and consultation purposes between the Panel and other organs, most

importantly the PSC and the Chairperson, apart from mention of the attendance of representatives of these organs at the Panel's formal meetings. It was confirmed, however, that informal consultations between Panel members and especially the Chairperson take place on an ongoing basis.<sup>31</sup>

With regard to consultations with the PSC, the Panel held its first formal meeting with the entire membership of the organ on 6 March 2009. The purpose of the meeting was to brief the PSC on the Panel's activities and to explore and exchange information on the joint activities to be undertaken to promote peace, security and stability on the continent.<sup>32</sup> The Chairperson noted that this first formal encounter provided 'an opportunity to further enhance coordination between the Panel and the PSC'.<sup>33</sup>

Although the Panel is expected to have one joint meeting per year with the PSC, it was decided in early 2009 that the two structures would aim to meet at least three times per year.<sup>34</sup> Accordingly, the Panel met with the PSC on 5 June 2009, specifically to discuss the recommendations arising from the Panel's work on preventing election-related conflicts,<sup>35</sup> which were subsequently presented at the ordinary session of the Assembly in July 2009. In March 2010, the PSC held a special meeting on 'Women and Children in Armed Conflict', which was the focus of the Panel in 2010. Although the meeting was not an official joint meeting between the two structures, the meeting recognised that the Panel's findings following the activities on the selected theme would 'inform the PSC decision-making process in the coming months'.<sup>36</sup>

## Engagement in conflict-affected countries and regions

The Panel's engagement in conflict situations may take several forms. As discussed earlier, the Panel will periodically discuss the situation on the continent from an early warning point of view and make recommendations to the PSC and the Chairperson.<sup>37</sup> In addition to this general overview, the Panel will select up to three 'priority conflict situations' per year that it will monitor constantly. The selected countries may also be visited for fact-finding or sensitisation purposes, the antagonists in the conflict may be engaged, or ongoing peace-making initiatives may be assisted.<sup>38</sup> In addition to maintaining a consistent interaction with priority conflict situations on an annual basis, the Panel recognised that it should be able to respond to unforeseen developments on the continent or situations that unexpectedly require the Panel's involvement.<sup>39</sup>

It should be noted that the priority conflict situations selected by the Panel have not (yet) been made public. Therefore no detailed information is available on the various missions that the Panel has undertaken thus far, except for the mission of Dr Salim A. Salim to South Africa in the context of observing the country's fourth democratic elections in April 2009.<sup>40</sup>

## Consideration of key thematic issues

As part of the Panel's mandate to make pronouncements on issues of relevance, it decided to select a thematic focus on an annual basis. Its purpose is to promote debate and raise awareness on an issue that, in the opinion of the Panel, may presently not receive adequate attention from relevant decision makers. Activities in support of such a focus may consist of commissioning a report on the issue and organising workshops or seminars.<sup>41</sup> Thus far, the Panel has selected three themes: the prevention of election-related violence (2008); impunity, reconciliation and healing (2009); and women and children in armed conflict (2010). Three workshops have been organised on the themes: in Nairobi, Kenya in November 2008; in Monrovia, Liberia in May 2009; and in Kinshasa, Democratic Republic of the Congo in May 2010, respectively.<sup>42</sup>

## PSC AND PANEL COLLABORATION THUS FAR

In light of the limited information made available on the Panel's activities, it is incredibly difficult to provide a meaningful analysis of collaboration between the PSC and the Panel during the three years since the operationalisation of the Panel. Nevertheless, on the basis of the above brief discussion of the activities of the Panel, it would appear that formal interactions between the two organs have taken place on two occasions only thus far, both in 2009. In addition, the advisory capacity of the Panel appears to have been limited to those recommendations made in the various reports commissioned by the Panel in light of its annual thematic reflections. However, as mentioned above, informal contact is said to take place regularly between the Panel members and especially the Chairperson, and during these contacts one could imagine that a Panel member would have the opportunity to carry out his or her advisory mandate.

Most importantly, however, in terms of the Panel's activities to support the efforts of the PSC and the Chairperson, it would appear that both bodies have

more frequently resorted to mandating a special envoy to deal with a particular situation on their behalf<sup>43</sup> or mandating a high-profile personality from within the AU Commission to look into a crisis.<sup>44</sup> This could be explained by two factors.

Firstly, although the Panel members are not expected to hold active political office, most members do have engagements besides serving on the Panel. One could therefore imagine that the most suitable Panel member may not always be immediately available to respond to a specific crisis and could have referred the crisis to another suitable individual to deal with.<sup>45</sup> Furthermore, as was noted above, the Panel members enjoy a certain level of independence and preference may therefore be for an ad hoc appointment, in the form of a special envoy or representative, who would have a more specific and limited mandate.

Secondly, it is important to note the emphasis that its creators have placed on the Panel's mandate to prevent conflict as opposed to only managing or resolving existing conflicts. Similar structures that have been established are expected to respond swiftly to a conflict that has erupted or led to violence. However, in recognition of a need for a more vigorous focus on conflict prevention (and not only conflict management or resolution), the Panel's mandate and modalities of action enable it to lead or proactively contribute to the AU's efforts in this regard. It could therefore be argued that the Panel would rather have been engaged in low-profile conflict-prevention efforts than in mediation of escalated conflicts or resolution of an existing crisis. The question that may be asked at this point, however, is whether the PSC, facing numerous crises on the continent, has the luxury to concern itself with situations experiencing merely simmering tensions, notwithstanding its awareness of the importance of preventing conflicts.

Furthermore, the Panel reportedly has been involved in the less contentious activity of election observation by undertaking more than just the one election observation mission to South Africa.<sup>46</sup> With this, the Panel appears to follow the example of the Council of the Wise of the Economic Community of West African States (ECOWAS), which regards leading election observation missions as its key task.<sup>47</sup>

Lastly, with regard to the Panel's mandate to pronounce itself on issues relating to peace and security, it has issued several communiqués following its meetings. Indeed, the modalities clearly stipulate that the Panel is only expected to issue a public statement in relation to a matter it discussed during a meeting or consultation.<sup>48</sup> It has been explained that the Panel was never expected to use its weight to voice its concerns publicly or provide a critique on a given development or situation.<sup>49</sup>

## OBSERVATIONS AND PRELIMINARY RECOMMENDATIONS

On the basis of the foregoing, the following observations and preliminary recommendations can be made.

### Interface with other structures

First and foremost, the complex nature of the business of the Panel and the fact that there are numerous other structures that have a conflict-prevention or peace-making mandate require the Panel to have a strong capacity to coordinate with and make use of the expertise of other relevant structures and departments. The emphasis in the Panel's mandate on conflict prevention explains the importance of a link between the Panel's secretariat and the CEWS. In addition to this, the Panel's secretariat should be able to strengthen the Panel's current dealings with the PSC and with the Chairperson. Hopefully the organisation-wide mediation strategy that is currently being finalised<sup>50</sup> will assist in further strengthening coordination between and technical support for the various actors involved in peace-making efforts. Lastly, in light of the fact that issues related to conflict prevention, such as democracy, governance and the rule of law, are at the core of the mandate of the Department of Political Affairs, coordination with this department is pertinent, although currently the Department of Peace and Security appears to overshadow the importance of the former.

Over and above the need for internal coordination, the importance of coordination with actors outside the AU should be noted. Most of the regional economic communities (RECs), for instance, have established or are in the process of establishing structures similar to the Panel or structures charged with providing mediation expertise.<sup>51</sup> Coordination with these structures would be important not only for avoiding duplication of efforts but also for sharing experiences and lessons learnt. Civil society is another external actor worthy of the Panel's coordination efforts. The 2008 programme of work specifies civil society as one of the groups with which the Panel may interact during its meetings.<sup>52</sup> Indeed, one of the tasks of the dedicated secretariat will be to 'facilitate the Panel's outreach efforts to civil society'.<sup>53</sup> While these acknowledgements are welcomed, civil society's contribution to the work of the Panel should be broad, in view of the ever-increasing need for skills and expertise on the part of the AU to which

civil society can contribute, given the wealth of information and experience at its disposal.

## Communication strategy

Concomitant to the previous point is the little media coverage that the Panel's activities have enjoyed. Although one must bear in mind that the Panel has indeed only recently commenced its work, it should also be noted that the Panel is part of a larger structure aimed at bringing peace and prosperity to the African people. While it is an advantage that the Panel is not composed of government representatives, the success of the Panel's work greatly depends on collaboration and buy-in from AU member states. This, in addition to the need for the Panel members to be non-partisan in the case of mediation efforts, prevents the Panel from making public pronouncements on certain developments or sharing information on most of its activities. Mediation and conflict-prevention efforts involve a great deal of 'behind the scenes' work and the outcomes, especially if successful, are not always tangible.

Nevertheless, it would be to the advantage of the Panel to raise awareness of its aims and objectives and to share information on those activities that can be disclosed. It has been explained that some countries may not be comfortable with the public announcement of their names on the programme of work of the Panel of the Wise, whose involvement is obviously associated with conflict prevention and thus with possible challenges.<sup>54</sup> This concern is a reality; however, the basic aspects of a programme of work, as well as other relevant information, should be made available to the public as this would contribute to a better understanding of and appreciation for the Panel and would build support for its work. It would also allow the exploration of opportunities for collaboration with other actors.

## CONCLUSION

The Panel appears to have had a slow start, arguably caused by, among other things, a delay in its operationalisation as well as a delay in further capacitating the Panel's secretariat, which for long consisted of one staff member only. As a result of this, as well as the fact that the number of crises in need of the AU's attention remains high, it appears that, rather than investing time in

institutionalising the Panel specifically and conflict prevention and mediation expertise generally, ad hoc peace-making initiatives appear to be still preferred by the relevant decision makers, most importantly the PSC and the Chairperson.

However, the Panel has been operational for three years and the end of the current mandate of the first five Panel members at the end of 2010 provides a unique opportunity to assess what has and has not worked thus far and to revise the Panel's modalities accordingly and make observations regarding the required calibre of Panel members. Limiting the sometimes necessary 'culture of secrecy' to the bare minimum would allow for a proper assessment of the Panel's contributions and its impact on peace on the African continent. It would also facilitate a greater understanding of the Panel's work and open up possibilities for collaboration.

## NOTES

- 1 Former General Secretary of the South African Council of Churches and current Chairperson of the Independent Electoral Commission of South Africa (representing the Southern Africa region).
- 2 Former President of Algeria, representing the North Africa region.
- 3 Former President of the Constitutional Court of Benin, representing the West Africa region.
- 4 Former Prime Minister and President of São Tomé and Príncipe, representing the Central Africa region.
- 5 Former Secretary-General of the OAU and former AU special envoy and chief mediator for the inter-Sudanese political talks on Darfur, representing the East Africa region.
- 6 African Union, Chairperson of the Commission, Report on the establishment of the Panel of the Wise, as stipulated in Article 11 of the *Protocol relating to the establishment of the Peace and Security Council*, Assembly/AU/12(VIII), presented at the eighth ordinary session of the Assembly of the African Union, Addis Ababa, Ethiopia, 29–30 January 2007.
- 7 Assembly of the African Union, Decision on the appointment of the members of the Panel of the Wise, taken at the eighth ordinary session, Addis Ababa, Ethiopia, 29–30 January 2007 (panelAssembly/AU/Dec.152 (VIII)), <http://www.africa-union.org/root/AU/Conferences/Past/2007/January/summit/doc/Decisions%20and%20Declarations%20-%208th%20Ordinary%20Session%20of%20the%20Assembly.pdf> (accessed 21 April 2009).
- 8 African Union, Panel of the Wise: A critical pillar of the African Peace and Security Architecture, Modalities for the functioning of the Panel of the Wise, as adopted by the Peace and Security Council at its 100th meeting, 12 November 2007, section XI.



- 9 Peter Heinlein, AU launches 'Panel of the Wise', *VOA News*, 18 December 2007, <http://www.voanews.com/english/archive/2007-12/2007-12-18-voa47.cfm?CFID=215828882&CFTOKEN=46990141&jsessionid=8830ac99e0f3a07f467277421136b4114322> (accessed 3 March 2009).
- 10 African Union, African Union booklet on the Panel of the Wise, preface, 2.
- 11 Personal interview with diplomats in Addis Ababa, April 2009.
- 12 African Union, Modalities for the functioning of the Panel of the Wise, section II(4).
- 13 *Ibid.*, section II(1)(a)–(h).
- 14 *Ibid.*, section II(2).
- 15 *Ibid.*, section IV(1).
- 16 African Union, *Protocol relating to the establishment of the Peace and Security Council*, Article 10(2)(c).
- 17 *Ibid.*, Article 7(g). Furthermore, in accordance with Article 23(2) of the Constitutive Act, the Assembly may impose sanctions on any member state that fails to comply with its decisions and policies.
- 18 Laurie Nathan, When push comes to shove: the failure of international mediation in African civil wars, *Track Two* 8(2) (1999), 5, [http://webworld.unesco.org/water/wwap/pccp/cd/pdf/educational\\_tools/course\\_modules/reference\\_documents/conflict/whenpushcomestoshove.pdf](http://webworld.unesco.org/water/wwap/pccp/cd/pdf/educational_tools/course_modules/reference_documents/conflict/whenpushcomestoshove.pdf) (accessed 3 March 2009).
- 19 *Ibid.*, 5 and 10.
- 20 African Union, Modalities for the functioning of the Panel of the Wise, section IV(3).
- 21 *Ibid.*, section VII(1).
- 22 *Ibid.*
- 23 *Ibid.*, section IV(7).
- 24 *Ibid.*, section V(2).
- 25 African Union, Panel of the Wise, Programme of work for 2008, section II(b)(10).
- 26 African Union, Modalities for the functioning of the Panel of the Wise, section V(1).
- 27 *Ibid.*, section VII(2).
- 28 *Ibid.*, section VII(3).
- 29 Specifically, the Panel met on the following dates and at the following locations: 17 July 2008 in Addis Ababa, 12–14 October 2008 in Algiers, 28–29 November 2008 in Nairobi, 5–6 March 2009 in Addis Ababa, 5 June 2009 in Addis Ababa, 9–10 November 2009 in Addis Ababa and 21 May 2010 in Kinshasa.
- 30 See African Union, Panel of the Wise, Press statement, Addis Ababa, 17 July 2008; Communiqué, Algiers, 14 October 2008; Communiqué, Nairobi, 29 November 2008; Communiqué, Addis

Ababa, 6 March 2009; Press statement of the 191th meeting of the Peace and Security Council, Addis Ababa, 5 June 2009; Communiqué, Addis Ababa, 10 November 2009; and Communiqué of the 8<sup>th</sup> Meeting of the Panel of the Wise of the African Union, 21 May 2010.

- 31 Personal interview with AU official in Addis Ababa, April 2009.
- 32 African Union, Press statement of the 176th meeting of the Peace and Security Council, Addis Ababa, 6 March 2009.
- 33 African Union, Opening remarks of the Chairperson of the Commission, 5 March 2009, 5, <http://www.africa-union.org/root/ua/conferences/2009/mars/psc/05mars%20panelof%20the%20wise/kwaku%20panel%20of%20the%20wise%20speech%2004%20mar%2009.doc> (accessed 9 March 2009).
- 34 Personal interview with AU official in Addis Ababa, April 2009.
- 35 African Union, Press statement of the 191th meeting of the Peace and Security Council, Addis Ababa, 5 June 2009.
- 36 African Union, Statement by the deputy chairperson of the Commission to the Peace and Security Council on the occasion of the consideration of the situation of women and children in armed conflicts in Africa, 30 March 2010, <http://www.au.int/en/dp/dcpauc/content/statement-deputy-chairperson-commission-peace-and-security-council-occasion-consideration-si> (accessed 8 July 2010).
- 37 African Union, Panel of the Wise, Programme of work for 2008, section II(c)(13).
- 38 Ibid., section II(c)(14).
- 39 Ibid., section II(c)(15).
- 40 Sapa, Leaders must ensure peaceful elections, *Polity.org.za*, 27 February 2009, <http://www.polity.org.za/article/leaders-must-ensure-peaceful-elections-2009-02-27> (accessed 10 March 2009).
- 41 African Union, Panel of the Wise, Programme of work for 2008, section II(d)(18).
- 42 See the various communiqués issued by the Panel thus far.
- 43 The most recent example would be the Chairperson's appointment of Professor Albert Tevoedjre as the AU special envoy for Niger on 3 March 2010. African Union, Press Statement of the 220<sup>th</sup> Meeting of the Peace and Security Council, Addis Ababa, 11 March 2010.
- 44 For instance, the Chairperson dispatched Ambassador Ramtane Lamara, Commissioner for Peace and Security, to Antananarivo, Madagascar in early 2009 to 'hold consultations with the Malagasy parties in pursuit of a peaceful and negotiated solution to the crisis ...', African Union, Press Release, March 2009.
- 45 Indeed, it has been noted that 'through the burgeoning number of Africa's elder statesmen and other prominent individuals, the Panel will have a wide pool of experienced individuals it can continually draw from in fulfilling its prerogatives.' Gilbert M Khadiagala, Khabele

- Matlosa and Nour Eddine Driss, Strengthening the role of the African Union in the prevention, management and resolution of election-related conflicts in Africa, Final draft report for the African Union, Department of Peace and Security, June 2009, 53.
- 46 African Union, Panel of the Wise, Communiqué, Addis Ababa, 6 March 2009.
- 47 See the Report on the Expert Workshop with the ECOWAS Council of Elders on the Role of ECOWAS in Election Observation, Accra, Ghana, 14–16 July.
- 48 African Union, Modalities for the functioning of the Panel of the Wise, section VI.
- 49 Personal interview with AU official in Addis Ababa, April 2009.
- 50 See Plan of action to build the AU's mediation capacity, paper presented by Laurie Nathan at the seminar, Towards enhancing the capacity of the African Union in mediation, Addis Ababa, 15–16 October 2009.
- 51 See for instance the Council of the Wise (previously the Council of Elders) of ECOWAS or the Mediation Support and Facilitation Unit at the Intergovernmental Authority on Development (IGAD).
- 52 African Union, Panel of the Wise, Programme of work for 2008, section II(b)(11).
- 53 *Ibid.*, section III(a)(x).
- 54 Personal interview with AU official in Addis Ababa, March 2009.



# 5 The Military Staff Committee

## A case for revitalisation

*Delphine Lecoutre*

The Military Staff Committee (MSC) was conceived by the African Union (AU) as part of the African Peace and Security Architecture (APSA) to serve as an advisory body to assist the Peace and Security Council (PSC)<sup>1</sup> on military and security issues 'for the promotion and the maintenance of peace and security in Africa' (Article 13 paragraph 8 of the PSC Protocol).<sup>2</sup>

Its launch was accelerated by the necessity of the African Union Mission in Sudan (AMIS) in Darfur. At the time that the AU began its work in Darfur, the essential role of the MSC was to provide the necessary support in terms of how to undertake a military operation and how to establish the necessary mechanisms, since this was the first time that the AU had undertaken a full-scale peace support operation and without any previous experience or laid down operational procedures.<sup>3</sup> The MSC held its first meeting on 18 October 2004 to provide an assessment of the military situation on the ground, to consider all issues related to its peacekeeping operation and to discuss the military plan for the enhancement of the AMIS mandate to make it more robust. Its recommendations were debated and approved at the 17<sup>th</sup> meeting of the PSC, held on 20 October 2004.<sup>4</sup>

The MSC has no institutional ancestor since the mechanism for prevention, management and resolution of conflicts of the Organisation of African Unity

(OAU) created at the Cairo (Egypt) Summit held in June 1993 did not have such a body.<sup>5</sup>

In retrospect, the MSC of the African Union (AU-MS) was envisaged as taking the form of the MSC of the United Nations (UN-MS). The MSC of the United Nations Security Council (UNSC) is the Council's subsidiary body, whose role, as defined by the UN Charter, is to advise and assist the UNSC on all questions relating to its military requirements, including the employment, command and strategic direction of any armed forces placed at its disposal, as well as the regulation of armaments and possible disarmament (Article 47 of the UN Charter).<sup>6</sup> But the AU-MS has remained defunct in the same way as the UN-MS is. Six years after its establishment, the MSC still suffers from a serious lack of effectiveness.<sup>7</sup>

This chapter questions whether the MSC, which was designed to be an advisory organ of the PSC but has failed to be operational, can be revitalised and made effective. Does the possibility exist for the MSC to re-establish its advisory role to the PSC or is it likely to remain dormant?

This chapter seeks to explore the structure of the MSC through its functions and functioning modalities, analyses its duties under its mandate, explores the reasons for its lack of effectiveness and, finally, suggests avenues for its revitalisation.

## FUNCTIONS AND FUNCTIONING MODALITIES OF THE MSC

The MSC has been functioning for more than six years now, but it is still facing uncertainties and difficulties regarding its composition and the convening of meetings.

### Issues concerning the composition of the MSC

The MSC 'shall be composed of senior military officers of the PSC's members' (Article 13 paragraph 9 of the PSC Protocol).<sup>8</sup> Theoretically speaking, the MSC composition mirrors that of the PSC in terms of the member states, which are the same for both bodies. Specific to the MSC is that three scenarios of the staffing of the MSC can be developed. In Scenario 1 a military officer from a particular member state of the PSC is specifically assigned from the capital headquarters to

the MSC for each meeting. The advantage of this option is that it does not require the full-time posting of a military officer for the MSC meetings, which take place on a very irregular basis. The downside of this option is the absence of follow-up on a frequent, if not a daily basis of the AU military and security issues by a specific person. In Scenario 2 the Defence Attaché (DA), primarily posted in Addis Ababa for bilateral relations with Ethiopia, also deals with AU issues and then attends the MSC meetings. The advantages of this option are both the limitation of costs and the avoidance of a military officer not being fully utilised waiting for MSC meetings. In Scenario 3, a scenario with numerous conflicts, if the situation requires intensive participation of the MSC, member states of the PSC can provide two full-time DAs (this last case is purely hypothetical, and this is not the kind of scenario being developed).<sup>9</sup>

In practice, Scenario 2 has prevailed up until now, but with the following exception: if on paper the MSC is composed of senior military officers, in the past, ambassadors or senior diplomats attended the MSC's meetings because of the absence of a DA posted at the Addis Ababa (AU headquarters) embassy.

The PSC Protocol of the AU proposes that once a country becomes a member of the PSC, it is expected to have a DA attached to the AU. But this is still far from being achieved, as some PSC members do not have DAs on the ground to give military expertise to their ambassadors during PSC meetings. In fact, only six out of 15 PSC members had DAs in 2004; nine out of 15 in 2007; and nine in its new April 2010 composition.<sup>10</sup> Some of these defaulting PSC members complain of a paucity of funds to maintain such a defence section of the Embassy. This could be the reason that Côte d'Ivoire closed down its defence section in 2009.

The absence of many DAs to constitute the MSC has resulted in a certain flexibility in who has attended its meetings in the past. For example, members of the PSC without DAs have sent civilians to MSC meetings. But the recent improvement in appointments of DAs by member states should alleviate this particular issue regarding the nature of the composition of the MSC, whether it is military or civilian.

Since 2008, there has been an ongoing debate about whether to retain the MSC as it is or to integrate two additional components (civilian and police), and in which case what to call it. This issue has been raised to take into consideration the multidimensional aspects of AU peace support operations (military, civilian and police). The argument is that the PSC does not simply need military advice

from soldiers who are experts in stabilising situations on the ground, but also from other experts on every aspect of peace operations (for example, distribution of food, taking care of refugees or moving towards an electoral process). The opinion of DAs in favour of a multidimensional MSC is that the PSC must be advised and aware of the whole range of activities and responsibilities of a peacekeeping operation. For this reason it has been proposed to staff the MSC with civilian and police officers to include relevant agencies that can provide relevant advice.<sup>11</sup>

There are several obstacles to such a change in the composition of the MSC. Two of these obstacles are: first, military officers are jealous of their prerogative of having at their disposal a body in which they feel comfortable about talking among themselves within their own culture and language, and, second, a proposal to make the MSC broader than purely military would include a change of name from 'MSC' to, for example, 'Security Committee', which would provide room for civilians and police to attend meetings.

The opponents of the change to the MSC composition consider that the MSC is a technical group with military know-how expected to give input into the PSC. They argue that for appropriate advice to be given requires solely military officers dealing with military documents to deliver the advice. They also insist that diplomats do not usually understand the in-depth military dimension of a military plan. Therefore, they assert that the MSC should remain as it is and focus on military matters, and suggest that if the situation on the ground dictates that the police component must take the lead in an operation, then this should take the form of a separate structure with its own name since this would mean that each body (military, civilian and police) would offer its own expertise in the field in which it is specialised and comfortable.<sup>12</sup>

## Issues concerning the convening of meetings

The PSC Protocol is vague in its provisions for convening MSC meetings. Understanding at what level the MSC meetings take place requires the combination of three paragraphs of Article 13 of the PSC Protocol: paragraph 9 ('The MSC shall be composed of senior military officers of the members of the PSC'), paragraph 10 ('The MSC shall meet as often as required to deliberate on matters referred to it by the PSC') and paragraph 11 ('The MSC may also meet at the level of the Chief of Defence Staff of the members of the PSC to discuss questions



relating to the military and security requirements for the promotion and maintenance of peace and security in Africa'). The frequency of the MSC's meetings is not clearly detailed since the MSC does not stand on its own, but as paragraph 10 stipulates it 'shall meet as often as required to deliberate on matters referred to it by the PSC'.<sup>13</sup>

An interpretation of the three paragraphs of Article 13 of the PSC Protocol suggests that the MSC could meet at the following levels:

- At the level of the Chiefs of Staff of PSC member states, who can be summoned from their capitals as necessary
- At the level of the DAs posted in Addis Ababa (headquarters of the AU), who can meet as required since they are located there
- Lastly, at the level of military counsellors of PSC member states, who could fly from their capitals to Addis Ababa for MSC sessions

Moreover, every military attaché from the PSC member states should be present at every meeting of the PSC, if necessary, to give military updates, to report on previous tasks, or to provide expected advice and information.

## THE MSC'S MANDATE – RULES VS REALITY

The MSC's mandate is not clearly indicated in the PSC Protocol, but is expanded on in Points 5 and 18 of the 'Framework for the Implementation of the African Standby Force and the Military Staff Committee', which was adopted on 15–16 May 2003, to comprise:

- Advising and assisting the PSC on all military and security issues of the continent
- Informing the Chiefs of Staff of the PSC member states of the PSC's decisions
- Ensuring that policies and actions in the area of prevention, management and resolution of the conflicts are in line with the regional economic community (REC) mechanisms
- Reinforcing cooperation in areas of early warning systems, conflict management, peacekeeping and peace enforcement through the Peace and Security Department (PSD)
- Coordinating military plans with the Peace Support Operation Division (PSOD)

- Organising visits to African Standby Force (ASF) missions and other tasks in the area of peacekeeping and peace building for the resolution of conflicts<sup>14</sup>

In practice, the AU-MSC can advise the PSC in at least three ways. First, the MSC can brief the PSC members on the functioning and implementation of the military aspects of peace support operations.

Second, the MSC can consider and give clarification to the PSC or reconsider a concept of operation (CONOPS), detailed military plans, or operational issues related to the formulation or revision of the mandate of an AU mission. For example, in its 15<sup>th</sup> meeting held on 28 August 2006 the MSC summed up the lack of clarity of the Intergovernmental Authority for Development's (IGAD) Peace Support Operation in Somalia (IGASOM) deployment plan, with the following words: 'How to read the IGASOM deployment plan: peace-keeping or peace-enforcement?'<sup>15</sup>

Third, the MSC can undertake assessments, inquiries and verification in the field. For example, the MSC sent a mission to Darfur in the summer of 2006 to assess whether a reinforcement of AMIS was necessary and if the number of sectors should be upgraded from six to eight, which would imply an increase in personnel and budget of the mission.<sup>16</sup>

The AU, for its part, has been trying to see to the positive functionality of the MSC. Apart from the assessment mission sent to Darfur in the summer of 2006 as stated above, the AU Commission also sent DAs accredited to the AU to Mogadishu, Somalia from 26 to 29 September 2007, prior to meeting with member states' Chiefs of Defence Staff and afterwards Ministers of Defence. The assessment mission exercise report was subsequently made to the AU PSD. Although the mission was undertaken to encourage member states to deploy military troops in Somalia, deployment to Somalia suffered a setback because the operation was not a classic peacekeeping operation with defined belligerents; hence, agitation for a change of mandate commensurate with the happenings on the ground, especially by Nigeria, was witnessed. The security-political vacuum created by the lack of a political decision to change the mandate of the African Union Mission in Somalia (AMISOM) emboldened the dissidents to be more brazenly active in their nefarious activities. Further to this, the AU Darfur Integrated Task Force (DITF) under AMIS tried on several occasions to organise weekly meetings to bring together MSC members to brief them on Darfur operations in 2007 and early 2008. This attempt was unsuccessful, as the attendance at these meetings was not encouraging, and this marked the end of the anticipated objective.

## Are all of the duties assigned to the MSC productive?

Example 1, paragraph 2 of the May 2003 ASF Framework stipulates that ‘the MSC shall make the Chiefs of Staff of the PSC Member States informed of the PSC’s decisions’. As an advisory body of the PSC, the MSC should in practice participate in the AU decision-making process and therefore be constantly aware of all the developments of the military dimension of the issue considered. The MSC should not have the role of dispatching available information from the AU to its member countries when these decisions are already transmitted by diplomats to their own hierarchy. One might therefore ask: What is this provision for? Is it a lack of understanding of the role of an MSC in general by its drafters? Or, is it a proposal to address the issue of a lack of dialogue and cooperation between political, diplomatic and military hierarchies at the national bureaucratic level, such as presidential palaces, ministries of foreign affairs and ministries of defence?

Example 2, paragraph 5 stipulates that ‘the MSC shall coordinate military plans with the PSOD’. What is the meaning of this provision, which is technically debatable? The use of the plural ‘plans’ raises the following issue: does the AU-MSD have the prerogative to coordinate several plans for one operation, since an operation has, in general, a sole plan? Indeed, a military operation can have both a strategic plan and an operational plan. Therefore, the MSC could be requested to give its military advice on the conceptualisation of different plans, depending at which level plans are coordinated, the Planning Element (Planelm) Unit being in charge of the strategic plan and the Mission Headquarters (Mission HQ) being responsible for the operational plan.

Example 3, paragraph 6 stipulates that ‘the MSC shall organise visits for the African Standby Force (ASF) and other tasks in the area of peace-keeping’. In this provision, the drafters have failed to distinguish between the MSC’s missions (ensuring the state of preparedness of the ASF or maintaining an operational readiness on the continent) and the MSC’s action (field missions). The MSC is expected to make ‘visits’ but their expected outcome is not clearly stated in paragraph 6. Field missions would definitely enable DAs to have a clear picture of the military situation on the ground.

From this analysis two questions can be asked. First, what is the political and legal value of the ASF framework compared to the PSC Protocol? The MSC takes its legal force from the PSC Protocol, which was adopted at the highest continental

level (Assembly of Heads of States and Government). However the PSC Protocol did not define in detail what the MSC is supposed to advise and assist on. The value of the ASF Framework is that it provides additional information about what the MSC will be expected to do. The operationalisation of the MSC comes from this framework, which was approved by African Ministers of Defence and endorsed by Heads of State.

The second question is: are the mistakes in labelling due to a lack of understanding or a lack of agreement on what the MSC is and what it should be, or simply a lack of experience on the part of the drafters at time of writing?

## Why is the MSC not working effectively?

Since the capacity of the PSC is largely dependent on the quality of advice it gets from its advisory organs, the operationalisation of the MSC is intended to make the PSC's work more effective. But the MSC, which is intended to advise and assist the PSC, is not yet operational and is still crippled by various weaknesses. These weaknesses are outlined in the paragraphs below.

The lack of political will by PSC member states has hampered not only the reactivation, but in fact the initial activation of the MSC. The work of the PSC is constantly prioritised and the MSC, in its role as an occasional and technical military advisor, has to keep a low profile.<sup>17</sup>

Few meetings are held, and irregularly. It is debatable how often the MSC should meet. The last two meetings were a year apart: 16 April 2009 and 18 March 2010. The convening of MSC meetings was also clouded by other issues, such as whether member states sent DAs to the meetings. For example, there has been no DA for Burundi since mid-2010; there has been no DA for Chad as he was appointed in September 2009. It is not known if there is any officer designated by Ethiopia; Gabon has a DA, but at the time of its monthly chair there was a pending change of ambassador; there has been no DA for Mali since May 2010 and as yet the replacement has not been posted. Nigeria does have a DA, but the MSC members were too busy with the AU-EU partnership during its chairmanship anyway; during Rwanda's chair, they were too busy with Darfur; Swaziland was occupied with the Ezulwini (Swaziland) Retreat on Unconstitutional Changes of Government, which was to be held from 16 to 19 December 2009. Tunisia has no DA; Uganda does have a DA, but this official was busy with the preparation of harmonisation of payment of AMISOM troops.

It is noteworthy that many DAs assigned to the AU have more than two countries as their area of responsibility as assigned by their ministries of defence. Obviously, this has a negative effect on some meetings of the MSC. This idea is a complete departure from the setup at the UN level where member states specifically assign DAs to the UN HQ alone.

Regarding the status of DAs, some observers consider that most of the DAs are 'diplomatic DAs', but not DAs specialised in military planning as requested by AU peace support operations. In general these 'diplomatic DAs' get absorbed by the political dimension of the issues. Such diplomatic DAs do not deal with the 'nitty-gritty' of plans, but talk about politics. On the other hand, the request from the AU support operations is for military planning skills, experts able to scrutinise a military plan in order to identify relevant weaknesses and offer timely and adequate advice. As yet there are no 'diplomatic DAs' in Africa. The diplomatic defence attaché system is only operational in Western countries. Nonetheless, there is absolutely no way the AU can have professional DAs with no political inclinations, given that such individuals are commissioned by their respective countries.

Another reason for not holding meetings is the persistent lack of interpreters and document translation into Arabic, which prevents the participation of those speakers, not to mention that the MSC conducts its meetings in English, which frustrates the French-, Arabic- and Portuguese-speaking members, resulting in cancelled meetings.<sup>18</sup>

Another obstacle to holding meetings is the debate surrounding a quorum. Some observers have questioned whether a quorum is required by the MSC's constitution. Rule 5 of the PSC's Rules of Procedure requires a quorum of two-thirds of the PSC's total membership for official meetings.<sup>19</sup> Should the MSC adopt this practice or is a quorum unnecessary for MSC meetings, considering that the MSC only acts in an advisory capacity to the PSC, which is the decision-making organ for peace and security issues?<sup>20</sup>

Similarly the adoption of its Rules of Procedure, which appeared on the agenda of its 7<sup>th</sup> meeting held on 28 October 2005, has been continually postponed. The issues related to the Rules of Procedure of the MSC discussed in that meeting were: Who chairs meetings? Who can take the floor (military and/or civilians)? What is the MSC's agenda? What is the recommendation-making process of the MSC?<sup>21</sup>

Another problem that besets the MSC is the transmission of documents by the AU PSOD to the MSC at the last minute before meetings are convened, which

prevents DAs from reporting to their national governments, drafting a position and getting timely and accurate feedback.

The politicisation of the MSC has also introduced a number of problems. Since PSC-MSC member states have their own strategic, national interests and political objectives, they obviously orientate the PSC's discussions to achieve their goals. The debates that took place in 2006 and early 2007 regarding the deployment of AMISOM illustrate these national interests and objectives at work.

The debates were between those in favour of the MSC adopting the plan proposed at the regional level by IGAD without any in-depth military discussions within the MSC and those opposed to a military deployment on the ground by orientating the debates to a political discussion rather than military. The latter argued several points:

- That it was an operation in which AU troops could face a high risk level
- That it was debateable whether the Union of Islamic Courts and the military opposition had accepted the presence of African forces in Somalia
- That there were funds available for the deployment of AMISOM
- Whether the AU Commission could manage two operations simultaneously (in Darfur and Somalia)
- That the PSC was better placed than the MSC to tackle such issues
- Whether countries were ready to contribute troops to deploy the mission on the ground
- That there was no AU exit strategy

These arguments were clearly the result of a political game between those in favour and those opposed to an AU military operation in Somalia. Was this debate the result of an imposed agenda by IGAD's members to the AU or was it a lack of involvement from an MSC that was largely composed of diplomats at that time?

## **Has the MSC become a rubber stamp for the military documents considered by the PSC?**

Some observers wonder whether the MSC is a rubber stamp for the military documents related to peace support operations that the PSD of the AU Commission drafts for the PSC. For example, an emergency meeting was convened just before the Banjul (Gambia) Summit in July 2006 for the MSC to consider the new CONOPS,

which had been prepared by the DITF in the context of the implementation of the Darfur Peace Agreement (DPA). In that case, the Commission pushed member states of the PSC to approve the CONOPS for at least two reasons: first, the time proximity of the 58<sup>th</sup> PSC meeting held on 27 June 2006 and the convening of the Executive Council two days later was an indicator of the desperate need for a political decision to be endorsed by the Executive Council and then the Assembly; and, second, the political desire of the Commission to show its partners that it had the political will to tackle peace and security issues. The Commission was then planning to organise a pledging conference for the upgrading of AMIS a few weeks later.<sup>22</sup>

There is a sharp difference between the AU-MSC and the UN-MSC, as the latter does not get involved in the operations plan of the UN Department of Peacekeeping Operations (DPKO), in order to avoid political interference. The UN-MSC only advises its colleagues in the DPKO. In the case of the AU, the MSC is involved in the operations plan with the PSOD, especially the Planelm Unit. However lofty this idea might look, it becomes exceedingly difficult to shield members of the MSC from their capitals' national and political interests in accordance with the saying that 'he who pays the piper dictates the tune'. Indeed, the AU action is the result of compromises between different national policies or sensitivities.

## AVENUES FOR REVITALISATION – WHICH CULTURE FOR THE MSC?

On 16 April 2009 under the monthly chairmanship of Burkina Faso, the MSC decided to put in place a working group committee (WGC) to study how to revitalise the MSC. Each of the five regions was supposed to propose a name for the revitalised MSC. Swaziland and Gabon proposed a name straight away for their own regions (Southern and Central Africa) while others, up till now, have not proposed any name. This means that this WGC is still not operational. The major issue facing the MSC is which culture to adopt to perform its functions and achieve its mandate. It is on the basis of the foregoing that this chapter makes the following recommendations:

- The MSC should ensure that all member states do have DAs, that they are properly staffed with skills on military operations and planning at both strategic and operational levels, and that they conform to the PSC Protocol requirements

- The MSC should have its own secretariat to prepare the agenda, convene meetings, follow up issues, ensure the necessary interaction with the PSC, and be aware of the need for making recommendations and the protocol within which to present them. Alternatively the PSOD should continue to serve the MSC in the same vein as the PSC Secretariat currently serves the Panel of the Wise
- The AU must budget for interpreters at all MSC meetings

In the long run, once the ASF is fully operational, the MSC will have an important role to play, especially on the management of AU operations (planning, coordinating and monitoring).

## NOTES

- 1 For an analysis of the PSC, see Delphine Lecoutre, *Le Conseil de paix et de sécurité de l'Union africaine, clef d'une nouvelle architecture de stabilité en Afrique? Afrique contemporaine*, Winter 2004, 131-162; Delphine Lecoutre, *Les premiers pas du Conseil de paix et de sécurité, Géopolitique africaine* (Paris/Washington), 19-20 (October 2005), 271-281; Delphine Lecoutre, *De l'-AMIS- à l'-UNAMIS? Ou la relève de l'UA par l'ONU, Géopolitique africaine*, 22 (April 2006), 37-50; Delphine Lecoutre, *Les enjeux du Conseil de paix et de sécurité, Le Monde diplomatique*, (September 2009); Delphine Lecoutre, *Evolution of the Peace and Security Council of the African Union and Prospects for Effectiveness*, paper presented at the Experts Roundtable Conference on the *State of the Union 2030: security threats and responses*, organised by the Conflict Prevention Programme of the Institute for Security Studies (ISS), Addis Ababa, Kampala, Uganda, 21-22 July 2009, forthcoming.
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- 3 Interview with a PSC member, Addis Ababa, 20 February 2007.
- 4 For a detailed explanation of reasons calling for the enhancement of AMIS, see African Union 2004.PSC/PR/2(XVII), *Report of the Chairperson of the Commission on the situation in Darfur (The Sudan)*, 20 October, Addis Ababa: African Union. For the contents of the enhanced mandate, see African Union 2004.PSC/PR/Comm. (XVII), *Communiqué of the 17<sup>th</sup> meeting of the Peace and Security Council*, 20 October, Addis Ababa: African Union.
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- State and Government, 29th Ordinary Session, Cairo (Egypt), 28-30 June 1993, Addis Ababa: Organization of African Unity.
- 6 UN Charter, Articles 26 and 47, <http://www.un.org/documents/sc/res/1946/scres46.htm> (accessed 15 March 2010).
  - 7 For a previous analysis of the MSC, see Delphine Lecoutre, *Revitaliser le Comité d'état-major de l'Union africaine, Géopolitique africaine* 24 (October–December 2006), 239–255.
  - 8 PSC Protocol, 24.
  - 9 Interview with an MSC member, Addis Ababa, 24 February 2010.
  - 10 Since April 2010 member states of the PSC are Libya, Mauritania (North Africa), Nigeria, Côte d'Ivoire, Benin, Mali (West Africa), Equatorial Guinea, Chad, Burundi (Central Africa), Kenya, Rwanda, Djibouti (East Africa), Zimbabwe, Namibia and South Africa (Southern Africa). Currently, Equatorial Guinea, Djibouti and Benin do not have a DA posted in Addis Ababa; Côte d'Ivoire cancelled the post late in 2009; Mauritania's DA has left but has not been replaced yet; and Mali's post is vacant.
  - 11 Interview with an MSC member, Addis Ababa, 17 March 2010.
  - 12 Ibid.
  - 13 PSC Protocol, 24.
  - 14 African Union. Exp/ASF-MS-2/2(1). *Framework on the African Standby Force and the Military Staff Committee* (1st part). Document adopted by the Third Meeting of the African Military Chiefs of Staff, 15–16 May 2003, Addis Ababa, 34–35.
  - 15 Interview with a military officer from the Peace and Security Department of the AU Commission, 23 November 2006.
  - 16 Ibid.
  - 17 Lecoutre, *Revitaliser le Comité d'état-major*, 248.
  - 18 Interview with an MSC member, Addis Ababa, 10 March 2010.
  - 19 African Union, *Rules of Procedure of the Peace and Security Council*, First Ordinary Session of the Assembly of the African Union, Durban (South Africa), 9 July 2002, 3. Addis Ababa: African Union.
  - 20 Interview with a military officer, Addis Ababa, 10 February 2010.
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# 6 The PSC and civil society organisations

*Tim Murithi*

## INTRODUCTION

In 2002 the African Union (AU) adopted the Protocol Establishing the Peace and Security Council (PSC Protocol), which effectively created not only the Peace and Security Council (PSC) but also the African Standby Force (ASF), the Military Staff Committee (MSC), the Continental Early Warning System (CEWS), the Panel of the Wise and the Peace Fund. This architecture is designed to oversee the implementation of the AU's early warning, peacemaking, peacekeeping, post-conflict reconstruction, and humanitarian assistance initiatives.

Article 20 of the PSC Protocol mandates the Council to engage with civil society organisations (CSOs) in the course of carrying out its functions. According to the Statutes of the AU Economic Social and Cultural Council (ECOSOCC), CSOs include social and professional groups, non-governmental organisations (NGOs), community-based organisations (CBOs), as well as voluntary and cultural organisations.<sup>1</sup> This chapter assesses the interaction between the PSC and CSOs and makes recommendations on areas in which CSOs can complement the work of the PSC.

## THE AFRICAN UNION'S OVERTURE TO CIVIL SOCIETY

The Constitutive Act of the AU states that two objectives of the Union are 'to build a partnership between governments and all segments of civil society' and to promote the 'participation of the African peoples in the activities of the Union'.<sup>2</sup> The AU has, from the outset, therefore expressed a commitment to engaging with civil society in the implementation of its objectives.<sup>3</sup> A core principle of the AU includes a commitment to the 'peaceful resolution of conflicts' and 'the peaceful co-existence of Member States and their right to live in peace and harmony'.<sup>4</sup> Therefore, the Constitutive Act of the AU establishes the foundation for the participation of civil society in the efforts by the AU to achieve peace and security on the continent.

## CONTEXTUALISING PEACE OPERATIONS

In order to understand the way in which CSOs can contribute to the work of the PSC, it is necessary to provide working definitions of the terms 'early warning', 'peacemaking', 'peacekeeping', 'humanitarian support', and 'post-conflict peace building'. In 1992 the United Nations (UN) published a report entitled *An Agenda for Peace*, which argued for proactive peacemaking and humanitarian intervention in areas of conflict.<sup>5</sup> The report outlined suggestions for enabling inter-governmental organisations to respond quickly and effectively to threats to international peace and security in the post-Cold War era.

In particular, four major areas of activity were identified: preventive diplomacy; peacemaking; peacekeeping; and post-conflict peace building. 'Preventive diplomacy' is the early action that results from an effective process of early warning and strives to resolve a dispute before it escalates into violence. 'Peacemaking' seeks to promote a ceasefire between conflicting parties and to negotiate a peace agreement. It often requires third-party intervention in the form of mediation. 'Peacekeeping' proceeds after the cessation of violence and after peace agreements have been signed and involves 'the deployment of a United Nations presence in the field, hitherto with the consent of all the parties concerned, normally involving United Nations military and/or police personnel and frequently civilians as well'.<sup>6</sup> 'Humanitarian support' is also necessary in the context of a post-conflict peacekeeping situation. Ideally these initiatives should be coordinated and integrated in order to ensure that post-conflict peace

building can take place and should include the programmes and activities that will sustain peace and prevent any future outbreak of violent conflict. This may involve addressing diplomatic, political, social, and military and security sector issues, as well as economic development issues. Peace operations over the years have demonstrated that peacemaking and preventive diplomacy are much more cost effective than peacekeeping and peace building.

## THE MANDATE OF THE PSC

The PSC is composed of 15 member states (ten elected for a term of two years and five for a term of three years). The Chairperson of the AU is assisted by a commissioner in charge of peace and security to provide operational support to the PSC as well as take the necessary steps to prevent, manage and resolve conflicts. The purpose of the PSC is to provide ‘a collective security and early-warning arrangement to facilitate timely and efficient response to conflict and crisis situations in Africa’.<sup>7</sup>

The PSC assesses potential crisis situations; sends fact-finding missions to trouble spots; and authorises and legitimises the AU’s intervention if and when necessary. Article 4(h) of the AU Constitutive Act affirms the right of the AU to intervene in the affairs of a member state with respect to crisis situations. Specifically, Article 7(e) of the PSC Protocol states that the Council can ‘recommend to the Assembly of Heads of State, intervention, on behalf of the Union, in a Member State in respect of grave circumstances, namely, war crimes, genocide and crimes against humanity, as defined in relevant international conventions and instruments’.<sup>8</sup>

## PSC PROVISIONS FOR CSO ENGAGEMENT

Article 20 of the PSC Protocol states that ‘the Peace and Security Council shall encourage non-governmental organizations, community-based and other civil society organizations, particularly women’s organizations, to participate actively in the efforts aimed at promoting peace, security and stability in Africa. When required, such organizations may be invited to address the Peace and Security Council’.<sup>9</sup> Furthermore, Article 8 of the PSC Protocol enables the PSC to hold ‘informal consultations’ with CSOs ‘as may be needed for the discharge of its responsibilities’.<sup>10</sup> In addition, the *Conclusions of the Retreat of the Peace and Security*

*Council of the African Union*, which were issued in Dakar, Senegal on 6 July 2007, noted that ‘an appropriate formula to be approved by the PSC shall be established to allow for the interaction between the PSC and the Civil Society Organisations with a view to giving effect to Article 20 of the PSC Protocol.’<sup>11</sup> Therefore, the mandate for civil society participation in the activities of the PSC is clearly stated in the Constitutive Act, in the PSC Protocol and in the modalities of the PSC.

## CONTEXTUALISING CIVIL SOCIETY PARTICIPATION IN THE WORK OF THE PSC

In terms of the contribution by CSOs to the work of the PSC, there are substantive and procedural issues that need to be addressed.

### Procedural and substantive issues

Specifically, CSOs need to interact with the PSC in a way that is of practical importance and adds value to the work of the PSC. The information provided to the PSC needs to be useful and relevant to the key issues being addressed by the Council. CSOs can contribute to the work substantively only if they have an informed understanding of how decisions are made within the PSC and the wider AU bureaucracy. Specifically, CSOs can provide the PSC with conflict analysis, assist with policy formulation and make proposals on how to monitor implementation.

CSOs will benefit from exploring areas of comparative advantage, strength, and synergies with other CSOs to avoid creating parallel processes with the AU Commission. Some areas where CSOs can assist the work of the PSC are in providing information on conflict situations and their particular phases; assisting the field missions that have been launched by the PSC in undertaking peacemaking and peace building initiatives; convening seminars to explore a specific issue pertaining to conflict situations in Africa; providing training for parties that the PSC may be working with through its field missions; and, ultimately, assisting the PSC in its deliberations on specific issues.

Procedurally CSOs have to interact with the work of the PSC in a coordinated manner so as not to overburden the agenda of the Council. There is a substantial number of CSOs working on matters pertaining to peace and security in Africa. It would be impractical for all of these CSOs to send their representatives to make presentations to the PSC. Ideally, CSOs working on similar thematic issues such

as early warning, peacemaking, peacekeeping, post-conflict peace building, or humanitarian issues should form a network and designate a single representative or team of representatives to appear before the PSC when possible.

Specifically, CSOs need to be aware of how the PSC works and the regular meetings that it convenes. In particular, CSOs have to be made aware of how the PSC operates, its rules of procedure, and the criteria used to select member states, notably experience in peacekeeping, a capacity to contribute to peace missions, and the financial resources to contribute to peace and security initiatives in Africa.

Article 20 of the PSC Protocol states that CSOs can be invited by the PSC to attend and make oral submissions to the Council. The PSC convenes regular meetings and its Secretariat informs interested CSOs of the most opportune time in which to make submissions to the PSC. When seeking to make their submissions to the PSC on a specific situation, CSOs have to take into account the particular phase of a conflict and provide information that will be pertinent to the task that the PSC has to undertake with respect to that particular situation. Some of the procedural and substantive issues are further elaborated in the chapter.

## THE LIVINGSTONE FORMULA

In a retreat on 5 and 6 July 2007 in Dakar, Senegal, the PSC recommended that 'an appropriate formula to be approved by the PSC shall be established to allow for interaction between the PSC and Civil Society Organizations with a view to giving effect to Article 20 of the PSC Protocol'.<sup>12</sup> Following this suggestion by the PSC, a series of meetings was held with CSOs to discuss the ways in which Article 20 could be operationalised.

On 4 and 5 December 2008, the Council convened a retreat in Livingstone, Zambia to discuss the implementation of Article 20 of the PSC Protocol. Following this retreat the PSC adopted what it called the 'Livingstone Formula', which provided 'a mechanism for interaction between the peace and security council and civil society organizations in the promotion of peace, security and stability in Africa'.<sup>13</sup>

From 27 to 29 December 2008, the AU African Citizens Directorate (CIDO) held a Civil Society Organisations Consultation in Lusaka, Zambia, with a view to discussing the modalities for operationalising Article 20 of the PSC Protocol. The meeting was attended by the Head of the Secretariat of the PSC, Dr Admore

Kambudzi, as well as the Director of CIDO, Dr Jinmi Adisa, and a number of CSOs from across the continent. The meeting ‘recommended that the PSC maintain an active engagement with African and international CSOs through written and oral submissions to the Council on a regular basis throughout the year as required’.<sup>14</sup> The meeting also proposed that ‘the specific details of a CSO accreditation process and the format of submissions to the Council should be refined and developed by the PSC with assistance from the AU Commission.’<sup>15</sup>

The Livingstone Formula states that the PSC will continue to determine its procedures and decisions, and that ECOSOCC, as the consultative organ responsible for coordinating the participation of civil society in the work of the AU, particularly the Peace and Security Cluster, should ideally act as a focal point and play a consultative role in the interaction between the PSC and CSOs. However, faced with an ECOSOCC constrained by financial and administrative challenges, CSOs have increasingly interacted directly with the PSC. (See section entitled ‘Civil society interaction with the PSC’ below.)

The ‘Modalities of Interaction’ in the Livingstone Formula outline a range of procedural aspects of engagement in which they stipulate that in order ‘to interact with the PSC, CSOs must conform to the relevant provisions in the Constitutive Act of the African Union and the provisions in the PSC Protocol’.<sup>16</sup> Specifically, a CSO is expected to comply with the criteria for eligibility for membership, in particular:

- It shall be registered in an AU member state in accordance with the national legislation of the country
- It shall uphold the objectives and principles of the AU, as stated in Articles 3 and 4 of the AU’s Constitutive Act
- It shall be a member of a national, regional or continental organisation or the African Diaspora, in pursuit of activities at the national, regional or continental level
- It shall be accredited, with the AU or an African Regional Economic Community (REC) or Regional Mechanism
- It shall solemnly declare that it will uphold the objectives and principles of the AU, as well as the provisions governing CSOs in an observer status with the AU Commission, or working with it, including the principle of impartiality
- It shall belong to a recognised regional or continental umbrella/network of CSOs<sup>17</sup>



The conclusions of the Livingstone meeting also state that the PSC should convene an annual meeting with CSOs so that they can provide the relevant inputs for the report of the PSC on its activities and the state of peace and security in Africa, which it typically submits to the AU Assembly during its bi-annual summits. In addition, the Livingstone meeting outlined the processes through which CSOs can be invited to PSC meetings; how CSOs can submit reports to the PSC; and how CSOs can provide information to PSC field and other AU fact-finding missions. Furthermore, it stipulated the mechanism for facilitating CSO interaction with the PSC, including invitations by the Chairperson of the PSC and accreditation of CSOs by the AU Commission to participate in a PSC meeting.

## CSO PARTICIPATION IN MEETINGS OF THE PSC

The PSC can institute formal meetings and informal consultations with CSOs.

### Formal meetings of the PSC and CSOs

According to Article 8 of the PSC Protocol, the PSC is mandated to hold closed and open meetings. The PSC should be able to convene the following types of meetings:

- Consultations
- Closed sessions during which decisions are taken
- Open sessions to receive briefings and at the end of which no decisions are taken<sup>18</sup>

In a specific crisis situation the PSC can convene a formal consultation or open session and invite CSOs with specific competence and expertise on the matter being addressed to take part in its deliberations for a set period of time. This will enable members of the PSC to consult, debate with, and engage CSO experts on specific issues which will enhance their information and knowledge of a particular situation, and thus provide them with a basis upon which to make their decisions on how to respond. Following this type of session, the PSC can then meet in a closed session to make decisions based on the discussions that it had held in the earlier session.

Formal PSC meetings typically consist of initially a closed session for member states followed by an open session where other interested parties may be invited to participate. CSOs could therefore contribute to this second session of the meeting.

## **Informal consultations of the PSC with CSOs**

The PSC can convene informal consultations through which the PSC can be provided with an analysis of a particular situation. CSOs can take part in such meetings to deliver reports on specific issues to the PSC. These meetings can also be convened by CSOs through a request submitted to the Secretariat of the PSC, the rotating Chairperson of the PSC and the AU Commissioner for Peace and Security.

## **Expert committees of the PSC and AU Commission**

Each PSC member designates an expert to a committee to prepare draft decisions, and officers of the AU Peace and Security Department are also often included in these committees. These committees can receive information from CSOs on a particular issue. The Secretariat of the PSC should ensure that on specific issues it can coordinate the transmission of information, analysis, or reports to the appropriate PSC Committee members.

## **CIVIL SOCIETY INTERACTION WITH THE PSC**

A number of CSOs have taken advantage of the platform that has been created by Article 20 and the Livingstone Formula to interact directly with the PSC. For example, on 30 March 2009, a number of human rights organisations, including some that were working specifically on women's rights, briefed the PSC at the AU headquarters in Addis Ababa, and engaged in an interactive dialogue with members of the Council. Subsequently, the PSC issued a communiqué on the theme of the situation of women and children in armed conflicts. This interaction between CSOs and the PSC set a precedent for subsequent CSO interaction with the PSC. The challenge now is for CSOs to mobilise themselves and take advantage of the opportunities offered by the PSC to engage it through the Livingstone Formula.

## INTERNATIONAL CIVIL SOCIETY ORGANISATIONS AND THE PSC

The PSC Protocol encourages the PSC to work with international partner organisations. Increasing collaboration between the PSC and the UN Security Council and the engagement of international partners in matters pertaining to peace and security in Africa necessarily require the PSC to source information from international civil society organisations (ICSOs).

Ideally, ICSOs should be able to demonstrate that they are contributing positively to promoting peace and security in Africa and are currently working on African peace and security issues. ICSOs based in member states of the AU would have a comparative advantage in drawing upon their practical expertise from their interaction and interventions on the ground. Where possible, ICSOs should join or support networks of African CSOs working on specific thematic issues and collaborate with these networks to make the required presentations to the PSC, in order to avoid the unnecessary duplication of services.

## HOW CSOs CAN ADD VALUE TO THE WORK OF THE PSC

Article 20 of the PSC Protocol states explicitly that the Council may invite civil society to attend its meetings. Therefore, civil society participation has to be structured as an integral component of the work programme of the PSC. The PSC could institutionalise one meeting a month in which it receives inputs from various CSO network representatives on issues pertaining to the agenda of the Council. The 'Report of the AU-CSO Consultation on the Modalities for the Operationalisation of Article 20 of the PSC Protocol', which was held in Lusaka, Zambia, from 27 to 29 December 2008, outlined a range of areas in which CSOs can add value to the work of the PSC.<sup>19</sup> Subsequently, the 'Conclusions of the Livingstone Meeting on a Mechanism for Interaction between the PSC and CSOs' refined these as outlined below.<sup>20</sup>

### Conflict prevention and early warning

CSOs may provide technical support to AU field and fact-finding missions and RECs, by undertaking early warning reporting and situation analysis, CSOs can

assist in enhancing the research and analysis process that feeds information into the decision-making process of the PSC.

## **Peacemaking and mediation**

CSOs may assist and advise mediation teams during negotiations. CSOs can provide information to Special Envoys/Representatives of the Chairperson of the AU Commission in the execution of their work. CSOs may also participate in giving publicity to the peacemaking process to enable the wider population to be informed of the ongoing efforts to broker peace in the countries concerned.

## **Peacekeeping**

Following the signing of a peace agreement, CSOs may assist, in a complementary manner, the AU and the PSC to devise effective processes to ensure that the parties to a conflict are assisted in the implementation of peace agreements. CSOs may also work in support of PSC-authorized peacekeeping missions by undertaking some aspects of the civilian component of the operation. This might, for example, involve supporting the work of the civilian component of the ASF.

## **Humanitarian support, peace building, post-conflict reconstruction and development**

After the signing of peace agreements, CSOs may work to complement the efforts of the PSC and Special Envoys/Representatives of the Chairperson of the AU Commission in post-conflict confidence building and support reconciliation processes in war-affected regions. Also, in the aftermath of conflicts, CSOs may assist in the rebuilding of communities to enable the delivery of basic services to the people.

## **Provision of technical support**

CSOs may work on environmental rehabilitation issues to enable local populations to resume normal activities. In addition, CSOs may work with local governments to re-establish water, electricity and social infrastructure.

## Training

CSOs may provide training sessions and workshops to impart skills and knowledge on peace building for specific parties to a conflict or for countries and regions that require such training. CSOs may backstop mediation efforts by providing appropriate information required on particular aspects, objectives and procedures of the mediation process.

## Monitoring and impact assessment of the implementation of peace agreements

CSOs may contribute to monitoring the implementation of PSC decisions, particularly those related to peace agreements, and provide independent evaluation reports and briefs that assist the PSC in reviewing a particular situation.

## Post-conflict situations

CSOs may engage in peacemaking, peace building and humanitarian assistance; address the basic needs of returnees and internally displaced persons; contribute to economic recovery and rehabilitation of ex-combatants; rebuild the administrative infrastructure; disarm, demobilise and reintegrate ex-combatants, especially child soldiers; and provide counsel and moral support to victims of violence and other members of the community affected by war.

## Advocacy/publicity for PSC decisions

CSOs may play a complementary role in the advocacy/publicity of PSC decisions and activities, using their wide continental and international networks, to contribute to a better understanding of PSC decisions by the population.

The Lusaka meeting of December 2008 also 'recognised that the challenge of resource mobilisation is a daunting one for the AU Commission and PSC in light of the tragic conflicts and post-conflict situations afflicting the African continent'.<sup>21</sup> The meeting therefore recommended that in the short term extra-budgetary resources be utilised to support CSOs in their work with the PSC. However, in the medium to long term the objective should be to ensure that the joint activities

between CSOs and the PSC are funded by the assessed contributions from AU member states.

## CSOs AND OTHER INSTITUTIONS OF THE AU

CSOs can enhance their overall effectiveness in engaging the PSC by working with other AU institutions such as ECOSOCC's Sectoral Committee on Peace and Security, the Pan-African Parliament's (PAP) Committee on Co-operation, International Relations, and Conflict Resolution, and the African Commission on Human and Peoples Rights. Under Article 22 of the Constitutive Act, ECOSOCC was created as 'an advisory organ composed of different social and professional groups of the Member States of the Union',<sup>22</sup> representing women, children, youth, the elderly and people with disabilities and special needs, as well as CSOs and NGOs. ECOSOCC's Sectoral Committees are supposed to expand the space for civil society participation in the areas of peace and security. It is imperative that these organs of the AU ensure that they each have a civil society liaison focal point that can work with the PSC Secretariat on peace and security issues.

## POLICY RECOMMENDATIONS FOR ENHANCING CSO ENGAGEMENT WITH THE PSC

The reality is that CSOs will continue to play a prominent role in promoting peace and security in Africa. Therefore, it is necessary for the PSC to enhance the capacity and opportunities for CSOs to engage further with the work of the Council. In particular, the following policy recommendations can contribute towards achieving this objective:

- CSOs with a demonstrated competence in the field of peace and security that intend to contribute regularly to the work of the PSC should obtain accreditation with the PSC. CSOs have to demonstrate that their programme of work is of direct relevance to the objectives and mandate of the PSC.
- CSOs that obtain accreditation should be granted a consultative status with the PSC. The emphasis will be on a consultative status rather than an observer status, which is common in other inter-governmental settings. This will encourage both the PSC and the CSO to recognise a qualitative difference in

both the expectations of the member states of the PSC about CSOs and the CSO responsibility to impact upon the work of the Council positively. CSOs will be expected to be more result-oriented if they obtain a consultative status with the PSC.

- Where a number of CSOs with similar expertise exists, in for example early warning, peacemaking, or post-conflict peace building, these CSOs should endeavour to form an informal or formal network through which to interact with the PSC and AU.
- CSOs that achieve accreditation should be required to sign a memorandum of understanding with the PSC.
- The PSC should provide CSO guidelines on how to make submissions to the PSC. In particular, three ways can be emphasised: a written submission; an oral presentation; or through an invitation to contribute to the deliberations of the PSC.

## CONCLUSION

The PSC is a vital organ for the promotion of peace and security in Africa. In turn, CSOs are crucial agents for achieving this same goal. The AU has clearly adopted a posture of positive engagement with CSOs. However, the current reality within the organisation is that some of the residual attitudes inherited from the AU's predecessor, the OAU, are still prevalent within the structures of the institution. Consequently, despite the commendable platform for engagement that has been established between the PSC and CSOs, these organisations still find it challenging to engage with the structures of the institution of the PSC in a professional and timely manner. To a large extent these challenges reflect the same challenges that African CSOs experience in engaging and interacting with their own governments. In effect, experiences of CSOs in engaging their governments are writ large when they seek to interact with the AU and its institutions. In the medium to long term these basic challenges can be remedied, but only if a genuine partnership is forged between CSOs and the PSC. The Livingstone Formula, which outlines a mechanism for PSC engagement with CSOs, is an important step in the right direction. The AU is still undergoing a cultural transformation with regard to its posture and openness to civil society. Similarly, the PSC is on an exponential learning curve when it comes to its exchanges and interaction with CSOs. Ultimately, the convergence between

the objectives of the Council and the role that CSOs can play in assisting to fulfil these goals suggests that there needs to be a progressive partnership between the PSC and CSOs.

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# 7 An assessment of the gendered dimensions of the PSC

*Ecoma Alaga, Emma Birikorang and Thomas Jaye*

## INTRODUCTION

The evolving African Peace and Security Architecture (APSA) has evoked a plethora of debates about its role and relevance. The APSA was envisaged against the background of the existing dynamic and complex security challenges facing the continent. The AU Peace and Security Council (PSC) constitutes one of the pillars of the APSA and is an integral part of the AU. Although very little has been written about the gender dimension of the AU PSC, it is important to stress that the AU has made significant strides towards ensuring that its policies, structures, operations and initiatives include women and recognise their issues. Accordingly, the AU has been lauded for its commitment to the principles of gender parity and women's empowerment. For example, the Protocol Relating to the Establishment of the Peace and Security Council of the African Union (PSC Protocol) recognises the adverse impact of conflict on women and calls for assistance for particularly traumatised women, and for the incorporation of women's rights' perspectives into curricula and training for civilian and military personnel of national standby contingents at both operational and tactical levels.

While these are crucial first steps, most of these initiatives tend to treat women as mere recipients of political goodwill rather than as critical stakeholders with the potential to engage the PSC processes and structures as partners. This chapter assesses the policies relating to the PSC and its organs with a view to highlighting the gender gaps as well as offering policy recommendations to advance gender mainstreaming and the full and active participation in the PSC structures and activities by women, especially in this AU-proclaimed African Women's Decade (2010–2020).

To achieve this, the chapter analyses some legal and policy documents relating to the AU PSC through a gender lens, with a view to highlighting critical aspects of these documents that require attention. This is covered in the first part of the chapter. The second part then discusses the workings and policy frameworks of three building blocks of the PSC: the Continental Early Warning System (CEWS), the Panel of the Wise, and the African Standby Force (ASF). This is with a view to assessing whether the AU's new structures incorporate gender issues, not only in their framework documents but also in practice.

It is important to state that, while acknowledging that gender relates to men, women, boys and girls, this chapter specifically focuses on women and their concerns. This is because, as a gendered group, women are active at community level yet are mostly excluded from peace and security discourse and practice at the formal level. It is equally important to note that, considering that the PSC has been in existence for more than six years, there are few publications about its operations, and those in existence focus mostly on its institutional building processes.<sup>1</sup> This chapter thus relies heavily on official AU documents, communiqués and other internal AU publications.

## **GENDERED CRITIQUE OF THE LEGAL AND POLICY INSTRUMENTS OF THE PSC**

The operational framework of the PSC is mainly guided by the protocol relating to its establishment (2002). In addition, its mandate and operations are informed by the Constitutive Act of the African Union (2001), the Solemn Declaration on a Common African Defence and Security Policy (2004), and the recent Policy on Post-Conflict Reconstruction and Development (2006). Given the significance of policy and legal instruments as a crucial first step in mandating the protection and promotion of women's rights, in enhancing women's participation in peace

and security, and in preventing and prosecuting violence against women, this section is dedicated to a gender review of the policy and legal instruments of the AU PSC. The review of each of these instruments is structured in three parts. The first deals with the use of gender sensitive (and especially pro-women) language; the second focuses on women-specific and gender programming; and the third looks at gender gaps.

## **Protocol Relating to the Establishment of the Peace and Security Council of the African Union (2002)**

Overall, the PSC Protocol and its attendant instruments, i.e. its rules of procedure and modalities for the election of its members, are highly progressive instruments for addressing issues relating to peace, security, stability and human development on the continent. In terms of language, except for the use of the word ‘chairmanship’ in article 8(6), the PSC Protocol makes good use of gender-sensitive language such as ‘chairperson’, ‘him/her’, and ‘he/she’. While it may be argued that gender-neutral language such as ‘human’ and ‘people(s)’ is used, we argue that these terms have been used appropriately. This is because they are used in a holistic sense to incorporate men, women, boys and girls. Additionally, the Protocol makes specific references to women, for example: in its preamble; in article 13(6) relating to training on the rights of women and children for civilian and military personnel of the national standby contingents at both operational and tactical levels; in article 14(3e), which calls on the PSC to assist member states that have been adversely affected by violent conflict in providing assistance to vulnerable persons, including women; and in article 20, which calls on the PSC to encourage civil society organisations, particularly women’s organisations, to participate actively in efforts aimed at promoting peace, security and stability in Africa.

With regard to women-specific and gender programming, a great deal more is desired. First, in terms of the composition of the Council and its structures (i.e. the Panel of the Wise and the ASF), there is a need for specific initiatives aimed at increasing women’s representation. In this regard, one option may be the enforcement of the gender parity principle, which the AU Commission has applied. Second, in terms of its subsidiary bodies and sub-committees (article 8[5]), the PSC should establish an ad hoc committee on gender that will provide the expertise it requires to perform its functions. In article 14(c) relating to disarmament, demobilisation and reintegration (DDR) programmes, specific reference

needs to be made to female combatants. This is crucial because most often DDR programmes overlook the special needs of female combatants and women associated with the fighting forces. The experience of countries like Liberia and Sierra Leone reveals that these only get added on at a later stage. Thus, the inclusion of the specific needs of especially these categories of women is crucial for ensuring that the Peace Fund (and especially the AU-established African Trust Fund for Women) caters for some of their particular needs.

Third, in terms of the AU Livingstone Formula, an informal arrangement that allows the AU PSC greater flexibility to interact with and be briefed by civil society organisations about peace and security issues, more can be done. Since its adoption in 2008, only one session has been dedicated to the issue of gender and women and more forums of this nature are needed to focus attention on specific issues relating to women and gender.

In terms of gaps, a major issue that has been overlooked is sexual violence. The increased use of sexual violence, especially rape, as a tool for political oppression and war poses a growing threat to peace and security in Africa and it is important that the Protocol includes specific provisions to address the use of sexual violence. In addition, article 13 needs to acknowledge the challenge to women's participation in the ASF and ought to include specific policy statements that address this.

## The Constitutive Act of the African Union (2001)

The Constitutive Act of the AU symbolises the statement of intent of African leaders to establish a continental union. The Act sets out the legal framework that governs the way in which the AU conducts itself. As with most policy documents of the AU, the Act is quite gender sensitive, except in its use of the term 'chairman' ten times in articles 6(4) on the 'office of the chairman'; 9(i) on the 'powers and functions of the Assembly to appoint the chairman'; 20(2) on the composition of the Commission; 27(3) relating to signature, ratification and accession; 29(1) and (2) on procedures relating to the admission of membership; 31(1) on the cessation of membership; 32(2) and (4) on the procedure for amendment and revision of the Act; and 33(5) on 'transitional arrangements and final provisions'. While this may be excused as an oversight, as in a number of instances the use of the word 'chairman' is followed by '... and his or her deputy ...', in this light the document is inconsistent in relation to being gender sensitive and as this can be misleading it needs to be revised.

In terms of women-specific and gender programming, first, the preamble stresses the need to build partnerships between governments and civil society, in particular with women. Second, article 4(l) lists the promotion of gender equality as one of the fundamental principles of the AU. While the AU has made significant strides in this regard in relation to the gender-balanced composition of its Commission, more needs to be achieved to increase the representation and participation of women in its peace and security structures and mechanisms. Lastly, article 13(1k) calls for the formulation of social security policies relating to mother and child care.

The Act has two major gender gaps. The first has to do with the absence of a committee on gender and women's issues as one of its organs (see the list of specialised technical committees in article 14). While it is acknowledged that the AU has a Women's Committee (AUWC) and a Directorate for Women, Gender and Development that play advisory and oversight (and implementing) roles respectively, the Act in its present form is not specific about a specialised technical committee on gender. The second gap is that the Act does not make specific reference to instruments on the rights of women, which could have been stated as a broad category, to show the correlation between the Act and other existing policy and legal frameworks for enhancing the protection and participation of women in, especially, peace and security. While it may be argued that AU-specific policies and legal instruments on gender or women's rights did not exist at the time, the broad referencing of such instruments would have made direct links to gender- and women-related instruments that were subsequently developed, i.e. the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (2003), the Solemn Declaration on Gender Equality in Africa (2004) and the AU Gender Policy (2009) –all of which emphasise the role of women in peace and security. From the above, it seems as though there is a conceptual issue to be addressed in the Act because, while it encourages gender sensitivity, it gives the impression that addressing this remains a major challenge.

## **The Solemn Declaration on a Common African Defence and Security Policy (2004)**

The Solemn Declaration on a Common African Defence and Security Policy directly complements the PSC Protocol. Like the Protocol, the Solemn Declaration

makes good use of gender-sensitive language, except for the use of the word 'chairman' in its introduction. It equally makes reference to women (in section 8(j)); calls on member states to provide a framework for the effective participation of women in conflict prevention, management and resolution activities (section 13(w)); and makes specific reference to existing instruments on the right of women such as the Declaration on the Elimination of Violence against Women, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on the Political Rights of Women, among others. Reference is also made to gender, and the definition of security that is given in section 6 includes the 'right to protection against marginalisation on the basis of gender'. Section 11(p) specifically calls for the 'promotion of gender equality' as one of the principles and values underlying the Common African Defence and Security Policy, and section 12(iv) calls on African countries to refrain from actions that 'amount to propaganda for war or advocate for hatred based on gender', among others. The constant reference to human trafficking as a security threat illustrates the recognition of gender-based violence in the Solemn Declaration, as trafficking is a crime that is usually perpetrated against women in particular.

On women-specific and gender programming, the implementing organs and mechanisms of the Common African Defence and Security Policy, i.e. the Assembly of the AU, the PSC, the AU Commission and the regional economic communities (RECs), are yet to initiate fully women-specific and gender-sensitive programmes that will particularly enhance the protection of women's rights and their active participation in the implementation of the Solemn Declaration. For example, the assessment of common security threats (especially those relating to intra-state conflicts/tensions) should adopt a participatory process of consultations with different stakeholders, especially women's groups. The assessment of external threats should include a focus on cross-border community issues because this is a level where women are mostly exploited. The assessment teams commissioned for this purpose should be representative of women and men, or they should have access to gender expertise. Gender training should be conducted for the assessment teams and gender-sensitive indicators developed to guide their work.

The main gender gap in relation to the Solemn Declaration has to do with the lack of reference to sexual violence. As a matter of fact, this should have been listed in section 8(iv)(v) as another factor that 'engenders insecurity'.



## The Post-Conflict Reconstruction and Development Policy (2006)

The AU Policy on Post-Conflict Reconstruction and Development (PCRD) is the most progressive policy instrument within the PSC for advancing women's issues. In recognition of the huge gender gap that exists within the field of peace and security and the urgent need to change this, the PCRD policy adopts a two-pronged approach. It mainstreams gender and women's issues across all its 'indicative elements'<sup>2</sup> and also addresses women and gender as a standalone element. In terms of gender-sensitive language, the PCRD policy cannot be matched by any other policy or legal instruments of the PSC. Right from its table of contents to the closing sections, women and gender issues are featured in the entire document.

As regards women-specific and gender programming, the PCRD policy makes a number of pertinent suggestions. Generally, it is focused on human security, non-state grassroots involvement in post-conflict reconstruction and development, and the importance of addressing structural/root causes of conflict and violence. It is underpinned by five core principles, which emphasise African leadership; national and local ownership; inclusiveness, equity and non-discrimination; cooperation and coherence; and capacity building for sustainability – all of which are critical for promoting women's full and active participation.

More specifically, section II, which focuses on its indicative elements, has a number of women-specific and gender-related programming suggestions. First, on security, section 24 calls for broad consultations and participation of civil society in the security sector, and section 25(ii) calls for integrated approaches to repatriation, resettlement, reintegration and rehabilitation programmes that pay particular attention to women victims of violence. Section 25(vi) also calls on countries emerging from conflict to address 'specific security concerns of women and girls, including their demands for protection against those who may have committed acts of sexual and other violence against them, since the reintegration of perpetrators into society can threaten them'. Section 25(vii) demands that the process of transformation of the security sector should recognise and acknowledge the role and specific needs of women.

Second, the indicative element on humanitarian and emergency assistance in section 29(d)(iii, iv) recommends the development of 'programmes that address the specific needs of women and girls, especially in relation to victims of Sexual and Gender-Based Violence [SGBV]. Such programmes should include medical

care, trauma and psycho-social counselling, assistance and legal redress' (section 30[f]). In section 29(vii) the PCRDR policy calls for the provision of training and skills development to women to facilitate their reintegration into and participation in reconstruction and longer-term peace-building initiatives (section 30[h]).

Third, on political governance and transitions, the PCRDR policy calls for programmes that promote inclusive politics, including enabling women's access to power and decision making (section 34). The policy also encourages countries emerging from conflict to 'facilitate societal transformation programmes in ways that reflect the interest of women, address their needs and aspirations; and consolidate any opportunities that emerge as a result of the challenges of conflict, to improve their lives' (section 36[b][vi]). In section 37(h) countries are urged to 'increase the numbers of women in decision making positions in public institutions as well as the private sector'.

Fourth, the indicative element on human rights, justice and reconciliation demands that the respect for human and peoples' rights should guarantee and protect women's rights and participation in political, social and economic spheres of life (section 41(iv)). Additionally, the section calls on countries to 'make legal provisions for justice for victims of human rights violation, particularly those who suffered sexual violence' and 'totally rejects impunity'.

The indicative element on women and gender (sections 43 to 46) is quite detailed in its recommendations for programming. It calls for: a) gender analysis to inform the development of gender-sensitive policies, programmes, budgets and impact assessment; b) the creation of legal frameworks that ensure the full enjoyment of family rights and equitable access to, and control over resources, including land, property and inheritance, which are key, especially for widows and women returnees; c) the full and active participation of women in conflict prevention, management and resolution; d) the creation of a gender focal point to ensure that gender is mainstreamed through all PCRDR activities; e) the transformation of public institutions to make them more responsive to women's needs; f) focus on gender training and sensitisation, especially for forces engaged in peace support operations in post-conflict reconstruction environments; and g) the ratification of, accession to, and domestication and implementation of the relevant AU and international instruments relating to women's rights, such as UNSCR 1325, 1820, 1888 and 1889.

From the above critique of the gendered nature of policy instruments within the PSC, it could be argued that, for the most part, gender and women's

issues have been incorporated into the legal and policy instruments of the AU PSC. However, these well-articulated legal and policy considerations are still largely theoretical. They are yet to be fully matched with practical initiatives that will translate these instruments into concrete gains for the ordinary woman on the continent, especially on peace and security issues. The next part of this chapter analyses some of the gendered initiatives of the AU PSC with the aim of affirming this point, which is that the AU PSC needs to move beyond rhetoric to the full implementation of legal and policy provisions on gender and women.

## **GENDERED CRITIQUE OF THE PILLARS OF THE PSC**

The PSC was established as an operational structure for the effective implementation of decisions taken in the areas of conflict prevention, peacemaking, peace support operations and intervention, as well as peace building and post-conflict reconstruction. The PSC is expected to be a collective security and early warning arrangement to facilitate timely and efficient responses to conflict and crisis situations in Africa.

### **Support structures of the Peace and Security Council**

According to the PSC Protocol, the PSC has a number of options and entry points for action in the event of a crisis in a member state. These entry points for action are referred to in the Protocol as pillars and consist of the Panel of the Wise, the CEWS, the ASF and the Peace Fund. This chapter focuses on the CEWS, ASF and the Panel of the Wise, which are the most critical entry points for action of the PSC.

#### ***The Continental Early Warning System***

Within the CEWS, information is expected to be collected from the RECs and regional mechanisms (RMs) for collation and analysis, both at the sub-regional and the regional levels. This information is to be used as an early warning mechanism, to prevent potential conflicts from breaking out or escalating into full-blown ones. While women are the most victimised during violent conflicts, they were until recently excluded from the conflict-resolution and post-conflict reconstruction processes in Africa. The AU and the RECs have made significant

progress towards establishing early warning mechanisms, through local peace structures and recruited field monitors.<sup>3</sup>

An important and positive development within the PSC Protocol is that it accedes to a broader approach to security, which is human security. Accordingly, human security implies the 'security of the individual with respect to the satisfaction of the basic needs of life; it also encompasses the creation of social, political, economic, military, environmental and cultural conditions necessary for survival ... and ensuring that each individual has opportunities and choices to fulfil his/her own potential'.<sup>4</sup> Thus, as Caroline Thomas suggests, human insecurity should not be understood as an inevitable occurrence. On the contrary, it should be understood and explained as a direct result of existing power structures that determine who enjoys security or not. In this sense, human security entails more than physical survival; it is also about emancipation from oppressive power structures that are global, national, regional or local in origin or scope.<sup>5</sup> It is within this conceptual framework that human security should be conceived in relation to the gender dimension of the PSC.

The fact that the PSC has a broader perspective on human security ensures that there is a greater propensity for women's issues to be taken into consideration as part of social, political or economic issues than when the emphasis is on the traditional conception of security, which has the state as the reference point. Once this is the case, women and gender issues are relegated to the background, with the state taking priority. The reasoning behind the prioritisation of the state was that if the state is protected and secure the needs of the citizens, including women, will naturally be met. Unfortunately, in Africa and perhaps elsewhere, this is not necessarily the case. The state has not been the guardian of the broader security of the people; on the contrary, it has been a source of threats and insecurity for the people, including women.

The nature of and methodology for data collection, at grassroots level, within the early warning system is such that it presents an opportunity to have a gendered dimension of early warning, where women's issues are brought to the forefront. According to Schmeidl and Piza-Lopez, engendering early warning 'is not only concerned with including women into early warning systems, but on sensitising the entire process by training both men and women on how to use gender analysis to fine-tune early warning and allow for a more appropriate and diverse range of response actions'.<sup>6</sup> This should be carried out during all the stages of early warning, which are the collection and collation of information, based on

agreed indicators; the analysis of this information and dataset; the development of worst-case scenarios and best-case scenarios; and the transmission of this final information to policy makers for preventive action.

According to the PSC Protocol, the CEWS is expected to develop early warning module indicators on the basis of clearly defined and accepted political, economic, social, military and humanitarian indicators (article 12.4). These indicators have further been sub-divided into categories such as justice and rule of law, human rights, ethnic tensions, arms proliferation, military expenditure, resources, corruption, and economic indicators such as poverty levels. What is clear within the CEWS is the fact that even though it has achieved some outputs in terms of daily news reports and highlights, and has submitted some early warning reports to the PSC, the system is not engendered. Most information and the subsequent analysis, derived and transmitted to the Council, are generic in nature. For example, the majority of these reports are country-specific, while information and analysis are not sex-aggregated. For example, a 12 March 2010 ECOWAS Early Warning System (ECOWARN) report on Senegal specified that French soldiers in Senegal were to be reduced drastically from 1 200 to 300 after April 2010.<sup>7</sup> This has implications for the employees of these soldiers, and those with small businesses around the base. This information did not indicate how many employees were women or men, although it gave a figure of 3 000 employees. The majority of employees and business owners around the bases would be women. Disaggregating this data would ensure that early responses to such reports targeted those hit the hardest.

In another scenario, a report on Nigeria highlighted a rally by hundreds of women in Abuja. According to the report, at least 109 people were killed in the ethnic clashes that resulted from this rally, and many of these people were said to be women and children. The fact that the report mentioned the number of women was a result of the fact that women had undertaken the rally. Would women have been mentioned if the rally had been organised by a group of people that included men? More often early warning is engendered only in relation to indicators such as human rights and human trafficking. However, gender sensitivity should not be limited to only obvious indicators. Gender should be mainstreamed in early warning activities. Knowing which group in a society is most affected by a particular issue has implications for the kind of response mechanism that needs to be established by the PSC.

### *The Panel of the Wise*

The Panel of the Wise was established to support the PSC and the Chairperson of the Commission in the area of conflict prevention. It is composed of five highly respected African personalities from various segments of society who have made outstanding contributions to the cause of peace, security and development on the continent. The panel is also appointed by the Assembly of Heads of State, based on regional representation. The civilian nature of the Panel is a potential conduit for women to influence conflict prevention and peace-building efforts in the region directly. The current composition of the Panel includes two women from Southern Africa and West Africa, respectively. However, the number of current and potential conflicts in Africa may seem too huge a task for the five-member Panel to mediate. Expanding the Panel and thereby increasing the number of women on the Panel could increase the contribution of women to mediation and preventive diplomacy in Africa.

### *The African Standby Force*

According to the PSC Protocol, 'in order to enable the PSC to perform its responsibilities with respect to the deployment of peace support missions and interventions pursuant to article 4(h) and (j) of the Constitutive Act, an ASF shall be established. Such a force shall be comprised of standby multi-disciplinary contingents, with civilian and military components in their countries of origin and ready for rapid deployment at appropriate notice.'<sup>8</sup>

In view of this, the ASF would be expected to perform such functions as intervention in member states in respect of grave circumstances such as war crimes and crimes against humanity, as well as to perform peace-building and post-conflict reconstruction functions. Although the ASF was expected to be operationalised in June 2010, certain aspects of its formulation – in terms of challenges – give a clear indication of the nature of future operations that the force will undertake.

Originally, the ASF was to be established in two phases, the first phase being the development of the capabilities of the military components. However, the civilian component was not considered to be a priority area because 'humanitarian, development and human rights elements, which do not require a UN Security Council mandate could deploy in tandem with an ASF mission'.<sup>9</sup> For this reason, the focus during the earlier stages of the development of the ASF was on the military component. For the second phase, it was expected that policy documents

would be prepared and joint training exercises conducted. This paved the way in 2006 for the preparation of the policy framework for the civilian component of the ASF. In the Civilian Component Policy Framework, a number of civilian functions are enumerated to include political affairs, human rights, legal advice, gender, and child protection. Although these functions have been clearly delineated, it has been envisaged that, in the event of a lack of funds to cover all the various civilian functions, civilian units would be expected to be multi-disciplinary, and cover more functional areas, with less specialisation. This implies, for example, that the human rights officer may be tasked with covering child protection, monitoring and evaluation, protection of civilians, and gender issues, areas which would typically be covered by different units in a fully functional peacekeeping mission.<sup>10</sup>

Multi-dimensional peacekeeping is usually undertaken when the conflict has degenerated to the point where it can be described as experiencing 'grave circumstances' or war crimes, human rights' abuses and crimes against humanity. It is therefore important that civilian mission personnel (who are usually overwhelmed by the scale of violence) are not dispersed among differing competing priorities. It is a well-known fact that women and children suffer the most in most civil wars, which suggests that bringing them together under one umbrella in terms of policy and operational response may not achieve the desired effect.

## CONCLUSION

This chapter has highlighted some of the significant developments within the AU since the turn of the decade in terms of making the policies, legal instruments, programming and operations of the PSC gender sensitive. In most of the legal instruments, the language has been gender sensitive, especially in the PSC Protocol. Women-specific and gender programming, however, seems to be lagging behind, as there are not many initiatives aimed at increasing women's participation and representation at all levels.

At the operational level, especially as it relates to the CEWS and ASF, more gender-sensitive indicators should be included. This will ensure that the PSC is sent information and analysis that relate specifically to the needs of women, in order to ensure that women's issues are factored into response mechanisms.

In terms of policy recommendations the PSC should:

- Match words/policy with action by developing concrete mechanisms to ensure the implementation of its gender-sensitive legal and policy instruments.
- Establish gender units in all departments within the AU Commission to ensure that gender policies are implemented. In addition, these mechanisms should be given the relevant influence, authority and resources (human, material/technical and financial). Situating the Directorate for Women, Gender and Development directly under the office of the Chairperson of the Commission is commendable; however, the mid/operational- level gender structures are also crucial.
- Develop a roster of qualified African women with expertise in the different technical areas of its work as to ensure that women are deployed in all its operations.
- Utilise its Livingstone Formula as a mechanism for engaging African women on different topical issues given their underrepresentation in its processes.

## NOTES

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- 2 The 'indicative elements' concept is used by the AU to refer to five thematic issue areas in the PCR: Security; Humanitarian and Emergency Assistance; Political Governance and Transitions; Human Rights, Justice and Reconciliation; and Women and Gender.
- 3 Report of the Fourth Quarterly Technical Meeting between the AU and the Regional Economic Communities on the Operationalization of the Continental Early Warning System; 24–25 November 2009, Kampala, Uganda. See also the ECOWAS Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security, Lome, 1999.
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# 8 The PSC and Darfur

## A Sudanese solution for an African problem

*Kwesi Sansculotte-Greenidge*

### INTRODUCTION

The attempt by the African Union's (AU) Peace and Security Council (PSC) to stop the violence in Darfur through the use of peacekeepers is now more than seven years old. The deployment of the African Mission in Sudan (AMIS) in June 2004 has presented many challenges to the AU. A restrictive mandate and inadequate troops to cover the region, along with serious operational, financial and capacity gaps, combined in inextricable ways. As a result most observers saw the mission as at best hobbled and ineffective and at worst counterproductive. Although the PSC's engagement with Darfur has made a significant difference in some areas, it has ultimately proven ineffective, hindered by a lack of resources and weak political will. This chapter examines the PSC's attempts at intervention in Darfur, by critiquing the AMIS mission. It argues that although logistical and financial problems all played a part in the ineffectiveness of the mission, it was in fact the ambiguousness of the mandate that was the single biggest obstacle to success. The chapter then states that Darfur has been a critical test of the PSC's ability to protect civilians in complex emergencies and also an opportunity to build its peace and security architecture. Darfur also presented the AU with an

opportunity to forge genuine partnerships with the international community in order to promote peace and security in Africa.

## SITUATING THE CRISIS IN DARFUR

The humanitarian crises in Darfur and eastern Chad have grabbed international headlines; however, this attention has not translated into effective action. Estimates of the human cost of this manmade disaster vary from 150 000 to 300 000 casualties. In addition to this, over 270 000 Darfuri have fled to Chad, while another 2.8 million are internally displaced.<sup>1</sup> What began as a rebellion in February 2003 evolved into what then UN Secretary General Kofi Annan described as the ‘world’s worst humanitarian crisis’, when the Khartoum regime and allied militias launched scorched earth tactics.<sup>2</sup> In the Chadian regions of Wadi Fira, Ouaddai and Sila 270 000 Darfuri refugees have found some sanctuary in 12 refugee camps, while another 20 000 to 30 000 try to survive along the border, with little or no assistance from the outside world.

The AU PSC intervention in the crisis in Darfur through the use of peacekeepers is now more than seven years old. The deployment of AMIS in June 2004 has presented many challenges to the AU. A restrictive mandate and inadequate troops to cover the region, along with serious operational, financial and capacity constraints, all conspired against the desired objective of the mission. As a result some observers have concluded that the mission is at best hobbled and ineffective and at worst counterproductive.<sup>3</sup> Although the PSC’s engagement in Darfur has allowed for significant numbers of peacekeepers to be deployed, its overall success has been hampered by a lack of resources and the absence of real political will.

## AFRICAN UNION INVOLVEMENT IN DARFUR

The adoption of the Constitutive Act of the African Union in July 2000, coupled with the Protocol Relating to the Establishment of the Peace and Security Council, marked a new era in peacekeeping and, more importantly, peace building on the African continent. The establishment of the PSC should have changed the way the continent engaged with conflict and security in general. On paper the PSC is a well-oiled machine, which seems almost purpose built for a continent in which security issues sit large on the centre stage. However, during the Darfur crisis the Council proved wholly inadequate to deal with realities on the ground.

As one of the earliest AU attempts at peacekeeping, AMIS, along with the AU intervention in Burundi in 2003, became a test case for the AU's PSC and its renewed commitment towards ensuring security on the African continent. AMIS, which served as the PSC peacekeeping baptism by fire, was initially established to implement the PSC's decisions in Darfur. A ceasefire agreement signed between the Government of Sudan and the Sudan Liberation Army (SLA) and the Justice and Equality Movement (JEM) rebels in 2004 gave AMIS the authority to monitor the situation and 'catalogue' ceasefire violations. Subsequent to this, and largely in response to the shortcomings of AMIS, the United Nations/African Union Hybrid Mission in Darfur (UNAMID) was established by UN Security Council Resolution 1769 in July 2007 and given a Chapter VII mandate. This chapter examines AMIS, from inception in 2004 to its hybridisation in 2007.

Several opinions have been expressed regarding AMIS and its apparent 'failure'. Most critics of the mission argue that the mission failed to fulfil its most basic objective, which was to halt the large-scale killings and displacement of the civilian population in Darfur.<sup>4</sup> As PSC communiqués seem to suggest, this was never the main objective of the AMIS mission. The intervention in Darfur was not designed as a 'peace enforcement' mission, but rather as an observer mission, mandated to observe a shaky ceasefire that was never fully implemented. As a result, AMIS was given the unenviable task of documenting violations of an agreement that had already been abrogated by all the parties to the conflict.

## Establishment of AMIS I

AMIS, like all AU missions, derives its mandate from the Constitutive Act of the African Union of July 2000, which provides the required mandate and institutional framework for peacekeeping. Although the AU retained the principle of non-interference in any member state's internal affairs, article 4(h) qualifies this by asserting the right of the organisation to 'intervene in a member state pursuant to a decision of the Assembly of Heads of State and Government in respect of grave circumstances, namely war crimes, genocide and crimes against humanity'.<sup>5</sup> Additionally, article 5 places such decision-making authority in the hands of the PSC, the AU's principal decision-making organ for conflict prevention, management and resolution, which was established by the PSC Protocol in July 2002 and officially inaugurated in May 2004. Article 7 empowers the PSC's Commissioner to recommend to the AU Assembly necessary AU interventions

and the deployment of peacekeeping missions in member states when acts of genocide and other crimes against humanity are committed.

Like the Constitutive Act, the Protocol provides for peacekeeping and related functions and makes recommendations for intervention in member states facing grave circumstances. In stark contrast to the Organisation of African Unity (OAU), the Protocol draws an explicit link between security and 'democratic practices, good governance, the rule of law, protection of human rights and fundamental freedoms, respect for the sanctity of life, and international humanitarian law'.<sup>6</sup> The Protocol also provides the criteria for intervention in internal conflict to protect and safeguard life, and to prevent conflicts from spilling into the neighbouring countries.<sup>7</sup> Thus, in theory at least, the mechanisms for an AU intervention in Darfur were well developed.

The AU's engagement with the crisis in Darfur predates the entry into force of the Protocol establishing the PSC. It was on 8 April 2004, under the auspices of President Idriss Deby Itno of Chad and the Chairperson of the African Union Commission, that the warring Sudanese parties signed a Humanitarian Ceasefire Agreement (HCFA) on the Darfur Conflict and a Protocol on the Establishment of Humanitarian Assistance in Darfur. Under the HCFA, the parties agreed in principle to:

- Cease hostilities and proclaim a ceasefire, and facilitate the delivery of humanitarian assistance to Darfur and combine their efforts in order to establish a global and definitive peace in Darfur. This never happened.
- Establish a Ceasefire Commission (CFC) comprising two high-ranking officers from the parties and members of the mediation team and international community. The CFC was mandated to operationalise the ceasefire mechanisms on the ground, and submit reports of alleged ceasefire violations to a Joint Commission (JC), comprising representatives from parties to the agreement, the mediation team and the international community.<sup>8</sup>

The HCFA was an unorthodox ceasefire; both parties came to the negotiating table from a position of strength and were confident they could achieve their objective through military force. As a result both sides obstructed the full implementation of ceasefire requirements. An AU-led reconnaissance mission, including all partners, was sent to Darfur from 7 to 16 May 2004, and recommendations were made to dispatch military observers (MILOBS) and military

units to serve as their protection from African troop-contributing countries (TCCs).<sup>9</sup> As a result, on 28 May 2004 the Sudanese parties to the conflict signed an Agreement on the Modalities for the Establishment of the Ceasefire Commission and the Deployment of Military Observers in the Darfur Region. In accordance with this Agreement, the parties accepted the deployment of 60 African MILOBS and 300 MILOB protectors, as well as observers from the Sudanese parties. It was also agreed that the European Union and United States would participate in the mission by sending advisors.<sup>10</sup> This began a long-term engagement with Darfur by non-African states, in particular the EU, AMIS's primary funder.

Several key issues are raised by the PSC's response to the crisis in Darfur. Firstly, what set the AU apart from its predecessor the OAU was its right to intervene in a member state pursuant to a decision by the Assembly of Heads of State and Government in respect of grave circumstances, namely war crimes, genocide and crimes against humanity, as well as unconstitutional changes of government, an amendment added later.<sup>11</sup> It should be noted that the Constitutive Act was suspiciously silent on the exact nature of interventions, with the specifics around the rules of engagement during such interventions deliberately left vague. It was against this backdrop that the AU became entangled in Darfur. Furthermore, even though the African Standby Force (ASF) had been proposed in the Protocol Relating to the Establishment of the Peace and Security Council in 2002, the force was in no way ready to be operationalised at the time of the AU's involvement in Darfur in 2004.

The mission was initially set up to 'monitor' the HCFA through the deployment of an AU 'Observer Mission'. The initial mandate of AMIS called upon peacekeepers to assist in the maintenance of conditions conducive to long-term conflict resolution by the parties themselves, not to create these conditions. However, AMIS was neither proactive as a force in wider conflict resolution processes, nor as a coercive instrument in defence of such processes and usually took place between a ceasefire and a political settlement.<sup>12</sup>

On 9 June 2004, the CFC and the first group of MILOBs were put in place in El-Fasher. However, the security and humanitarian situation in Darfur continued to deteriorate, and a PSC briefing on AMIS dated October 2005 went as far as to state that 'it soon became clear that the 60 AU observers were both too few and too thinly spread to effectively carry out their mandate in the context of a growing number of ceasefire violations'.<sup>13</sup>

## AMIS II

During the 3rd Ordinary Session of the Assembly of the AU, held in Addis Ababa from 6 to 8 July 2004, the PSC authorised the increase of the force to a minimum of 80.<sup>14</sup> Even this did not ameliorate conditions in the region and the security situation continued to deteriorate, particularly in government-held areas. In recognition of this, the 13th meeting of the PSC, held on 27 July 2004, requested the Chairperson of the AU Commission to submit for consideration a comprehensive plan on how best to enhance the effectiveness of AMIS. The request explicitly called for the examination of the feasibility of transforming AMIS into a full-fledged peacekeeping mission, with the mandate and strength to implement all aspects of the defunct HCFA, including the disarmament and neutralisation of militias, the protection of the civilian population, and the facilitation of the delivery of humanitarian assistance.<sup>15</sup>

This plan, known as 'AMIS II', was formulated by the AU Commission and proposed the transformation of the nature, scope and composition of the original AMIS mission. It was approved by the PSC on 20 October 2004, deciding that:

AMIS shall consist of 3 320 personnel, including 2 341 military personnel, among them 450 observers, up to 815 civilian police personnel, as well as the appropriate civilian personnel. The enhanced Mission should be headed by a Special Representative of the Chairperson of the Commission (SRCC), who shall ensure the overall direction and coordination of the activities of the Mission and shall maintain close contact with the Sudanese parties, as well as the UN and all other concerned actors.<sup>16</sup> AMIS II was deployed from 2<sup>nd</sup> October 2004 for a period of one year with an extension of the same mandate, but more extensive reach in the field. In April 2005, AMIS was enlarged to about 7 000 personnel and in 2007, its final year of activity under the AU, the mission had an operating budget of 450 million dollars.<sup>17</sup>

## Assessment

The second AMIS mandate was an improvement on the earlier one and peacekeepers were given some powers to be 'prepared to protect civilians under imminent threat in the *immediate vicinity*, within means and capabilities in accordance with the rules of engagement'. As to what exactly constituted the



immediate vicinity of a force that was largely immobile was and is still open to debate.

AMIS II was still not a peace support operation (PSO). This involves a multi-faceted mission that combines robust military force with significant military, police and civilian strength. However, the AU had neither the means nor capability to engage in a peace support or peace enforcement operation in a region as large as Darfur. Peace enforcement is mandated under Chapter VII of the UN Charter, which calls for actions with respect to threats to peace, breaches of the peace and acts of aggression. The UN/AU hybrid mission in Darfur can be classified as such. As the humanitarian crisis persisted, it became evident that the restrictive mandate of AMIS was no longer appropriate for dealing with the challenges encountered in the field. In light of these realities and in the face of the worsening humanitarian situation, the Security Council, acting under Chapter VII of the UN Charter, passed Resolution 1769 on 31 July 2007, to authorise the deployment of a 26 000-strong UNAMID force. This transition, which had previously been rejected by the Sudanese government, began deployment in October 2007.

It is clear that AMIS did not have the ability or the resources to carry out its job of monitoring a ceasefire that was widely and regularly violated by all sides. AMIS was hobbled by a weak mandate, too few peacekeepers and a lack of political will on the part of the AU to confront Khartoum. Additionally, donor governments failed to provide AMIS with adequate support. The effectiveness of the two AMIS deployments was constrained by a number of interconnected factors that can be summarised as follows:

- **Institutional capacity:** At the time of the deployment the various organs of the AU were still evolving. The PSC in particular did not have the institutional capacity to plan and execute a large-scale peacekeeping operation. The Darfur crisis prematurely engulfed the AU in an extremely complex peacekeeping operation, at the very time the organisation was developing mechanisms to deal with such emergencies.
- **Insufficient troops:** The initial AMIS mission struggled to raise 3 320 personnel and AMIS II, which required close to 7 000 troops, pushed the mission's capacity to the limit. Yet even with its troop commitments fulfilled, AMIS faced tremendous challenges. Comparisons to NATO's missions in Bosnia and Kosovo highlight stark deficiencies. Whereas the 60 000 NATO troops initially

deployed in Bosnia covered 51 126 square kilometres and the 46 000 NATO troops at the start of the intervention in Kosovo covered 10 887 square kilometres, in Darfur AMIS forces are expected to protect 493 180 square kilometres. Thus, in Darfur, there was one AMIS soldier per 88 square kilometres, while in Bosnia and Kosovo, each soldier covered 0.85 and 0.24 kilometres, respectively.<sup>18</sup>

- **Inadequate equipment and training:** Although many of the TCC provided some training for their peacekeepers before deployment in Darfur (Rwanda bears particular reference), the level and standard of training was by no means standardised. The US and the Kofi Annan International Peacekeeping Training Centre (KAIPTC) did provide some training for commissioned officers, but much of the rank and file received no such training.
- **Financial constraints:** One of AMIS' most serious problems was inadequate funding. In December 2005, AU Peace and Security Commissioner Said Djinnit announced that despite a recent EU provision the mission would run out of money in April 2006.<sup>19</sup> The initial AMIS and AMIS II had budgets of US \$250 million and US \$450 million annually respectively. In 2005 there was a shortfall of US \$200 million and the mission was in danger of being unceremoniously terminated. This could have paved the way for a better-equipped UN force, or at least more Western involvement to buttress the struggling AMIS mission; neither of these were prospects the Sudanese government was prepared to accept and the regime offered to plug the funding shortfall. However, even this pledge could not save AMIS, since unrestrained Janjaweed activity exposed the impotence of the cash-strapped mission as it tried to match rhetoric with appropriate action.
- **Limited mandate:** The single largest problem that faced AMIS was its mandate. In 2004 the international community, faced with massive human rights violations and ethnic cleansing akin to Bosnia and Kosovo in the nineties, was still haunted by the memories of the complex intra-ethnic warfare in Somalia in the early nineties. More than 15 years after Somalia, the phrase 'African intervention' still leaves a bitter taste among Western nations. As a result, few were willing to become involved in what they assumed would be another quagmire. However, the US, NATO and EU were willing to provide training for African peacekeepers. NATO has provided air transport for the peacekeepers, as most African armies lack heavy airlift capability. Western nations have even provided them with uniforms, but not with the force

multipliers like APCs (armoured personnel carriers) and helicopters desperately needed for tactical mobility. The AMIS, and now UNAMID, deployment to Darfur allowed the Western diplomats to push a scaled-back Resolution 1769 through the UN Security Council, where many feared a Russian or Chinese veto if sanctions against Sudan were tabled. In this international climate Sudan was able to negotiate the deployment of AMIS forces with a severely limited mandate.

It was against this backdrop that the PSC authorised the AU's involvement in Darfur. The AMIS mandate effectively created a monitoring mission disguised as a PSO. The role of the mission was to monitor and verify the ceasefire between the Government of Sudan and rebel groups in Darfur. In addition, the mission was there to 'contribute to a secure environment' and 'protect civilians whom it encounters under imminent threat and in the immediate vicinity, within resources and capability, it being understood that the protection of the civilian population is the responsibility of the Government of Sudan'.<sup>20</sup> It is the latter that led to AMIS being written off as weak and ineffective by displaced peoples, humanitarians and even AMIS personnel interviewed for this chapter.

Additionally, even in its capacity as a monitoring mission AMIS was ineffectual. MILOBS interviewed expressed frustration with the inclusion of the Government of Sudan and rebel representatives on the investigation teams. Although the benefits of including both parties to a conflict in a verification mission is clear, it seems that in many cases these representatives appear to have done more harm than good. The fact that the Government of Sudan representatives frequently visit AMIS bases, taking part in briefings, means they are privy to all AMIS intelligence and movements.

## CONCLUSION

In the wake of massive human rights violations and indiscriminate violence, the AU's PSC established AMIS in 2004 with the authority to monitor a fragile ceasefire and 'catalogue' violations. Subsequent to this, and largely in response to the challenges faced by AMIS, UNAMID was established by UN Security Council Resolution 1769 in July 2007 and given a Chapter VII mandate. At the time of writing, just over nine years after the first African peacekeepers were deployed, Darfur is still in the clutches of violence and its future far from certain.

The Sudanese government has consistently failed to protect its civilians in Darfur, and the AU alone cannot fulfil the international responsibility to do so. At times it appears that the concept of 'African solutions for African problems' has given US and European policy makers a convenient excuse for limiting their actions to financial support. The UN and partners have acknowledged the lead role of the AU in Darfur and have been very supportive with assistance in some of the most deficient areas. The PSC and the AU in general need to strengthen their capacity and expertise at all levels of command through technical cooperation and appropriate assistance. UNAMID will allow for the AU to strengthen some of these areas through exposure to UN standards and international best practice.

The AU has been admirably engaged in the Darfur crisis but has ultimately proven ineffectual, hindered by poor resources and weak political will. At the same time, the Sudanese government's intransigence and the diplomatic protection it has received from China, Russia and the Arab states have all consistently scuttled even debate around the real steps that need to be taken to improve the situation in Darfur. Seven years after the establishment of the PSC it is clear that ending the human rights violations that have plagued Darfur will require greater pressure on Khartoum, a task which to date the AU has proved itself to be either incapable of undertaking or unwilling to undertake.

Through the PSC, the AU issued several informed and critical communiqués making known its concern about the violence in Darfur; however, it remains painfully clear that peacekeeping is a global responsibility. The rhetoric of 'African solutions to African problems' does not mean that the AU has to take a back seat to non-African actors. Rather the AU would be most effective in peacekeeping by bringing together various peace actors from local, regional and international systems, both African and non-African.

The shortcomings of both AMIS and AMIS II were preventable and predicted by many analysts. The calls for a more robust mandate were ignored and as a consequence AMIS and now UNAMID have become little more than tools of Khartoum. Deployment allowed the regime of President Omar al-Bashir, recently indicted by the International Criminal Court for war crimes, to assuage criticism of Sudanese complicity in Darfur through the deployment of a force with a restrictive mandate. If the PSC can use the lessons learnt in Darfur as it moves forward, then the failures in Darfur will become no more than historical footnotes. However, if it fails to make use of these lessons the PSC, which promised so much, may itself be consigned to failure.

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# 9 The PSC and ECOWAS

## Collaboration on conflict resolution in the two Guineas<sup>1</sup>

*Jimam Lar*

### INTRODUCTION

The framework guiding the relationship between the African Union (AU) and regional economic communities (RECs) is the Protocol on Relations between the African Union and Regional Economic Communities adopted in July 2007 in Accra, Ghana. Collaboration and coordination of peace and security policies are articulated in Chapter 2, Article 7, paragraph 2(b) and Article 30.<sup>2</sup> These relevant sections outline the establishment of a committee that shall be responsible for coordinating and harmonising policies on governance, peace and security, among other issues. The membership of these committees will be drawn from relevant departments of the AU and the RECs.

In addition, the Protocol Relating to the Establishment of the Peace and Security Council (PSC) provides the legal and institutional parameters of the PSC's relationship with regional mechanisms (RMs) for conflict prevention, management and resolution. Specifically, Article 16, paragraph 1(b) notes that the PSC shall 'work closely with Regional Mechanisms to ensure effective partnership in the promotion and maintenance of peace, security and stability'.<sup>3</sup> Furthermore, paragraph 3, of Article 16, calls for close harmonisation and coordination of

activities between the AU's PSC and RMs. In furtherance of these normative provisions, a Memorandum of Understanding on conflict prevention, management and resolution was signed between the AU and the RECs. Article 7, paragraph 4 states that, 'where conflicts have occurred, the parties shall cooperate in peace-making and peace-building activities to resolve these conflicts and prevent their recurrence, including through good offices, mediation, conciliation, enquiry and the deployment of peace support missions, as provided for in the PSC Protocol and other relevant regional instruments'.<sup>4</sup>

By referring to the AU and the Economic Community of West African States' (ECOWAS) collaborative interventions in Guinea Bissau and Guinea Conakry, between 2008 and 2010, this chapter argues that interventionism<sup>5</sup> has emerged as a norm of necessity in the behaviour of states in the international system. This chapter attempts an assessment of successes and challenges emerging from the AU PSC/ECOWAS intervention in our two case studies and concludes with an assessment of the prospects for future collaborations between the PSC and RECs.

## UNDERSTANDING INTERVENTION – CONTENDING THEORIES<sup>6</sup>

There are two main contending theories of international order that provide normative frameworks on how the international system should operate. First are the pluralists, who maintain that sovereignty demands minimal rules of coexistence, in particular that of non-interference in the domestic affairs of other states. The pluralist concern as it affects international intervention is that 'in the absence of an international consensus on the rules governing practice of unilateral humanitarian intervention, states will act on their own moral principles, thereby weakening international order'.<sup>7</sup> The second group is the solidarists, who contend that 'sovereignty is conditional and that the existence of an international society requires us to determine both the ends to which, in principle, all states, nations and peoples should be committed, and the means by which international order should be upheld'.<sup>8</sup>

The normative framework that best articulates the solidarist idea of liberal humanitarianism or a humanist theory of international order is the emerging norm of the 'responsibility to protect'. In December 2001, the report of the International Commission on Intervention and State Sovereignty was published, and outlined the broad framework of the responsibility to protect (R2P). In September 2003, the



UN General Assembly adopted the report and in April 2006 the UN Security Council issued Resolution 1674, which re-affirmed the R2P. The report's core basic principle, which speaks to the theory of humanitarianism, is worth reiterating in full:

State sovereignty implies responsibility, and the primary responsibility for the protection of its people lies with the state itself. Where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect.<sup>9</sup>

One could argue that the UN was established on firm pluralist principles. Specifically, Article 2 paragraph 7 of the UN Charter of 1942 states that the UN may not 'intervene in matters which are essentially within the domestic jurisdiction of any state'. Similarly, Article 3 paragraph 2 of the OAU Charter of 1963 essentially borrowed from the UN Charter and Article 2(7) in particular. However, whereas the UN Charter's Article 2(7) has a caveat that allows the organisation to intervene in internal matters of member states, when acting under Chapter VII and the rubric of humanitarian intervention, the OAU Charter did not establish such a provision.

The AU Constitutive Act, the successor to the OAU Charter, has included a provision in Article 4(h) that authorises intervention.<sup>10</sup> Additionally, the AU's Constitutive Act, signed in Lomé, Togo, in 2000, has provisions for promoting democratic governance and proscribes the acquisition of power by unconstitutional means. ECOWAS has also taken the lead in managing conflicts within its region. Since intervening in Liberia in August 1991 for the first time in its history, ECOWAS has subsequently played a major role in peace, security and governance issues in the sub-region. ECOWAS has also developed a range of normative frameworks to uphold democratic principles, constitutionality and the rule of law.<sup>11</sup>

## THE TWO GUINEAS – SECURITY/POLITICAL SYSTEMS IN HISTORICAL CONTEXT

The roots of West Africa's governance dilemma are deeply entrenched in the region's historical experience that dates back to European colonialism. The lack of effective democratic governance was subsequently exacerbated during a post-colonial period that was characterised by the machinations of the bi-polar geo-strategic

imperatives of the Cold War. The then superpowers, the United States (US) and the Union of Soviet Socialist Republics (USSR) intervened overtly and covertly in the affairs of African countries to advance their ideological agendas, with no regard for the domestic conduct of regimes in power. This allowed a permissive environment of bad governance to flourish and authoritarian and dictatorial regimes to run roughshod over the fundamental human rights of their peoples.

## Guinea-Conakry

In Guinea-Conakry, under the yoke of its authoritarian ruler Sekou Toure, the security forces were not obligated to operate under democratic norms and principles. Human rights in the country were systematically undermined and political prisoners perished behind bars. After Sekou Toure's death, Lassana Conte, then a colonel in the Guinean army, took power in a coup d'état and remained in power for 24 years. Conte presided over the massive deterioration of public infrastructure and economic mismanagement characterised by large-scale official state kleptocracy. This was punctuated by the definitive collapse in the provision of education, health and other social services; inevitably all of this culminated in the creation of alienated, marginalised and frustrated populations. In December 2008, following Conte's death from a protracted illness, a group of army officers led by Captain Moussa Dadis Camara announced the dissolution of the Constitution and took control of the government. Calling themselves the National Council for Democracy and Development (CNDD), the soldiers promised to fight Guinea's widespread corruption and its drug trafficking industry. While there was a collective condemnation from the international community, Guineans exhausted from decades of dictatorship and misrule openly celebrated on the streets of Conakry and across the country.

This celebration was unfortunately short-lived, as two events transpired to expose the negative intentions of Camara's regime. Firstly, Camara reneged on an understanding that he would not contest the presidency as a civilian, which would in effect extend his rule. This exposed the military strongman's intention to continue the negative practices of previous regimes and reversed his acceptance and popularity amongst Guineans. In response to Camara's plans to contest the presidential poll, a demonstration was convened at Conakry's main stadium on 28 September 2009. The junta deemed the demonstration illegal and responded with force. Soldiers opened fire on innocent civilians, killing at least 160, injuring

1 700 and brutally raping over 100 women.<sup>12</sup> On 3 December 2009, Camara was shot by his aide-de-camp, Aboubacar Diakiti, ostensibly because the junta leader wanted to attribute sole responsibility for the atrocities to him. These events left Guinea in a very precarious situation while Camara was evacuated to Morocco for treatment, and subsequently to Burkina Faso to recuperate.

The junta's defence minister, Sekouba Konate, became the interim leader and has since established a transitional government, which is tasked with guiding the country through elections. On 27 June 2010, a first round of voting in the presidential elections was convened. Subsequently, a run-off was convened on 7 November 2010 between former Prime Minister Cellou Dalein Diallo and the veteran opposition leader Alpha Conde. Conde won the run-off with 52,52 per cent of votes cast against 47,48 per cent for Diallo. President Conde was sworn in on 22 December 2010.

## Guinea-Bissau

In Guinea-Bissau the historical emergence of a military dictatorship was directly linked to the dysfunctional security sector that was dominated by the liberation army after independence.<sup>13</sup> The position of the founding leader of the country, Amilcar Cabral, was undermined and made untenable owing to his leadership struggle with General Joao Bernardo Vieira. Vieira was one of the key military strategists during the liberation war but subsequently emerged as Principal Commissioner (Prime Minister) and Army Commander after independence. Being at the head of a military that had emerged from a liberation war and did not appreciate subservience to a civilian Commander-in-Chief, Vieira had no difficulty in deposing Cabral in a coup d'état on 14 November 1980. Vieira shored up his position and amid the Cold War divide of the time established a stable but brutal military dictatorship.<sup>14</sup>

Military rivalry and ethnic fractionalisation, among other factors, culminated in a civil war between June 1998 and May 1999. Vieira, who was ousted in 1999, returned triumphantly to win elections in 2005. Unfortunately continuing rivalry with the top military hierarchy and intermittent violence culminated in Vieira's assassination by soldiers on 2 March 2009.<sup>15</sup>

Apart from political and historical legacies that have shaped the relationship between the political ruling class and the populations of the two Guineas, other factors of consequential note include:

- The crisis-ridden political environment in which decision making takes place
- The prominence of particularistic agendas in the public sector
- A critical lack of institutional capacity to ensure the effective functioning of the countries' service sectors

These are the features that define the dysfunctional governance dilemma that has afflicted the two Guineas.<sup>16</sup>

## THE PHENOMENON OF 'SPECIAL DEMOCRACIES'

Although there are certain commonalities across the sub-region,<sup>17</sup> West African states are characterised by distinctive trajectories in their transition from military and authoritarian rule. The countries are at different stages of political transition so one cannot impose a wholesale generalisation on the conditions in the region.<sup>18</sup> On the one hand there are some countries, such as Ghana, that have demonstrated that they are making progress in the process of political transition, and are striving to engender some level of security, development and peaceful coexistence. On the other hand there is a bleak picture of countries where transition is either in a state of flux or has not yet begun. These countries are smokescreen democracies, or what ECOWAS informally refers to as 'special democracies',<sup>19</sup> where on the surface some semblance of stability exists but where the foundations are characterised by rampant abuse of human rights and the suppression of all forms and manners of dissent from the media and opposition. In these countries elections are stage managed, and haplessly rigged in favour of the incumbent ruling party or personality.

It is within the context of the 'special democracies phenomenon' that events in Guinea-Bissau and Guinea-Conakry should be understood. The two Guineas were on the verge of major internal crises after the demise of their heads of government because political transition had either only partially taken place or not begun at all.

## AU PSC-ECOWAS COLLABORATION IN THE TWO GUINEAS – SEEKING A COHERENT RESPONSE

The reactions and responses from the AU PSC and the ECOWAS Commission to the events in Guinea-Conakry in December 2008 demonstrated some elements of coherence, particularly owing to the fact that the two organisations responded

on the basis of their existing norms and protocols. This was important because in such circumstances it is vital for key stakeholders such as the AU PSC and ECOWAS to articulate a common position, otherwise the target country can easily play one organisation off against the other. The AU and ECOWAS have articulated norms and principles which reject attempts by military juntas or any other groups to engage in the unconstitutional takeover of the reins of power. This message has to remain clear and consistent from all stakeholders. The response of the AU PSC and ECOWAS to the coup in Guinea-Conakry was quite nuanced. For instance, a reading of the AU PSC Communiqué of its 165<sup>th</sup> meeting, held on 29 December 2008, reveals a legal and a political perspective.<sup>20</sup> The legal perspective is found in the early paragraphs of the Communiqué, where the PSC, recognising the contravention of AU norms and principles,

... reiterates its firm condemnation of the coup d'état ... which is a flagrant violation of the constitution of Guinea and of the relevant AU instruments, as well as its demand for the return to constitutional order ... [Paragraph 3 goes on to state that the PSC] decides to suspend Guinea in the activities of the AU until the return to constitutional order ... in accordance with the relevant provisions of AU Constitutive Act and Lomé Declaration, of July 2000 ...<sup>21</sup>

As far as the case of legality and legitimacy goes, the Guinea coup was a contravention of the relevant provisions of the AU Constitutive Act and the Lomé Declaration of July 2000. The two documents condemn the unconstitutional and undemocratic takeover of power in all member states of the Union. However, this argument was nuanced by a political statement, with the AU PSC in the same communiqué stating that it

welcomes the present coordination between the AU and ECOWAS and urges the Chairperson of the Commission to pursue in close coordination with the countries of the region, the efforts he has already initiated including the contacts with the perpetrators of the coup d'état, for rapid return to constitutional order, and promised to work with the new authorities in collaboration with ECOWAS.<sup>22</sup>

While the AU PSC condemned the coup, in accordance with the proverbial saying of 'not throwing the baby out with the bath water', the need for and importance

of engaging the coup perpetrators to assist the country in returning to constitutional rule as soon as was practicable was clearly emphasised.

On its part ECOWAS responded to Camara's coup with a strongly worded communiqué read by then ECOWAS President Mohamed Ibn Chambas after an Extraordinary Summit of the Authority of ECOWAS Heads of State and Government in Abuja, Nigeria, on 10 January 2009. The Heads of Government suspended Guinea from all its meetings until constitutional order was restored in the country. The Heads of Government also strongly condemned the coup d'état in conformity with the provisions of Protocol A/SP1/12/01 on Democracy and Good Governance.<sup>23</sup> When Vieira and his Army Chief were assassinated, the sub-regional body was one of the first to respond, offering to mediate among the factions and multiple stakeholders in the country. The ECOWAS statement, among other things, stated that the assassinations were not just an assassination of a president or a chief of staff, but represented the assassination of democracy.<sup>24</sup> The AU PSC was also quick to condemn the assassinations; emerging from its 174<sup>th</sup> meeting on 3 March 2009 to condemn the assassinations, the PSC 'noted the intentions of the Armed Forces to uphold the provisions of the constitution of the country relating to the succession to the presidency'.<sup>25</sup> Furthermore, the Council also welcomed the efforts that ECOWAS had been making over the years to engage the Guinean authorities and further welcomed the initiatives of the AU Chairperson, requesting him to continue to take all necessary steps in close consultation with the Chairperson of ECOWAS to resolve the crisis.<sup>26</sup> The fact that the reactions were prompt, coherent and not contradictory created the grounds for and framed, at the outset, the tone that the engagement and mediation would take. This was critical to the stabilisation of the crises in both countries.

## TOWARDS A COORDINATED ENGAGEMENT

The AU PSC and ECOWAS were coherent in their response, and engagement was sustained with high levels of collaboration. The focal point of the AU PSC/ECOWAS engagement in Guinea-Conakry was the International Contact Group for Guinea (ICG-G). The ICG-G was established on 30 January 2009, to continue engagement, coordinate their efforts and monitor progress towards the restoration of constitutional rule in Guinea.<sup>27</sup> The Contact Group is co-chaired by the ECOWAS President and the Chairperson of the AU Commission. Other members included representatives of the Community of Sahel-Saharan States (CEN-SAD),

the European Union (EU), the Mano River Union (MRU), the Organisation of Islamic Conference (OIC), Organisation de la Francophonie (OIF), the UN, and the Chair of the AU PSC, as well as African members and permanent members of the UN Security Council (UNSC).

On 15 February 2009, the ICG-G held its first meeting in Conakry. Between February 2009 and January 2010 the Contact Group held ten meetings. On 26 January 2010, the 10<sup>th</sup> meeting was held on the margins of the AU Executive Council and the Assembly of the Union, in which the International Contact Group continued to engage the military regime in Conakry constructively.<sup>28</sup> Another important demonstration of coordination and collaborative engagement between the AU PSC and ECOWAS is found in the PSC's Communiqué adopted after its 207<sup>th</sup> Meeting held in Abuja, Nigeria, on 29 October 2009. This was after the brutal killings of and deliberate acts of violence against unarmed civilian demonstrators by armed units under the authority of the CNDD on 28 September 2009.<sup>29</sup> The PSC also threw its weight behind the mediation efforts undertaken by President Blaise Compaore of Burkina Faso on behalf of ECOWAS, and requested the AU Commission, in close collaboration with ECOWAS and members of the ICG-G,

to take all measures towards the implementation of targeted sanctions, including denial of visas, travel restrictions and freezing of assets, against the President and members of the CNDD ... and any other civilian or military individual whose activities are aimed at maintaining the unconstitutional status quo in Guinea.<sup>30</sup>

In Guinea-Bissau, after the strong responses to the assassinations of early March 2009 referred to above and on 5 June 2009,<sup>31</sup> there were several levels of sustained engagement. At the level of the AU Commission, the Chairperson, with the support of the PSC through the relevant communiqués and also through the efforts of his then Special Envoy for Guinea-Bissau, Joao Bernardo de Miranda, was able to support the stabilisation process. The AU's functioning in Guinea-Bissau and also in Guinea-Conakry was largely facilitated by the fact that ECOWAS had a physical presence in these countries, with expertise to acquire and provide on-the-spot analysis and situation reports. The presence and function of the ECOWAS liaison offices in critical zones of crisis mean that ECOWAS and the AU are well informed on all developments in crisis countries; this is important because it allows responses and engagements to proceed in a coherent and expedient manner.

The AU and ECOWAS's unwavering and sustained engagement with and support for the crisis countries, in search of a peaceful resolution that conforms to the relevant protocols and decisions, are well captured in the communiqués of the 10<sup>th</sup> Meeting of the ICG-G held in Addis Ababa, 26 January 2010 and the 37<sup>th</sup> Ordinary Session of ECOWAS Heads of State and Government held in Abuja, 16 February 2010. The ECOWAS Summit, among other things, assured the new president of Guinea Bissau of its support in the implementation of measures to enhance good governance, and control impunity and drug trafficking. They also 'hailed the signing of the Ouagadougou Joint Declaration of 15 January 2010 as a critical step in the effort to restore constitutional order and end the crisis in Guinea Conakry'.<sup>32</sup>

## CHALLENGES CONFRONTING THE PSC AND ECOWAS FRAMEWORK OF COLLABORATION

The discussion above has briefly illustrated how the AU PSC and ECOWAS have coordinated their responses to contribute positively to the management of the crises affecting the two Guineas. However, there are areas where both organisations can improve their interventions and ensure that they have a more lasting effect. Firstly, the AU PSC needs to improve on the mechanisms for enforcing its decisions. Despite the fact that both organisations systematically issued a range of statements and directives, the regimes in the target countries, in this case the two Guineas, were essentially able to ignore these statements. As an illustration, despite all the efforts of the AU-ECOWAS collaboration in Guinea-Conakry, the significant breakthrough that culminated in the signing of the Ouagadougou Joint Declaration only came after the violence of an attempted assassination removed junta leader Camara from the seat of power. Although Camara's attempted assassination triggered the progress, this would not have happened if the AU and ECOWAS had not been engaging with the deteriorating situation with sustained commitment and resolution.

Secondly, there is a need for effective communication of the PSC's decisions, and an improvement in the coordination of international efforts and activities in crisis zones and countries. Crisis zones tend to attract a multiplicity of international actors, each with their own self-interest. The leading organisations, the AU and the relevant REC, need to lead international coordination in these regions because of their close proximity to the countries as well as their understanding of the political dynamics necessary for effective intervention. A relevant example



is the duplication of security sector reform (SSR) support to Guinea-Bissau, where over 14 different countries and organisations were involved. This multiplication of international intervention enabled the target in-country institutions to avoid making any fundamental changes.<sup>33</sup>

Thirdly, the AU PSC needs to show more consistency in its early response to crisis situations. Whereas the AU PSC is quick to respond to situations where there is an unconstitutional takeover of government or where a political assassination takes place, as our case studies above demonstrate, there is a reluctance to engage with countries that have been embroiled with low-level conflicts and bad governance at an early stage. This allows situations to deteriorate to the point where violence erupts, at which point it becomes exponentially more difficult to resolve a dispute. The principle of sovereignty and non-intervention clearly continues to impose constraints on the ability of the AU and ECOWAS, and other intergovernmental organisations, to intervene at an early stage. However, there is a perceptible incremental increase in the propensity of the AU and ECOWAS and similar organisations to utilise the gamut of norms, protocols and mechanisms to intervene in the affairs of their member states.

## CONCLUSION

Non-democratic means of ascending to power are condemned and are frowned upon by the norms and principles of both the AU and ECOWAS.<sup>34</sup> The permissive environment that enables so-called ‘special democracies’, which have not really undergone transition, to prevail created the context in which the recent experiences in Guinea-Conakry and Guinea-Bissau took place. This made it critical for the AU and ECOWAS not to ignore or dismiss the events in the two Guineas, but to use the opportunities generated to lay the foundations for stabilisation.<sup>35</sup> The collaborative efforts of the AU and ECOWAS in the two Guineas have illustrated the importance of intergovernmental organisations coordinating efforts to manage crises across the continent.

The situation in both countries is far from stabilised but there is a platform on which to build. In Guinea-Bissau, despite the election of a new president, security sector governance remains a major challenge. The deep mistrust among political and military elites, coupled with Guinea-Bissau’s status as a major hub for the trafficking of narcotics, fosters transnational criminality, political instability and insecurity. As the authorities in Guinea-Conakry midwife the country hopefully

towards an enduring democratic culture, coordinated international support is critical. If both countries are genuinely to move forward, domestic stakeholders will have to be persuaded to agree to and internalise reform. In the final analysis it is clear that the relationship between the AU and ECOWAS is evolving and, progressively, insights gained from joint interventions in countries like the two Guineas will provide useful insights for ongoing and future initiatives to promote peace and security in Africa.

## NOTES

- 1 Although the objective of this chapter is to assess the PSC's collaboration with ECOWAS in particular, the AU Commission/ ECOWAS collaboration is also discussed, which further demonstrates the progress that has been made in the areas of coordination and coherence between the AU PSC and African RECs.
- 2 See The Protocol on Relations between the AU and RECS, July 2007, Accra-Ghana, <http://www.afrimap.org/english/images/treaty/AU-RECs-Protocol.pdf> (accessed 26 March 2010).
- 3 See *Protocol relating to the establishment of the Peace and Security Council of the African Union* (PSC Protocol), adopted by the 1<sup>st</sup> Ordinary Session of the Assembly of the African Union in Durban, South Africa, on 9 July 2002, Article 16, item 1b, [http://www.africa-union.org/root/AU/organs/psc/Protocol\\_peaceandsecurity.pdf](http://www.africa-union.org/root/AU/organs/psc/Protocol_peaceandsecurity.pdf) (accessed 26 March 2010).
- 4 See the AU-RECs Memorandum of Understanding on Peace and Security, Article VII, item 4. <http://www.afrimap.org/english/images/treaty/AU-RECs-Protocol.pdf> (accessed 26 March 2010).
- 5 'Interventionism' in this instance does not exclusively refer to robust enforcement. In the context of this chapter's analysis, the activities of preventive diplomacy and mediation are also categorised as intervention.
- 6 The ideas on and analysis of humanitarian intervention argued in this section are largely taken from an earlier paper by the author. See JT Lar, Making the case for humanitarian intervention: a threshold in African conflict prevention and management, *Journal of the Historical Society of Nigeria* 17 (2008), 41–55.
- 7 Nicholas J Wheeler, *Saving strangers: humanitarian intervention in international society*, Oxford: Oxford University Press, 2002, 29.
- 8 James Mayall, Introduction, in M Berdal and S Economides (eds), *United Nations Interventionism 1991–2004*, Cambridge: Cambridge University Press, 2007, 4.
- 9 *The responsibility to protect*, Report of the International Commission on Intervention and State Sovereignty, <http://www.iciss.ca/report-en.asp>, xi (accessed 10 November 2010).

- 10 Article 4, paragraph H of the African Union Constitutive Act adopted in 2002 provides for ‘the right of the Union to intervene in a member state pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity’.
- 11 Key among these normative frameworks are the Protocol on Democracy and Good Governance, and the ECOWAS Conflict Prevention Framework (ECPF).
- 12 Francois Grignon, Africa peace-building agenda, ‘Guinea: the junta must leave,’ International Crisis Group, <http://www.crisisgroup.org/text/index:cfm=6390> (accessed 26 March 2010).
- 13 For more on this analysis, see JT Lar, The ECOWAS SSR agenda in West Africa: looking beyond normative frameworks, KAIPTC Occasional Paper, 24, Kofi Annan International Peacekeeping Training Centre, Accra, Ghana.
- 14 *Ibid.*, 105–107.
- 15 Obituary: President Vieira of Guinea Bissau, BBC News, <http://news.bbc.co.uk/go/pr/fr/-/2/hi/africa/7918462.stm> (accessed 2 March 2009).
- 16 Dylan Hendrickson, *Understanding and supporting security sector reform, a DFID handbook on SSR*, London: Conflict Security and Development Group (CSDG), King’s College, 2008, 8.
- 17 This section is largely taken from an earlier paper by the author. See JT Lar, The ECOWAS SSR agenda in West Africa: looking beyond normative frameworks, 5–7.
- 18 These two volumes are Alan Bryden, Boubacar N’Diaye, and Funmi Olonisakin (eds), *Challenges of security sector governance in West Africa*, DCAF, Lit Verlag, Münster, 2008, and Adedeji Ebo and Boubacar N’Diaye, (eds), *Parliamentary oversight of the security sector in West Africa: opportunities and challenges*, DCAF, 2008.
- 19 This is a common way amongst ECOWAS staff of addressing member states that are still governed by idiosyncratic dictators who are presiding over anything but democratic regimes.
- 20 Souaré explains this point effectively. See Issaka Souaré, Explaining the December 2008 military coup d’état in Guinea, *Conflict Trends* (1) (2009), 27–33, [http://accord\\_explainingdecember-2008militarycoupdetat\\_Guinea.pdf](http://accord_explainingdecember-2008militarycoupdetat_Guinea.pdf) (accessed 26 March 2010).
- 21 Communiqué of the Peace and Security Council, 165<sup>th</sup> Meeting, 29 December 2008, Addis Ababa, Ethiopia [http://www.africa-union.org/rppt/au/organs/165-Communique\\_Eng.pdf](http://www.africa-union.org/rppt/au/organs/165-Communique_Eng.pdf). (accessed 26 March 2010).
- 22 *Ibid.*
- 23 Authority of Heads of State and Government suspends Guinea, [http://www.ecowas.int/publications/en/communique\\_final10jan2009/comfinal](http://www.ecowas.int/publications/en/communique_final10jan2009/comfinal) (accessed 28 March 2010).
- 24 Guinean President Shot Dead, BBC News, <http://news.bbc.co.uk/go/pr/fr/-/2/hi/Africa/7918061.stm> (accessed 28 March 2010).
- 25 Communiqué Peace and Security Council, 174<sup>th</sup> Meeting, 3 March 2009. PSC/PR/Comm (CLXXIV) <http://www.issafrica.org/uploads/PSC174COM.PDF> (accessed 26 March 2010).

- 26 Ibid.
- 27 See Final Communiqué 1<sup>st</sup> Meeting of The International Contact Group on Guinea (ICG-G), Conakry, 15 February 2009, Communiqué final de la 1 Session du GIC-G Conakry 15-02-2009 Eng.pdf. (accessed 27 March 2010).
- 28 See Final Communiqué of 10<sup>th</sup> Meeting of the International Contact Group on Guinea (ICG-G) Addis Ababa, 26 January 2010. Communiqué final de la 10eme Session du GIC-G Addis Ababa 26-01-2010 Eng.pdf. (accessed 27 March 2010).
- 29 Communiqué of the African Union Peace and Security Council, 207<sup>th</sup> Meeting at the level of Heads of State and Government, 29 October 2009, Abuja Nigeria, PSC/AHG/COMM.2(CCVII).
- 30 Ibid.
- 31 A presidential candidate, Baciro Dabo, and Helder Proenca, a former defence minister, were assassinated on 5 June 2009 in the build up to the presidential elections. This was strongly condemned by ECOWAS and the AU PSC at its 192<sup>nd</sup> meeting held on 10 June 2009.
- 32 Communiqué of 37<sup>th</sup> Ordinary Meeting of the Authority of ECOWAS Heads of State and Government, Abuja, 16 January 2010, Ref.:CWW/HOSG/ABJ/37/Rev.1, [http://www.ecowas.int/publications/en/communiqué\\_final/comfinal.pdf](http://www.ecowas.int/publications/en/communiqué_final/comfinal.pdf) (accessed 28 March 2010).
- 33 International Crisis Group, *Guinea Bissau: beyond the rule of the gun*, Africa Briefing, 61 (25 June 2009). Some of the countries and organisations involved include Portugal, Nigeria, Spain, Brazil, France, UK, UNDP, EU, ECOWAS, and Angola. More recently the AU and ECOWAS have been mandated to lead the process, with support from the UN.
- 34 The AU and RECs, like ECOWAS, have developed norms and protocols that uphold democratic principles and the rule of law; for example, ECOWAS has the Protocol on Democracy and Good Governance.
- 35 Currently an international contact grouping led by ECOWAS is engaged in assisting and supporting Guinea towards a democratic transition.

# 10 The PSC and unconstitutional changes of government in Africa

## A critical assessment

*Issaka K. Souaré*

### INTRODUCTION

The Peace and Security Council (PSC) is a very important organ of the African Peace and Security Architecture (APSA) of the African Union (AU). This is so particularly with regard to the prevention, management and resolution of conflicts. With regard to instances of unconstitutional changes of government (UCGs), it is the organ that spearheads the efforts of the AU in view of restoring constitutional order in the country concerned.<sup>1</sup> Yet, since its inauguration in May 2004, there have been eight cases of UCGs in five African countries. What has the work of the PSC on UCGs consisted of and what assessment can be made of its performance so far? This chapter takes stock of cases of UCGs since 1990, with a focus on those that have occurred since the PSC's inauguration; scrutinises the actions of the PSC; and points to a few ways in which its performance may be improved.

The chapter shows that there have been some improvements in the responses of the Organisation of African Unity (OAU) and later the AU to UCGs since the adoption of the Lomé Declaration in July 2000, compared to the situation before this date. This change is illustrated, first, by the adoption of the first comprehensive and structured continental response to the phenomenon. This

response led to the second illustration of this change, which is the firmness with which cases of UCGs have been dealt with since the initial response, albeit with some inconsistencies. The combined effect of these two changes has been a significant reduction in the occurrence of UCGs. The chapter finally shows that, despite the continued occurrence of the phenomenon, the PSC is innovative in its continental approach by being proactive and principled in condemning not only UCGs engineered by military officers but also those orchestrated by sitting rulers.

This chapter is divided into three main sections. The first section provides a conceptualisation of UCGs and the policy position of the AU in this regard. Beyond a descriptive listing of policy actions, this section also interrogates the wisdom behind the policy. The second section considers the interventions of the PSC in cases of UCGs from its inauguration in May 2004 to December 2010. The third section then scrutinises the PSC's work on these cases. The assessment made in this section is based on both quantitative and qualitative analysis of cases of UCGs in this period. This allows, in the conclusion, a number of policy recommendations to be put forward in view of improving AU strategies for addressing the challenge of UCGs on the continent.

## **THE AU'S POLICY APPROACH TO UNCONSTITUTIONAL CHANGES OF GOVERNMENT IN AFRICA – CONCEPTUAL AND OPERATIONAL FRAMEWORKS**

Both the definition of UCG and the policy actions suggested by the AU, in continuation of the practice of its predecessor the OAU, are contained in three policy instruments. The first is the Lomé 'Declaration on the Framework for an OAU Response to Unconstitutional Changes of Government' (hereinafter referred to as the 'Lomé Declaration'), adopted in the Togolese capital, Lomé, in July 2000.<sup>2</sup> The second instrument is the Constitutive Act of the AU (2002). The African Charter on Democracy, Elections and Governance, adopted in Addis Ababa by the 8<sup>th</sup> ordinary summit of the AU in January 2007 (henceforth referred to as the 'Addis Charter'), is the third instrument dealing with the subject matter at continental level.<sup>3</sup> It is worth noting that despite the non-ratification of the Addis Charter by the requisite number for operationalisation, as at December 2010, a decision of the 14<sup>th</sup> AU Assembly of Heads of State and Government, held in Addis Ababa in

February 2010 (hereinafter referred to as the 'Addis Decision'), adopted a number of innovative provisions of the Charter, which are not in the Lomé Declaration. Those include the refusal of auto-legitimation of coup makers through elections they ought to organise to restore constitutional order in their countries.<sup>4</sup>

According to these instruments, the following five situations constitute instances of UCG:

- Military coup d'état against a democratically elected government
- Intervention by mercenaries to replace a democratically elected government
- Replacement of democratically elected governments by armed dissident groups and rebel movements
- The refusal by an incumbent government to relinquish power to the winning political party after free, fair and regular elections
- Any amendment or revision of the constitution or legal instruments, which is an infringement on the principles of democratic change of government

Regarding the operational policy position of the AU in relation to UCGs, the first element of this policy is for the current Chairperson and the President of the AU Commission (AUC), on behalf of the Organisation, to condemn immediately and publicly the act of UCG and urge for the speedy return to constitutional order in the country concerned. This is because a UCG is considered 'as an unacceptable and anachronistic act, which is in contradiction of ... democratic principles and conditions' that the continent has espoused, as stated by the Lomé Declaration. In addition to the condemnation, the following steps are to be taken and in the following sequence:

- The PSC should immediately convene to discuss the matter.
- The country where the UCG occurred should be suspended from participating in the decision-making organs of the AU while the 'new authorities' are given a period of up to six months to restore constitutional order.<sup>5</sup>
- The AU would, during this six-month period, engage with the new authorities with a view to ascertaining their intentions regarding the restoration of constitutional order in the country and, in so doing, seek the contribution of African leaders and personalities in the form of discreet moral pressure on the perpetrators of the unconstitutional change in order to get them to cooperate with the AU in its efforts. The collaboration of the Regional Economic

Community (REC) to which the 'country in crisis' belongs is also to be enlisted in this endeavour.

- At the expiration of the six-month suspension period, a range of limited and targeted sanctions against the regime that stubbornly refuses to restore constitutional order should be instituted, in addition to the continued suspension from participation in the AU policy organs.
- Interdiction of auto-legitimation by the coup makers by which they are not to be allowed to participate in elections held to restore the democratic order or to hold any position of responsibility in political institutions of their state (Article 25 of the Addis Charter, and Addis Decision) should be obtained.<sup>6</sup>

## Interrogating the wisdom of the policy

Any interrogation of the AU's policy position on UCGs as presented above must put the policy in its appropriate historical and political contexts, which can be found in the Lomé Declaration (2000) and the circumstances that led to the adoption of the Addis Charter (2007) and the Addis Decision (2010). In the preamble of the Lomé Declaration, African leaders state 'that coups are sad and unacceptable developments in our Continent, *coming at a time when our people have committed themselves to respect of the rule of law based on peoples' will expressed through the ballot and not the bullet*' [emphasis added].

It would seem that African leaders came to this conclusion after a careful review of various patterns of change of government and realised that constitutional channels were not only the best way but the only acceptable means of coming to power. Indeed, the adoption of the Lomé Declaration in July 2000 took place about ten years after the end of the Cold War and the start of a widespread democratisation process on the continent. As Francis Ikome notes, democracy had 'emerged as the most popularly accepted form of government [...] even among Africa's not-too-democratic leadership'.<sup>7</sup>

Military coups were a normal occurrence in Africa in the period prior to 1990. In this period, most African rulers left office through a military coup, political assassination, or some other form of violent overthrow – only one leader left power after losing elections.<sup>8</sup> This happened in Mauritius following the June 1982 general elections in which a coalition led by Anerood Jugnauth's Mauritian Militant Party (MMM) defeated the Labour Party of Prime Minister Seewoosagur Ramgoolam.



Ramgolam graciously left power, having led Mauritius to independence in 1968 and ruled the country until this electoral defeat.

Indeed, some other leaders retired voluntarily (e.g. Aden Abdullah Osman in Somalia in June 1967, Léopold Senghor in Senegal in December 1980, Ahmadou Ahidjo in Cameroon in November 1982, and Julius Nyerere in Tanzania in October 1985). But most of those did so after handpicking their own successor. The prevalence of military coups was such that some argue that in analysing the phenomenon the question should not be why military coups occur or occurred in an African country, but perhaps rather why they do or did not.<sup>9</sup>

Yet the end of the Cold War and the political liberalisation that ensued on the continent saw many long-time rulers leave power after elections and in favour of opposition candidates (e.g. Mathew Kérékou in Benin and Kenneth Kaunda in Zambia in 1991, Denis Sassou N'Guesso in Congo in 1992, Didier Ratsiraka in Madagascar in 1993, and Hastings Banda in Malawi in 1994). But some of these changes or the prospect of similar changes elsewhere were undermined by military coups at a preoccupying rate.

It is against the backdrop of this changed political environment on the continent and the menace that military coups were perceived to pose to this new or 'aspirational' political order that the Lomé Declaration has to be read. This is illustrated by the fact that the most significant step taken by African leaders towards the adoption of the Lomé Declaration came at the 33<sup>rd</sup> summit of the OAU held in Harare, Zimbabwe, in early June 1997, following the coup d'état in Sierra Leone barely a week earlier. The putsch overthrew the democratically elected government of Ahmed Tejan Kabbah, who had been elected after nearly half a decade of brutal civil war in the country. For almost the first time, African leaders jointly and unequivocally condemned and rejected that coup and any unconstitutional change of government on the continent and resolved to maintain a united official stance on this issue in future, 'particularly, as regards the measures to apply in coup d'état situations occurring in Member States'.<sup>10</sup>

Following this, the OAU and then AU followed the principles of the Lomé Declaration, particularly with regard to the condemnation of military coups. But there was a weakness in this approach, in that it focused mainly on the mode of 'accession to power' while neglecting or proving to be powerless vis-à-vis 'unconstitutional maintenance of power' by sitting leaders. Yet, the Lomé Declaration had been clear about this, as it acknowledged that strict adherence to 'the principles of good governance, transparency and human rights' and the 'strengthening

of democratic institutions' would considerably reduce the risks of UCGs on the continent. The Addis Charter was therefore adopted to address this shortcoming in the AU's policy on UCGs.

Given the above, the evaluation of the rationale for the policy should largely be based on the answer to the following two questions: first, is the new political order that is seemingly espoused by the continent, or that which it has been striving to adopt or perfect since the end of the Cold War (i.e. multiparty democracy and constitutionalism as the only acceptable means of change of government) a better political dispensation than what existed before 1990? If this is the case, then how truthful is the assumption made by the AU position that military coups and other forms of unconstitutional change of government are a true menace to this new order?

Regarding the first question, it would appear from the empirical data on military coups in Africa that some regimes birthed by military coups have turned out to be relatively better than the ones they overthrew, some of which were constitutional regimes in the legal sense of the word. Examples include the March 1991 coup staged by Amadou Toumani Touré in Mali and that of August 2005 by Ely Ould Mohamed Vall in Mauritania. Both men overthrew autocratic regimes, promised to restore democracy and honoured this promise by organising credible elections and handing over power to the duly elected leader in 1992 and 2007, respectively. This is because military coups are sometimes the consequence of bad governance by the ousted regime, as the AU itself acknowledges. It is perhaps this fact that led Ikome to suggest that 'some coups are acceptable, and therefore could be said to be good coups, whereas others are not acceptable, and are therefore bad coups'.<sup>11</sup>

But this assertion poses a number of problems. One is that notwithstanding a few exceptions, the 'majority' of unconstitutional regimes have not governed any better than the regimes they replaced. To use John Clark's expression, military rulers have, in most cases, 'turned out to be at least as corrupt and authoritarian as the civilians whom they replaced'.<sup>12</sup> Naison Ngoma notes that: 'Although the military has a certain contribution to make towards the development of a state, this contribution has not always been successful'.<sup>13</sup>

In fact, a proper evaluation of the 'goodness' or the 'redemptory' quality of military coups may consider the following formula. This formula suggests that 20 per cent of scores to be awarded military juntas should be based on the nature of the regime they overthrew. Most military juntas would fare well in this regard.

**Figure 1** A formula for evaluating the ‘goodness’ of military coups

20%	30%	50%	
How bad was the overthrown regime	How successful was the junta in solving the socio-economic problems of the country	When and how did the junta leave power in compared to initial promises	+70% = good coup -70% = bad coup -40% = average score of juntas

Source Author's own conception<sup>14</sup>

But the way they comport themselves in power and how successfully they manage to resolve the social-economic difficulties in the country, which they generally claim to be their main motive for coming to power, should win them or deprive them of 30 per cent of the score. The remaining 50 per cent should be reserved for *how* and *when* they leave power. Most military juntas in Africa would miserably fail the latter two tests, and therefore lose close to 70 per cent of the score.

Another problem that flows from the above is that policies are based on predictable patterns and not versatile or unstable ones; yet, coup plotters who replace bad leaders, constitutional or otherwise, may themselves end up governing poorly and therefore head bad and illegitimate regimes, as has generally been the case.<sup>15</sup> A recent case in point is the coup staged by Captain Moussa Dadis Camara and fellow military officers in Guinea in December 2008. Many Guineans cheered these officers, believing them to be their ‘saviours’.<sup>16</sup> But a few months down the line, in September 2009, the whole world was outraged by the massacre of unarmed civilians committed by soldiers under the command of the same junta.<sup>17</sup> In fact, the qualification of certain military coups as ‘good coups’ has almost always been ‘retrospective’, after the leaders of the coup have left power, having lived up to their initial promises; for all coup makers come with good promises. It is this fact that the formula above follows.

Finally, while regimes that come to power by constitutional means may violate their terms of office and the very constitutional arrangements that brought them to power, there are *more* peaceful ways through which they can be made to respect these provisions. These peaceful ways seldom exist under unconstitutional regimes. Consequently, one could argue that constitutional order, which the continent has been striving to embrace or perfect since the end of the Cold War, is better than the prior political dispensation. And because UCGs *generally*

lead to the establishment of unconstitutional regimes, this method of acquiring power is a true menace to the aspiration of Africa to adopt constitutional norms in the governance systems of its countries. In the final analysis, therefore, the AU policy is a pertinent one, and thus the qualification of coups as ‘good coups’ is not a sound one.

## THE PSC AND UNCONSTITUTIONAL CHANGES OF GOVERNMENT, 2004–2010

Sturman and Hayatou contend that it is on UCGs that ‘there has been the most significant progress in the institutionalization of a norm’ in the work of the AU in general, and that of the PSC in particular.<sup>18</sup> But what has this work consisted of and what assessment can be made of the performance of the PSC so far?

Answering this question requires two sets of contextualisation of the subject matter. The first set has been made above, which is the circumstances and factors that led to the adoption of the various instruments that constitute the AU policy on UCGs. The second contextual point to highlight is that there were 28 cases of UCGs recorded on the continent from January 1990 to December 2010. Of those,

**Table 1 Military coups/UCGs in Africa, 1990–2010**

Military coups/UCGs in Africa, from January 1990 to May 2000 (16)			
Mali: 03/1991	Lesotho: 04/1991	Algeria: 01/1992	Nigeria: 11/1993
G. Bissau: 05/1999	Côte d'Ivoire: 12/1999	Sierra Leone: 03/1992; 01/1996; 07/1997	
The Gambia: 07/1994	Burundi: 10/1993; 07/1996	Niger: 01/1996; 04/1999	Comoros: 09/1995; 04/1999
Military coups/UCGs in Africa, from July 2000 to May 2004 (4)			
Madagascar: 12/2001	CAR: 03/2003	São Tomé: 07/2003	G. Bissau: 09/2003
Military coups/UCGs in Africa, from May 2004 to December 2010 (8)			
Togo: 02/2005	Guinea: 12/2008	Madagascar: 03/2009	
Niger: 12/2009; 02/2010	Mauritania: 08/2005; 08/2008	Côte d'Ivoire: 12/2010	

*Source* © Author's compilation

16 happened before the adoption of the Lomé Declaration, four between this date and the launch of the PSC in May 2004, and a further eight cases, including three instances of ‘unconstitutional preservation of power’, from 2004 to December 2010 (see Table 1).<sup>19</sup>

Quantitatively, Table 1 shows that the Lomé Declaration might have had a deterrent effect on UCGs, particularly in the first four years of its adoption. But does the increase, since the launch of the PSC, mean that the Council is not performing well or that the ‘deterrent effect’ of Lomé is waning with time? Perhaps the quantitative approach is not the best way to assess the performance of the PSC on UCGs. The qualitative approach is probably a better model. In this regard, it is worth noting that there have been some inconsistencies in the approach of the OAU/AU vis-à-vis regimes bequeathed by UCGs, but less so since the launch of the PSC. In fact, the PSC has managed to take bold stances unprecedented in African history, particularly with regard to the description of ruling regimes as unconstitutional, as happened in Togo (2005), Niger (2009) and Côte d’Ivoire (2010).

For example, the OAU/AU did condemn the four UCGs that happened on the continent between 2000 and May 2004, and the countries concerned (Madagascar, G. Bissau, São Tomé and Príncipe and the Central African Republic (CAR)) were suspended from membership, apart from São Tomé, whose overthrown leader was restored within hours of the putsch. However, none of these countries was subjected to targeted sanctions or the continued pressure of an international contact group (ICG). But some of these things changed following the inauguration of the PSC.

The first UCG after the launch of the PSC happened in Togo on 5 February 2005. It was also the first test of the PSC’s commitment to eliminate the ‘scourge’ of UCGs from African polities. For following the sudden death of Gnassingbé Eyadéma, the country’s long-serving ruler (1967–2005), the president of the National Assembly (Speaker of parliament) was expected to take the presidency and organise fresh elections in 60 days, according to Article 65 of the Togolese Constitution. However, the military suspended the Constitution and prevented the Speaker, who was on an official mission abroad at the time, from returning home. The military then nominated one of the sons of the late president as the new Head of State. Both ECOWAS and the AU condemned this action and insisted that the military and its appointed Head of State abide by the Constitution. As a result, Faure Gnassingbé stepped down and agreed to elections, but was declared winner of these when they were held in April 2005. Indeed, this was

the first time that the OAU/AU had refused such a takeover in favour of the ruling party.<sup>20</sup>

Perhaps the boldest of such actions were those seen on Niger in December 2009 and Côte d'Ivoire in December 2010. Niger's leader, Mamadou Tandja, was determined to manipulate the country's constitutional arrangements in order to hang on to power. In the face of growing opposition to his designs, Tandja dissolved Parliament, the Constitutional Court and the Electoral Commission. He then promulgated a new constitution through a highly

**Box 1 AU and the unconstitutional change of government of Gbagbo –  
Côte d'Ivoire: one man against the whole world?**

After many years of serious political crises in the country and several postponements of the presidential elections since October 2005, the first round of these elections was finally held on 31 October 2010, with a run-off election on 28 November. It was hoped that this poll would mark the end of the crisis. On 2 December 2010, the head of the Independent Electoral Commission (IEC) declared former Prime Minister Alassane Dramane Ouattara as the winner of the run-off election with 54.10 per cent of the votes, against 45.90 per cent for the incumbent president, Laurent Gbagbo. But soon after this, the head of the Constitutional Council, a close ally of Gbagbo, invalidated these results and proclaimed Gbagbo as the winner with some 51.45 per cent of the votes. At the behest of Gbagbo and his entourage, he had scrapped more than 400 000 votes from seven constituencies in Ouattara's strongholds in the north of the country. But the Special Representative of the UN Secretary-General in the country as well as all the foreign electoral observers certified Ouattara's victory as announced by the IEC. Both ECOWAS and the AU – as well as the UN and European Union (EU) – condemned Gbagbo and asked him to leave power. The PSC recommended the suspension of Côte d'Ivoire from the AU, and the country was suspended from both the AU and ECOWAS, while both institutions engaged in diplomatic efforts to persuade Gbagbo to step aside. At the time this chapter was completed, both organisations were firm on their principled position of only recognising the real winner, an unprecedented position – in African history – they were not ready to negotiate.<sup>23</sup>

controversial referendum that was boycotted by the opposition and the majority of Nigeriens.<sup>21</sup>

Thus, on the basis of Article 2(1) of its Supplementary Protocol on Democracy and Good Governance, ECOWAS engaged with Tandja's regime from mid-2009 with a view to dissuading him from amending the Constitution in a unilateral manner less than six months before the presidential elections in which he was not to take part. The AU followed the lead of the regional organisation in this instance. When Tandja ignored the efforts of both ECOWAS and the AU, ECOWAS suspended Niger's membership from the regional organisation 'until constitutional legality is restored in the country'. The AU endorsed this decision of the West African regional body.<sup>22</sup>

Although these respective actions did not force Tandja out of power (he had to be overthrown in a military coup in February 2010),<sup>24</sup> or persuade Laurent Gbagbo to step aside (he was still on his feet in Abidjan at the end of December 2010), the principled stance taken by both organisations in this matter is commendable because, short of military intervention, they did all that they could in accordance with their *prerogatives* and *constraints*.<sup>25</sup>

Two other actions of the PSC illustrate a qualitative change in the work of the AU vis-à-vis UCGs. The first one is the imposition of targeted sanctions against coup makers. The second one is the establishment of ICGs to give effect to AU policy and decisions.

The first country against whose junta the AU imposed targeted sanctions – beyond suspending the country from membership – was Mauritania. Following the 6 August 2008 military coup that overthrew the democratically elected government of Sidi Ould Cheick Abdallahi, the AU immediately condemned the coup and suspended Mauritania from all the decision-making organs. This was for an initial six-month period during which the AU engaged with the military junta to restore constitutional order. When the continental body, spearheaded by the PSC, realised that despite several high-level meetings and consultations between the AU and its partners, on the one hand, and the military junta, on the other, there had not been any meaningful progress by the junta in the direction of restoring constitutional order by 5 February 2009 (the end of the six-month period), the decision was taken to impose targeted sanctions against all those whose activities were seen as designed to maintain the unconstitutional status quo in Mauritania.<sup>26</sup>

Mauritania was also the first country on which the concept of ICG was experimented. In addition to the AU, this group consisted of all the major partners

of Mauritania, including the Organisation of the Islamic Conference, the Arab League, the UN and the EU. A similar mechanism was devised in Guinea, following the December 2008 military coup there, and in Madagascar following the March 2009 UCG there. In each of these cases, the group held several meetings in various locations in turn, including Addis Ababa and the capitals of the countries concerned. On Niger, as noted above, the PSC followed the lead of ECOWAS and the 'crisis group' that the latter had formed to facilitate dialogue between the Nigerien parties.

The effect of these groups is that they put pressure on military juntas and serve as a mechanism to remind them of their initial undertakings. Most significantly, they remind the juntas of their obligation, as per the relevant AU instruments, to restore constitutional order. The groups also serve, as was made clear in the case of Guinea, to offset tensions between the political actors during the transitional period.<sup>27</sup>

The foregoing clearly shows the evolution of the AU response to UCGs. It has to be noted, however, that the AU could not have taken any of the above-mentioned actions alone. In fact, closer examination of the various cases reveals that the achievements made were the result of a combination of efforts by national, regional and international (non-African) actors, highlighting the importance of these various actors working in concert towards achieving the goal of eliminating UCGs on the continent.

## A CRITICAL ASSESSMENT OF THE PSC'S WORK ON UCGs

Some assessment of the work of the PSC on UCGs has already been made in the previous section. The current assessment aims to point at some challenges faced by the continental organ, by highlighting some shortcomings in its work. Two cases already mentioned above will be used to undertake this assessment, Mauritania being the first case and the 2010 military coup in Niger the second one. These two examples have been chosen because they show contrasting cases, one constituting the overthrow of a democratically elected government (Mauritania) and the other relating to the overthrow of a leader that had ceased to be democratic, and had even defied the AU and remained in power unconstitutionally.

In Mauritania, following pressure from the AU and other partners, General Mohamed Ould Abdoulaziz, the author of the August 2008 coup, resigned from



the presidency and accepted the formation of a government of national unity that had been instituted by an AU-backed Senegalese-brokered agreement (Dakar Global Agreement) reached by the Mauritanian parties on 4 June 2009. The ousted president, Cheikh Abdallahi, was 'technically' reinstated, before signing the decree establishing the transitional government and 'voluntarily' resigning immediately after the swearing in of the new government. The military junta had also been disbanded and transformed into the High Council of National Defence and theoretically placed under the supervision of the government, according to Article 34 of the Constitution. But without denying the symbolism of all these acts, it is clear that the outcome reflected more the design of Abdoulaziz than anything else.

In the end, Abdoulaziz stood as a candidate in the 18 July 2009 election and was declared the winner, an outcome that was accepted by the AU, thereby triggering the lifting of Mauritania's suspension from the AU and, quite curiously, its election, in February 2010, to the PSC. This raised the question as to whether the AU, by accepting this outcome, was contributing to the perpetuation of the trend of auto-legitimation of coup makers in Africa, in which authors of UCGs decide to organise elections in order to 'constitutionalise' their unconstitutional enterprise. This is so particularly since the AU's initial position on the coup was for the ousted president to be reinstated, or for no member of the military junta to be allowed to stand if new elections were to be held.<sup>28</sup>

The case of Niger following the February 2010 military coup points to an apparent 'show of faith' of the AU in the military junta and its undertaking to restore constitutional order without applying the kind of pressure seen on the juntas in Mauritania, Guinea and Madagascar. Although both the AU and ECOWAS condemned the coup and Niger remained suspended from both organisations, the absence of any ICG on the country lends credence to this observation.<sup>29</sup> In fact, as time passed, ECOWAS and a number of West African leaders seemed to have relaxed their stance on the regime in Niamey. For example, the leader of the junta, General Salou Djibo, was officially invited to and attended the swearing-in ceremonies of re-elected President of Burkina Faso Blaise Compaoré and newly elected Guinean President Alpha Condé, respectively, on 20 and 21 December 2010. Most significantly, he attended, although 'by special leave of the Chairman of the Authority as observer', an Extraordinary Session of the Authority of Heads of State and Government of ECOWAS held in Abuja on 24 December 2010 to consider the latest developments in the political and security situation in Côte d'Ivoire.<sup>30</sup>

In all these cases, Djibo sat alongside representatives of the Chairperson of the AU Commission or the Chairperson himself.

But both cases can easily be explained and they show the political and legal dilemma in which the PSC and other continental institutions find themselves. On Mauritania, although the acceptance of Abdoulaziz's candidature and his subsequent electoral victory was politically disappointing, there is little if anything to reproach the AU with from a legal perspective. For whereas the ideal political outcome and the AU's initial position was to refuse the auto-legitimation of Abdoulaziz and all other coup makers on the continent, neither the Lomé Declaration nor the Constitutive Act talks to this issue. It is only the Addis Charter that deals with this, as noted above, but this Charter has not yet entered into force.<sup>31</sup> One could therefore argue that the AU's initial statements to this effect with regard to Mauritania were based on a policy that is not yet operational or perhaps on a different reading of the other two policy frameworks. Yet, the non-ratification of this Charter is beyond the power of the PSC, and depends solely on the will of member states of the AU, which must take the blame here. It should be noted, nonetheless, that the aforementioned Addis Decision (2010) has now adopted this policy of disallowing auto-legitimation of coup makers.

Regarding Niger, this falls squarely in the ambit of the debate on 'good coups' and 'bad coups', as illustrated above. But there is a danger in having such faith in a military junta given that all juntas begin with 'nice' promises only to renege on those a few months down the line. But even if this was not the case in Niger (as Djibo kept his promise by organising presidential elections in early 2011), the AU and ECOWAS do not seem to be sending the right message with such a stance, pragmatic as it might appear.

## CONCLUSION – TOWARDS A MORE IMPROVED ACTION ON UCGs

This chapter considered the phenomenon of UCGs in Africa and the actions of the AU's PSC to prevent this phenomenon. It looked first at the AU policy with regard to this phenomenon. This policy is contained in the Lomé Declaration of July 2000 and the African Charter on Democracy, Elections and Governance, adopted by the AU in January 2007. Article 30 of the Constitutive Act of the AU also addresses the matter and strengthens certain stipulations of the Lomé Declaration. In particular, the policy as contained in these documents states

that regimes born out of military coups d'état or other forms of UCG are not to be recognised by the AU.

It was noted that a total of 28 military coups and UCGs were recorded on the continent between 1990 and 2010. The bulk of those (16) happened before the adoption of the Lomé Declaration, but as many as eight cases have happened since the inauguration of the PSC in May 2004. Put in its proper political and historical context, it appears that the AU has since 2004 been quite forceful and innovative in how to deal with military juntas. But some shortcomings have been revealed. One such shortcoming is the apparent lack of consistency in the application of the AU policy in various countries. This was illustrated by the reaction of the AU to the military authorities that staged a coup in Niger in February 2010, a reaction that can be described as 'benign', unlike that which was seen in other countries such as Guinea and Mauritania. Another shortcoming of the policy is the fact that coup makers can still orchestrate elections to constitutionalise their regimes and subsequently gain the AU's recognition, as happened in Mauritania in 2009.

But the AU, or the PSC, is not to be blamed for all these shortcomings, for these bodies act within the framework of a number of specific legal instruments and political realities. Although they might want to take a principled position on certain issues, they still have to work within the purview of these instruments and realities. One important action that African states therefore need to take is the speedy ratification of the African Charter on Democracy, Elections and Governance. Although some of its provisions were adopted in the Addis Decision of February 2010, by ratifying the Charter, African countries would provide the AU with a binding legal instrument that not only condemns unconstitutional changes of government but also prevents auto-legitimation of putschists. This is to acknowledge that, notwithstanding the good will that officials at the AUC – including members of the PSC – may have, they will remain toothless if member states do not provide the Commission with the appropriate legal powers to act or create political environments that are conducive for doing so.

Adopting a shorter period for the perpetrators of unconstitutional changes of government to restore constitutional order might also be a measure to consider. The current policy position is to suspend from the AU decision-making organs countries in which this phenomenon occurs for six months, during which time the AU would engage with the 'new authorities' to get them to restore

constitutional order. One could argue that this gives the leaders of such regimes a great deal of time to consolidate their position. Thus, the AU might consider making the six-month period the deadline for the restoration of constitutional order, or even barring the coup makers from ruling the country, by way of forcing them out of power as swiftly as possible.

One innovation of the PSC that needs to be cherished and enhanced is the bold action taken against unconstitutional maintenance of power, as seen in Niger in 2009 and Côte d'Ivoire in 2010. As history shows and AU instruments recognise, military coups are sometimes the consequence of bad governance by the ousted regime. Hence, the assertion of the Lomé Declaration that strict adherence to 'the principles of good governance, transparency and human rights' and the 'strengthening of democratic institutions' will considerably reduce the risks of UCGs on the continent. Yet, until the Niger case, the focus of condemnation and sanctions had generally been on UCGs operated by soldiers or politicians outside of the ruling regime. But such a stance brings about some incoherence in the application of the policy. The PSC will therefore be well advised to be consistent in implementing the approach it adopted on Mamadou Tandja and Laurent Gbagbo's actions in Niger and Côte d'Ivoire, respectively, so as to lend more credibility to its actions vis-à-vis coup makers 'out of the palace'.

## NOTES

- 1 See Article 7(1)(G) of the Protocol establishing the PSC, and Articles 24 to 26 of the *African Charter on Democracy, Elections and Governance*.
- 2 See the Lomé Declaration at <http://www.au.int/en/decisions/assembly> (accessed 10 February 2011). It should be noted that the Lomé Declaration is an outgrowth of the 1997 Harare Declaration and, in particular, of the 1999 Algiers Declaration on Unconstitutional Changes of Government. Both those are available at the same Internet address as the Lomé Declaration.
- 3 See African Union, Sanctions in cases of unconstitutional changes of government (Chapter 8: Articles 23 to 26), in *African Charter on Democracy, Elections and Governance*, Addis Ababa, 30 January 2007. See note above.
- 4 See *Decision on the prevention of unconstitutional changes of government and strengthening the capacities of the African Union to manage such situations*, Assembly/AU/Dec.269 (xiv), Decisions, declarations and resolutions of the Assembly, 31 January to 2 February 2010, Addis Ababa, Ethiopia.
- 5 This applies only to the suspension of representatives of the country concerned from participating in meetings of the decision-making organs of the AU, such as the Council of Ministers

- and the Assembly of Heads of State and Government. It should not affect the country's membership of the AU and therefore will not exonerate it from honouring its basic obligations towards the Organisation, particularly financial contributions to the AU's regular budget.
- 6 For a more detailed analysis on this policy and the rationale behind it, see Issaka K Souaré, *The AU and the challenge of unconstitutional changes of government in Africa*, ISS Occasional Paper 197, Pretoria, Institute for Security Studies, 2009.
  - 7 See Francis Nguendi Ikome, *Good coups and bad coups: the limits of the African Union's injunction on unconstitutional changes of power in Africa*, Pretoria, Institute for Global Dialogue, 2007, 29.
  - 8 Samuel Decalo, *Coups and army rule in Africa: studies in military style*, New Haven & London: Yale University Press, 1976, 5; Daniel N Posner and Daniel J Young, The institutionalization of political power in Africa, *Journal of Democracy* 18(3) (July 2007), 126–140.
  - 9 John F Clark, The decline of the African military coup, *Journal of Democracy* 18(3) (July 2007), 141–155. See also Naison Ngoma, Coups and coup attempts in Africa: is there a missing link? *African Security Review* 13(3) (October 2004), 85–94, 86.
  - 10 See the Preamble of the Lomé Declaration.
  - 11 Ikome, *Good coups and bad coups*, 35.
  - 12 Ikome, *Good coups and bad coups*, 7; Clark, *The decline of the African military coup*, 141.
  - 13 Ngoma, *Coups and coup attempts in Africa*, 88.
  - 14 The author has comprehensive data on all military coups in Africa since the first one carried out in the Sudan in November 1958.
  - 15 Ikome, *Coups and coup attempts in Africa*, 13.
  - 16 See Ibrahimia Sorry Makanera, *Conséquences de la mort du Président Conté*, [www.guinea-forum.org](http://www.guinea-forum.org) (accessed 23 December 2008); Ben Daouda Touré, *Nous soutenons la Junte Militaire au pouvoir: pourquoi ?* [www.kababachir.com](http://www.kababachir.com) (accessed 28 December 2008); Issaka K Souaré, Explaining the December 2008 military coup d'état in Guinea, *Conflict Trends* 1 (2009), 27–33.
  - 17 Human Rights Watch, *Bloody Monday: the September 28 massacre and rapes by security forces in Guinea*, New York: HRW, 2009; United Nations, *Report of the International Commission of Inquiry mandated to establish the facts and circumstances of the events of 28 September 2009 in Guinea*, S/2009/693, 18 December 2009.
  - 18 Kathryn Sturman and Aïssatou Hayatou, The Peace and Security Council of the African Union: from design to reality, in Ulf Engel and Joao Gomes Porto (eds), *Africa's New Peace and Security Architecture: promoting norms, institutionalizing solutions*, Farnham & Burlington: Ashgate, 2010, 57–77, 71.
  - 19 These three cases are the short-lived constitutional coup orchestrated in Togo in February 2005 by soldiers loyal to the deceased president against the constitutional successor; the one carried out by Mamadou Tandja in Niger in December 2009; and that of Laurent Gbagbo in

- Côte d'Ivoire following his defeat in the second round of the 28 November 2010 presidential elections.
- 20 For more details, see Issaka K Souaré, Togo: a constitutional coup after the fall of a baobab, *Africa Week* (Special Print Edition), February 2005.
  - 21 Cherif Ouazani, Jusqu'où ira Tandja? *Jeune Afrique* 2526 (7 to 13 June 2009).
  - 22 ECOWAS, *ECOWAS suspends Niger from membership of organisation*, ECOWAS Press Release, 113/2009 (21 October 2009); AU, Communiqué of the 207<sup>th</sup> meeting of the Peace and Security Council, PSC/AHG/Comm.3 (CCVII), Abuja, 29 October 2009.
  - 23 See the final Communiqué of the extraordinary summits of the ECOWAS, held in Abuja on 7 December 2010, 188/2010 and on 24 December 2010, 192/2010; the Communiqué of the 252<sup>nd</sup> meeting of the PSC, PSC/PR/Comm.1 (CCLII), Addis Ababa, 9 December 2010, and the Press Release of the Chairperson of the AU Commission, *The AU calls for an immediate peaceful solution to the Ivorian crisis*, Addis Ababa, 27 December 2010. See also David Zounmenou and Issaka K Souaré, What way out of the post-election imbroglio in Côte d'Ivoire? *ISS Today*, 7 December 2010, [www.issafrica.org](http://www.issafrica.org) (accessed 7 December 2010).
  - 24 David Zounmenou, Is Niger's military coup merely countering a constitutional one? *ISS Today*, 24 February 2010, [www.issafrica.org](http://www.issafrica.org) (accessed 30 November 2010).
  - 25 It should be noted that the option of military intervention in Côte d'Ivoire was still open at the time this chapter was completed, even though some cracks had begun to appear in the ranks of African countries on the pertinence of this option.
  - 26 See the Communiqué of the Consultative Meeting [of the International Contact Group] on Mauritania, Addis Ababa, 28 January 2009; the Communiqué of the 163<sup>rd</sup> meeting of the PSC, PSC/MIN/Comm. 3 (CLXIII), 22 December 2009, Addis Ababa.
  - 27 Both outgoing interim President of Guinea General Sékouba Konaté and in-coming elected President Alpha Condé recognised the important role played by the International Contact Group on Guinea (ICG-G) in their speeches during the swearing-in ceremony of the latter in Conakry on 21 December 2010. See extracts of their speeches on [www.guineenews.org](http://www.guineenews.org); [www.aminata.com](http://www.aminata.com); [www.jeunafrique.com](http://www.jeunafrique.com).
  - 28 See the Communiqué of the 151<sup>st</sup> meeting of the PSC, PSC/MIN/Comm.2 (CLI), 22 September 2008, New York; Issaka K Souaré, Mauritania: auto-legitimation of another coup-maker in Africa? *ISS Today*, 14 August 2009 at [www.issafrica.org](http://www.issafrica.org) (accessed 14 August 2009).
  - 29 In a conversation with the ambassadors of Burundi and Sierra Leone, members of the PSC, both interlocutors defended the PSC's stance, justifying the absence of an ICG on Niger by the fact that the junta's cooperation with these countries had made that unnecessary. Conversation held in Addis Ababa, 10 November 2010.
  - 30 See the final Communiqué of the meeting, 192/2010, 24 December 2010, <http://news.ecowas.int/presseshow.php?nb=192&lang=en&annee=2010> (accessed 29 December 2010).

- 31 The entry into force of the Charter is conditional on the passing of 30 days after the deposit of 15 instruments of ratification by AU member states. At the end of December 2010, only four countries had made the appropriate deposits.





# 11 Justice without peace

## The PSC and the dilemmas of international criminal justice

*Ahmed Idris*

'The quest for yesterday's victims of atrocities should not be pursued in such a manner that it makes today's living the dead of tomorrow.'

Anonymous

### INTRODUCTION

The Rome Statute of the International Criminal Court (ICC)<sup>1</sup> has been viewed by many as a historic development in the struggle against impunity and the administration of global justice. The then UN Secretary-General, Kofi Annan, called it 'a gift of hope to future generations, and a giant step forward in the march towards universal human rights and the rule of law'.<sup>2</sup> However, since the adoption of the treaty and subsequent establishment of the ICC, the court has posed serious legal, policy and political challenges.

Since the indictment of the Sudanese President by the ICC in 2009, the African Union's (AU) interest in peace and the interest of the ICC in prosecution have been seen to be diametrically opposed. Yet the AU's responsibilities within the context of the Rome Statute are part of the wider framework of international relations

and diplomacy that underpins international law. Specifically, the ICC is crucial to the global commitment to consolidation of the rule of law and respect for human rights and humanitarian law. However, certain actions of the ICC might be a clear risk to initiatives on the development of peace and security in Africa. This chapter assesses this dilemma with a view to recommending a specific policy framework for the Peace and Security Council (PSC).

The chapter is structured as follows. The first section discusses broadly the doctrine of international justice. The second section outlines the peace-justice dilemma. The third locates the peace-justice dilemma within the context of the AU. The final section offers recommendations. While the recommendations may be specific, this chapter argues that there is a need to establish a clear policy on cooperation with international prosecution processes, one that is informed by pragmatism and political reality rather than the blindness of legal absolutism. The concluding section summarises the findings of the chapter.

## INTERNATIONAL CRIMINAL JUSTICE

The concept of justice has been the subject of much writing. In many respects justice is a concept that is difficult to define and agree on. For the purposes of this chapter, the term is applied narrowly to mean what in some circles is known as 'retributive justice'. This is justice defined within the confines of prosecution and punishment.

The centrality of prosecution for violations of international law constitutes one of the essential measures of effective conflict prevention, resolution and post-conflict peace building. Justice, defined as holding accountable perpetrators of egregious human rights violations, is an important function of the human rights movement. Viewed this way, justice is first and foremost desirable for its own sake. It is a duty owed to the victims of the crimes and cannot be wished away. Michael Scharf argues that the prosecution of the perpetrators 'would give significance to the victims' suffering and would serve as a partial remedy for their injuries'.<sup>3</sup> It is in this spirit of justice as an absolute requirement that the Genocide Convention provides an absolute obligation to prosecute those responsible for genocide.<sup>4</sup>

Justice can also be used for reconciliation of societies by preventing vigilante justice. It prevents and discourages revenge and unfettered retribution. Thus, it is argued that national reconciliation cannot take place as long as prosecutions are

absent. More importantly justice serves a deterrence function; it prevents future violations of law by would-be perpetrators. This view of accountability is based in 'a core belief that exemplary prosecutions, if prudently pursued, could help dispel the toxic effects of impunity'.<sup>5</sup> The argument is: if offenders get away with the atrocities committed, then 'this breeds contempt for the law and encourages future violations'. In this context scholars argue that historical incidences of non-punishment for offences committed could have encouraged others in later generations to commit similar offences.<sup>6</sup>

The commitment to ensuring that egregious human rights violations do not go unpunished has yielded important norms of international law about the duties of states to break the cycle of impunity. These norms are widely accepted and beyond the scope of this chapter. However, it suffices to note that the norms are reflected in the institutionalisation of the struggle against impunity. The establishment in 2002 of the ICC as a 'permanent institution [that has] the power to exercise its jurisdiction over persons for the most serious crimes of international concern'<sup>7</sup> can thus be viewed in this light.

The ICC represents the evolution of international efforts to ensure that international justice is enforced. This effort can be located in the establishment of the Nuremberg Military Tribunal,<sup>8</sup> which has been referred to as 'an affirmation of the primacy of international law and the notion that individuals should be held accountable for their crimes'.<sup>9</sup> Further to the UN response to the genocide committed in the former Yugoslavia and Rwanda was the establishment of the ad hoc tribunals, which in many respects acted as precursors to the establishment of the ICC.

However, unlike the ad hoc international criminal tribunals for the former Yugoslavia and Rwanda, the ICC does not have primacy in jurisdiction but rather supplements domestic proceedings, which is known as the complementarity role of the ICC.<sup>10</sup> The complementary role of the ICC remains crucial to its future engagement in Africa. The national jurisdictions have the right of first action. The function of the ICC is to step in when a country fails or is unwilling to take action, thus supplementing the role of national jurisdictions and not 'supplanting' them.<sup>11</sup>

The ICC has opened investigations into several situations that the Court believes to have met the criteria set in its Rules of Procedure and Evidence. Interestingly, all of these cases relate to African countries (i.e. the Democratic Republic of the Congo (DRC) and Uganda, both opened in 2004, and the situations

in the Central African Republic and the Sudanese region of Darfur, both opened in 2005). At the moment, the prosecutor is considering starting investigations in relation to Kenya and Guinea.

All these developments in such a short span of time and in quick succession show the pattern of the development of the international justice system in punishing perpetrators within the territorial states certainly, but also by the international community when the territorial state is unwilling or unable to do so. Unfortunately, at the same time, the pursuit of justice has introduced legal and policy issues that present difficulties to the global community of states.

It is in this context that, commenting on the ICC, Villa-Vicencio referred to it as 'morally impressive and legally a little frightening'.<sup>12</sup> Prime concern of the ICC has been the scepticism about the negative consequences on national jurisdictions and sovereignty. In this context, before its establishment Alex Boraine observed that:

It is to be hoped that... when the ICC comes into being, it will not, either by definition or by approach, discourage attempts by national states to come to terms with their past ... It would be regrettable if the only approach to gross human rights violations comes in the form of trials and punishment. Every attempt should be made to assist countries to find their own solutions provided that there is no blatant disregard of fundamental human rights.<sup>13</sup>

## DEFINING THE 'JUSTICE WITHOUT PEACE' DILEMMA

The title of the chapter presupposes that there is a 'justice without peace' dilemma in the struggle for accountability. Justice defined is itself problematic, as argued above. In the context of international criminal accountability, it presupposes holding perpetrators of human rights violations accountable for their actions. States are required to ensure that criminal proceedings are instituted against those suspected of specified violations of human rights, such as genocide, crimes against humanity and war crimes. Viewed from this perspective, justice is clothed in legal absolutism that requires a 'duty to prosecute'.<sup>14</sup>

The retributive nature of international prosecutions is such that it is disinterested in the contextual nature and immediate effect on peace processes. As such peace is considered to be in the 'political realm', far beyond the concerns of the international prosecutor in his prosecutorial work.<sup>15</sup> The outcome of this

view is that the reality presented by international prosecutions is one that undermines quests for peace. International justice therefore ignores the picture of communities trying to pick up the pieces, of societies struggling to put their guns aside and of nations in the processes of healing. International justice is willfully blind. Within the ICC framework former ICC Deputy Prosecutor Serge Brammertz argues, 'the priority of the Rome Statute is to prosecute ... it's not here for political stability'.<sup>16</sup>

The involvement of the ICC in conflict areas has revived longstanding debates over whether transitional societies are most in need of peace or of justice. This is because of the fact that the peace-justice dilemma is acute in situations of ongoing conflicts where the possible outcome of decisions to prosecute could have the effect of either scuttling the peace processes or discouraging the relinquishing of power by a dictatorial regime. In contexts where peace processes have hardly started, a threat of prosecution would discourage parties to a conflict from seeking a peaceful alternative. Manfred Max-Neef competently argues the outcome of this tension between peace and justice as 'the right on the one hand of the individual victim and society to demand prosecution and the need and right on the other hand of ordinary people to live in peace'.<sup>17</sup>

The existence of the dilemma is unfortunate, but this is made far worse by the fact that it has not benefitted from a consensus on what approach to take. On one hand the argument is: if prosecutions threaten to imperil a transition to democracy and peace, their potential value is outweighed by their attendant risks. Those who support this argument have warned against the 'destabilizing consequences of a rigid legalism'<sup>18</sup> and are referred to as 'pragmatists'.

The 'pragmatic approach' taken is informed by the utilitarianism view that an action is just if its consequences are more favourable than unfavourable to all concerned. Outcome is more important than the rule. As such, arguing anything to the contrary would be suffering from 'rule fetishism' – the adherence to rules for their own sake. Kenneth Einar Himma summarises this in the argument:

To claim that there is a moral obligation to obey law qua law is to claim that a legal standard is morally obligatory ... because that standard is a law; in other words, it is to claim that a proposition of law is morally obligatory in virtue of being legally valid. Thus, someone who violates the law commits a moral wrong in virtue of performing an act that is inconsistent with the law.<sup>19</sup>

Proponents of this view contend that justice itself should be a subject of assessment on whether it is just or unjust. If the effect of the international justice mechanism is to increase aggregate wellbeing, then it is just; if its immediate and direct effect is to decrease aggregate wellbeing, then it is unjust.

Thus, rules promoting international justice are the proper objects of evaluation. The pursuit of international justice should be up to a limit where it will not undermine peace processes and/or reconciliation in the country in question. A corollary of this is when the prosecution of an individual is likely to lead to escalation of hostilities and undermine ceasefire efforts, then prosecution efforts should be reconsidered.<sup>20</sup> In this regard, the obligations to prosecute in international law should be circumscribed by wider societal values such as peace and reconciliation. As such, contrary to the popular view among human rights' proponents, the issue of peace is not an isolated 'political question', but one that requires any organisation that makes decisions to prosecute 'to grapple with appropriate roles and responsibilities and the proper weight it should attach to claims of peace, pluralism and punishment when they conflict'.<sup>21</sup>

Whereas the 'pragmatic view' is increasingly coming into the limelight, the dominant paradigm is one of impunity: if the principal reason for prosecuting those responsible for crimes against the basic code of humanity is the perpetrators' impunity, the task for international law and international organisations is to mount effective strategies against impunity. As summarised by Kenneth Rodman, 'long-term stability, they claim, is more likely to come from an uncompromising approach to criminal justice, in terms of both deterring gross human rights abuses and consolidating transitions to peace and democracy'.<sup>22</sup>

Within the impunity paradigm, the premise of requirement of prosecution of perpetrators of mass atrocities is located in the preamble of the Rome Statute, which is to ensure prosecution of 'the most serious crimes of concern to the international community' in order to 'put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes'.<sup>23</sup> Supporters of the impunity paradigm further consolidate their argument by insisting that the only mention of peace in the preamble is 'such grave crimes threaten the peace, security and well-being of the world', concluding that peace is more likely to be achieved through prosecution than in staying the hand of the prosecutor.<sup>24</sup>

During the negotiations of the Rome Statute a number of states argued for the possibility of the inclusion of amnesties in the provisions of the treaty. In this

respect, the US circulated a ‘non-paper’ on amnesties, arguing that the prosecution of international offenders must be balanced against the need to ‘close a door on the conflict of the past era’. Proponents of the impunity paradigm argue that concern with peace and amnesties would mean that states would not be able to meet their international obligations to prosecute. This can entrench a sense of impunity.

The dilemma here is thus how to achieve peace and at the same time make justice available to the victims, without compromising on any of the two objectives. The dilemma is real and agonising, where doing nothing results in impunity and prosecution threatens the stability of countries.

## LOCATING THE PEACE-JUSTICE DILEMMA WITHIN THE PSC

The balance of peace and justice is also not new to the global governance: the reality of this dilemma was considered in the past in the cases of Cambodia, Sierra Leone, South Africa and Uruguay, with the UN in some of the countries pushing and supporting peace agreements with amnesties in order to ensure peace and security.<sup>25</sup>

For the AU PSC it would be absurd to focus on peace and security without necessarily supporting institutions that contribute to accountability and rule of law. The task of accountability is more urgent in Africa than anywhere else in the world. This is informed by the sad history of Rwanda, Congo, Uganda, Sudan and more recently Kenya and Guinea. It is within this reality that the AU Constitutive Act indicates the commitment to the fight against impunity. Articles 3(h), 4(h), 4(m) and 4(o) of the AU’s Constitutive Act, read in tandem with the objectives of the AU’s Protocol Relating to the Establishment of the Peace and Security Council (The Protocol), commit member states to ensuring respect for the rule of law and human rights, and condemning and rejecting impunity. Pointing to this responsibility, the AU in recent communiqués on the ICC and Sudan indicated that: ‘The African Union has always emphasized its commitment to justice and its total rejection of impunity, in line with the relevant provisions of its Constitutive Act.’<sup>26</sup>

Whereas the Darfur situation has benefited from the highest attention, it is the first referral to the ICC relating to northern Uganda that posed the ‘justice without peace’ dilemma, which remains unresolved to date. The Court accepted the case on 28 June 2004, following a referral from the Ugandan president, Yoweri

Museveni, on 16 December 2003. Since then, religious leaders, tribal leaders and international NGOs have spoken against the decision by the ICC to issue indictments for the top leadership of the Lord's Resistance Army (LRA). The paramount argument supporting this outcry was that arrest warrants would keep Joseph Kony and the LRA in the bush and away from the negotiating table.<sup>27</sup> This continues to be a sticking point in the ongoing peace talks between the Ugandan government and the LRA.

The context of the DRC presents its own unique strain on the peace and security framework in Africa. Whereas at face value it might not pose a threat, a key issue of concern is the extent to which President Joseph Kabila could have utilised the functions of the Court in advancing his own 'battle'. As such, the ICC could have been used as a system of 'law fare',<sup>28</sup> where the Court is used to remove political competitors; as Erick Leonard and Steven Roach argue, the Court is used to 'pay the political and economic costs of trying the perpetrators'.<sup>29</sup> This has a clear risk of escalating conflict between the warring parties.

To a high extent, the existing differences between the AU and the ICC are a function of the responsibilities of the two institutions at different levels. On one hand, the AU has a 'positive responsibility' as an international organisation to promote justice and accountability by supporting the efforts of the ICC.<sup>30</sup> In the same spirit, the Court has a positive responsibility to bring to book perpetrators of genocide, crimes against humanity and war crimes. The AU also has a negative responsibility to refrain from supporting action that presents a risk to peace security, whereas the ICC bears a negative responsibility to refrain from action that is not in the interest of justice.<sup>31</sup>

The logical outcome of these responsibilities is that the AU cannot be solely concerned with political dynamics, whereas the ICC cannot work on the assumption that it operates in a situation of political vacuum. The operation and functioning of the Court is based on the reliable enforcement of member states, a decision that is made through considerations of 'state interests'. As one scholar argued, 'effective authority in international politics requires power as well as legitimacy ... the new court must rely on the good will of many states'.<sup>32</sup>

More importantly, the importance of considerations of peace has been incorporated in the Rome Statute. Paragraphs (1)(c) and (2)(c) of Article 53 of the Rome Statute provide for the prosecutor to suspend or abandon an investigation or prosecution where there are substantial reasons to believe that the investigation or prosecution 'would not serve the interests of justice'. In interpretation, the



possibility of including the need for peace in the ‘interest of justice’ framework has been contested. Some scholars argue that the prosecutorial discretion given by Article 53 provides an opportunity to ‘arbitrate between the imperatives of justice and the imperatives of peace’.<sup>33</sup> However, most human rights organisations have rejected this interpretation, a view that has eventually been adopted as policy by the prosecutor.<sup>34</sup> In this regard the prosecutor maintains no comprehensive or consistent approach at either the policy or operational level in relation to the accommodation of peace and security.

Specifically within the context of peace and security, Article 16 of the Rome Statute gives the UN Security Council the discretion to stay prosecutions in the interests of peace and security. In a resolution adopted under Chapter VII of the UN Charter, the Security Council can request the Court to suspend an investigation or prosecution for a renewable period of 12 months, based on considerations of international peace and security.<sup>35</sup> However, article 16 is rooted within the wider bureaucratic international legal and political hegemony where the peace and security interest of the AU might not be necessarily that of the Security Council.<sup>36</sup>

In this regard, immediately after the decision of the pre-trial chamber to issue a warrant of arrest for Sudan’s President Omar al-Bashir, the AU PSC noted that the decision came ‘at a critical juncture in the process to promote lasting peace, reconciliation and democratic governance in the Sudan, and *underlines* that the search for justice should be pursued in a way that does not impede or jeopardize the promotion of peace’.<sup>37</sup> The PSC requested the UN Security Council to exercise its powers under Article 16 of the Rome Statute, which the Security Council failed/refused to exercise. It is in this respect that the AU Assembly in its decision on 3 July 2009 noted, ‘the unfortunate consequences that the indictment has had on the delicate peace processes underway in the Sudan and the fact that it continues to undermine the ongoing efforts aimed at facilitating the early resolution of the conflict in Darfur’.<sup>38</sup> On this basis the AU took the decision not to cooperate with the ICC in enforcing the arrest warrant for al-Bashir.<sup>39</sup>

The decision taken by the AU not to support the indictment of al-Bashir is a clear response to the marginality of peace and security in the ICC decision-making framework. For the AU this was recognition of the existence of the justice without peace dilemma, with the AU arguing that ‘the search for justice should be pursued in a manner not detrimental to the search for peace’.<sup>40</sup>

Appreciating the dilemma between peace and justice in Africa, the key question that presents itself is whether the pursuit of justice through

international prosecution is necessarily helpful and desirable, considering the tension it presents in peace processes. This tension raises the point that there are limitations to international prosecutions in Africa. Conceived differently, the main issue is whether the goal of international justice can be separated from the realities of power politics on the continent.<sup>41</sup>

## **POLICY RECOMMENDATIONS – LOOKING BACK TO THE FUTURE**

The argument in this chapter has thus far been diagnostic; however, in this section it will become more prescriptive. From the onset, it is necessary to acknowledge that these policy recommendations might be contestable. The recommendations are presented in two parts. The first part concerns general, although not international, justice; the recommendations have implications for the prevention of mass atrocities. In this regard, the PSC must first and foremost work towards the prevention of mass atrocities. This is through the effective utilisation of the early warning systems and provision of physical security to vulnerable populations under the Responsibility to Protect framework and utilisation of the standby force to halt the perpetration of mass atrocities through appropriate intervention. This will further include strengthening humanitarian assistance to make people less vulnerable. Reducing or preventing deaths is the most important goal of the PSC.

The second general recommendation is to consider strategies that appreciate the diverse range of mechanisms available for the advancement of international justice. This includes supporting amnesties, national prosecutions, and international prosecution through the ICC. The PSC should not allow any of the options available to become the condition for the progress of the other.

With regard to more specific recommendations, the PSC could focus on the following:

### **Establishing and enhancing national competence and jurisdiction**

The ICC is intended to be a safety net; it is a court of last resort to come into action when there is no other forum nationally. In this respect, an immediate goal of the AU should be to ensure that impartial and competent national

systems are in place. This is not merely to 'oust the jurisdiction' of the ICC, but is an honest step towards advancing genuine prosecution and generally the rule of law within the member states. In this respect, the PSC should establish, under Article 5 of the Protocol, a subsidiary body on the enhancement of national judicial jurisdictions, staffed by experts in international law. The subsidiary body would work towards strengthening national jurisdictions in countries with weak judicial functions.

## **Decision to cooperate with ICC where arrest warrants have been issued**

This section relates to a situation where the ICC has effectively exercised its role and issued warrants of arrest. The decision to prosecute is a function of circumstances. As such the decision by the AU to support processes of prosecution should equally be a function of circumstances. In this respect, it is necessary to adopt a 'case-by-case approach' towards the implementation of peace and security policy and strategy by the PSC. The case-by-case approach is, juridically, a cop-out, and an acknowledgement that no reasonable rule can be fashioned to govern all circumstances that can foreseeably arise. Essentially this approach has been utilised in the AU position in the situations of the DRC, Uganda and more explicitly Sudan, but this has been on a more or less ad hoc basis. Placing this approach within the peace and security strategy will make the decisions of the PSC certain and predictable; this will in turn insulate the PSC from appearing to be protecting the interests of certain individuals.

Within the case-by-case approach, two tests can be adopted to influence a decision to cooperate. The first test is the 'national interest test'. This test recognises that the law can advance justice without imperilling crucial national interests. When it declines to cooperate, the AU should establish persuasive evidence that it is not in the national interest of the state in question that international prosecution be established.<sup>42</sup> The 'national interests' doctrine is an age-old principle that shapes the situation in which international law is enforced. The idea of national interest is a sensitive affair, and caution should be taken to distinguish the interests of specific individuals from the wider public interest of peace and security.

The second test proposed is the 'possible consequence test'. This test refers to a situation in which an indictment is issued on the basis of how likely it is to

lead to an escalation in violence. Essentially this is an objective test based on the various factors at play. The test presents a new problem, which is how to establish 'possible consequences'. In this regard three factors need to be considered:

- What is the centrality of the individual indicted and what is the level of commitment of the accused to the peace process? Essentially this will be a measurement of authority in relation to the peace process. It might thus be possible to postpone action until such a propitious time, a time when alleged war criminals are no longer in power and can be apprehended without a serious risk of violent backlash. This is supported by the fact that there is no statute of limitations on the prosecutorial initiative of the ICC.
- What are the challenges raised and the possible alternatives to international prosecutions in light of the interest at stake?
- What is the assurance that in the long run the absence of international prosecutions will not mean that perpetrators will get away with the offences committed?<sup>43</sup>

This is not to suggest that the imperatives of international law are fundamentally at odds with the political reality on the ground. The argument made here is that, through process, time and space, the law can accommodate the needs of societies in conflict while at the same time achieving the goal of advancing justice.

## CONCLUSION

Given what is at stake, the peace-justice debate is not academic. For the AU, the dilemma between peace and justice will intensify in the coming months and years. With the current ICC interest in Kenya, Guinea, Uganda, Congo and Sudan, development of a clear strategy to handle this is important. As suggested, we must move from ad hoc responses to clear policies on cooperation with the ICC.

Much of the criticism on the position taken by the AU is informed by the portrayal of Africa as a hopeless continent in relation to commitment to accountability. This view is founded on history; our immediate goal is to discard it. The future of international criminal justice in Africa calls for a special role for the PSC. That is, the not-so-enviable duty of seeking to strike a balance ultimately between the demands of justice and potentially conflicting values such as the

need for political stability. The AU as a whole has an obligation to ensure that national sovereignty is respected. But the process of accountability for gross human rights violations cannot be left to individual states in an unbridled manner.

## NOTES

- 1 The Rome Statute of the International Criminal Court, UN Doc. A/CONF. 183/9, 17 July 1998, corrected by *procès-verbaux* of 10 Nov. 1998, 12 July 1999, 30 Nov. 1999, 8 May 2000, 17 Jan. 2001 and 16 Jan. 2002 (hereafter 'Rome Statute' or 'Statute'), [http://www.un.org/law/icc/statute/english/rome statute \(e\).pdf](http://www.un.org/law/icc/statute/english/rome%20statute%20(e).pdf) (accessed 3rd March 2010).
- 2 Kofi Annan, Secretary-General, United Nations, Statement at the ceremony celebrating the adoption of the Rome Statute, <http://www.un.org/icc/speeches/718sg.htm> (accessed 27 November 2009).
- 3 Michael Scharf, Justice vs. peace, in Sarah B Sewall and Carl Kaysen (eds), *The United States and the International Criminal Court: national security and international law*, Lanham, Md.: Rowman & Littlefield, 2000, 182.
- 4 Article 4 Genocide convention.
- 5 Diane Orentlicher, 'Settling accounts' revisited: reconciling global norms with local agency, *The International Journal of Transitional Justice* 1 (2007), 10–22, 15.
- 6 Richard Goldstone argued that the failure of the international community to prosecute Idi Amin, Mohamed Aldeed and Pol Pot could have encouraged the ethnic cleansing in the former Yugoslavia. See Scharf, Justice vs. peace, 183.
- 7 Article 1 of the Rome Statute.
- 8 However, it must be noted that the Nuremberg tribunal does not represent the first international trials. For a discussion on this see, generally, Bassiouni M Cherif, From Versailles to Rwanda in seventy-five years: the need to establish a permanent international criminal court, *Harv. Hum. Rts. J.* 11 (1997), 10.
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- 12 Charles Villa-Vicencio, Why perpetrators should not always be prosecuted: where the International Criminal Court and truth commissions meet, *Emory Law Journal* 49(1) (2000), 205–222, 205.
- 13 Alex Boraine, *A country unmasked: South Africa's Truth and Reconciliation Commission*, Oxford: Oxford University Press, 2000.
- 14 Diane Orentlicher, 'Settling accounts': the duty to prosecute human rights violations of a prior regime, *Yale Law Journal* 100(8) (1991), 2537–2615, 2541.
- 15 See, generally, Human Rights Watch (HRW), *The meaning of the 'interests of justice' in Article 53 of the Rome Statute*, Policy Paper, June 2005; Amnesty International, Open letter to the Chief Prosecutor of the International Criminal Court: comments on the concept of the interests of justice, drafted by Martin Macpherson, Senior Director of the International Law and Organizations Program, 17 June 2005.
- 16 Quoted in Erick Blumenson, The challenge of a global standard of justice: peace, pluralism, and punishment at the International Criminal Court, *Columbia Journal of Transnational Law* 44 (2006), 797–867, 821.
- 17 Manfred Max–Neef, *Human scale development*, New York and London: Apex Press, 1991.
- 18 Kenneth Rodman, Is peace in the interests of justice? The case for broad prosecutorial discretion at the International Criminal Court, *Leiden Journal of International Law* 22 (2009), 99–126, 101.
- 19 Kenneth Einar Himma, Positivism, naturalism, and the obligation to obey law, *Southern Journal of Philosophy* 36(2) (1998), 145–162, 151.
- 20 See Gary Jonathan Bass, *Stay the hand of vengeance: the politics of war crimes tribunals*, Princeton: Princeton University Press, 2000, 20–8; and Leslie Vinjamuri and Jack Snyder, Advocacy and scholarship in the study of international war crime tribunals and transitional justice, *Annual Review of Political Science* 7 (2004), 345–352, 346.
- 21 Blumenson, The challenge of a global standard of justice, 804.
- 22 Rodman, Is peace in the interests of justice?, 101.
- 23 However, in the recent past, scholars have questioned this premise, arguing that there is no empirical evidence to support this contention.
- 24 Darryl Robinson, Serving the interests of justice: amnesties, truth commissions and the International Criminal Court, *EJIL*, 14(3) (2003), 481–505, 483.
- 25 Michael Scharf, The letter of the law: the scope of the international legal obligation to prosecute human rights crimes, *Law and Contemporary Problems* 59(4) (1996), 41–61.

- 26 The Africa Union communiqué on the Judgment of the International Criminal Court Appeals Chamber on Darfur, 4 February 2010, <http://www.africa-union.org/root/ar/index/Communique%20Feb%204%202010%20eng.pdf> (accessed 2 March 2010).
- 27 See generally Tim Allen, *Trial justice: the International Criminal Court and the Lord's Resistance Army*, London/New York: Zed Books, 2005, 29–30; see also Tim Allen, *Trial justice: the International Criminal Court and the Lord's Resistance Army*, London/New York: Zed Books, 2006, 93–4.
- 28 In this respect the Court could be 'a means of exposing dangerous rebels internationally, so as to dispose of them through the judicial process of the ICC', cited in Cassese, Is the ICC still having teething problems? *Journal of International Criminal Justice* 4(3) (2006), 434–41, 435.
- 29 Erick Leonard and Steven Roach, From realism to legalization: a rationalist assessment of the ICC in the Democratic Republic of Congo, in Steven Roach (ed), *Governance, order, and the International Criminal Court: between realpolitik and a cosmopolitan court*, Oxford: Oxford University Press, 2009, 64.
- 30 This is reflected in Articles 3(h), 4(h), 4(m) and 4(o) of the AU's Constitutive Act, read in tandem with the objectives of the AU's Protocol relating to the establishment of the Peace and Security Council, which commits the AU to the promotion of accountability.
- 31 The theory on these synergies has been borrowed generally from Roach (ed), *Governance, order, and the International Criminal Court*.
- 32 Ruth Wedgwood, Fiddling in Rome: America and the International Criminal Court, *Foreign Affairs* 7(6) (1998), 20–24, 22.
- 33 Luc Cote, Reflections on the exercise of prosecutorial discretion in international criminal law, *Journal of International Criminal Justice* 3(1) (2005), 162–186, 178.
- 34 ICC-OTP, Policy Paper on the Interests of Justice, September 2007.
- 35 See generally Morten Bergsmo and Jelena Peji, Article 16 Deferral of investigation or prosecution, in Otto Triffterer (ed), *Commentary on the Rome Statute of the International Criminal Court: observers' notes, article by article*, Baden-Baden: Nomos Verlagsgesellschaft, 1999, 377.
- 36 It is in this context that at its 14th Ordinary Session held in Addis Ababa from 31 January to 2 February 2010, the Assembly of Heads of State and Government of the AU expressed concern at the failure of the UN Security Council to exercise the powers entrusted to it under Article 16 of the ICC Rome Statute in relation to deferral of the Bashir indictment.
- 37 Communiqué of the 175th Meeting of the Peace and Security Council SC/PR/COMM (CLXXV) on 5 March 2009. The communiqué reaffirmed the 'AU's conviction that the process initiative by the ICC and the decision of the Pre-Trial Chamber have the potential to seriously undermine the ongoing efforts to address the many pressing peace and se-

curity challenges facing the Sudan and may lead to further suffering for the people of the Sudan and greater destabilization of the country and the region'.

- 38 Decision of the Assembly of the African Union, Assembly/AU/Dec. 243-267 (XIII) Rev.1, 13th Ordinary Session 1 to 3 July 2009, Sirte, Great Socialist People's Libyan Arab Jamahiriya, [http://www.africaunion.org/root/au/Conferences/2009/july/summit/decisions/ASSEMBLY%20AU%20DEC%20243%20-%20267%20%28XIII%29%20\\_E.PDF](http://www.africaunion.org/root/au/Conferences/2009/july/summit/decisions/ASSEMBLY%20AU%20DEC%20243%20-%20267%20%28XIII%29%20_E.PDF) (accessed 14 January 2010).
- 39 It must be noted that this was not a unanimous decision, with some countries arguing that they would act on their obligations under the ICC.
- 40 The Africa Union Communiqué on the Judgment of the International Criminal Court Appeals Chamber on Darfur, 4 February 2010, <http://www.africa-union.org/root/ar/index/Communique%20Feb%204%202010%20eng.pdf> (accessed on 2 March 2010).
- 41 For a detailed discussion of the ICC and *realpolitik*, see generally Roach (ed), *Governance, order, and the International Criminal Court*.
- 42 Ideally it is the state party that should make a *prima facie* case that non-prosecution is necessary to advance the national interest. International prosecution must be a genuine and sufficiently serious threat to the interest of the nation.
- 43 This requires the AU to assure itself that the imposition of punishment is certain and possible.



# 12 Balancing the responsibility to protect with non-interference

## A dilemma for the PSC

*Lui Chitima*

### INTRODUCTION

This chapter discusses the application of the responsibility to protect (R2P) in Africa and its balance with non-interference in the maintenance of peace and security on the continent. The discussion defines the two concepts and analyses the challenges the African Union (AU) Peace and Security Council (PSC) faces in balancing the two principles for effective conflict prevention, management and resolution on the continent. The chapter illustrates that non-interference is still the preferred policy over R2P. This preference reflects a resistance to an encroaching doctrine of R2P that could potentially be used as an instrument to promote geo-political strategic national interests in the form of military intervention, occupation or regime change. The chapter further points out how the two principles can complement each other through the effective utilisation of the African Peace and Security Architecture (APSA) in preventing and managing conflict and building peace. The utilisation of APSA involves using regional mechanisms because of their familiarity and sensitivity to crisis situations in their regions. The discussion concludes with recommendations that preventive diplomacy-oriented APSA structures such as the Panel of the Wise and Continental Early Warning System

(CEWS) should be utilised more regularly. Furthermore, member states should financially support AU structures and the international community should partner, rather than undermine, efforts at capacitating African countries to exercise R2P.

The chapter is divided into four parts. The first part conceptualises the doctrine of R2P. The evolution of R2P is traced and the report by the International Committee on Intervention and State Sovereignty (ICISS), which established the framework for R2P, is discussed. This is followed by an outline of the application of R2P at the UN and its acceptance and implementation in Africa. The second section explains the principle of non-interference and its incorporation in the various international legal instruments. The third section examines the dilemma faced by the AU's PSC in balancing R2P and non-interference and analyses the utilisation of both principles in the promotion of peace and security on the continent. The last section focuses on recommendations to the PSC on how to implement R2P effectively in Africa.

## CONCEPTUALISING THE RESPONSIBILITY TO PROTECT

The world has witnessed serious human rights violations over the past 50 years in the form of war crimes, ethnic cleansing and crimes against humanity. The critical aspect of these events is that they took place within states as opposed to the interstate warfare that characterised the First and Second World Wars. The end of the Cold War shifted focus from military security as the guarantor of a state's security to human security. Human security focused on the provision of adequate food, health, water, the environment and sanitation services. This focus on human security was buttressed by the increased importance of the democratic values of respect for human rights and the rule of law.

The need to promote democracy and horror at the atrocities that took place in Cambodia, the Central African Republic, Uganda, Rwanda and Kosovo prompted the international community to focus on ways of preventing the recurrence of such acts and assisting populations at risk of serious violations. In response to the emerging post-Cold War value system in international relations, former UN Secretary-General Boutros Boutros Ghali published a report entitled *An Agenda for Peace* in 1992, in which he argued for greater response to threats to international peace and security. The report outlined a range of strategies for preventing

conflict as well as making peace and rebuilding societies in the aftermath of war. Subsequently, in 1999 and 2000, then UN Secretary-General Kofi Annan urged the international community to reach consensus on the issue of humanitarian intervention in view of mass human rights violations.<sup>1</sup> This appeal laid the foundation for the transition towards the notion of R2P.

## REPORT BY THE INTERNATIONAL COMMISSION ON INTERVENTION AND STATE SOVEREIGNTY

The 2001 report by the International Commission on Intervention and State Sovereignty (ICISS) has been the basis upon which discussions, literature and actions on R2P have been centred. According to the report, the core principles of R2P are that:

- State sovereignty implies responsibility and the primary responsibility for the protection of its people lies with the state itself
- Where a population is suffering serious harm as a result of internal war, insurgency, repression or state failure and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect<sup>2</sup>

The foundational principles of R2P are based upon:

- Obligations inherent in the concept of sovereignty
- The responsibility of the Security Council under Article 24 of the UN Charter for the maintenance of international peace and security
- Specific legal obligations under human rights and human protection declarations, covenants, treaties, international humanitarian law and national law
- The developing practice of states, regional organisations and the Security Council<sup>3</sup>

The ICISS report highlights three specific responsibilities under R2P:

- **The responsibility to prevent** – to address both the root causes and direct causes of internal conflict and other man-made crises that put populations at risk

- **The responsibility to react** – to respond to situations of compelling human need with appropriate measures which may include coercive measures such as sanctions and international prosecution and, in extreme cases, military intervention
- **The responsibility to rebuild** – to provide, particularly after a military intervention, full assistance with recovery, reconstruction and reconciliation, addressing the causes of the harm the intervention was designed to halt or avert

Prevention has been identified as the most important dimension of R2P and, therefore, preventive options should always be exhausted before military intervention is contemplated. On balance the international community spends less on prevention than it does on intervention; the latter often signals that the situation has got out of hand. Therefore, more resources and commitment must be devoted to the responsibility to prevent. In addition, the exercise of the responsibilities to prevent and react should always first involve the application of less intrusive and coercive measures such as mediation before more coercive and intrusive options such as sanctions or military intervention are used.<sup>4</sup>

One of the key elements of R2P is military intervention and the ICISS report states that there must be a just cause threshold before military intervention is authorised, namely large-scale ‘ethnic cleansing’ and loss of life. Specifically, R2P has been classified as a norm that seeks to address the international community’s failure to prevent and stop genocide, war crimes, ethnic cleansing and crimes against humanity.<sup>5</sup> It is a question of when, if ever, it is appropriate for states to take coercive and, in particular, military action against another state for the purpose of protecting people at risk.<sup>6</sup> Furthermore, there must be precautionary principles in considering military intervention and these are:

- Right intention
- Last resort
- Proportional means
- Reasonable prospects

There are operational principles that guide military intervention and, traditionally, the UN Security Council is the only body with the authority to authorise international military intervention.<sup>7</sup>

In essence, R2P is not an entirely new concept but a re-articulation and re-emphasis of conflict prevention, management and resolution techniques. Its emphasis on prevention and the responsibility to prevent points to a renewed focus on preventive diplomatic tools, with a view to mitigating the outbreak or escalation of conflict that could lead to serious human rights violations. The responsibility to react can be linked to conflict management initiatives that have been used over the years, such as sanctions, blockades and military intervention. The responsibility to build complements conflict resolution and peace building.

The combination of the doctrine of R2P, the values of democracy and the human security paradigm means that contemporary international politics is characterised by increased scrutiny of a state's ability to exercise its responsibility as the primary provider and protector of its people.

## APPLICATION OF R2P AT THE UNITED NATIONS

While the provisions in the UN Charter do not explicitly mention R2P, Article 33 of the UN Charter encourages preventive action to offset disputes that are likely to endanger international peace and security. Chapter VII calls for decisive response to threats to peace and security through measures such as sanctions and military intervention. Chapter VIII calls for cooperation between the UN and continental mechanisms on peace and security issues. While the UN is the body responsible for the maintenance of international peace and security and while Article 53 of the Charter states that only the Security Council authorises military intervention, the UN has had to support the AU's deployment of troops in trouble spots on the continent.

A 2004 report by the UN High-level Panel on Threats, Challenges and Change highlighted the debate on R2P. The report discussed the notion of sovereignty as responsibility and declared support for the implementation of R2P.<sup>8</sup> This was followed by the publication of another report from the then UN Secretary-General, Kofi Annan, entitled *In Larger Freedom*, in 2005, which highlighted and reinforced some of the key elements of the High-level Panel report.<sup>9</sup>

In 2004, the Office of the Special Adviser on the Prevention of Genocide (SAPG) was established within the UN as a mechanism to implement R2P. The establishment of the SAPG coincided with the 10<sup>th</sup> anniversary of the Rwandan genocide. The functions of the SAPG are to collect information on massive and serious violations of human rights and international humanitarian law that,

if not prevented, might lead to genocide, and to act as a mechanism of early warning for the Secretary-General and the Security Council.<sup>10</sup> The post of SAPG was subsequently upgraded to Under Secretary-General level in December 2007. In February 2008, the Secretary-General established the Office of the Special Adviser to the Secretary-General, at the level of Assistant Secretary-General, to focus on R2P.<sup>11</sup>

In 2005 the UN General Assembly passed Resolution 60/1, the first UN resolution on R2P. Resolution 60/1 is significant as it demonstrated a political intention by world leaders to mainstream R2P. Paragraphs 138 and 139 of the resolution have been the foundation of subsequent R2P-related UN resolutions.<sup>12</sup> Significantly, the resolution lists four gross human rights violations that fall under R2P and can be the basis for humanitarian intervention when faced with the threat of genocide, war crimes, ethnic cleansing and crimes against humanity.<sup>13</sup> The General Assembly resolution was followed by a Security Council resolution adopted in 2006. It was the first time that the Security Council had made reference to and endorsed R2P.<sup>14</sup>

In January 2009, UN Secretary-General Ban Ki-moon issued a report on R2P. The report proposed a three-pillar strategy as well as recommendations for further consideration of the doctrine, as agreed in the 2005 resolution.<sup>15</sup> Subsequent debate on the report at the General Assembly resulted in the passage of a resolution in September 2009 in which leaders pledged to continue consideration of R2P.<sup>16</sup> Ban Ki-moon's report is important as it was an attempt by the UN to reconcile the responsibility of the state and international assistance and capacity building with a timely and decisive response in times of compelling need in order to protect vulnerable populations.

In July 2009, the UN Secretary-General proposed the establishment of a Global Impact and Vulnerability Alert System (GIVAS). This system will, among other things, provide the international community with early, real-time evidence of how a global crisis is impacting the lives of the poorest and most vulnerable populations. It will provide situation reports to world leaders and will work in cooperation with governments, UN agencies, academic institutions and civil society organisations.<sup>17</sup> Therefore, the adoption of resolutions on peace and security-related issues, the appointment of Special Envoys and mediators, the undertaking of assessment visits by the UN Secretary-General, the application of sanctions and the deployment of peacekeeping forces can be construed as attempts by the UN to implement R2P.

## EFFORTS TO IMPLEMENT R2P IN AFRICA

Post-colonial Africa was, and continues to be, beset by serious human rights violations. Even as states struggled to incorporate democracy and multi-partyism after years of one-party and authoritarian rule, countries were awakening to the need for a paradigm shift in the way politics is conducted on the continent. This resulted in the Organisation of African Unity (OAU) member states adopting the Declaration on Fundamental Changes Taking Place in the World and their Implications for Africa in 1990. This was followed by the 1994 Cairo Agenda for Action on Re-launching Africa's Economic and Social Development.<sup>18</sup>

However, the 1994 Rwandan genocide and the inaction on the part of the OAU prompted African leaders to review the activities of the continental body. The transformation of the OAU into the AU was an opportunity for African leaders to create new structures and incorporate more legal provisions that reflect a shift from over-emphasis on non-interference to a focus on non-indifference.

African leaders adopted the Constitutive Act of the African Union at the 2000 Lomé Summit. The Constitutive Act is significant as it represents a 'hands-on' approach by African leaders to prevailing peace and security challenges. The Constitutive Act contains a number of provisions that address R2P. Specifically, Articles 4(h) and (j) give the Union the right to intervene in a member state pursuant to a decision of the Assembly in respect of grave circumstances; namely, war crimes, genocide and crimes against humanity. Upon the recommendation of the PSC, the AU can assert its right to intervene in order to restore peace and security.<sup>19</sup>

In the same year leaders adopted the Solemn Declaration on the Conference on Security, Stability, Development and Co-operation in Africa (CSSDCA). CSSDCA was meant to be a policy framework that would complement the activities of the AU. In 2004, the Common African Defence and Security Policy was established and it serves as the overall policy guideline of the AU. In 2005, AU member states committed themselves under the African Union Non-Aggression and Common Defence Pact to 'prohibit and prevent genocide, other forms of mass murder as well as crimes against humanity'.<sup>20</sup> In 2007, the AU Summit adopted the Declaration on the Framework for a Response to Unconstitutional Changes in Government. That same year, AU member states also adopted the African Charter on Democracy, Elections and Governance as part of the AU's continued emphasis on the promotion of democracy and good governance in member states.

The APSA evolved from the establishment of the AU as a mechanism to implement the organisation's peace and security agenda. The PSC is at the centre of APSA and is supported by the CEWS, the African Standby Force (ASF) and the Panel of the Wise. A key element of the APSA is that its structures are located in the regional organisations that act as 'pillars' of the APSA. An example is the ASF, which, upon its establishment, will be composed of brigades from the five AU regions. The setting up of regional peace and security structures was meant to address timeously the peace and security challenges occurring in a particular region. Furthermore, there would be more familiarity with the prevalent dynamics and complexities in the region.

The existence and operations of the PSC are provided for in the Protocol on Amendments to the Constitutive Act and the Protocol Relating to the Establishment of the Peace and Security Council of the African Union (PSC Protocol).<sup>21</sup> The PSC Protocol contains objectives, principles and powers that address R2P.<sup>22</sup> Crucially, it also has provisions for cooperation with AU organs, regional organisations, civil society organisations and the UN, all critical actors in the implementation of R2P in Africa.<sup>23</sup>

Despite its capacity constraints, the AU, through the PSC, has attempted to implement R2P across the continent. Sanctions were imposed in countries such as Togo and Madagascar, where unconstitutional changes of government took place. The two countries were also suspended from the continental body. The PSC has supported conflict-prevention techniques such as mediation in countries such as Mauritania, Zimbabwe, Madagascar, Guinea, Kenya and Niger and recently in Côte d'Ivoire and Libya.

The AU deployed peacekeeping troops in the form of the AU Mission in Burundi (AMIB), in 2003; the AU Mission in Sudan (AMIS), in 2004; and the AU Mission in Somalia (AMIS), in 2007. This generated debate among scholars on whether or not the AU circumvented Article 53 of the UN Charter. The UN has, however, supported the AU's decisions to intervene militarily in compelling circumstances.<sup>24</sup>

This chapter supports the assertion that R2P was effectively enshrined in the Constitutive Act.<sup>25</sup> The Constitutive Act was signed in 2000, before the ICISS report was published, and is therefore one of the pioneering international attempts to implement R2P. The Constitutive Act and the PSC protocols that establish relations between the Council and other AU structures, regional organisations and civil society are a statement of intent to respond to the prevailing peace



and security challenges on the continent and are a political acceptance by AU member states of R2P. These legal instruments empower and obligate the AU to implement R2P.

## EXPLAINING NON-INTERFERENCE

The concept of non-interference is closely related to the principles of sovereignty and territorial integrity. State sovereignty entails that ‘within the territory of a political entity, the state is the supreme power and as such no state from without the territory can interfere, militarily or otherwise, with the internal politics of that state’.<sup>26</sup> Sovereignty and non-interference are linked in the sense that a state possesses the legal and political authority to define, implement and defend its interests without intrusion from other states. This ensures that all states, regardless of size, economic endowments and military might, are treated equally, in this way guaranteeing stability and predictability in the international system.

Non-interference has been enacted in the various legal instruments of inter-governmental organisations. It is one of the principles of the UN Charter and was reinforced in the Declaration on Principles of International Law Concerning Friendly Nations adopted by the UN General Assembly in 1970.<sup>27</sup>

In Africa, it was articulated as part of the purposes and principles of the OAU Charter.<sup>28</sup> The AU Constitutive Act and the PSC Protocol also contain provisions on non-interference, sovereignty and territorial integrity.<sup>29</sup> Even though it does not explicitly mention ‘non-interference’, the AU Non-Aggression Pact reflects a solid respect by African countries of the notions of sovereignty, territorial integrity and, as a corollary, non-interference.

## THE PSC’S DILEMMA IN BALANCING R2P AND NON-INTERFERENCE

Endorsing R2P and balancing its implementation with non-interference is one of the dilemmas faced by the PSC in maintaining peace and security on the continent. This dilemma is born out of the continued preference for non-interference over R2P in conflict prevention, management and resolution initiatives in Africa. It should be noted though that this is not a uniquely African phenomenon but reflects prevailing international uncertainty and lack of clarity about how R2P should be implemented.

This chapter argues that sovereignty and non-interference are defensive mechanisms that countries use in an 'anarchical' international system characterised by competing and conflicting interests. The political and legal right to manage one's own affairs within a defined territory guarantees survival in such a hostile environment.

In Africa, colonialism had a negative effect that still manifests today. It is the reason that OAU founders noted in the Preamble of the Charter the determination to safeguard 'the hard-won independence, sovereignty and territorial integrity and to fight neo-colonialism in all its forms'.<sup>30</sup> External intrusion in African countries continues to ferment instability and generate resistance. It can be argued that this instability, compounded by an international economic system fundamentally skewed in favour of developed countries, has resulted in the general incapacity of African countries to provide for their citizens and has created an entry point for foreign countries, through humanitarian organisations, to 'assist' African countries in implementing R2P. African countries are therefore sensitive to the notions of sovereignty and non-interference and are still sceptical of R2P because they fear that external actors intend to continue exercising political and economic control over their countries. Murithi highlights the dangers of R2P if it focuses exclusively on military adventurism, regime change and the forced imposition of democracy.<sup>31</sup>

It has to be appreciated that many countries oppose the implementation of R2P that is motivated more by geo-political strategic interests than altruistic intentions. The challenge lies in separating the notion of national interests from the altruistic intention of implementing R2P. It can be concluded, however, that national interests are driving the implementation of R2P and this is at the core of the prevailing negative attitude towards R2P. It is the reason that the resolution on R2P, passed at the UN General Assembly in September 2009, only made reference to continuing the debate on the doctrine rather than significant action in mainstreaming the concept.<sup>32</sup> Despite the ambivalent attitude towards R2P, both R2P and non-interference can be effectively utilised. Their incorporation in the PSC legal instruments signifies a commitment by the PSC to both principles. It reflects an attempt by the PSC to balance the need to promote democratic principles for the maintenance of peace, security and stability and the reality that non-interference protects states from hostile external actions, in this way guaranteeing a modicum of interstate stability.

The PSC Protocol includes a provision on cooperation with sub-regional mechanisms in Africa. This is necessary and is a recognition that sub-regional mechanisms are better placed to exercise the responsibilities to prevent, react and build. In this instance, the PSC would play a supportive role and, in cases requiring military intervention, it could then recommend that action. It is the rationale for the PSC's support for initiatives by organisations such as the Southern African Development Community (SADC) in Madagascar and Zimbabwe, and the Economic Community of West African States (ECOWAS) in Niger and Guinea.<sup>33</sup>

An example of how the PSC is trying to utilise R2P and non-interference in conflict prevention, management and resolution can be observed in Zimbabwe. The PSC supports SADC's mediation efforts, but has consistently called for the lifting of all forms of sanctions against the country.<sup>34</sup> This approach demonstrates the difficulty of balancing the need to intervene to protect against the need to respect the sovereignty of an African country.<sup>35</sup>

In essence, R2P and non-interference are complementary principles. R2P mainly places responsibility on the state to meet the human security requirements of its citizens. Therefore, non-interference should be interpreted as affording states the opportunity to exercise that responsibility, backed by the necessary international support, without any intrusive or coercive machinations. In this context, R2P should not be viewed as an entirely new norm that seeks to usurp the sovereignty of a country and, with it, the authority to define and implement its own policies. Rather it should be interpreted as a renewed impetus to address the prevailing peace and security challenges and should also reinforce the state's role as the primary provider of the human security requirements of a population in a particular territory.

## RECOMMENDATIONS FOR IMPLEMENTING R2P

R2P remains a contested concept in Africa but it needs to be mainstreamed. The AU possesses the necessary structures and legal instruments for implementing R2P. What is needed is for Africa to own and implement R2P, through APSA. The following policy recommendations can provide guidance on the implementation of R2P.

- **Activation of PSC structures:** Preventive diplomacy is the main technique favoured by the PSC in maintaining peace and security on the continent. This means that structures such as the Panel of the Wise, the CEWS and their

sub-regional structures need to be utilised actively. The use of elder statesmen and women, former presidents and other prominent people will enhance the mediation process because these individuals possess the required experience to navigate the complex world of negotiations. Early-warning systems assist in detecting signs of possible instability and contribute to the expeditious activation of preventive efforts.

- **Financial commitment to AU structures and initiatives:** One of the PSC and the AU's major constraints is inadequate financial resources. However, resources are required if R2P is to be effectively implemented. It can be argued that most of the PSC's peace and security initiatives, notably the deployment of adequate troop numbers to Somalia and Sudan, for example, are being hampered by inadequate financial resources. AU member states have to commit significant financial resources for the implementation of R2P. In addition, the establishment of structures such as the African Central Bank needs to be expedited or, alternatively, member states need to contribute to the African Development Bank in order to equip it to be able to disburse loans and grants to members.
- **International support for R2P implementation in Africa:** The international community should support, rather than undermine, efforts to implement R2P in Africa. The UN should effectively utilise Chapter VIII to mobilise international support for regional intervention initiatives. Also, the UN can render capacity support to conflict prevention, management and resolution efforts on the continent.
- The international community and in particular the UN Security Council should also respect and support the initiatives of the PSC, even though they might be of the view that the PSC is not being robust enough in enforcing R2P. As long as the perception that Western countries promote R2P for their geo-political strategic interests persists, efforts at mainstreaming R2P will be undermined.

## CONCLUSION

The chapter discussed initiatives to implement R2P in Africa and efforts to balance it with the principle of non-interference. It discussed how the AU pioneered the institutionalisation of R2P, by adopting its Constitutive Act, in 2000, as a legal instrument that made specific reference to the right of the continental

body to intervene in a member state, and the right by a member state or states to request intervention in another state. These provisions were adopted before the ICISS report on R2P was published in 2001.

In Africa, non-interference is still preferred over R2P because countries are still sceptical about the meaning and scope of R2P. In addition, geo-political strategic interests are driving the implementation of R2P and this is at the core of the ambivalence towards the doctrine. The discussion also examined how the PSC could balance R2P and non-interference for effective conflict prevention, management and resolution. The structure of the continental peace and security architecture, with its focus on regional pillars, enables the balance of R2P and non-interference because regional organisations are better placed to exercise the responsibilities to prevent and react effectively, with the PSC supporting the responsibility to build.

This chapter recommended that structures such as the Panel of the Wise and the CEWS be utilised more effectively. Furthermore, member states should robustly support and finance AU structures. The international community should also support rather than undermine efforts at implementing R2P in Africa.

In conclusion, even though non-interference is a sacrosanct principle and R2P is a controversial doctrine, both concepts can complement each other. The PSC faces the continuing dilemma of applying both principles in the maintenance of peace and security on the continent. Emphasis should always be on prevention, as it is critical in diffusing complex political situations. National interests continue to drive the implementation of R2P. Consequently, non-interference will continue to take precedence over R2P, albeit for pragmatic purposes.

## NOTES

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- 12 UN General Assembly Resolution 60/1, 2005, <http://daccess-dds-un.org/doc/UNDOC/GEN/N05/487/60/PDF/N0548760.pdf?OpenElement> (accessed 16 February 2010). Paragraph 138 discusses state responsibility for R2P and paragraph 139 discusses the UN's role in R2P.
- 13 UN General Assembly Resolution 60/1.
- 14 UN Security Council Resolution 1706 [2006] paragraph 2.
- 15 Report of the Secretary-General, 2009: *Implementing the responsibility to protect*, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/206/10/PDF/N0920610.pdf?OpenElement> (accessed 16 February 2010). Pillar one focuses on the protection responsibilities of the state; pillar two focuses on international assistance and capacity building; pillar three focuses on timely and decisive response.
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- 20 Article 3(d) of the African Union *non-aggression and common defence pact*, 2005, [http://www.africa-union.org/root/AU/Documents/Treaties/text/Non Aggression Common Defence Pact.pdf\(application/pdfObject\)](http://www.africa-union.org/root/AU/Documents/Treaties/text/Non%20Aggression%20Common%20Defence%20Pact.pdf(application/pdfObject)) (accessed 17 February 2010).
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- [http://www.africa-union.org/root/AU/organs/psc/Protocol.peace and security.pdf](http://www.africa-union.org/root/AU/organs/psc/Protocol.peace%20and%20security.pdf) (accessed 17 February 2010).
- 22 Articles 3(a)-(c), (f) and Articles 4(a)-(c), (j)-(k), Articles 6, 7, 14 and 15 of the PSC Protocol.
  - 23 Article 16 focuses on the relationship with regional bodies, Article 17 with the UN, Article 18 with the Pan-African Parliament, Article 19 with the African Commission on Human and People's Rights and Article 20 with civil society organisations.
  - 24 An example is the Security Council Resolution 1706.
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  - 26 *Ibid*.
  - 27 United Nations Charter 1992, Article 2.1; UN, *Principles of international law concerning friendly relations and co-operation among states*, 1970, Article 15.1.
  - 28 Organisation of African Unity Charter 1963, Article II(c) and Article III (I-3) [http://www.africa-union.org/root/au/Documents/Treaties/text/OAU\\_Charter\\_1963.pdf](http://www.africa-union.org/root/au/Documents/Treaties/text/OAU_Charter_1963.pdf) (accessed 10 August 2010.)
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  - 30 Preamble of OAU Charter.
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# 13 A critical appraisal of the PSC's mandate with respect to human rights

*Solomon A. Dersso*

## INTRODUCTION

For much of its history, particularly during the post-Cold War period, the post-colonial African state has witnessed violent conflicts of differing intensity and gravity.<sup>1</sup> Owing to the prevalence of conflicts and their devastating effects on the lives of African people, including setbacks in socio-economic development, social harmony as well as peace, African states have realised that 'developing a robust framework for peace and security is an imperative for Africa'.<sup>2</sup> Probably one of the most important developments to emerge in translating this realisation into tangible action in the context of the transformation of the Organisation of African Unity (OAU) to the African Union (AU) is the establishment of the African Peace and Security Architecture (APSA), anchored in the Peace and Security Council (PSC) of the AU.

The PSC is central to the APSA and is 'a standing decision-making organ for the prevention, management and resolution of conflicts' and operates as 'a collective security and early warning arrangement to facilitate timely and efficient response to conflict and crisis situations in Africa'.<sup>3</sup> As will further be demonstrated in the discussion below, the PSC is vested with expansive powers covering

the prevention, management and resolution of conflicts in Africa. In this context, the Protocol establishing the PSC (PSC Protocol) not only makes numerous direct references to human rights but also assigns the PSC specific responsibilities vis-à-vis the protection of human rights.

Despite the PSC's express mandate with respect to human rights and the crucial importance and link of human rights to peace and security in Africa, little has been written on human rights from the perspective of the PSC and generally in the context of AU initiatives for the promotion, maintenance and restoration of peace and security in Africa. Even more strangely, and as this chapter will further reveal, the issue of human rights is arguably one of the most important themes and one that is least developed and systematically addressed in the work that the PSC has so far undertaken.

In the context of reviewing the work of the PSC and identifying areas for improvement, this chapter seeks to consider the place of human rights within the mandate of the PSC and the need for their integration and the extent to which they are integrated in the PSC's work for the prevention, management and resolution of conflicts in Africa. As space will not permit an exhaustive examination of human rights from the perspective of the PSC's mandate with respect to human rights, the chapter examines only *some* of the first and the hard cases considered by the PSC.

## **HUMAN RIGHTS AND PEACE AND SECURITY – A FRAMEWORK FOR ANALYSIS**

The starting point for considering this subject should be the relationship between human rights and the PSC and the interplay between human rights and peace and security in general and in the African context in particular.

To this end, it is necessary first to start with a brief description of what human rights are and what they are meant to achieve. If one adopts a simple but comprehensive description, human rights can be regarded as the legally recognised inalienable guarantees that define those minimum physical, political, cultural, socio-economic and environmental conditions which are necessary for leading a dignified, free and equal life and to which human beings are entitled by virtue of their being human.<sup>4</sup> Formulated in positive terms, they seek to secure the conditions and the means that make it possible for human beings, both as individuals and members of groups, to achieve dignity, freedom and equality and

generally to pursue the good life as they see it, in accordance with their needs and tastes. Framed in the negative, human rights seek to protect human beings from violations against their life, person, liberty, and political freedoms and from deprivation of the means for meeting their needs and realising their aspirations.

Peace and security is directed towards creating conditions that are free from not only violent conflict but also fear and insecurity.<sup>5</sup> Viewed from this perspective, it is clear that human rights and peace and security are inherently intertwined. One aspect of this interconnectedness relates to the issue of how human rights violations feed into the eruption of violent conflicts and vice versa.<sup>6</sup> There are a number of ways in which human rights violations can generate conflict. As the conflicts in Darfur, Burundi, and Kenya among others show, grievances over the denial or perceived denial of rights, most notably discrimination and socio-economic inequality, often constitute the root causes of violent conflicts. More serious incidents of violations of the rights to security, liberty and life such as illegal detention, extrajudicial execution, massacre and torture are often likely to trigger armed conflict, particularly if they occur on a large scale. On the other hand, it is widely recognised that violent conflicts, particularly intra-state ones, occur amid the most serious violations of human rights and humanitarian law, including war crimes, crimes against humanity and even genocide.<sup>7</sup> Another dimension of the relationship between human rights and peace and security pertains to the role and place of human rights for the maintenance of peace and security, which are dealt with below.<sup>8</sup>

## Violation of human rights as a threat to peace and security

With respect to the effect of human rights violations on peace and security, an important development is the shift towards recognising serious violations of human rights as threats to international peace and security, which are the basis for the consideration of a particular situation by the UN Security Council (UNSC). Accordingly, since Resolution 688 of 1991, in which the UNSC for the first time concluded that serious violations of human rights constitute a threat to international peace and security,<sup>9</sup> the UNSC has paid increasing attention to human rights violations in conflict situations. It has considered human rights not only in the resolutions it has adopted condemning particular acts of violence against civilians<sup>10</sup> but also in the mandates it has given to UN peacekeeping missions regarding the protection of civilians.<sup>11</sup> At the regional level also, the Organisation

for Security and Co-operation in Europe (OSCE) defines security as linked with, among other matters, human rights, peace and governance.<sup>12</sup>

## **Human security – integrating human rights with peace and security for the intrinsic good of securing human welfare**

Another important development is the recognition of human rights as having not only instrumental but also intrinsic value in the context of peace and security. Accordingly, with the recognition and institutionalisation of the normative concept of human security, human rights have increasingly come to occupy centre stage, as the ultimate end of peace and security is redefined in terms of the protection and fulfilment of the wellbeing of individuals and peoples. Former Secretary-General of the UN Kofi Annan eloquently expressed this evolution as follows:

In the 21<sup>st</sup> century, I believe the mission of the United Nations will be defined by a new, more profound, awareness of the sanctity and dignity of every human life, regardless of race or religion. This will require us to look beyond the framework of states, and beneath the surface of nations or communities. We must focus ... on improving the conditions of the individual men and women who give the state or nation its richness and character ... In this new century, we must start from the understanding that peace belongs not only to states or peoples, but to each and every member of those communities. The sovereignty of states must no longer be used as a shield for gross violations of human rights ... Peace must be sought, above all, because it is the condition for every member of the human family to live a life of dignity and security.<sup>13</sup>

## **THE MANDATE OF THE PSC WITH RESPECT TO HUMAN RIGHTS**

Within the framework of the peace and security regime of the AU, gross violations of human rights are regarded as threats to peace and security and human rights are expressly enunciated as an essential part of the mandate of the PSC in the PSC Protocol. In recognition of violations as a threat to peace and security, the Preamble to the PSC Protocol expresses the concern of AU members 'about the continued prevalence of armed conflicts in Africa and the fact that

no single internal conflict has contributed more to socio-economic decline on the Continent and the suffering of the civilian population than the scourge of conflicts *within* and between our states'.<sup>14</sup> The AU Defence and Security Policy is even more straightforward. Within the category of internal threats to peace and security, the policy identifies the following as threats:

- The existence of grave circumstances, namely war crimes, genocide and crimes against humanity
- Lack of respect for sanctity of human life, impunity, political assassination, acts of terrorism and subversion
- Coups d'état and unconstitutional changes of governments, as well as situations which prevent and undermine the promotion of democratic institutions and structures, including the absence of rule of law, equitable social order, population participation and electoral processes
- Improper conduct of electoral processes
- Absence of the promotion and protection of human and peoples' rights, individual and collective freedoms, and equitable opportunity for all, including women, children and ethnic minorities
- Poverty and inequitable distribution of natural resources
- Corruption

The PSC Protocol also recognises the importance of human rights for achieving sustainable peace and security. Paragraph 15 of the Preamble to the PSC Protocol emphasises 'the fact that the development of strong democratic institutions and culture, observance of human rights and the rule of law, as well as the implementation of post-conflict recovery programs and sustainable development policies, are essential for the promotion of collective security, durable peace and stability, as well as for the prevention of conflicts'.

The mandate of the PSC also includes a wide range of human rights-related powers and functions. These include the implementation of the defence and security policy,<sup>15</sup> the promotion of human rights in the context of conflict prevention,<sup>16</sup> intervention in cases of grave circumstances;<sup>17</sup> ensuring respect for the rule of law and for the sanctity of human life and international humanitarian law; as well as the protection of human rights and fundamental freedoms.<sup>18</sup>

At the level of the AU PSC, the intrinsic importance of human rights within the peace and security regime of the AU is expressly stated in the PSC Protocol.

The Protocol stipulates that the very first objective of the PSC is to 'promote peace, security and stability in Africa, in order to guarantee the protection and preservation of life and property, the well-being of the African people and their environment, as well as the creation of conditions conducive to sustainable development' [own emphasis].<sup>19</sup>

Although it is difficult to assign differing importance to the various objectives of the PSC, the fact that this is the first objective of the PSC is clearly indicative of the weight assigned to the concern for human rights and its importance in the context of peace and security. It suggests that the concern for human rights is a central determinant in assessing the value and success of any AU initiative for promoting peace and security in Africa and thereby places human rights at the centre of the work of the PSC and assigns them the status of being an overarching and overriding frame of reference.

This has brought about and been reflected in the important legal developments in the context of the UN peace and security regime.<sup>20</sup> From the perspective of this chapter, the most far-reaching legal development is the legal enunciation of the right of the AU to intervene in member states in respect of grave circumstances.<sup>21</sup> Notably, this represents a paradigmatic shift from the OAU's exclusive focus on the principles of state sovereignty and non-intervention to the security and wellbeing of individuals and peoples encapsulated in the principle of the right of the AU to intervene. As such, sovereignty and non-interference would no longer shield states from external scrutiny and even military intervention not only where states endanger the lives of people on a massive scale but also where they are unable to protect their citizens from such grave threats and violations.<sup>22</sup> Nor can these state-centric principles justify inaction on the part of the new organisation in the face of such threats. In this, the AU Act became a pioneer in leading the 'systemic shift in international law, namely, a growing tendency to recognise that the principle of state sovereignty finds its limits in the protection of "human security"'.<sup>23</sup>

Clearly, the PSC Protocol represents a substantial framework for mainstreaming human rights into the processes of the peace and security regime of the AU. As such, it can be considered both as mandating and demanding AU institutions, particularly the PSC and its supporting bodies, to integrate human rights into all their conflict-prevention, conflict-management and conflict-resolution initiatives and processes fully and appropriately. The challenge for the human rights agenda of the PSC is implementation. This is attributable to various factors. The

first factor is the lack of an operational framework for identifying and analysing relevant human rights issues in violent conflict and crisis situations. There is also a lack of institutional experience and more importantly lack of awareness or sensitivity regarding matters of human rights often due to the persistence of the traditional approach to peace and security in which human rights had no part. Additionally, for the AU organs there is also the issue of articulating implementation approaches and mechanisms in the realm of peace and security. Finally, in some of the situations tension also exists between the demands of peace and security and of human rights and the associated difficulty of balancing the two.

## HUMAN RIGHTS IN THE WORK OF THE PSC – AWAITING SYSTEMATIC INTEGRATION?

It clearly emerges from the above brief exposition that peace and security in Africa is inseparably linked to human rights. It further emerges that human rights constitute and should constitute an overarching consideration and should be systematically integrated in the AU's, and most particularly the PSC's, initiatives for conflict prevention, management and resolution as well as for post-conflict reconstruction.

In examining the work of the PSC from the perspective of its responsibilities with respect to human rights, one can identify five areas for consideration. These are preventive action; peacemaking; peacekeeping; dealing with perpetration of serious violations of human rights; and fighting impunity.

### Conflict prevention

In this respect the activities of the PSC have largely focused on unconstitutional changes of government and election-related disputes or conflicts. The first such case to be considered by the PSC took place in Togo where, following the death of President Gnassingbé Eyadema in February 2005, the Togolese army orchestrated a contrived and unconstitutional succession process to enable Faure Gnassingbé to ascend to power. The PSC responded by condemning the acts of the military as contrary to AU commitments<sup>24</sup> and by suspending Togo from participating in AU activities.<sup>25</sup>

The PSC's actions, including its decision to suspend Togo from participation in AU activities, received international applause<sup>26</sup> and proved to be instrumental in

the restoration of the constitutional process. Despite its effect in the temporary restoration of constitutional order, the PSC's approach was not, however, fully successful in implementing effective conflict prevention in Togo, hence the eruption of the post-election violence leading to hundreds of deaths and other casualties.<sup>27</sup> A more substantive approach would have included a PSC recommendation that the election be administered by an international body and/or that those who participated in the coup and its intended beneficiaries be excluded from participating in the election.

Subsequent to this, the PSC dealt with many other cases of unconstitutional changes of government. These include the cases of Madagascar (in August 2005 and August 2008), Guinea-Conakry (December 2008), Mauritania (2008) and Madagascar (17 March 2009). While it applied the same measure to Mauritania (condemnation of the coup and suspension of Mauritania from participation in AU activities), when it considered the coup in Guinea it went further and for the first time held that the phenomenon of coup d'état 'constitutes a threat to peace and security on the continent, as well as a very serious set back in the ongoing democratization process in Africa'. Another important development is the AU's decision that those involved in a coup or unconstitutional change of government are not eligible to stand for election.

There are certain factors that militate against the PSC's initiatives to address problems of constitutional governance and democracy in Africa. First, the effort of the PSC is generally characterised by what may be called a 'fire-fighting' approach. It is limited to reaction to emerging constitutional crisis, often with no effective conflict-prevention tools. Second, its approach in many instances is limited to addressing the symptoms of the crisis rather than dealing substantively with the roots of the crisis. Finally and related to these is the PSC's heavy reliance on sanctions such as diplomatic isolation as the best tool for safeguarding constitutional governance in Africa.

While the initiatives of the PSC in dealing with the challenge of fostering constitutional governance by treating unconstitutional changes of governments as threats to continental peace and security are encouraging, there is a need to develop a systematic approach that addresses these problems from the very beginning. There is also a need to adopt a system that ensures not only that constitutional order is temporarily restored and violence is stopped but also that the root causes that led to the crisis are fully addressed.



## Peacemaking

Peacemaking is also one of the methods to be used by the PSC in dealing with emerging crisis situations as well as conflicts that have already erupted. Among the PSC's most notable peacemaking efforts are its active involvement in the Darfur crisis. The AU was involved from the very beginning in the search for a negotiated settlement. This started with the assistance that it gave Chad in organising the initial round of negotiations which resulted in the 8 April 2004 N'djamena Ceasefire Agreement signed between the Government of Sudan (GoS), the Sudan Liberation Army (SLA) and the Justice and Equality Movement (JEM). In the subsequent agreement on modalities signed in Addis Ababa on 28 May 2004, the AU was assigned the role of being the lead international body in Darfur.

Other than the fact that the PSC made Darfur its most regular agenda item, it also facilitated various peacemaking initiatives, which included the negotiation and signing of the 2004 Ceasefire Agreement, the 2005 Comprehensive Peace Agreement and the subsequent Darfur Peace Agreement (DPA), which the PSC hoped would herald the beginning of peace in Darfur. At the time that the DPA was signed in May 2005, the PSC stated that it considered 'that the DPA, which was the culmination of intensive deliberations and negotiations, conducted by the AU mediation with the support of the facilitators and international partners, represented a fair and comprehensive solution to the conflict in Darfur, addressed the legitimate demands of the movements, and met the aspirations of the people of Darfur. Council, therefore, is of the view that there are no legitimate grounds for any group in Darfur to use military means to achieve its goals.'<sup>28</sup> These peace agreements did not however lead to the desired result of ending the conflict, and the people of Darfur have continued to endure violence.

As some have reported, one of the problems with the DPA process was that the focus was on having the leaders of the warring factions sign some form of agreement. The DPA, for example, was far from comprehensive as there were some factions that were not signatories to it. Most importantly, no adequate attention was paid to the high level of human rights and humanitarian violations the conflict had continued to cause. Given the nature of the conflict in Darfur, the need for extensive dialogue and peace-building efforts, not only at the level of the various actors to the conflict but also at the grassroots level, should have been given due attention to resolve the conflict.

When the PSC decided to establish an independent high-level panel on Darfur, some of these issues were addressed, and the work of the panel also came to establish what the late Prime Minister Meles Zenawi of Ethiopia reportedly called 'a new standard that the AU will have to uphold'.<sup>29</sup> The PSC adopted the decision for the establishment of the panel in responding to the peace versus justice dilemma that arose in the wake of the International Criminal Court's (ICC) decision to indict Omar Hassan Ahmad al-Bashir for war crimes and crimes against humanity. The communiqué adopted at its 142<sup>nd</sup> meeting at the AU Commission (AUC) in Addis Ababa on 21 July 2008 tasked the panel with examining the situation in depth and with submitting recommendations 'on how best the issues of accountability and combating impunity, on the one hand, and reconciliation and healing, on the other, could be effectively and comprehensively addressed, including through the establishment of truth and/or reconciliation commissions'. The panel submitted its analysis, findings and recommendations in a report entitled *Darfur: The Quest for Peace, Justice and Reconciliation* to the AUC on 8 October 2009.

One of the innovations of the panel was its approach; what Alex Dewal called participatory listening.<sup>30</sup> In preparing its report, the high-level panel consulted all relevant stakeholders, particularly ordinary Darfuris, and undertook extensive studies about the conflict. From the perspective of this study, two aspects of the report make it particularly notable. First, the report not only revealed that the underlying causes of the crisis pertain to problems associated with human rights and governance but also identified and analysed in sufficient detail the issues of human rights and democracy that both led to and were caused by the conflicts. According to the panel, the Darfur crisis is a manifestation of the Sudan crisis in Darfur. Thus, it attributed the Darfur crisis to the socio-economic exclusion, the political marginalisation and the domination (due to an authoritarian and bad governance system) suffered by Darfur and its people. To use the expression of the panel, '[t]he crisis in Darfur is a manifestation of Sudan's inequitable distribution of wealth and power'.<sup>31</sup> And after the violent conflict erupted, it led to the perpetration of serious violations of human rights and humanitarian law and it deepened the division and animosity both vertically between Darfur and Khartoum and horizontally within Darfur itself.<sup>32</sup>

Second, drawing inspiration from principles of human rights and democracy enunciated in various AU instruments, the report also recommended measures that adequately and innovatively respond to the issues thus identified. It recommended that the political system of Sudan be redesigned to guarantee equitable

political participation and justly accommodate the cultural and religious diversity of the country; that devolved structures of governance be crafted on the basis of federalism; and that socio-economic measures (including affirmative measures) be implemented both to redress the prevailing inequalities at the root of the conflict and to compensate for the loss suffered by those affected by the conflict. With respect to justice and reconciliation, the panel innovatively recommended the establishment of a hybrid court to deal with the most serious crimes, the reform and issuance of appropriate laws, the restructuring of the justice administration system to re-establish its independence and credibility, payment of reparations for victims and the establishment of a justice and reconciliation commission.

The PSC adopted the recommendations of the report and panel, without any revision, during its 207<sup>th</sup> session meeting at its highest level, the level of Heads of State and Government.<sup>33</sup> In the communiqué it issued while adopting the report, the PSC formulated mechanisms for follow-up and implementation.<sup>34</sup> Although the report and the recommendations of the panel are yet to be fully implemented, there is a recognition that they provide a comprehensive framework for achieving peace, justice and reconciliation all at once. It is this that earned the report a positive reception regionally and internationally.

The work of the Panel also broke new ground in setting a robust and useful framework that can be institutionalised for considering other similar conflict situations. Accordingly, the PSC should be encouraged to adopt a similar approach in dealing with other cases.

## Peacekeeping and intervention

In addition to its roles in peacemaking in many countries, the AU has, through the PSC, initiated the deployment of peacekeeping missions as an instrument for conflict management and resolution. Under its authority, the AU deployed missions to Burundi,<sup>35</sup> Darfur,<sup>36</sup> Somalia<sup>37</sup> and Comoros.<sup>38</sup>

Clearly, peace support operations have become an important tool in the AU's efforts for managing and resolving conflicts. Many of these operations can also be credited with playing a role in stabilising the areas affected by violent conflicts, and in the case of the AU Mission in Burundi (AMIB) for creating the conditions that facilitated the resolution of conflicts and the deployment of a UN mission. In the case of the AU Mission in Sudan (AMIS), as the only line of defence between the notorious Janjaweed militia and Darfur civilians, in those areas under its

military presence AMIS, even if it did not stop the attacks on civilians, at least prevented the armed groups from causing more destruction, which would not have been possible in its absence.<sup>39</sup>

These achievements notwithstanding, many studies have shown that AMIB and to a larger degree AMIS were not able to realise their missions fully and effectively.<sup>40</sup> In both cases, military capability in terms of size and logistics and a lack of funds to finance the operations were the main, if not the only, culprits. In the case of AMIS, financial, logistical, and military capability; problems of command and control; the intransigency of the GoS; and even organisational problems severely undermined its ability to carry out its responsibilities effectively in enforcing the ceasefire agreements and protecting civilians.<sup>41</sup> Apart from these technical and operational problems, its mandate, particularly in terms of the protection of civilians, has also been one of its most serious flaws. The lack of such a mandate means that AMIS could not have extended its help to civilians even if it was operationally possible for it to do so.

Despite the expansion of AMIS's mandate to include the most needed protection of civilians under AMIS II,<sup>42</sup> the formulation of the civilian protection mandate was highly qualified and unclear, making it difficult to implement. First, it included the usual caveats of 'under imminent threat', 'in the immediate vicinity', and 'within resources and capability'. Most controversially, it also made the role of AMIS in the protection of civilians subject to the primary responsibility of the GoS to protect civilians in Darfur. The first problem with this addition is that it assumed that the GoS was willing to provide protection to vulnerable Darfuris. As Appiah-Mensah later pointed out that, 'regrettably these assumptions have not been realized'.<sup>43</sup> Indeed, contrary to these assumptions, 'the GoS actively, as well as indirectly through its support to the Janjaweed, was taking part in the violence against civilians'.<sup>44</sup> Second, 'it also introduced an element of confusion, and meant that the responsibility to interpret exactly what the respective responsibilities of AMIS and of the GoS were was left to the AMIS leadership'.<sup>45</sup>

From the perspective of this chapter, another limitation of the PSC's peace operations relate to the lack of a mandate to monitor and report serious violations of human rights. Associated with this is the issue of the provision of appropriate structure and mechanisms, including the required expertise for monitoring and reporting incidents of violations of human rights and humanitarian law by any of the parties to the conflict.

## OPERATIONALISING ARTICLE 4(H) – A PRINCIPLE WHOSE TIME HAS NOT YET COME?

In terms of the operationalisation of Article 4(h) of the Constitutive Act of the AU, the Darfur crisis and the PSC's efforts for undertaking peace operations revealed that this principle of intervention presented many gaps and dilemmas. First of all, the mechanism for ascertaining the existence of 'grave circumstances warranting intervention' was not provided for. Yet, the PSC held that 'even though the crisis in Darfur is grave, with the attendant loss of lives, human suffering and destruction of homes and infrastructure, the situation cannot be defined as a genocide'.<sup>46</sup> This was a problem because not only was such a finding made without a clearly established process, duly considering and analysing the situation against the legal elements of genocide, but also it left unanswered whether the situation, which the PSC characterised as grave, revealed the commission of any one or both of the other crimes, namely war crimes and crimes against humanity.

Most importantly, this unreasoned decision of the PSC also revealed the continuing tension between the principles of intervention on the one hand and of consent and sovereignty on the other. When the PSC was considering the deployment of AMIS II with expanded mandate and additional force size, Sudan invoked its sovereignty to resist the plan.<sup>47</sup> It was as a result of the insistence of the GoS that its sovereignty be respected, and the application of the associated principle that the state bears the primary responsibility of protection, that the controversial qualification to the protection mandate of AMIS was inserted by the PSC.<sup>48</sup>

The difficulties that the PSC faced in terms of following the requirements of Article 4(h) brought to the fore several difficult questions. First, in the face of a strong government, the PSC was forced to try to implement the promise of protection that Article 4(h) carries while trying to secure and maintain the support of the government for its intervention. This brings to light that, notwithstanding the law, in practical terms the PSC could not apparently implement the principle of intervention without the consent of the state. Secondly, despite the paradigm shift that Article 4(h) introduced from non-intervention to non-indifference and the resultant legal circumspection of the principle of sovereignty, sovereignty remains alive and well particularly where military intervention is considered.

One thing that clearly emerges from the above is that Article 4(h) of the AU Act is a principle whose time has not yet come, particularly where the use of

military force against a strong resisting government is needed for its enforcement. It is not clear if its time would come even if the African Standby Force (ASF), the AU's peace support operation and intervention mechanism,<sup>49</sup> were to be fully operational.

## CONCLUSION

The AU PSC's work reveals that while the PSC has made significant contributions to dealing with problems in the area of human rights and constitutional democratic governance, its approach to issues of human rights in the context of a crisis has not been systematic. As a result there is a huge gap between the mandate of the PSC with respect to human rights and what the PSC has actually done in the course of considering various conflict and crisis situations on the continent. Although human rights should constitute an overarching framework in any of the PSC's engagements in conflict prevention, conflict management and conflict resolution as well as post-conflict reconstruction, the work of the PSC seems to show that such a coherent human rights consideration is a missing element. The PSC has yet to grasp the place and importance of its human rights mandate fully and to use it systematically in all stages of a conflict as the nature of the situation under consideration dictates. In this regard, the PSC may consider dedicating a session to human rights and humanitarian law in the context of conflicts and crisis situations.

For the PSC to deliver on its mandate with respect to human rights, there is a need for it to follow the UN in mainstreaming human rights into all its activities. This is also essential to ensure that not only the factors triggering and perpetuating conflicts but also their root causes are properly addressed. As the AU Audit Report rightly noted, 'this will be in consonance with article 4 of the Protocol which states that in carrying out its work, the PSC should, inter-alia, be guided by the principles enshrined in the UN Charter, the Constitutive Act of the AU, the Universal Declaration of Human Rights and international humanitarian law'.<sup>50</sup>

## NOTES

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- Journal of Contemporary African Studies*, 20(1) (2002), 29-52; Solomon A Dersso, The role and place of the ASF within the African Peace and Security Architecture, ISS Paper, January 2009, 1-3.
- 2 AU High Level Panel, *AU audit report* (2007), 95, <http://www.pambazuka.org/aumonitor/comments/962/> (accessed on 27 February 2011).
  - 3 Protocol relating to the establishment of the Peace and Security Council of the AU (PSC Protocol), adopted at the 1<sup>st</sup> Ordinary Session of the AU Heads of State and Government in Durban, South Africa on 9 July 2002 and entered into force on 26 December 2003, Art. 2.
  - 4 The concept of human rights which entails the recognition, respect and protection of the fundamental rights of human beings, because they are human beings, draws heavily on internationally accepted norms.
  - 5 For a broader understanding of security as freedom from fear and want see the seminal work of Amartya Sen, *Development as freedom*, Oxford: Oxford University Press, 1999.
  - 6 See Oskar NT Thomas & James Ron, Do human rights violations cause internal conflicts? *Human Rights Quarterly*, 29(3) (2007) 674-705, <http://server.carleton.ca/~jron/publications/HRQFinalSubmission.PDF>.
  - 7 For a discussion on the impact of African conflicts on human rights see Osita Agbu, Human rights implications of African conflicts, *African Journal of Political Science* 5(1) (2000), 92-104.
  - 8 See Elen L Lutz, Eileen F Babbitt and Hurst Hannum, Human rights and conflict resolution from practitioner's perspectives, *The Fletcher Forum of World Affairs* 27(1) (Winter/Spring 2003), 173; and Ram Manikkalingam, Promoting peace and protecting rights: how are human rights good and bad for resolving conflicts? *Essex Human Rights Review* 5(1) (July 2008) 1, 4.
  - 9 In this resolution the UNSC condemned 'the repression of the Iraqi civilian population in many parts of Iraq, including most recently in Kurdish populated areas, *the consequences of which threaten international peace and security in the region.*' [my emphasis] UN Doc. S/RES/687, 3 April 1991.
  - 10 Ibid.
  - 11 For an in-depth examination of the origin of this development see Ulf Haubler, *Ensuring and enforcing human security: the practice of international peace missions*, Nijmegen, The Netherlands: Wolf Legal Publishers, 2007; UNSC resolutions on the protection of civilians include S/Res/1267 of 15 October 1999, S/Res/1296 of April 2000, S/Res/1674 of 28 April 2006 and S/Res/1738 of 23 December 2006.
  - 12 See Li-Ann Thio, Developing a 'peace and security' approach towards minorities' problems, *International and Comparative Law Quarterly* 52 (2003), 115-150; and CSCE Helsinki Document 1992: The Challenges of Change, Done at Helsinki on 10 July 1992, II, para. 23.
  - 13 Secretary-General Kofi Annan, Nobel Lecture, 10 December 2001.
  - 14 Para. 10. The emphasis I added shows both a shift from the OAU and a recognition of the increasing concern and interest manifested by the OAU on the need to address internal

conflicts which dominated the African landscape during the post-Cold War period more than inter-state conflicts.

- 15 Art. 7(l) PSC Protocol.
- 16 Art. 7(m) PSC Protocol.
- 17 Arts. 4(j) and 7(e) (f) PSC Protocol.
- 18 Art. 3(f).
- 19 Art. 3(a) PSC Protocol.
- 20 See S Neil Macfarlane, Human security and the law of states, in Benjamin J Goold and Liora Lazarus (eds), *Security and human rights*, Oxford and Portland, Oregon: Hart Publishing, 2007, 347.
- 21 Art 4(h) AU Constitutive Act. As defined in this article, grave circumstances are those involving war crimes, genocide and crimes against humanity.
- 22 As Cilliers and Sturman state '[t]he absence or disappearance of a functioning government can lead to the same kind of human catastrophe as the presence of a repressive state. In Africa, intervention will be needed in as many cases where a weak state is unable to protect its citizens, as when a repressive state is unwilling to do so or itself the cause of the abuse.' Jakkie Cilliers and Kathryn Sturman, *The right intervention: enforcement challenges for the African Union*, *African Security Review* 11(3) (2002), 29.
- 23 Carsten Stahn, Responsibility to protect: political rhetoric or emerging legal norm? *American Journal of International Law* 101 (2007), 99, 100–101.
- 24 Communiqué of the 24<sup>th</sup> Meeting of the PSC 7 February 2005, AU Doc. PSC/PR/Comm. (XXIV), On the Situation in Togo, para. 1.
- 25 Communiqué of 25<sup>th</sup> Meeting of the PSC 25 February 2005, AU Doc. PSC/PR/Comm. (XXV) para. 3.
- 26 Afrol News, *Togo prepares elections, Gnassingbé stays in power*, <http://www.afrol.com/articles/15678> (accessed 15 March 2011).
- 27 See AU Commission Chairperson Report on Togo, submitted to the PSC, AU Doc. PSC/PR/2 (XXX) para. 12, 27 May 2005.
- 28 Communiqué of the 51<sup>st</sup> Session of the PSC, AU Doc. PSC/MIN/1. (LI) para. 8, 21 June 2006.
- 29 Alex de Waal, *Reflections on the AU PSC Summit*, available from <http://blogs.ssrc.org/sudan/2009/11/03/reflections-on-the-au-psc-summit/>
- 30 Ibid.
- 31 Report of the AU High Level Panel on Darfur, *Darfur: the quest for peace, justice and reconciliation*, at xiii. AU Doc. PSC/AHG/2 (CCVII), 29 October 2009.



- 32 As the Panel stated, '[t]he extreme violence and gross violations of human rights that followed this mobilization (the launch of a massive counter-insurgency to defeat the rebellion) resulted in a massive humanitarian crisis, occasioned by the death of many people, the displacement of over two million within Sudan, and up to 250 000 refugees spilling across the border into Chad. The role of the nomadic groups in forming the militias, and more broadly in the counter-insurgency, has created deep rifts and tensions within Darfurian society that need to be healed.' Ibid, xiv.
- 33 PSC/AHG/COMM/1 (CCVII).
- 34 Ibid, paras. 11–14.
- 35 See Tim Murithi, The African Union's evolving role in peace operations: the African Union Mission in Burundi, the African Union Mission in Sudan and the African Union Mission in Somalia, *African Security Review* 17(1) (2008); Festus Abogagye, The African Mission in Burundi: lessons learned from the first African Union Peacekeeping Operation, *Conflict Trends* 2 (2004); and Emma Svensson, *The African Mission in Burundi: lessons learned from the African Union's first Peace Operation*, Stockholm: FOI, Swedish Defence Research Agency, 2008; Henry Boshoff and Dara Francis, The AU Mission in Burundi – technical and operational dimensions, *African Security Review* 12(3) (2003).
- 36 See ICJ, The AU's Mission in Darfur: bridging the gap, *Africa Briefing* 28 (July 2008); Seth Appiah-Mensah, The AU's critical assignment in Darfur: challenges and constraints, *African Security Review* 14(2) (2005); Peter Kagwanja and Patrick Mutahi, Protection of civilians in African peace missions: the case of the African Union Mission in Sudan, Darfur, ISS Occasional Paper 139 (May 2007); Sarah E. Kreps, The United Nations-African Union Mission in Darfur: implications and prospects for success, *African Security Review* 16(4) (2007), 67–79; and Arvid Ekengard, *The African Union Mission in Sudan (AMIS): experiences and lessons learned*, Stockholm: FOI, Swedish Defence Research Agency, 2008.
- 37 Cecilia Hull and Emma Svensson, *The African Union Mission in Somalia (AMISOM): exemplifying African Union peacekeeping challenges*, Stockholm: FOI, Swedish Defence Research Agency, 2008.
- 38 See Emma Svensson, *The African Union's operations in the Comoros: MEAS and Operation Democracy*, Stockholm: FOI, Swedish Defence Research Agency, 2008.
- 39 See Appiah-Mensah, The AU's critical assignment in Darfur, 8; and ICJ, The AU's Mission in Darfur, 4–6.
- 40 See Festus Abogagye, The African Mission in Burundi; Henri Boshoff, Burundi: The African Union's First Mission, ISS Situation Report, 10 June 2003 available from [www.iss.co.za](http://www.iss.co.za); ICJ, The AU's Mission in Darfur; Seth Appiah-Mensah, The AU's critical assignment in Darfur: challenges and constraints, *African Security Review* 14(2) (2005); Peter Kagwanja and Patrick Mutahi, Protection of civilians in African peace missions: the case of the African Union Mission in Sudan, Darfur, ISS Occasional Paper 139 (May 2007); and Sarah E. Kreps, The United Nations-

African Union Mission in Darfur: implications and prospects for success, *African Security Review* 16(4) (2007), 67–79.

- 41 See Appiah-Mensah, The AU's critical assignment in Darfur.
- 42 See Communiqué of 17<sup>th</sup> Session of the Peace and Security Council, AU Doc. PSC/PR/Comm. (XVII), 20 October 2004.
- 43 Seth Appiah-Mensah, The AU's critical assignment in Darfur.
- 44 Ekengard, *The African Union Mission in Sudan*, 26.
- 45 Ibid.
- 46 Communiqué of the 12<sup>th</sup> Session of the Peace and Security Council, AU Doc. PSC/MIN/Comm. (XII) para. 2, 4 July 2004.
- 47 See Peter Kagwanja and Patrick Mutahi, Protection of civilians in African peace missions: the case of the African Union Mission in Sudan, Darfur, ISS Occasional Paper 139 (May 2007), 6–7.
- 48 Ekengard, *The African Union Mission in Sudan*, 27.
- 49 See Solomon A Dersso, The role and the place of the African Standby Force within the African Peace and Security Architecture, ISS Paper 209 (January 2010).
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# 14 Turbulent marriage or peaceful divorce?

## Forecasting the future relationship of the PSC and the United Nations Security Council

*Obijiofor Aginam\**

### INTRODUCTION

It is a widely accepted norm and practice in the contemporary international system – the post-1945 world order – that the United Nations Security Council (UNSC) has the primary responsibility for the maintenance of international peace and security. The entire gamut of Chapter VII of the Charter of the United Nations (Charter), entitled ‘Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression’, provides for the various mechanisms that the UNSC deploys to discharge this task.<sup>1</sup> Notwithstanding the provisions of Article VII of the UN Charter, most scholars of international relations and international law argue that the international system is an ‘anarchical’ system that is: (i) characterised by pronounced asymmetries (including military and economic power) between ‘sovereign’ nation-states; (ii) often driven by the ‘national-strategic interest’ of the most powerful states within and outside the mandate of intergovernmental institutions like the UN; and (iii) lacking any centralised enforcement institutions even for the most universally accepted norms and conventions by the international community as a whole. Because the national-strategic interests of states in the international system are dynamic and always evolving in

line with the changing geo-political realities and alliances in an interdependent world, most African countries may not always be strategically relevant to the national interest of the 'Big Powers' in the system.

Coupled with the perceived or actual marginalisation of Africa in global politics, the UNSC could easily be 'incapacitated' to intervene, or decide to intervene too late in ongoing or future African conflicts. Should this scenario occur, as has been the case in some past African conflicts such as Rwanda and to some extent Sierra Leone and Liberia, this chapter raises two key questions. First, would the AU Peace and Security Council (AU PSC) be empowered where the UNSC, for whatever reasons, is incapacitated to intervene in African conflicts without prior UNSC authorisation? Second, how would such an intervention be legitimised if it were adjudged illegal *ab initio*? These questions are not new per se for two reasons. First, the UN Charter (Chapter VIII) identifies cooperation between the UNSC and regional and sub-regional organisations as an important pillar in collective security in international relations. Second, there are a few precedents in Africa where a regional organisation has intervened in a country without prior authorisation of the UNSC, notably the Economic Community of West African States (ECOWAS) interventions in Liberia, and Sierra Leone through the ECOWAS Ceasefire Monitoring Group (ECOMOG) in the late 1980s and 1990s. In the AU's fast-evolving peace and security architecture, what therefore are the prospects for: (i) replicating the ECOMOG precedents from a sub-regional organisation (ECOWAS) to the African continental level as a whole, with the AU PSC; and (ii) harnessing the emerging doctrines, especially the norm of the 'Responsibility to Protect' as part of the emergent AU PSC practice?

This chapter focuses more on the first challenge – how the lessons of the ECOMOG precedents could be used in the evolving AU PSC framework. Using relevant international law/international relations doctrines, this chapter seeks to forecast the future relationship of the AU PSC and the UNSC, and argues that this relationship may be either a 'turbulent marriage' or a 'peaceful divorce'. The AU PSC and UNSC relationship will likely be a turbulent marriage where, in future African conflict situations, the AU PSC first defers to the authority of the UNSC as the body that is primarily responsible for the maintenance of international peace and security, deploys all available diplomatic channels to sustain a constructive engagement with the UNSC, and eventually fails to win any commitment for effective UNSC action. It will likely be a peaceful divorce where the AU PSC, failing to win any effective UNSC action after a long and frustrated engagement with the

UNSC, resolves to recommend ‘intervention’ to the Assembly of Heads of State, based on Article 7(e) of the Protocol Establishing the AU PSC. In other words, a peaceful divorce between the UNSC and the AU PSC starts exactly where their turbulent marriage/relationship ends. As such, whichever action the AU PSC eventually opts for, it should grapple with the intense debate in academic, policy, and diplomatic forums on the *legality versus legitimacy* of such interventions.

## THE INTERNATIONAL SYSTEM – AN OVERVIEW OF THE THEORETICAL LENS

Despite the many theories that explore the behaviour of states in the international system, leading scholars of international relations concede that these theories are not rigidly compartmentalised. As Zacher and Matthew observe, ‘each of these traditions includes many variants, which frequently overlap in complicated ways such that identifying their key features is a difficult and controversial task’.<sup>2</sup> Exploring the ‘idea of international society’, Hedley Bull in his famous magnum opus, *The Anarchical Society*,<sup>3</sup> states that:

Throughout the history of the modern states system there have been three competing traditions of thought: the Hobbesian or realist tradition, which views international politics as a state of war; the Kantian or universalist tradition, which sees at work in international politics a potential community of mankind; and the Grotian or internationalist tradition, which views international politics as taking place within an international society.<sup>4</sup>

Bull asserts that ‘what has been called the Grotian or internationalist tradition stands between the realist tradition and the universalist tradition. The Grotian tradition describes international politics in terms of a society of states or international society. ... The Grotian prescription for international conduct is that all states, in their dealings with one another, are bound by the rules and institutions of the society they form.’<sup>5</sup> Granted that the world has transformed a great deal since Bull’s work was first published in 1977; the international system has nonetheless remained ‘state-centric’ – what international lawyers refer to as the ‘Westphalian system’.<sup>6</sup> Since the Peace of Westphalia in 1648, nation-states have remained the dominant actors in the international system. In the heat of the Cold War characterised by a bi-polar world order, states largely followed ideological

prescriptions as opposed to the Grotian prescription that they were bound by the 'rules and institutions of the society they form'. Even as members of the UN, their positions, behaviour and actions were largely influenced by balance-of-power imperatives and strategic interests, and not the provisions of the UN Charter. Contextualising the UN within the Cold War world order, Malanczuk observed that:

During the Cold War the collective security system of the United Nations remained largely crippled, because the required continuing cooperation of the five major allied powers had evaporated soon after the Second World War was over. ...[T]he procedures for collective measures in Chapter VII were largely substituted by balance of power strategies implemented by the great powers outside the framework of the United Nations. ...From 1946 to 1986, there were only two determinations under Article 39 by the Security Council that there was a 'breach of the peace', in the case of Korea in 1950 and concerning the Falklands war in 1986.<sup>7</sup>

The Cold War provided the context for the leading powers to pursue foreign policy objectives on basis of national-strategic interests. These interests influenced the collective intervention decisions of member states of international organisations, including the Permanent Five (P5) of the UNSC. When juxtaposed with the nuclear threats between the US and the former Soviet Union, the realist theory of international relations, as expounded by scholars like Morgenthau, looks like a theoretical toolbox that satisfactorily explains the behaviour of states in the international system.<sup>8</sup>

While the bi-polar Cold War era represents an important historical epoch that partly explains the 'incapacity' of the UN, the post-Cold War uni-polar world order has continued to oscillate between the *Scylla* of national interests of states and the *Charybdis* of 'Grotian prescription' for an international society. This is what Obiora Okafor characterised as the tensions 'between normative idealism and national interest'.<sup>9</sup> It is on this basis that the actual, perceived and/or potential marginalisation of Africa and the 'disinterestedness' of the UNSC in African civil strife should be explored and understood. According to Okafor:

The process through which the normative ideals of the UN are funneled in order to vindicate them in concrete cases is severely constrained by the often

capricious behavior of a few great powers. The consequence of this for African peoples, who are typically unimportant in the scheme of things because they possess neither money nor military and do not immediately threaten the borders or other strategic interests of great powers, is often devastating and oppressive. This is not to say that the UN never does anything of value to African peoples, but that the heavy constraints imposed on that body by the nature and working of the process of norm-application, all-too-often results in a relegation of African problems to the bottom of the priority list, and even in cases where they receive some attention, these problems are not usually treated with sufficient dispatch and commitment as witness the half hearted efforts in Somalia, and the feet-dragging over Rwanda-Burundi, and Liberia.<sup>10</sup>

**Relating this to the tragedy in Rwanda, despite clear warnings, powerful states in the UNSC kept silent as 800 000 people were put to death in a clear case of state-sponsored genocide. As Mgbeoji put it:**

[T]his brutal savagery, well planned and fully known to the Security Council in advance, was executed within 100 days, while the US representative to the UN at that time, Madeline Albright, 'actively blocked UN Security Council intervention to stop the killing'. ... Similar indifference was seen in the case of Zaire, Sierra Leone, Madagascar, and many so-called Third World countries where non-Caucasians have been affected. ... This attitude of selective and racialized intervention, barely concealed economic/political opportunism, and expediency when dealing with states in the Third World must be of concern to scholars of global security and stability. This is not to say that African states or Third World states need more unilateral western military interventions. The point here is that interventions must be transparently justifiable on a priori rules. Racial considerations or the economic and political self-interests of members of the Security Council must be eschewed in the process of determining when and how the Council is to be moved to intervene.<sup>11</sup>

**On the list of conflict-prone African countries in recent years, one can add Sudan, Guinea-Bissau, Central African Republic, Democratic Republic of the Congo (DRC), Burundi, and many others. In a worst-case scenario, should another potential Rwanda confront African states, should the AU PSC intervene if the UNSC, for any reason, is incapacitated?**

## THE FUTURE OF THE AU PSC-UNSC PARTNERSHIP – LESSONS FROM THE ECOMOG INTERVENTION IN LIBERIA

The Liberian civil wars (1989–1996, 1999–2003) as well as the mediation processes that eventually culminated in the intervention in those conflicts by ECOMOG have been the subject of incisive scholarly analyses.<sup>12</sup> It is beyond the scope of this chapter to analyse the voluminous literature on the Liberian civil wars and the role of ECOMOG in the conflict. This chapter rather seeks to articulate the consequences of the ECOMOG intervention in Liberia, which was not initially supported by express UNSC approval, in order to forecast the future relationship between the AU PSC and the UNSC. As already stated, Chapter VIII of the UN Charter envisaged a role for regional and sub-regional organisations as an important pillar in collective security.<sup>13</sup> In particular, Article 53(1) of the UN Charter provides that:

[T]he Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies *without the authorization of the Security Council* [own emphasis].

Even in cases of collective self-defence where an armed attack has occurred against a state, Article 51 of the Charter places an obligation on member states to report such measures to the UNSC immediately, and further provides that such collective self-defence measures shall not in any way affect the authority of the UNSC to take any action as it deems necessary to maintain international peace and security.

Relating these and other provisions of the UN Charter to the Liberian conflicts where, on 25 August 1990, a four thousand-strong peacekeeping force known as the ECOMOG was deployed in Liberia, some scholars have argued that the ECOWAS-ECOMOG intervention was illegal in international law.<sup>14</sup> This school of thought predicates its conclusion on at least four major grounds: (i) the ECOWAS action was unlawful because it was not based on the invitation of the effective government of Liberia because President Samuel Doe, at the time of the ECOWAS intervention, lacked the authority to invite ECOMOG to intervene in Liberia; (ii) the ECOWAS intervention constituted ‘enforcement action’ under Chapter VII of



the UN Charter, and was therefore unlawful without UNSC authorisation; (iii) the ECOWAS action was not based on the unanimous consent of all ECOWAS member states;<sup>15</sup> and (iv) the ECOWAS action exceeded a peacekeeping/humanitarian mission and therefore required the consent of all the warring factions in Liberia.<sup>16</sup> As White observed, 'it can be seen ... that during its long involvement in Liberia, ECOMOG had overstepped the boundary between consensual and neutral peacekeeping and military enforcement action'.<sup>17</sup>

While all, or at least most, of these grounds have solid support in international law and international relations scholarship, the UNSC, as a face-saving device, gave tacit support to the ECOWAS/ECOMOG actions through Resolution 788 in November 1992. The Resolution affirmed that the situation in Liberia was a threat to 'international peace, particularly in West Africa as a whole'; imposed a mandatory arms embargo on the whole of Liberia except for ECOMOG; condemned all attacks on ECOMOG troops; and commended ECOWAS for its initiatives to restore peace, security and stability in Liberia. By referring to Chapter VIII of the UN Charter, the UNSC accepted ECOWAS as a regional organisation within the ambit of Article 52 of the Charter. Subsequent UNSC resolutions on Liberia re-affirmed Resolution 788. In 1993, through Resolution 856, the UNSC agreed to send an advance team of 30 military observers to pave the way for the deployment of the UN Observer Mission for Liberia (UNOMIL) to partner with ECOWAS in the implementation of the peace agreement. The long history of ECOWAS involvement in the Liberian conflicts that eventually culminated in ECOMOG intervention without UNSC approval, and the subsequent UNSC action, point to one irresistible conclusion. The UNSC action constituted a retroactive legitimisation that legalised or normalised the initial perceived or actual 'illegality' of the ECOMOG intervention. The UNSC may have been swayed either by some form of 'guilty conscience' that it had not done much, as the repository of the use of force in the UN, to assist Liberia, or simply by the 'modest' progress already made by ECOMOG in serving at least some humanitarian purpose in Liberia. Either way, the tensions between legality and legitimacy are not always easy to resolve, especially in cases of humanitarian interventions involving the use of force.<sup>18</sup>

What lessons then could the AU PSC learn from the ECOMOG precedent and experience in Liberia? Scholarly opinion is sharply divided on the ECOMOG intervention in Liberia. To paraphrase Cyril Obi, while some scholars have described ECOMOG as a 'heroic failure',<sup>19</sup> those that supported the intervention

have also pointed to its limitations and weaknesses.<sup>20</sup> Both critics and supporters of ECOMOG agree that regional peacekeeping faces enormous 'resource, institutional, managerial and leadership' challenges.<sup>21</sup> Adibe observed that one of the factors that accounted for the ECOWAS diplomatic debacle in Liberia was the 'organization's lack of experience in the diplomacy of multilateral security'.<sup>22</sup> The AU PSC, in order to succeed, has to learn from the challenges of previous experience of regional organisations like ECOWAS on the continent.

## OPPORTUNITIES FOR REGIONAL ORGANISATIONS IN POST-COLD WAR INTERNATIONAL PEACE AND SECURITY

As already stated, Chapter VIII of the UN Charter envisaged a role for regional and sub-regional organisations as an important pillar in collective security. However, because of the politics of the Cold War, this important pillar of collective security was never fully explored to maximise its potential. Post-Cold War, the failure of the UNSC in dealing with the genocide in Rwanda, the rapid decline in interstate conflicts and the simultaneous rapid proliferation of intrastate conflicts, especially in Africa, have opened new vistas for the engagement of the UNSC in African conflict situations. Today, more than 70 per cent of UN peacekeepers are deployed in Africa; the biggest UN peacekeeping operations are deployed in the DRC and Somalia. This post-Cold War trend offers opportunities for the future relationship of the UNSC and AU PSC. As pointed out by Hentz, Soderbaum and Tavares:

The idea of regional contributions to UN security operations resurfaced in recent times with the emergence of a new post-Cold War security environment and the multiplication of weak or even so called 'failed' states.<sup>23</sup>

Citing the 1992 UN Secretary-General's Report *An Agenda for Peace*,<sup>24</sup> which advocated the involvement of regional organisations in such activities as preventive diplomacy, peacekeeping, peacemaking, and post-conflict reconstruction, Hentz et al state that 'over the next fourteen years, the UN convened seven high-level meetings with regional organizations from all the continents involved in security matters'.<sup>25</sup> Like *An Agenda for Peace*, UN Secretary-General Kofi Annan's 2005 Report, *In Larger Freedoms*, argued that 'the United Nations and regional organizations should play complimentary roles in facing the challenges to peace and

security'.<sup>26</sup> Since 1994, both the UNSC and the UN Secretary-General, through their resolutions and reports, have initiated debates and discussions aimed at enhancing an effective cooperative framework between the UNSC and regional organisations. Examples of these resolutions and reports include the 2004 Report by the High Level Panel on Threats, Challenges and Change set up by the UN Secretary-General; UN Security Council Resolution 1631 of 2005; Report of the 6<sup>th</sup> High Level Meeting between the UN and Regional and other International Organizations; 2005 World Summit Outcome; UN Secretary-General's Report S/2006/590, and many others. Buoyed by these trends, most scholars and commentators see exciting opportunities in the present-day cooperation between the UNSC and regional organisations. As Hentz et al observe:

Indeed, be it measured by the proliferation of publications in recent years or by the growing number of military deployments, the contribution of regional organizations to peace and security seems to be one of the most remarkable trends in international security.<sup>27</sup>

According to Aning and Atuobi:

[I]n the last decade, there has been a growing recognition by the UN Security Council (UNSC) of the need to cooperate more closely with regional organizations ...under Chapter VIII of the Charter.<sup>28</sup>

In furtherance of this optimism, the UNSC has launched periodic interactive sessions with regional organisations, including the AU. Since 2007, the UNSC and the AU PSC have jointly convened at least four interactive and consultative meetings. Despite the optimistic tone of the analyses of UNSC-regional organisations' cooperative framework in relevant academic and policy literature, difficult questions still remain. Endorsing Ramesh Thakur's persuasive argument, for instance, Soderbaum and Tavares state that:

[T]here is an increasing gap between legality and legitimacy in multilateralism. ... [T]he UN cannot deliver a legitimate world order on its own. Regional arrangements closer to home can in this view counter perceptions of 'external imposition' by a distant global UN. Yet this approach stresses that, to be legitimate, such regionalism must be compatible with and contribute to UN-based

multilateralism. ...Regional organizations can fill some of the gaps within multilateralism but they must do so within the UN framework.<sup>29</sup>

The value of Thakur's argument – at least in the context of most African regional organisations – lies in the benefit of 'burden sharing' between these organisations and the UNSC. This is vindicated by the fact that most interventions undertaken by African regional organisations in recent years have been hampered by serious logistical and other command and control difficulties, including the ECOMOG operations in Sierra Leone, Liberia and other West African conflicts; SADC's intervention in the DRC; and the Intergovernmental Authority on Development (IGAD) efforts in Somalia. Nonetheless, being 'closer to home', as Thakur observes, means that regional organisations could play an important role in getting to trouble spots quickly and sustaining some form of engagement with warring factions before deferring to the UNSC. This seems to be the case in Somalia, where periodic discussions on the review of the mandate and strength of the AU Mission in Somalia (AMISOM) that take place at the AU PSC and IGAD are subsequently deferred to the UNSC.

Supportive of this 'closer to home' philosophy, Aning and Atuobi observe that there are several reasons for the role of regional organisations in peacekeeping to be encouraged, including such factors as proximity to the crisis, familiarity with the actors and issues involved in the crisis, and the perception that 'a regional organization has a great interest in resolving a crisis that erupted in its neighbourhood'.<sup>30</sup> While this view has some value, it must be observed as a cautionary note that not in all cases would a conflict-afflicted country trust its neighbours within a region or regional organisation with the utmost good faith as a benign intervener. For example, the Nigeria-led ECOWAS-ECOMOG interventions in West African trouble spots were fraught with suspicion, as most countries in the sub-region were concerned about Nigeria's intentions to become a regional super-power, and rivalries in the Horn of Africa region rendered IGAD largely ineffective.

## THE WAY FORWARD – AN EPILOGUE ON THE FUTURE AU PSC-UNSC PARTNERSHIP

There is no doubt that the AU and the PSC fall under the category of a regional arrangement or organisation within the framework of Article 52 of the UN

Charter. This enables the AU to function as such within the entire Chapter VIII of the Charter, provided the AU defers to the authority of the UNSC as the body with primary responsibility for the maintenance of international peace and security. Although a school of thought supports the view that the language of the Constitutive Act of the AU and the PSC Protocol, albeit that it recognises the primacy of the UNSC in international peace and security, reserves for the AU an interventionist role that reverts to the UNSC only when the AU deems this necessary,<sup>31</sup> a better way seems to be that, in all cases, the UN should cooperate with regional organisations in ways that align regional actions with the purposes and principles of the UN Charter.<sup>32</sup>

In the ongoing and future African conflicts, the first task of the AU PSC should be to embark on an 'early warning arrangement to facilitate timely and efficient response to conflict and crisis situations' while simultaneously engaging with the UNSC. As crisis diplomacy takes time and effort, this normally would explore all the pacific and diplomatic means of resolving the dispute/conflict, including mediation, fact-finding and the PSC's institutional innovation for preventive diplomacy and conflict resolution – the Panel of the Wise. In this endeavour, the AU PSC should work closely with the African non-permanent members of the UNSC to lobby and put diplomatic pressure on the five permanent members of the Council, and also maintain a robust relationship with the UN Peacebuilding Commission, whose agenda currently includes four African countries emerging from conflict: Guinea Bissau, Sierra Leone, Central African Republic, and Liberia.

As intervention naturally starts where diplomacy ends, the PSC should be guided by humanitarian concerns in recommending intervention to the AU Heads of State in such grave circumstances as war crimes, genocide, and crimes against humanity as defined in relevant international treaties and conventions. This is the only possible way that such interventions, assuming there was no prior UNSC authorisation, would be legitimised by subsequent UNSC action. It is extremely important that the PSC devise ingenious ways to develop its future practice around the norm of 'Responsibility to Protect' – a norm that seeks to strike a balance between state/territorial sovereignty and humanitarian intervention should the state fail to protect its own citizens and the UNSC fail to live up to its responsibility to maintain international peace and security.<sup>33</sup> In all this, the AU PSC should be guided by Article 17 of the PSC Protocol, which recognises the UNSC as the body with the primary responsibility for the maintenance of

international peace and security. In principle, while the AU PSC does not seek to usurp this role in Africa, it shall, according to Article 17 of the PSC Protocol, maintain close and continued interaction with the UNSC to promote peace and security in Africa.<sup>34</sup> This is without prejudice to the right of the AU PSC to intervene if a situation like the Rwandan genocide presents itself and the UNSC is incapacitated to take effective action.

In conclusion, the metaphorical relationship of the UNSC and AU PSC depicted in this chapter as either 'turbulent marriage' or 'peaceful divorce' could define the tension between these organisations going forward. This relationship could also resemble that of parent and child, where the AU PSC effectively cooperates with the UNSC and functions as its 'regional/continental child'. Alternatively, the UNSC and AU PSC relationship could also look like a set of twins, where the UNSC sees the AU PSC as a committed and equal partner in the maintenance of international/regional peace and security and gives it all the normative, logistical, and tactical support necessary to carry out that mandate. These possible outcomes will eventually depend on how the UNSC, especially the P5 members, construe future African conflicts from enlightened self-interest, altruism or egotistical realist perspectives, based on their economic, strategic and other interests.

## NOTES

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# 15 Cooperation between the PSC and the EU's Political and Security Committee

State of play and prospects

*Thomas Muehlmann and Umberto Tavalato*

## INTRODUCTION

In recent years, the African Union (AU) and European Union (EU) have developed a new, unprecedented form of political partnership. The basis for this partnership was laid in December 2007, when African and European heads of state and government gathered at their second summit ever in Lisbon to adopt the Joint Africa-EU-Strategy (JAES). In its second part, entitled 'shared vision', the JAES document states: 'The purpose of this Joint Strategy is to take the Africa-EU relationship to a new, strategic level with a strengthened political partnership and enhanced cooperation at all levels. The partnership will be based on a Euro-African consensus on values, common interests and common strategic objectives.'<sup>1</sup> Acknowledging the expanding roles of the two continental organisations, both sides also agreed to 'upgrade the Africa-EU political dialogue to enable a strong continent-to-continent partnership, with the AU and the EU at the centre'.<sup>2</sup>

The JAES can be considered a cultural innovation in the international relations of Africa. For the first time Africa is dealt with as one continent by the Europeans, through a partnership based on the principle of equality and common interest, where the area of peace and security plays the most visible and active part.

To achieve the ambitious objective of the Strategy, an action plan, adopted in parallel to the Joint Strategy, aims to operationalise and implement this shared vision and emphasises the need for regular dialogue at the appropriate decision-making levels. In particular, it suggests the holding of 'consultations, in an appropriate format, between the AU Peace and Security Council (AU PSC) and the EU Political and Security Committee' (*Comité politique et de sécurité*, or COPS).<sup>3</sup>

The increasing interaction between the two key bodies, the AU PSC and COPS,<sup>4</sup> is an essential element in this cooperation and will be key for success in fully achieving the ambition to strengthen the political dialogue. In this context, it also needs to be highlighted that there is a strongly established link between the COPS and certain instruments of the European Commission, underlining further the importance of a constant exchange of views.<sup>5</sup>

The ambition of developing a strategic relationship between the PSC and COPS is in appreciation of the increasing need for a better, shared understanding of peace and security matters in Africa. Additionally, the partnership aims at coordinating each other's actions to make them mutually reinforcing and thus lead to a joint leverage of both institutions to ensure peace and security on the continent. The cases of Sudan, Madagascar and Somalia illustrate that PSC and COPS coordination can require a long and complicated process. However, this chapter argues that such a coordination process is required in order to produce a common position and added leverage. Indeed, there is still room for improvement in a number of practical areas to support this aim.

PSC-COPS cooperation, which has progressed increasingly over the last two years, has often been compared to the special and much-needed strategic relationship between the AU PSC and the UN Security Council (UNSC). Although there remain substantial differences between PSC-COPS and PSC-UNSC relationships – not least the hierarchical nature of the latter relationship while the PSC and COPS cooperate on an equal footing – important lessons might still be learnt by the UNSC and the UN Secretariat.

This chapter is divided into three parts. The next section examines the different natures and institutional embeddings of the PSC and the COPS and concludes by arguing why a close cooperation is needed and what the nature of this cooperation should be. This chapter then turns to an analysis of the progress made and the state of play of the current cooperation between the two bodies, looking at three concrete examples. Finally, the chapter analyses the challenges ahead, providing concrete avenues of future cooperation from a practitioner's point of view.

## THE ROLE OF THE PSC AND COPS IN THEIR RESPECTIVE ORGANISATIONS

The PSC and COPS are at the heart of the decision-making processes of their respective organisations. This means that their cooperation is crucial for the AU and EU. However, their institutional setup, environments and structures are quite different. A clear understanding of these differences, as set out below, is instrumental for exploring ways for better cooperation between these bodies.

Firstly, although the AU has 53 members, only 15 sit on the PSC at any one time. In contrast the COPS is an inclusive body in which all EU member states are represented. The PSC normally convenes at the level of ‘permanent representatives’ in Addis Ababa at least twice a month; the PSC Protocol, however, also foresees meetings at the level of ministers, heads of state and government once a year.<sup>6</sup> The COPS is composed of senior officials/ambassadors of each of its member states as well as the European Commission. It can also convene at the level of political directors, but not at a higher level.<sup>7</sup>

Secondly, there is a huge difference in the institutional embeddings of the two bodies. The COPS was placed into the complex institutional setup of the EU, with the Council being the body with the power of legally binding decision making.<sup>8</sup> The COPS was created specifically to bring more coherence into the Common Foreign and Security Policy (CFSP) and to develop the European Security and Defence Policy (ESDP).<sup>9</sup> The COPS can rely on numerous working groups and committees for preparing its work, the most important one in respect to Africa being the Africa Working Group and – for crisis management aspects with regard to the African continent – the EU Military Committee (EUMC), the Committee for Civilian Aspects of Crisis Management and the Politico-Military Group.

The PSC is meant to be supported by the Military Staff Committee (MSC), whose role is ‘to advise the Peace and Security Council in all questions relating to military and security requirements for the promotion and maintenance of peace and security in Africa’.<sup>10</sup> This committee, however, has been largely dysfunctional and dormant. The PSC Protocol also allows the PSC to ‘establish subsidiary bodies as it deems necessary for the performance of its functions’.<sup>11</sup> However, to date the PSC has rarely used this option.<sup>12</sup>

Also, both organisations depend a great deal on institutions for organising meetings, providing information and, most importantly, making policy recommendations as well as following up on decisions. The AU is still an

emerging institution and rather weak in terms of human resources and the ability to support numerous structures substantially. It has a lighter institutional structure than the EU. For the time being, it relies on the AU Commission (AUC) and in particular its peace and security department. Creativity is thus often used in taking challenging political initiatives (the case of establishing international contact groups as well as the AU High Level Implementation Panel on Sudan is discussed below).

In contrast, the COPS can rely on the large external relations directorates general (i.e. External Relations and Development directorates general) of the European Commission, including its delegations, as well as the General Secretariat of the Council.<sup>13</sup> The EU structures are much stronger than the AU's; however, this has often produced a heavy decision-making process, which can be an obstacle to rapid and suitable responses to African conflicts (see below the case of EU efforts in Somalia).

Thirdly, the mandates of the two bodies differ significantly. On the one hand, the PSC deals with peace and security issues related to its own continent. This means that in performing its duties the PSC can take binding decisions for all AU member states, as the latter 'agree to accept and implement the decisions of the Peace and Security Council'.<sup>14</sup> The PSC aims to provide, among other things, a 'collective security and early-warning arrangement to facilitate timely and efficient response to conflict and crisis situations in Africa'.<sup>15</sup>

On the other hand, the COPS has a much wider geographic remit and is mandated, *inter alia*, to 'keep track of the international situation in the areas falling within the common foreign and security policy', i.e. areas outside the EU. The COPS helps 'define policies by drawing up "options" for the Council' as well as 'provide guidelines for other Committees ... coordinate, supervise and monitor discussions on CFSP issues in various Working Parties ... (and) lead the political dialogue'.<sup>16</sup>

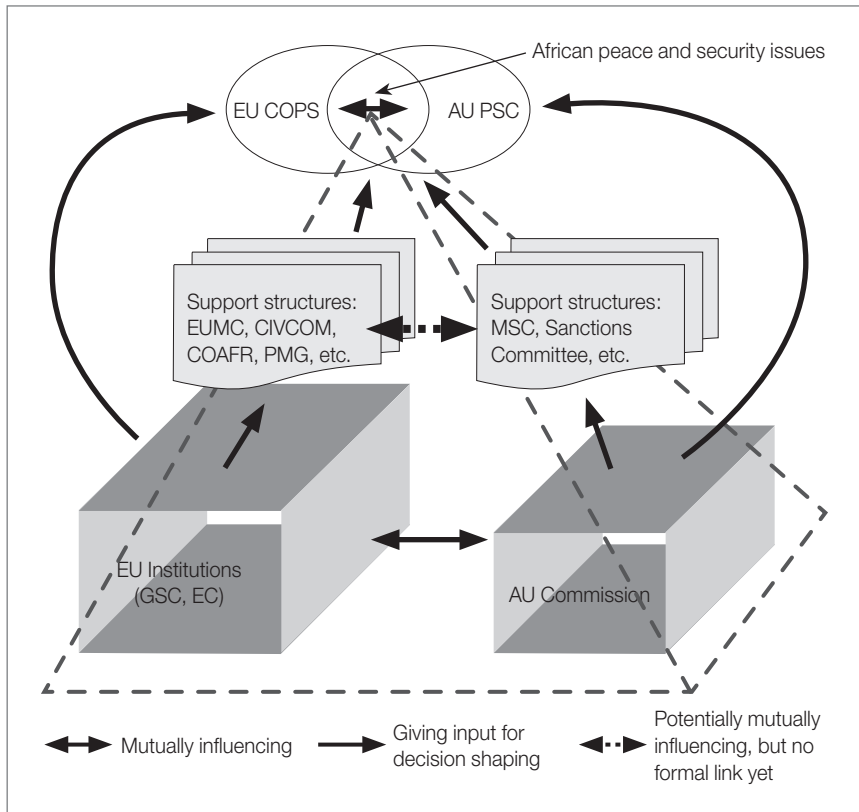
As a consequence, approaches and reactions to conflict often vary in terms of time and approach. In general, the PSC's focus on the African continent gives it the natural advantage of having a greater understanding of African issues and of being able to take the initiative. Generally speaking, this means that the AU is faster in its decision making. However, the EU has more instruments and means at its disposal to deal with threats to peace and security (see the case of Somalia below).

Despite these differences, both bodies are bound to work together to address the challenges on the African continent. These challenges dominate debates in international fora: this is equally true for the UNSC as well as the COPS. Almost

every COPS meeting has an African issue on its agenda; three out of 11 EU special representatives are working on African issues.<sup>17</sup> Ten out of 24 ESDP missions were or are currently conducted on the African continent.<sup>18</sup> Consequently, there is sufficient common ground to interact actively.

As explained above, the two bodies do not act in isolation but are embedded in structures and procedures that are quite different from each other. The PSC-COPS relationship should therefore be seen as a pyramid with the two bodies at the top of the pyramid. The model shown in Figure 1 tries to capture this particular relationship. The top of this pyramid is defined by common areas of interest of both fora.<sup>19</sup> They mutually influence each other during and by their autonomous decision making. However, this is only the tip of the iceberg. In order to ensure

**Figure 1 Model showing PSC-COPS relationship**



the best possible understanding and eventually mutually reinforcing activities, one must recognise the need for cooperation in the institutional surroundings.

Both bodies have subordinate committees and working groups supporting their work and/or preparing decisions, but this relationship still remains underdeveloped. However, all these bodies are supported and fed into by the respective institutions on both sides.<sup>20</sup> Therefore, in order for the PSC-COPS relationship to function well, it is essential for the other components of this pyramid to work together, i.e. the institutions. Through regular contacts with each other, one can foster mutual understanding and ensure that the respective positions of the other organisation are fed into and reflected in the own autonomous decision-shaping and -making, providing an informed basis for the decisions to be taken and, ideally, for mutually reinforcing activities.

The model shows two other things that are essential for understanding the PSC-COPS relationship: first, the pyramid will only stand and the cooperation at the top will only work well if the foundation is solid. Otherwise, the pyramid will collapse. Second, the foundation is much wider and broader than the tip of the pyramid – demonstrating that the cooperation of the respective institutions must be much closer, more regular and intense to ensure that the decisions taken by the PSC and COPS individually (or the common understandings found in consultative meetings) are informed by each other's position.

## **PSC AND COPS COOPERATION – PRACTICAL IMPLEMENTATION**

Annual meetings of the two bodies<sup>21</sup> are foreseen within the partnership in Brussels and Addis Ababa. These joint consultative meetings, although one of the most visible outcomes of the partnership, are far from being isolated or in themselves already a guarantee of success in terms of policy cohesion. While careful preparation is necessary to make these meetings a success so that they provide added value, one also has to understand their limitations. Annual meetings are, if they stand alone, not sufficient in view of the many peace and security challenges facing the African continent on a daily basis.

To strengthen the annual meetings it is essential to ensure constant diplomatic activities between the two organisations at an institutional level to gain relevant information, communicate with each other and feed into the respective discussions. One key element in reinforcing this dialogue has been the

reinforcement and upgrading of the representations of the AU and EU in the capitals hosting the respective headquarters of each organisation. The daily contact particularly among the decision shapers and -makers in the institutions has over the last two years assisted in increasing mutual trust and understanding, leading to greater cooperation. For instance, before a matter of African peace and security is discussed in Brussels, the EU Delegation to the AU attempts to sound out and report back to headquarters and member states on African sensitivities so that they can be reflected in the discussions.

In this context, it is fair to say that no decision is taken in Brussels without at least communicating the AU's views on that particular issue. This does not always lead to a complete overlap of positions; on the contrary, in some cases, such as Sudan and the International Criminal Court (ICC) indictment of its president, both organisations have had a legitimately different appreciation of a situation. Nevertheless, the strategic interest in continuing the exchange of opinions and explanations of each other's positions has helped in recent months to find common ground on the way forward, including on controversial issues.

In addition to daily informal contacts between the AU and EU missions in both Brussels and Addis, the AU has developed two main formal instruments for receiving feedback from the international community and in particular from the EU. First, with increasing frequency the PSC invites the EU and other international stakeholders to address it when discussing an issue in which the EU is also actively involved.<sup>22</sup> This has allowed the PSC to get a clearer picture of the activities of other actors, including the EU's, and to shape its own response accordingly. Secondly, and even more importantly, the establishment by the AU of international contact groups (ICGs) is a major, innovative way of fostering cooperation between the organisation and the rest of the international community on African crisis situations, where stronger international cooperation is required.

In the ICGs, the AU and EU institutions, as well as a number of other key stakeholders, have been working together, particularly in relation to the newly emerging trend of unconstitutional changes of government in a number of African countries. The ICGs have helped the AU tremendously to promote its conflict resolution approaches and to promote international support around these efforts. The ICGs also allow the AUC and the EU institutions to brief the PSC and COPS in a coordinated and more coherent manner, helping to ensure that all stakeholders make informed decisions and pull in the same direction, each of them using their own toolbox in a well-coordinated way.

This search for common approaches has already proven its added value, as the three case studies described below show.

## Case studies – Sudan, Somalia and Madagascar

### *Madagascar*

Following an army coup d'état led by Andry Rajoelina in March 2009, the AU decided to suspend Madagascar from participating in the activities of the AU until the restoration of constitutional order, and established an ICG on Madagascar (ICG-M). The ICG-M includes, in addition to several African countries, the permanent members of the UNSC, the EU, the *Organisation de la Francophonie*, the Organization of the Islamic Conference and the Southern African Development Community (SADC). The ICG-M, which has met five times to date, has been crucial in rallying the international community's support, including the EU's, behind the Addis/Maputo agreements and the AU/SADC mediation efforts.<sup>23</sup>

However, international engagement has not had the desired results because of the continuing resistance by the de-facto Malagasy leadership to complying with the Addis/Maputo agreements.<sup>24</sup> This led to the recent PSC decision to impose sanctions upon the de-facto leadership, including travel bans, the freezing of financial assets and diplomatic isolation.<sup>25</sup> It remains to be seen whether the EU, as well as the UNSC, will support the AU decision and/or will also impose sanctions. This will be discussed in the following ICG-M meetings and will be an important test case for the general AU doctrine on unconstitutional changes of government. Although the creation of the ICG has not yet led to a solution to the Madagascar political crisis, the ICG has been instrumental in ensuring that discussions among EU member states in the COPS on what position to take on Madagascar were centred on decisions made by the PSC.

### *Sudan*

Probably the most debated political issue between Europe and Africa in the last few years, and consequently between the PSC and COPS, has been the ICC arrest warrant for Sudanese President Omar al-Bashir that was issued on 4 March 2009. While both the PSC and COPS agreed on the general need to fight impunity, they reacted differently to the arrest warrant. The EU asked Khartoum to comply with it,<sup>26</sup> while the PSC expressed concerns about the possible repercussions of the decision for the peace process and requested the UNSC to decide on a one-year



deferral in accordance with Article 16 of the Rome Statute.<sup>27</sup> While the EU/AU differences remained, the dialogue between the PSC and COPS and the institutions at the lower end of the pyramid continued, as illustrated by the multiple interactions with the AU on Sudan by the EU Delegation to the AU.

In an attempt to calibrate its position on justice and facilitate its return to the Sudanese political arena as a main international actor, in March 2009 the PSC established the AU High Level Panel on Darfur, led by former South African President Thabo Mbeki. This move helped the PSC and COPS to start working again on finding common ground by supporting the work of AU-Mbeki Panel,<sup>28</sup> whose report was subsequently welcomed by the EU. In addition, when the AU Panel on Darfur (AUPD) was then transformed into the AU High Level Implementation Panel on Sudan (AUHIP), extending the panel's mandate to the overall Sudan political process, the EU stood ready to support it financially.<sup>29</sup> Mbeki's visit to Brussels on 23 March 2010 and his meetings with the COPS and High Representative Catherine Ashton has helped to increase the EU's focus on Sudan and rally support behind the AU-Mbeki role and to continue the dialogue with the AU on the search for justice in Darfur.<sup>30</sup>

The ICC-Sudan case thus illustrates how the interaction between the PSC and COPS is not always based on a synonymous appreciation of a sensitive political issue. It demonstrates that continuous exchanges of positions and opinions between the two bodies have definitely contributed to create space in the search to find a much-needed common ground for a way forward on key issues.

## *Somalia*

On 19 January 2007, in a swift and courageous decision, the AU PSC authorised the deployment of the AU peacekeeping mission in Somalia (AMISOM).<sup>31</sup> This decision was not taken in isolation from international partners: the UNSC, acting under Chapter VII of its Charter, authorised the mission's establishment,<sup>32</sup> allowing the EU to provide support mainly by ensuring AMISOM's financial sustainability.<sup>33</sup> In addition, the AU and EU began in 2009 to engage in a dialogue with the Somali Transitional Federal Government (TFG) on how best to support its security forces. This will lead to an EU Training Mission (EUTM) for Somali security forces, conducted in close collaboration with AMISOM, which will be involved in the selection as well as re-integration of the trainees. The AU PSC has also called on the UNSC to sanction Eritrea further and to impose a no-fly zone as well as a blockade of seaports (particularly of Kismayo) in Somalia, a decision further

endorsed by the AU Assembly in Sirte.<sup>34</sup> The latter two requests have so far not been followed up by the UNSC or by the international anti-piracy naval forces off the Somali coast, including the EU's ATALANTA operation. However, the COPS is well aware of the AU request and further exchanges of opinions might lead to a merging of positions in the future.

## POSSIBLE AVENUES OF ENHANCED COOPERATION

The PSC-COPS liaison is still in its infancy and there is much room for further improvement. A number of practical steps could be considered: a) a more structured PSC-COPS relationship; b) improvement in the harmonisation of the respective approaches; and c) exchange of lessons learnt and best practices.

### PSC-COPS – a more structured relationship

A more regularised exchange of information between the PSC Secretariat and the respective EU bodies with regard to the agendas of the COPS and the PSC (but also their supporting committees) could be envisaged. This would also necessitate a more structured exchange between the relevant staff at the AUC and the EU Delegation to the AU. The missions in Addis and Brussels could have regular meetings with the respective institutions and the PSC-COPS Chair to discuss issues of common concern on the respective agendas.

The urgency of peace and security issues dictates that annual joint consultative meetings will not be sufficient to ensure timely joint responses. Thus, these meetings could be supplemented by, for example, PSC-COPS interaction on other occasions and by other means (such as video conferences). In support of this, the future External Action Service and the AUC could envisage holding regular video conferences to discuss such issues on a monthly basis, for instance.

The exchange of documents could also be stepped up. In the spirit of pragmatism and dictated by political need, finding appropriate arrangements that allow for the sharing of at least some classified documents of both organisations could be considered. This would, for instance, allow the EU Situation Centre to step up its exchange of information with the AUC. This could facilitate the coherence between both institutions in their mission planning. For instance, when the AU and the Economic Community of West African States (ECOWAS) contemplate a

security sector reform (SSR) mission in Guinea-Bissau, it should be of great interest to them what the relevant EU documents contain on the EU SSR mission there and the latter's assessment of the SSR progress.

Finally, mutual invitations of the respective missions to the PSC and COPS meetings to present their organisations' assessment of certain crisis situations could also enhance the basis on which autonomous decisions are taken. The same applies for special representatives or special envoys, who could share their insights on and approach to certain crises.

## Reinforced efforts at institution level to coordinate and harmonise approaches

Concrete cooperation begins with information sharing and building a common understanding of a certain crisis situation. This should happen preferably as early as possible, before an issue escalates. Strengthened dialogue with all actors and early consultations between the AU and the EU – as well as with other stakeholders – could then prove fruitful. In this context, it could be envisaged that the AU Situation Room and EU Situation Centre explore more intensive ways of stepping up cooperation in exchanging information on and analysis of upcoming crises/potential coups. In parallel, it would probably be equally important that AU offices and EU delegations in the field step up communication and coordination, including with the regional economic communities (RECs). In addition, both sides could encourage their experts to exchange and consult on a regular basis; for instance, the African and European election observation missions could hold discussions, both before deployment and then *in loco*.

Once the AU and EU have jointly defined a challenge to peace and security and have agreed on their cooperation, they should then seek ground for more coordinated approaches, not least in the context of the ICGs mentioned above. On a case-by-case basis, the possibility of issuing joint AU-EU declarations or conducting AU-EU consultations ahead of ICG meetings could be assessed.

To increase the credibility of applying appropriate and effective measures, sanctions need to be effective and synchronised. The EU could share its lessons learnt and experiences in this respect with the AU. Both organisations could jointly consider how sanctions under the respective instruments could be mutually reinforcing. In a next step, the two bodies could also agree to ensure coherence in other international fora, notably the UN.

## Building capacities and lessons learnt

The EU began its crisis management under the ESDP only ten years ago. This recent experience warrants a sharing of know-how on structures and procedures in the EU. The aim should not be that the AU copies the EU approach, but rather that the AU benefits from the lessons learnt and is able to look for the best possible solutions in the international context.

In this respect, an invitation by the Chairman of the EUMC has already been issued to the MSC to visit Brussels to observe how the EUMC functions. Similar visits could be organised for other delegations, including from the RECs, or in other specific fields of expertise in support of the PSC, for instance on sanctions. One could also look at possibilities of inviting the AU Mission to the EU to several meetings so as to allow members of the AU Mission to learn from the European experience. An additional step would be joint missions to Europe's post-conflict areas to look at the EU experiences there, including civil-military cooperation, as already highlighted in the Strategy's Action Plan.<sup>35</sup>

## CONCLUSION

The PSC has a very ambitious mandate and is increasingly deploying and strengthening its doctrine and instruments. Yet, the success of its work heavily depends on international cooperation with other international partners. This is necessary to bring different interests, visions and ideas to the table to discuss the best possible way forward in tackling crises on the African continent.

In this context, it seems fair to say that the AU's relationship with the EU is the most solid of all its partnerships. This continent-to-continent interaction, based on two institutions which were created in response to the geopolitical changes and to the processes of integration in Africa and Europe, has a huge potential for a significant contribution to an international system influenced also by multilateralism and new and alternative centres of power.

Peace and security remains the most important and visible area of collaboration within this international relationship. The strategic relationship between the PSC and COPS, supported by cooperation among the support structures, will increasingly lead to a better shared understanding of peace and security matters and the employment of coordinated, enhanced and mutually reinforcing measures, leading to a joint leverage of both institutions. This is valid for both the AU

and the EU with regard to conflict resolution in Africa as well as in the international arena, such as the UNSC.

The cooperation between the EU and AU, notably between the PSC and COPS, is based on the principle of decision-making autonomy of each stakeholder. Working more closely will help trigger parallel decision-making processes which are well coordinated and – wherever possible – similar and/or mutually reinforcing decisions. Cooperation has thus become increasingly important and fruitful in achieving the ambition of a strengthened political partnership.

## NOTES

- 1 The Africa-EU Strategic Partnership – A Joint Africa-EU Strategy, December 2007, 2, [http://www.africa-eu-partnership.org/pdf/eas2007\\_joint\\_strategy\\_en.pdf](http://www.africa-eu-partnership.org/pdf/eas2007_joint_strategy_en.pdf) (accessed 18 March 2010).
- 2 *Ibid.*
- 3 First Action Plan (2008-2010) for the implementation of the Africa-EU Strategic Partnership, 6, [http://www.africa-eu-partnership.org/pdf/eas2007\\_action\\_plan\\_2008\\_2010\\_en.pdf](http://www.africa-eu-partnership.org/pdf/eas2007_action_plan_2008_2010_en.pdf) (accessed 17 February 2010).
- 4 For easier reference and distinction, its French abbreviation ‘COPS’ (*Comité politique et de sécurité*) will be used throughout the chapter.
- 5 For instance, the African Peace Facility, the most important financial instrument to support African peace and security activities, required the PSC to confirm the political appropriateness of any support suggested, before contractual relationships could be established.
- 6 See Rules of Procedure of the Peace and Security Council, Rule 2, adopted by the Executive Council of the AU in its fourth ordinary session in Addis Ababa, Ethiopia, 12–16 March 2004.
- 7 Council Decision of 22 January 2001 setting up the Political and Security Committee (2001/78/CFSP), Annex, second paragraph, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:027:0001:0003:EN.pdf> (accessed 16 February 2010).
- 8 Composed of all EU member states’ ministers, meeting in different formats.
- 9 Under the Lisbon Treaty, which came into force on 1 December 2009, it was re-named the Common Security and Defence Policy/CSDP.
- 10 Protocol relating to the establishment of the Peace and Security Council of the African Union (PSC Protocol), 9 July 2002, Article 18, <http://www.africa-union.org/root/au/AUC/Departments/PSC/Asf/doc/PSC%20protocol.pdf> (accessed 18 March 2010).
- 11 PSC Protocol, Article 8.

- 12 The PSC decided in March 2009 to establish a Sanctions Committee, but only agreed to its modalities in January 2010. The members of this subsidiary body are yet to be appointed.
- 13 With the implementation of the relevant provisions of the Lisbon Treaty, a European External Action Service will eventually be created to support the newly created position of High Representative of the Union for Foreign Affairs and Security Policy, who is also Vice President of the European Commission.
- 14 PSC Protocol, Article 7, par. 3.
- 15 *Ibid.*, Article 2.
- 16 Council Decision of 22 January 2001 setting up the PSC (2001/78/CFSP), Annex. 1; 'CFSP' is the abbreviation for Common Foreign and Security Policy.
- 17 For a complete list of the EU Special Representatives, see the EU Council's website, <http://www.consilium.europa.eu/showPage.aspx?id=263&lang=EN> (accessed 17 February 2010).
- 18 For a complete overview of the ESDP missions, see the EU Council's website, <http://www.consilium.europa.eu/showPage.aspx?id=268&lang=EN> (accessed 17 February 2010).
- 19 Accepting that the common intersection is more comprehensive with regard to the overall PSC work than with the COPS work, dealing with a number of other crisis areas across the globe.
- 20 In terms of supporting committees and institutions the EU is stronger, which is reflected in the model's larger boxes on the EU's side of the pyramid.
- 21 For the last meeting, see the Press Statement of the 2<sup>nd</sup> Joint Consultative Meeting between the AU PSC and the EU PSC, 12 October 2009, [http://www.africa-eu-partnership.org/pdf/press\\_statement\\_au\\_psc\\_eu\\_psc\\_12oct.pdf](http://www.africa-eu-partnership.org/pdf/press_statement_au_psc_eu_psc_12oct.pdf) (accessed 18 March 2010).
- 22 Most recently in February 2010 to be briefed on the EU's position vis-à-vis Madagascar and in March 2010 to report on the intended EU Electoral Observation Mission in Sudan.
- 23 The Maputo Agreement was signed on 9 August 2009, while the Addis Ababa Additional Act was signed on 6 November 2009.
- 24 5<sup>th</sup> Meeting of the International Contact Group on Madagascar, Addis Ababa, 18 February 2010, [www.africa-union.org/.../Communique%20ICG-M%20\\_Eng\\_%2018-2.pdf](http://www.africa-union.org/.../Communique%20ICG-M%20_Eng_%2018-2.pdf) (accessed 19 March 2010).
- 25 AU Peace and Security Council Communiqué, 221<sup>st</sup> Meeting, 17 March 2010, <http://www.africa-union.org/root/au/Conferences/2010/March/221psc/221st%20Communiqué%20CPS%20Madagascar%20Eng.pdf> (accessed 19 March 2010).
- 26 [http://www.eu-un.europa.eu/articles/en/article\\_8537\\_en.htm](http://www.eu-un.europa.eu/articles/en/article_8537_en.htm) (accessed 8 December 2010).
- 27 AU Peace and Security Council Communiqué, 142<sup>nd</sup> Meeting, 21 July 2008, <http://www.iss.co.za/uploads/PSC142COM.pdf> (accessed 19 March 2010).

- 28 13<sup>th</sup> Africa – EU Ministerial Troika Meeting, Addis Ababa, 14 October 2009.
- 29 Through the African Peace Facility's Early Response Mechanism.
- 30 HR Ashton statement 23 March 2010, [http://www.europa-eu-un.org/articles/en/article\\_9610\\_en.htm](http://www.europa-eu-un.org/articles/en/article_9610_en.htm) (accessed 21 July 2010).
- 31 AU Peace and Security Council Communiqué, 69<sup>th</sup> Meeting, 19 January 2007, <http://www.iss.co.za/uploads/COMMSOMALIA69.pdf> (accessed 19 March 2010).
- 32 UN Security Council Resolution 1744, 21 February 2007, <http://daccess-ods.un.org/TMP/1984453.94635201.html> (accessed 18 March 2010).
- 33 So far, the EU has paid or committed to AMISOM 95 Mio Euro through the African Peace Facility. In addition, the EU has provided five EU planners to support the work of the Strategic Planning and Management Unit at AUC level as well as technical assistants to improve the financial management of the operation.
- 34 Decision on the Report of the Peace and Security Council on its Activities and the State of Peace and Security in Africa, Assembly/AU/Dec.252(XIII), par. 16, [http://www.iss.co.za/uploads/ASSAUDEC243-267\(XIII\).pdf](http://www.iss.co.za/uploads/ASSAUDEC243-267(XIII).pdf) (accessed 19 March 2012).
- 35 First Action Plan, Priority Action 1,6





# 16 The PSC and AFRICOM

## From opposition to possible partnership

*Jack Mangala*

### INTRODUCTION

Since its inception in 2002, the African Union (AU) has made the building of regional peace and security institutions a cornerstone of the holistic vision of development embedded in its Constitutive Act.<sup>1</sup> The establishment of the Peace and Security Council (PSC) in 2004 represented an important step in the AU's quest for continental security governance.<sup>2</sup> Over the past few years, the PSC has assumed a growing role and it has come to epitomise both the possibilities and weaknesses of an increasingly self-confident AU in responding to the continent's peace and security challenges.<sup>3</sup> Against this backdrop, the Bush Administration's decision in 2007 to establish the US Africa Command (AFRICOM) was rightly perceived as countercyclical to the AU's own efforts in providing a strategic response to African conflicts.<sup>4</sup>

This chapter probes the relationship between AFRICOM and the PSC in the broader context of the African Peace and Security Architecture (APSA). It is divided into four sections, the first of which offers a conceptual, contextual and strategic interpretation of AFRICOM. The second section discusses reactions to AFRICOM at both the national and the AU levels. The third section assesses

the nascent partnership between AFRICOM and the PSC and other segments of the APSA. The fourth section articulates some policy recommendations that might enable a genuine partnership in the quest for peace and security on the continent.

## AFRICOM – A CONCEPTUAL, CONTEXTUAL AND STRATEGIC INTERPRETATION

The announcement of AFRICOM's creation on 6 February 2007 marked a sharp conceptual and organisational departure from American global military projection.<sup>5</sup> It was the culmination of years of thinking about the best ways to confront mounting perceived strategic challenges coming from Africa. The new command structure was intended to 'enhance our efforts to bring peace and security to the people of Africa and promote our common goals of development, health, education, democracy, and economic growth in Africa'.<sup>6</sup> The broad scope of this declaration of intent, which extends the military beyond its traditional role and puts it at the forefront of development promotion, underlines the fact that AFRICOM was conceived as a 'grand experiment' in US military strategy. The decision to establish a unified military command for Africa also reflects, in many respects, a shift in US policy toward the region that speaks to the growing strategic importance of the continent to the interests of both the US and the world.

Africa has been traditionally relegated to the lowest level of US military prioritisation and planning, reflecting what was generally perceived as a lack of US strategic interests on the continent as expressed by then-presidential candidate George W. Bush during the 2000 presidential campaign: 'At some point in time the president's got to clearly define what the national interests are, and while Africa may be important, it doesn't fit into the national strategic interests, as far as I can see them.'<sup>7</sup> This was not an isolated opinion of Bush, who was only expressing the prevailing view of Africa in realist and neoconservative circles that have traditionally dominated US policy toward Africa.<sup>8</sup> Although the US had a long history of military involvement in Africa going back to the Barbary Wars of 1801–05,<sup>9</sup> the continent was never given any serious consideration in US military strategy and planning. What changed between the candidate's aforementioned statement in 2000 and the US president's announcement of AFRICOM in 2007? A brief exploration of this question will provide a strategic and contextual interpretation of the new military command.

## Conceptual shift to a strategic view of Africa

The decision to establish AFRICOM is reflective of a new vision of US foreign policy strategy as outlined by Principal Deputy Assistant Secretary for African Affairs Linda Thomas-Greenfield:

In 2001, the US changed its foreign policy strategy, a move long overdue with the close of the Cold War. We decided not to rank US interests according to the traditional hierarchy of regions. In that ranking, Europe was considered a vital national security interest, Asia and the Middle East important, and Latin America and Africa mainly of humanitarian interest. We no longer operate according to this hierarchy. Since 2001, the US has implemented a strategy to operate more effectively in a world where non-state actors, and illegal trans-border activity, can pose essential threats to even the most powerful of countries. This strategy has moved Africa from the margins to the centre of American foreign policy.<sup>10</sup>

But what are the factors that have militated in favour of what the Council on Foreign Relations has termed a ‘conceptual shift to a strategic view of Africa’?<sup>11</sup> The reconceptualisation of US foreign policy toward Africa, of which AFRICOM is an expression, seems to have been motivated by three core factors that form the backbone of the new strategic thinking: the Global War on Terror (GWOT), energy security, and China’s growing influence on the continent. Each of these factors deserves some comment.

Over the past few years, US counterterrorism and other policy documents have warned about Africa’s vulnerability to international terrorism due to a host of factors, including poverty, ungoverned spaces, proximity to the Middle East, and growing radical Islam in some countries.<sup>12</sup> Some countries, such as Somalia, Sudan, Mauritania and Chad, have been portrayed as potential safe havens or breeding grounds for hostile groups that might target US and Western interests as illustrated by the terrorist attacks on US embassies in Dar es Salaam, Tanzania and Nairobi, Kenya in 1998; on targets in Mombasa, Kenya in 2002; and in Algeria, Mauritania and Morocco. US policymakers have been particularly concerned with the security challenges posed by what have been referred to as ‘ungoverned spaces’:

America is now threatened less by conquering states than ... by failing ones ... Regional conflicts can arise from a wide variety of causes, including poor governance, external aggression, competing claims, internal revolt, tribal rivalries, and ethnic or religious hatreds. If left unaddressed, however, these different causes lead to the same ends: failed states, humanitarian disasters, and ungoverned areas that can become safe havens for terrorists.<sup>13</sup>

The new security discourse conceptually encapsulated in notions such as ‘failed states’ and ‘ungoverned areas’ has been met with sharp criticism. Reflecting on the rhetoric of the ‘failed state’, Morten Bøas and Kathleen Jennings write:

‘State failure’ assumes all states are constituted and function in the same way: on a spectrum from good to bad. Yet the relevant question is not ‘Is the state failing?’ but ‘For whom is the state failing, and how?’... The concept of state failure is only useful in the context of human security, as it enables a fuller description of the realities and coping strategies in the state, taking into account agency, interests and incentives on the part of various local, national and regional actors.<sup>14</sup>

The US government has taken decisive steps, especially since 2001, to increase its counterterrorism activities in Africa. Among the most notable operations that AFRICOM has inherited are the Combined Joint Task Force-Horn of Africa (CJTF-HOA) created in late 2002, the East Africa Counterterrorism Initiative (EACTI) established in 2003, the Trans-Sahara Counterterrorism Initiative (TSCTI) established in 2005, and the Africa Coastal/Border Security Program created in 2005. These security initiatives have seen a constant increase in funding over the past few years. For example, TSCTI funding has been determined at US \$100 million per year over five years from 2007. The EACTI received an initial funding of US \$100 million.<sup>15</sup>

Against the backdrop of Africa as a ‘potential safe haven or breeding ground for terrorists’, a strategic reading of AFRICOM is that of a unified US military response in the GWOT as being prosecuted in the African theatre. AFRICOM’s centre of gravity is thus the war on terror, even though public statements and other policy and strategy documents emanating from the US administration and AFRICOM have tended to deemphasise this *raison d’être*. This interpretation is shared by many analysts.<sup>16</sup>

Another consideration behind the conceptual shift to a strategic view of Africa has to do with the energy security of the US. Reducing US dependency on Middle Eastern oil and diversifying its energy suppliers have been, since the 9/11 terrorist attacks, framed as a major component of the global strategy in the war on terror. Within this broad strategic context, the US has been increasingly turning to Africa to meet its energy needs. Oil from Africa already represents 22 per cent of US total imports, attesting to Africa's centrality in the US energy security chess game.<sup>17</sup> Within this broad context, AFRICOM must be seen as an energy-protection service whose function is, among other things, to safeguard Africa's energy supplies as well as their delivery systems to the US domestic market. This second strategic interpretation has been espoused by many scholars and analysts of US-Africa relations.<sup>18</sup>

Besides terrorism and energy security, a third core factor that has led to the conceptual shift to a strategic view of Africa by the US has to do with China's growing influence on the continent. A look at the Chinese (both public and private) foreign direct investment (FDI) portfolio clearly illustrates the extent of Chinese economic penetration. Between 2000 and 2005, Chinese FDI in Africa stood at US \$30 billion. As of mid-2007, the stock of China's FDI to Africa was US \$100 billion. Chinese FDI is both diversified (oil, copper, cobalt, iron, platinum, timber, textiles, railways and retail developments) and geographically spread across all regions of the continent.<sup>19</sup> All this has prompted the Council on Foreign Relations to declare that 'China has altered the strategic context in Africa'. AFRICOM must therefore be seen as part of a global US response aimed at counterbalancing China's deepening influence and strategic positioning in Africa.<sup>20</sup>

The US has never publicly admitted to the three factors identified above as forming the backbone of the strategic thinking behind AFRICOM's creation, preferring instead, as a matter of public diplomacy, to promote the military command under the banner of humanitarianism and capacity building, perhaps, as Raymond Copson puts it, 'out of a concern that doing so would make US policy appear too self-interested'.<sup>21</sup> However, a contextual reading of AFRICOM has shown that it represents, beyond the cosmetic rhetoric, a US military response to the global reconfiguration of power as it is unfolding on the African theatre. AFRICOM is ultimately about the projection of American power and the defence of its perceived interests in, and against security threats emanating from, Africa, with the three core objectives of fighting terrorism, securing energy supplies and counterbalancing China's influence.<sup>22</sup>

## Shifting conceptual framework and evolving mission

Since its inception, AFRICOM's conceptual framework has been refined several times, leading to a confused and mixed image in what has truly been '*l'aventure ambiguë*', to borrow from the title of Cheikh Hamidou Kane's famous novel. As Botswana's former president, Festus Mogae, put it 'We don't know how the animal would look like.'<sup>23</sup> AFRICOM has been successively referred to as 'a bold new method of military engagement', 'a pioneer for a new model of US military engagement abroad', 'a combatant command plus', 'an organization along non-traditional lines'<sup>24</sup> that reflects 'a shift in military thought'<sup>25</sup> and ought to be 'a maximalist and transformational institution', all of which have only added to the conceptual confusion.

One feature that was supposed to distinguish AFRICOM from other US military commands is that it was conceived to embody an interagency construct or character.<sup>26</sup> AFRICOM was supposed to exemplify a 'whole-of-government approach' that bridges the divide between US governmental agencies in advancing US strategic goals in Africa.<sup>27</sup> According to Principal Under-Secretary of Defence Ryan Henry, AFRICOM was not meant to be an 'operational entity' but an organisational change 'that did not mean any sort of change in a basing structure or troop positions on the continent'.<sup>28</sup> AFRICOM was predicated on the idea that US diplomatic and development resources and skills and its security assets could be brought together in a coherent and innovative way on the African continent in order to support the US administration's goals.

A second distinctive conceptual feature of AFRICOM is the centrality given to pre-conflict, preventive and anticipatory operations. While other commands, with the exception of the Southern Command (SOUTHCOM), have traditionally focused on 'fighting and winning wars', AFRICOM introduces a new security paradigm that emphasises what has been referred to as 'Phase Zero' by military strategists. Phase Zero strategy, also known as 'peacetime engagement', seeks to address 'threats at their inception through increased emphasis on security and cooperation and capacity building of partners and allies'.<sup>29</sup> As one Department of Defence official puts it, the measure of AFRICOM's success would be 'if it keeps American troops out of Africa for the next 50 years'.<sup>30</sup> Translated in non-military terms, this statement seems to echo the proposition that 'AFRICOM appears to be designed not so much to use US forces abroad to protect us at home, but to enable foreign forces in their home to protect us from a distance'.<sup>31</sup>

It is worth noting that this initial conceptual framework of AFRICOM was greeted with a mixed reception in US governmental and nongovernmental circles. It was particularly suggested that by blurring the lines between military and civilian operations, AFRICOM's conceptual framework would lead to a 'militarization of development and diplomacy'. Other stakeholders were worried that 'an increase in funding executed by AFRICOM could change the dynamic in relationships among US federal agencies and in relationships between individual US agencies and African partners'.<sup>32</sup>

These challenges are reflected in the evolution of AFRICOM's mission. Between February 2007 and May 2008, AFRICOM's mission statement went through several iterations that contributed to fuelling a great deal of scepticism and conveying the sense that the US government had a 'hidden agenda'. AFRICOM's current mission statement approved by Secretary Gates in May 2008 reads:

United States Africa Command, in concert with other US government agencies and international partners, conducts sustained security engagement through military-to-military programs, military-sponsored activities, and other military operations as directed to promote a stable and secure African environment in support of US foreign policy.<sup>33</sup>

The retooling of AFRICOM's mission statement as well as comments made by AFRICOM and other US officials seem to indicate two important shifts. First, there has been a move away from the original emphasis on development and humanitarian-oriented activities toward more traditional military programmes that the US military has been engaged in for some time in Africa: peace-keeping training, military education and counterterrorism operations.<sup>34</sup> Second, the initial 'whole-of-government approach' has been somehow tempered by an increased reference to AFRICOM rather as a 'bureaucratic reorganization within DOD [Department of Defence]'.<sup>35</sup>

Amidst a shifting conceptual and operational framework, AFRICOM has inherited a meaningful military presence – in terms of both personnel and facilities – already existing in numerous African countries. These include, for example, about 1 500 US military and civilian personnel in residence at Camp Lemonier in Djibouti that are part of the CJTF-HOA and whose command authority has been transferred from the Central Command (CENTCOM) to AFRICOM. This clearly

shows that the US military already has a small but significant footprint on the continent. Africans' reaction to AFRICOM must thus be considered against the backdrop of these already existing military and security arrangements.

## AFRICANS' REACTION TO AFRICOM

The announcement of AFRICOM's creation has generated a wide array of reactions in Africa, ranging from stiff opposition to any additional US military presence on the continent to cautious optimism and enthusiastic offers to house the new command's permanent location and subsequent forces. Although these reactions have been overwhelmingly negative, it is crucial, in this as in other matters of importance, to avoid a monolithic approach to the continent's affairs. Also, beyond specific lines of arguments for or against AFRICOM, reactions to the new command deserve to be analysed in light of US-Africa relations of the past 50 years and within the general framework of the regional balance of power.

### Few supporters

Few African governments have publicly voiced support for AFRICOM and stated an interest in housing the Command. Among those that have are Senegal, Mali, Morocco, Namibia, São Tomé and Príncipe, Equatorial Guinea, Kenya, Djibouti, Botswana and Liberia. The latter has been the most vocal in its support and lobbying efforts. Liberia's President, Ellen Johnson Sirleaf, who has sought to remake her country into the strongest US ally in the region, outlines Liberia's position:

US and foreign sceptics of AFRICOM have pointed to concerns that previous military engagements on the continent have often led to the disproportionate development of the military over instruments of civilian rule, or they see AFRICOM as a naked American attempt to gain greater access and control of regional resources. But we all must acknowledge that security and development are inextricably linked. There is no greater engine for development than a secure nation, and no better way to build a secure nation than through building professional militaries and security forces that are responsible to civilian authorities who safeguard the rule of law and human rights ...



AFRICOM should be seen for what it is: recognition of the growing importance of Africa to the US national security interests, as well as recognition that long-term African security lies in empowering African partners to develop a healthy security environment through embracing good governance, building security capacity, and developing good civil-military relations. AFRICOM should be seen as the end-product of a significant strategic realignment a long time in the making – one where engagement with African nations is more than just a humanitarian cause. Liberians can only hope that the United States will use AFRICOM to raise standards for engagement and help change the way of doing business in Africa. AFRICOM is undeniably about the projection of American interests – but this does not mean that it is to the exclusion of African ones.<sup>36</sup>

Sirleaf and others who have voiced support for AFRICOM seem to see the new military command as a win-win situation, a non-zero sum game in which US and African interests are not antithetic. This position is predicated on the idea that a mutually beneficial relationship is indeed possible and can be worked out.

## Unprecedented opposition

Opposition to AFRICOM has been both strong and unprecedented in the history of US-Africa relations. To date, all major regional and sub-regional organisations have taken position not so much against the concept of an Africa command per se, but against the basing, on the continent, of any additional US military forces. In 2007, the Pan-African Parliament, the legislative body of the AU, voted in favour of a motion to ‘prevail upon all African governments through the African Union not to accede to the United States of America government’s request to host AFRICOM anywhere in the African continent’.<sup>37</sup> On 29 August 2007, the Southern African Development Community (SADC) adopted a common position ‘that it is better if the United States were involved with Africa from a distance rather than be present on the continent’. This position was further reiterated by SADC defence and security ministers, who issued a statement stressing that ‘sister countries of the region should not agree to host AFRICOM and in particular, armed forces, since this would have a negative effect ...’<sup>38</sup> The basing of US troops in Africa has also been strongly opposed by the Arab Maghreb Union and the

Economic Community of West African States (ECOWAS). Few states have publicly dissented from these common positions.

Generally speaking, AFRICOM's opponents have put forward four lines of argument, based on a number of considerations. First, they argue that AFRICOM was presented as a *fait accompli* to Africans, who were never consulted during the conceptualisation phase.<sup>39</sup> Second, those reluctant to embrace AFRICOM have stressed that the latter's design doesn't take into consideration Africa's own emerging security architecture.<sup>40</sup> While it is true that the US had been supporting Africa's security through a variety of capacity-building programmes and initiatives,<sup>41</sup> AFRICOM's designers didn't consult with the AU on how the new military command could enhance continental efforts in the area of peace and security; and, in so doing, AFRICOM has become the archetype of America's unilateralism at a time when fundamental dynamics on the continent point towards multilateralism and the building of a collective security mechanism. Third, some have argued that the militarisation of Africa-US relations that AFRICOM seems to entail will introduce a new dynamic that runs counter to the restructuring of civil-military relations that has taken place in Africa since the end of the Cold War as part of the continent's democratic process.<sup>42</sup> Fourth, the reluctance to embrace AFRICOM is also based on the grounds that the latter epitomises a conflict of priorities between the US and Africa. While the central focus of the US government is on the GWOT, terrorism doesn't seem to be a top priority on the other side of the Atlantic, which seems more concerned with meeting the basic needs of the population.<sup>43</sup>

This unprecedented opposition has been attributed, to a greater extent, to a failure of US public diplomacy and the inability of the US Department of Defense to articulate its message clearly, to 'sell' AFRICOM to Africans and engage them at a level and in a manner that not only dissipates deep-rooted historical suspicions stemming from past US involvement on the continent but, more importantly, emphasises clearly defined and shared interests and a common vision of the continent's peace and security. 'In some respects, we probably didn't do as good a job we should have when we rolled out AFRICOM,' Gates has acknowledged.<sup>44</sup> Much more remains to be done to convince sceptical African leaders that their countries' own security and interests and those of Africa as a whole can be reconciled with US interests and organised along commonly agreed upon strategic and operational priorities.

## EMERGING PSC-AFRICOM PARTNERSHIP

Despite the controversy surrounding its establishment and the operational challenges it has faced, AFRICOM has lent its support to some of the initiatives undertaken by the PSC. However, this emerging partnership has yet to be formalised into a general framework of cooperation and stands in clear contrast to AFRICOM's deepening relationships with national governments.

### Absence of a general framework for cooperation

In its Article 17(4), the PSC Protocol stipulates that the Council shall cooperate and work closely with relevant international partners on issues of peace, security and stability in Africa. This provision offers the legal basis for a possible working partnership between the PSC and AFRICOM. Although the two partners have started to engage each other, they have yet to negotiate a general framework for cooperation on the basis of Article 17(4). The same is true for the AU in general, whose nascent relationship with AFRICOM lacks a general framework that would offer the advantage of 'harmonising and coordinating all AU interactions with the Command', as suggested by the Institute for Security Studies (ISS).<sup>45</sup> Such an action, however, doesn't seem to be of concern to the AU, whose Commission Chairperson, Jean Ping, has admitted that the question of AFRICOM has never been put on the agenda of the AU Summit, and that the AU hasn't sought to develop an institutional engagement with AFRICOM.<sup>46</sup> This apparent institutional reticence to engage AFRICOM is reflective, in many respects, of the general mistrust surrounding the military command and the negative image it still carries and has to overcome.

Various AU officials have, however, indicated the organisation's support for AFRICOM and the latter's potential in furthering the cause of peace and security on the continent. Representing Ping at AFRICOM's commemoration ceremony on 17 October 2008, Brigadier General Jean De Martha, head of the Operations and Support Unit, noted that 'the AU believes that AFRICOM represents an opportunity to strengthen and expand United States and African relationships in this regard. We pledge to take this partnership seriously and that our combined effort would help Africa to attain sustainable peace and security in the continent.'<sup>47</sup> However, in the absence of a general framework for cooperation, current patterns of interaction between the PSC and AFRICOM remain marked by a case-by-case

approach as illustrated by AFRICOM's contributions to AU regional peace and security initiatives.

## AFRICOM'S CONTRIBUTIONS TO AU REGIONAL PEACE AND SECURITY INITIATIVES

In its *2010 Posture Statement*, AFRICOM reiterates the critical importance of 'region-wide efforts to establish common security networks, such as the AU's cooperative security architecture'.<sup>48</sup> AFRICOM has thus underscored its willingness to support the AU's peace and security initiatives. For example, in 2008, it helped to deploy 1 600 Ugandan peacekeepers to Somalia and provided equipment to the Burundian battalion as part of the AU's Mission in Somalia (AMISOM). It also participated in the planning and logistics for the deployment of AU troops in Darfur.<sup>49</sup> AFRICOM has worked with the AU to strengthen the latter's communications capability by training a team of AU technicians and military personnel on Very Small Aperture Terminal (VSAT) satellite systems. Given the PSC responsibilities in post-conflict reconstruction issues under Article 6.e. of its Protocol, there seems to be the possibility of a partnership with AFRICOM in this area. Such a partnership would be in line with the latter's commitment to address 'conditions that contribute to instability'.<sup>50</sup>

There has been a developing relationship between AFRICOM and regional economic communities (RECs) in the operationalisation of ASF regional brigades. The establishment of regional brigades is regarded as an area in which AFRICOM could concretely and effectively contribute to the advancement of the APSA.<sup>51</sup> Under the auspices of the Partnership for Integrated Logistics Operations and Tactics (PILOT), a joint Canadian government/AFRICOM initiative 'aimed at building long-term operational logistics planning capacity with the African Standby Force while simultaneously promoting interoperability between the US military and ASF', AFRICOM has been able to contribute in the improvement of the ECOWAS Standby Force's deployment and sustainment capabilities. The first PILOT seminar was held in February 2009 in Ghana and it included 30 officers and civilians from 15 ECOWAS countries.<sup>52</sup> Through the CJTF-HOA, AFRICOM has also provided similar training for the East Brigade (EASBRIG).

AFRICOM has organised large-scale military and humanitarian exercises involving RECs. For example, it put together exercise NATURAL FIRE 10 in Uganda and Kenya in October 2009, which brought 1 200 soldiers and civilians from six

central and east African countries to improve interoperability and help build African partner capacity to respond to complex humanitarian emergencies. The same applied for AFRICA ENDEAVOR, a multinational exercise aimed at testing and strengthening the communications interoperability of African militaries to enable their coordination in regional peacekeeping, humanitarian and disaster relief operations. It is worth noting that 25 countries and three regional organisations (the AU, ECOWAS, and the Economic Community of Central African States or ECCAS) participated in the AFRICA ENDEAVOR 09 in Gabon in 2009 and more than 30 countries were expected to participate in AFRICA ENDEAVOR 10 in Ghana.<sup>53</sup> AFRICOM's 2010 *Posture Statement* indicates that the Command has requested funding to support training programmes to enhance the capabilities of the AU peacekeeping staff, ECOWAS, ECCAS, and SADC Standby Brigade Headquarters. The document notes in particular that AFRICOM has sought funding for designated member states' tactical units pledged to the respective regional standby brigades.<sup>54</sup> However, no evidence is available that would indicate AU involvement in this planning.

AFRICOM's limited engagement with continental and regional institutions and instruments of peace and security stands in clear contrast with the wide range of activities and programmes that the military command has been pursuing in collaboration with national governments. The rhetoric against AFRICOM doesn't seem to match the reality on the ground,<sup>55</sup> where AFRICOM has established some presence in 12 countries and is planning on extending its footprint to 11 others.<sup>56</sup> In light of this growing bilateral cooperation with individual national governments, it seems legitimate to ask whether AFRICOM's current approach might undermine the APSA. The remaining section answers this question. It outlines a broad rationale for a mutually beneficial partnership and lays out concrete policy recommendations that could enable such a partnership.

## POSSIBLE STRATEGIC CONVERGENCES AND POLICY RECOMMENDATIONS

This chapter has demonstrated that AFRICOM is first and foremost about the projection of US power and the protection of its interests in Africa. Africans must thus deal with AFRICOM from this realist perspective. The constellation of US interests in Africa revolves around three overarching strategic imperatives: fight terrorists and deny them safe haven; secure energy supplies and transportation

routes; and maintain a playing field conducive to the free market and favourable to the promotion of American economic and commercial interests. AFRICOM is a central instrument in the US panoply of power aimed at achieving those strategic goals.

## Possible strategic convergences

Can US strategic interests be reconciled with African ones? This is the defining question that African leaders must come to terms with. A mere opposition to AFRICOM is not a sustainable position, especially given the power differential at play. African leaders need not be locked into the postulation that US strategic interests should necessarily come at the expense of African ones and that AFRICOM represents a classic example of the zero-sum game, whereby when the US wins Africa loses. AFRICOM can be a non-zero-sum game. A parallel examination of overarching US strategic goals and Africa's own interests and priorities seems to suggest that a win-win situation is possible.

First and foremost, on the central question of terrorism, Africans have clearly and strongly indicated their willingness to fight terrorism and cooperate internationally in eradicating this scourge. Speaking after the Kampala terrorist attacks on 11 July 2010, Ambassador Ramtane Lamamra, AU Commissioner for Peace and Security, reiterated that the AU was 'committed to the fight against terrorism and to defeat terrorists and terrorism'.<sup>57</sup> The Commissioner also indicated that the AU would use the various anti-terrorist treaties that have been passed in recent times to reactivate the continental battle against terrorism. While the terrorist attacks in Uganda during the recent World Cup have prompted a re-examination of the AU's anti-terrorist strategies, they have also highlighted the possibility of a further partnership between the AU and the US. What is needed, at this juncture, is for Africans – working through the AU – to bend the arc of the fight against terrorism, as pursued by the US through AFRICOM, so that dimensions of terrorism and other human security threats that are of concern to the African people are given the right priority and are fully addressed under a joint strategy: genocide, gross violations of human rights, poverty, and destabilising activities by militant and other groups seeking alternative authority.

Second, the US and its African partners need to frame the question of security of energy supplies and routes as a common good in which both the producer (Africa) and the consumer (US) have a vested interest. Africa's limited capabilities

in securing vast energy-producing areas, particularly offshore,<sup>58</sup> would be enhanced by a genuine cooperation aimed at preserving the common good. Both the US and its African partners have an interest in bringing the continent's energy production into the international market in a safe and predictable way. To that end, the former must act in a way that respects the latter's sovereignty.

Third, the question of the promotion of US commercial and economic interests in Africa must be approached against the backdrop of globalisation whose current phase is ontologically different from the colonial era that saw a concerted plundering of Africa's resources. Competition from newcomers China, India, Brazil and Indonesia has already forced the US to reassess Africa's economic significance. It is within the realm of this possible strategic encounter between Africa and the US that an AU/PSC–AFRICOM partnership must be conceptualised and pursued.

## Some recommendations for moving forward

Despite AFRICOM's current 'image problem' – in part of its own making – and the widespread suspicion that has accompanied its inception, a partnership between the PSC and AFRICOM should be welcomed. A genuine partnership between the two partners could enhance the cause of peace and security on the continent. Below are some policy recommendations worth considering in this process, which requires, among other things, a great deal of confidence-building measures to dissipate the initial mistrust. It falls upon AFRICOM to demonstrate its commitment to the APSA and the PSC work in particular.

First, it is crucial that the issue of AFRICOM be placed on the agenda of the AU Summit. The current reactive approach is counterproductive in the long run. Two years after the establishment of AFRICOM, it is imperative that the AU develops a coherent policy response to the Command whose activities and programmes are going to impact greatly on the AU's efforts in the area of peace and security. Such a response should especially outline possible areas of collaboration between various components of the APSA and AFRICOM.

Second, the AU should establish a formal collaboration framework with AFRICOM to coordinate and harmonise the interactions of its various peace and security structures with the Command. Within this framework, the two partners should articulate a set of common objectives in the area of peace and security and define a joint strategic vision that takes into consideration the legitimate interests of Africa and the US. The ISS has also recommended such action.<sup>59</sup>

Third, on the basis of Article 17 of its Protocol, the PSC could negotiate a memorandum of understanding with AFRICOM to guide their current and possible partnership, especially in the area of post-conflict reconstruction. AFRICOM has indicated its intention to contribute to the building of the APSA, especially the establishment of regional standby brigades. It is necessary that such a contribution be part of a concerted collaborative framework.

Fourth, as AFRICOM takes shape, it is imperative to deemphasise the development-military nexus that was supposed to be its institutional signature. While it is important to recognise the complexity of issues facing the continent, which calls for a more holistic approach, making the military a central piece of this approach at a time when regional dynamics in Africa seem to restrict the military to the traditional space that it occupies in democratic countries seems deeply miscalculated. Given Africa's ongoing democratic transformation and restructuring of civil-military relations, a more traditional military command would be better received than one that may potentially blur the lines between civilian and military spheres of operation.

Fifth, the question of AFRICOM's final headquarters and basing must be dealt with carefully and in close collaboration with the AU so as to avoid any disruptive effect on the overall APSA.

Sixth, AFRICOM must actively seek the cooperation of regional powers such as South Africa and Nigeria, whose support and leadership are key to the full development and functioning of the APSA.

## CONCLUSION

The first five years of the PSC's establishment have coincided with an affirmation of Africa's growing strategic importance to the US. A robust examination of US overarching strategic goals in Africa – that AFRICOM is intended to serve – tends to suggest that American and African interests can be reconciled. Fighting terrorism, securing energy sources and their transportation routes and maintaining an environment conducive to the promotion of US commercial and economic interests are not antithetic to Africa's own institutional and strategic priorities in the area of peace and security. But, for AFRICOM to be a non-zero-sum game, the US must be seen to act as a force for good in the region, a force whose intervention doesn't disrupt regional equilibrium but genuinely contributes to Africa's own solutions to peace and security as pursued by the AU/PSC. Although the history of



US military intervention in Africa warrants a note of caution, the ongoing reconfiguration of global power and the strengthening of continental and regional institutions in Africa makes possible a genuine partnership between AFRICOM and the PSC. AFRICOM has expressed its intent to play a part in the building of the APSA; it is up to Africans to work collectively to ensure that its capabilities ultimately serve the cause of peace and security on the continent.

## NOTES

- 1 See Timothy Murithi, *The African Union: pan-africanism, peacebuilding and development*, Adershot: Ashgate, 2005; Tim Murithi, African approaches to building peace and social solidarity, *African Journal on Conflict Resolution* (2007), 9–33; Corine Paeker and Donald Kurake, The African Union and its Constitutive Act, *American Journal of International Law* 92(2) (2002), 365–379.
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states in order to fight the phenomenon of extremism. Since then has adopted a battery of instruments that indicate Africans' commitment: the 1999 Algiers Convention on the Prevention and Combating of Terrorism and its Protocol, the 2001 Dakar Declaration Against Terrorism, and the 2002 Plan of Action on the Prevention and Combating of Terrorism in Africa. For an overview of AU's efforts on this front, see African Union, *The Peace and Security Agenda*, [http://www.africa-union.org/root/au/AUC/Departments/PSC/Counter\\_Terrorism](http://www.africa-union.org/root/au/AUC/Departments/PSC/Counter_Terrorism) (accessed 20 September 2010).

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# 17 Conclusion

*Tim Murithi*

The emergence and development of the African Union's Peace and Security Architecture (APSA) reflects a growing realisation on the African continent that ensuring stability and order is a prerequisite for the promotion of peace, development and the improvement of Africans' livelihoods. The Peace and Security Council (PSC) has carved out a space for itself as one of the pre-eminent institutional structures of the AU. Its regular pronouncements have also elevated the African perspective on conflicts across the continent. This is a significant shift from the often clumsy and inarticulate positions adopted by the predecessor institution, the Organisation of African Unity. In the first five years of its operation, from 2004 to 2009, the PSC has gradually taken a stronger stand on conflicts and peace initiatives. The PSC has adopted a stance that can be defined as 'interventionist' as far as peace and security issues in Africa are concerned. However, the limitations of APSA's fledgling institutions have been exposed in complex humanitarian situations such as in the Darfur region of Sudan. There is clearly a 'security gap' in Africa regarding what the continent and the AU leadership would like to achieve in terms of order and stability and what the AU as an institution is currently able to deliver.

Ultimately, it is too early to pass a definitive judgment on the work of the PSC and the AU's broader peace operations. The AU is trying to effect a paradigm shift from business as usual on the continent and this requires fostering a change in attitudes, which will take time. The AU as a norm entrepreneur has to be acknowledged and its vision of bringing about lasting change across the continent has to be given an opportunity to work. The AU will need to seriously orient the political leadership of the continent and take decisive and necessary action, without which the challenges of ensuring successful peace operations will not be addressed effectively.

We have to be Afro-optimistic in believing that, ultimately, African people will reach their desired destination of peace and development. Pan-Africanism and the AU are vehicles that will be used to get to that destination. Like all vehicles, they will sometimes refuse to start, break down or have accidents. But when your car breaks down or will not start, you do not abandon it, you try again or you find somebody to help you fix it. The AU exists, but the African continent is not yet unified, united or at peace with itself. The African vehicle, with the PSC as its engine, has started on its journey towards the destination of peace and development and is rolling along gently. The AU has had some starts and stops and will have more. But it will get there quicker if more actors are willing and committed to pushing it along.